

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIUBUNAL
BENCH AT NAINITAL**

Present: Hon'ble Mr. Rajendra Singh

.....Vice Chairman (J)

Hon'ble Mr. A.S. Rawat

.....Vice Chairman (A)

CLAIM PETITION NO. 88/NB/DB/2023

Govind Ballabh, aged about 42 years, S/o late Sri Laxmi Dutt Thuwal, presently serving as Head of Department (Information technology), Government Polytechnic, Lohaghat, District Champawat.

.....Petitioner

Vs.

1. State of Uttarakhand through Secretary, technical Education Department, Government of Uttarakhand, Dehradun.
2. Director, Technical Education, Uttarakhand Srinagar (Garhwal).
3. Principal, Government Polytechnic, Lohaghat, District Champawat.
4. Chief Secretary, State of Uttarakhand, Dehradun.

..... Respondents

Present: Sri Bhagwat Mehra, Advocate, for the petitioner
Sri Kishore Kumar, A.P.O. for the respondents

JUDGMENT

DATED: DECEMBER 09, 2025

Per: Hon'ble Sri A.S.Rawat, Vice Chairman (A)

This claim petition has been filed by the petitioner for following reliefs:

“A. To declare the action on the part of the Respondents in the matter, as arbitrary and illegal and without jurisdiction.

B. To set aside the impugned orders dated 19-08-2016, 28-01-2018, 28-11-2020 and 02-06-2023 passed by the

Respondents (Annexure No. 1, 2, 3 and 4 respectively to Compilation No. 1).

C. To direct the Respondents to grant all consequential benefits to the petitioner from due date.

D. To pass any other suitable order as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

E. To allow the claim petition with cost."

2. Brief facts, giving rise to present claim petition, are as follows:

2.1 The petitioner holding a four years regular B. Tech (Information Technology) Degree with First Division from Uttar Pradesh Technical University in the year 2005 was appointment to the post of Lecturer in Government Polytechnics run by the Technical Education Department of State Government, was appointed by the Respondent No. 1 on the post of Lecturer (Information Technology) on regular and substantive basis after due selection by the Uttarakhand Public Services Commission in the year, 2008, vide Government Order dated 30.12.2008. He immediately joined duties on the said post at the posting place on 19.01.2009.

2.2 The Service conditions of the petitioner are regulated by the Statutory Rules framed by the State Government namely "The Uttarakhand Technical Education Gazetted Officers Service Rules, 2009, notified on 17.12.2009.

2.3 The petitioner was promoted to the post of Head of Department (Information Technology) vide order dated 11.09.2015. Pursuant to the said promotion order, the petitioner immediately joined duties on the promoted post at Government Polytechnic, Lohaghat, District Champawat (i.e. the present place of posting) and is discharging his duties with due sincerity and dedication.

2.4 With a view to promote the standard of quality education being imparted by the Teachers of the Government Polytechnics, the erstwhile State of U.P. issued a Government Order on 28.09.1998, which provides for sponsorship of candidates for higher studies in Masters Degree in Engineering i.e. M.E/M.Tech. as in service candidate with full salary.

2.5 In view of the above, as well as in view of the "Quality Improvement Programme for Polytechnic Teachers" (in short Q.I.P. (Poly) of the A.I.C.T.E., the Respondents sponsored/permited various persons similarly situate like the petitioner from time to time for pursuing the M.E./M. Tech. course and even various candidates were sponsored in other disciplines which were not provided in the aforesaid policy decision/Government Order dated 28.09.1998.

2.6 The petitioner under R.T.I. Act, made an application on 05.08.2010, sought certain information regarding the candidates sponsored by the Respondents No. 1 and 2 from time to time for higher studies with salary. The Respondent No. 2 vide reply dated 03.08.2010, furnished the same to the petitioner, in which it was fairly admitted that various candidates were granted permission to pursue Higher Courses from outside the State also with full salary.

2.7 The petitioner applied for permission vide application dated 28.03.2016 through proper channel. The said application was duly forwarded by the Principal of Government Polytechnic, Lohaghat, District Champawat to the Respondent No. 2 for further necessary action vide letter dated 29.03.2016. As per the provisions contained in G.O. dated 28.09.1998, the decision was/is to be taken by the State Government/Respondent No. 1. However, the said request of the petitioner was turned down by the State Government vide letter dated 17-08-2016 at the relevant time on the ground that the petitioner's services are not confirmed. Thereafter the Respondent No. 1 after assessing the petitioner's work, conduct, entire service career,

performance as well as all other relevant aspects, vide notification dated 23-06-2020 confirmed the services of the petitioner.

2.8 The petitioner rendered continuous and satisfactory service of about 12 years in the department and in view of his work, conduct and performance, he was given promotion to the next higher post of Head of Department vide order dated 11-09-2015. However, in the year 2016, one Shri Pankaj Kumar Pandey, who was posted as Director of the Department, and who was not happy with the petitioner since the petitioner has dared to approach Hon'ble Uttarakhand High Court by filing Writ Petition No. 149 (S/B) of 2015 (Govind Ballabh and others Vs. State of Uttarakhand and others) against inaction on his part in holding the promotion exercise. The said writ petition was disposed of by the Hon'ble Court with certain directions. When the said directions were not complied with, the petitioner filed Civil Contempt Petition in the matter against the Secretary and Director of the Department and only thereafter, the order of this Hon'ble Court was complied with.

2.9 Vide impugned letter dated 19-08-2016, a special adverse entry was communicated to the petitioner by Sri Pankaj Kumar Pandey as Respondent No. 2/ Director of the Department, alleging therein that the petitioner has issued an advertisement for contractual appointment without permission from the competent authority and as such the petitioner was reprimanded. Petitioner submitted a representation against the aforesaid special adverse entry to the Respondent No. 1/Appellate Authority by registered post as well as through proper channel on 15-09-2016, refuting all the allegations duly supported by documentary evidences.

2.10 No decision whatsoever, has been taken on the aforesaid statutory representation by the Respondent No. 1 despite lapse of a period of more than 4 years. On the basis of the said Special Adverse Entry, the Respondents No. 1 and 2 has given adverse entry to the petitioner for the year 2016-17, which was communicated to the petitioner vide letter dated 23-01-2018, without recording any reasons.

The said adverse entry was communicated to the petitioner for the first time through his Principal vide covering letter dated 08-03-2018 and it was also provided that the petitioner may file his representation against the adverse entry within a period of 45 days after receipt of the adverse entry. When no decision was taken by the Respondent No. 1 on the request dated 29.7.2020 submitted by the petitioner, the petitioner approached Hon'ble Uttarakhand High Court by filing Writ Petition No. 288 (S/B) of 2020 (Govind Ballabh Vs. State and others). At the same time, the Respondent No. 2 vide letter dated 11-08-2020 virtually rejected the Statutory Appeal of the petitioner by terming the same as time barred.

2.11 The said Writ Petition came up for hearing on 7th October, 2020. On 7.10.2020, the Hon'ble High Court posted the matter for 9th October, 2020 while granting time to the State Counsel to make a submission in the matter. During the hearing dated 9.10.2020, the State Counsel made a statement that the petitioner's request has been rejected vide order dated 8.10.2020. A copy of the same was also provided to petitioner's Counsel on the same day. As such, this Hon'ble Court vide order dated 9.10.2020 was pleased to dismiss the writ petition being infructuous with a liberty to the petitioner to challenge the order dated 08-10-2020. Feeling aggrieved, the petitioner again approached the Hon'ble Court by filing writ petition no. 330 (S/B) of 2020.

2.12 On 18-04-2021, the petitioner submitted a representation in the matter to the Respondent No. 2 seeking permission for the M. Tech. Course. The impugned order dated 28-11-2020 is totally arbitrary and illegal and cannot be justified in the eyes of law. The sole basis for awarding the annual adverse entry for the year 2017-18, which was communicated on 08-03-2018, was the Special Adverse Entry given vide order dated 19-08-2016 passed by the Director (Respondent No. 2 herein), against which Representation was submitted on 15-09-2016. No decision has been taken on the representation dated 15-09-2016. As such the alleged decision dated

28-11-2020 is nothing, but, merely an eye wash. While passing the said decision dated 28-11-2020 issued under the signature of Additional Chief Secretary of Technical Education Department, the said person, who has signed the same, lost sight of the fact that the Annual Adverse Entry of 2016-17 was given and finalized by himself/herself i.e. Additional Chief Secretary and she has no authority whatsoever, at all to decide a Statutory Appeal against his/her own order. Moreover, the said Statutory Appeal was addressed to the Chief Secretary i.e. Respondent No. 4 herein as also reveals from the document dated 13-04-2018. Till date no decision whatsoever, has been taken by the Chief Secretary in the matter.

2.13 Feeling aggrieved, the petitioner approached this Tribunal by filing Claim Petition No. 17/N.B./S.B./2022 (Govind Ballabh Vs. State of Uttarakhand and others, which was disposed vide order dated 20.03.2023 with a direction to respondent no. 1 to take a decision on the statutory appeal/ representation dated 15.09.2016. The said representation was rejected vide impugned order dated 02.06.2023. Hence, the impugned orders cannot be justified in the eyes of law and the same deserves to be set-aside forthwith.

3. The claim petition has been contested on behalf of the respondents. Counter affidavit has been filed by Sri Prakash Tiwari, Deputy Secretary, Technical Education, Govt. of Uttarakhand, on behalf of respondent no. 1.

3.1 Petitioner, Mr. Govind Ballabh, Lecturer IT, Government Polytechnic Lohaghat (Champawat) was given the special adverse entry in the year 2016-17, since, advertisement for the engagement of contract lecturers was advertised by him without obtaining the permission of the Government/Directorate. This act of the petitioner created very odd and unfavourable situation before the State Government. In this regard he was directed to clarify the situation, and not being satisfied with the reply given by him, he was strongly condemned for his irregular work and vide Directorate's office

memorandum no-511-15, dated 19.08.2016 Special adverse entry was given to him. The said adverse entry was marked for the year 2016-17. The information about the same was communicated to him vide the Directorate's letter no. 4119 dated 28.01.2018 with the purpose if he had to give any representation, he may send it within 45 days of the receipt of the letter.

3.2 In this matter a representation dated 13.04.2018 of the petitioner was sent to the Directorate vide letter no-1664 dated 25.02.2020 by the concerned Principal. Vide Directorate's letter dated 11.08.2020 it was communicated to him that since his representation was not received as per rules within 45 days, same is not acceptable.

3.3 Earlier also a writ petition no. 330(S/B) of 2020, Govind Ballabh versus State of Uttarakhand and others was filed before the Hon'ble High Court, Nainital in which the Court directed the competent authority to decide the representation of the petitioner within a period of four days. In compliance of the said order, representation dated 13.04.2018 was disposed of on merit basis vide order dated 28.11.2020.

3.4 Further, the petitioner, sought permission to appear in the GATE exam for doing M.Tech but he was not permitted 02 years study leave on the ground that his entry for the year 2016-17 was adverse. He was not permitted for the study leaves because as per para-5 of Government Order No.-918 dated 28.09.1998, the work and conduct of the concerned teachers in the year to be sponsored and in all previous years should have been satisfactory.

3.5 Petitioner's representation dated 15.09.2016 addressed to the Principal Secretary and another representation (undated) addressed to the Chief Secretary for disposal of adverse entry was forwarded to the State Government by Directorate, Technical Education vide the letter dated 20.04.2018. The representation dated 13.04.2018 of the petitioner was disposed of by the State Government.

3.6 Writ Petition No. 288 (S/B) of 2020, Govind Ballabh vs. State of Uttarakhand and others, a letter dated 07.10.2020 was sent by the Advocate General's Office, vide which it was informed to send the instructions in the matter of his representation dated 29.07.2020 which was regarding permission to him for higher studies. Hence, the representation of the petitioner dated 29.07.2020 was disposed of point-wise as per office memorandum no. 914 dated 08.10.2020, in which at point-2(1) it has been clarified that there will be no hindrance in the education system of the students. Similarly, in paragraph-2(2), paragraph-5 of the said government order it was also mentioned that the work and conduct of all the teachers in the year to be sponsored and in all the previous years should have been satisfactory. Hence, it is clear that petitioner's own statement is contradictory and department has taken the decision as per the prevailing rules.

3.7 Special adverse entry was given to the petitioner vide Directorate's letter No. 511-15 dated 19.08.2016. further, vide Directorate's letter No. 4119 dated 28.01.2018 comments of the Reporting officer, Reviewer officer/sanctioning officer was sent so that if any representation is to be sent, the same may be sent within 45 days. The petitioner did not submit his representation within 45 days. Further, as per Government order dated 28.04.2015, his representation was not found acceptable and same was communicated to him vide letter No. 1782 dated 11.08.2020. The Government order dated 28.09.1998 is applicable for the facility of study leaves as per point-5 of which it has been clarified that the work and conduct of the concerned teachers in the year to be sponsored and in all previous years should have been satisfactory.

4. Rejoinder affidavit has been filed by the petitioner in which the petitioner has contested that the Director Technical education was not competent authority to award punishment order dated 19/08/2016. This fact has not been contested by the respondents in the counter affidavit. The punishment order is itself nullity in the eyes of the law and the same vitiates the entire action from inception.

5. We have heard the learned counsel for the parties and also perused the record.

6. Learned Counsel for the petitioner argued that the Director, Technical Education is not authorised to award punishment to the petitioner. Any punishment which is not mentioned in the categories of the punishment cannot be awarded. The petitioner has relied upon the judgment of Hon'ble Supreme Court in Civil Appeal No. 3550 of 2012, Vijay Singh vs. State of U.P. & others (2012) 5 SCC 242. He has also relied upon the judgment dated 17.11.2021 passed in claim petition No. 11/NB/DB/2021, Dr. M.K.Tiwari vs. State of Uttarakhand & others, in which this, Tribunal also referred the judgment of Hon'ble Supreme Court in Vijay Singh's case.

7. Learned A.P.O. argued that the petitioner has been awarded the special adverse entry by the Director, Technical Education as the petitioner in the capacity of the officiating Principal advertised the posts of the Lecturer on contract basis in the department without taking permission of the competent authority. Because of the special adverse entry to the petitioner adverse entries have been made in the ACR for the year 2016-2017 of the petitioner also. The petitioner did not represent against the adverse entries within the stipulated period of 45 days, so his representation was considered as time barred. In view of the above the Claim petition is liable to be dismissed.

8. Based on the arguments of both the parties and the documents placed before the Tribunal, we find the petitioner has been awarded special adverse entry a way of punishment, which is nowhere mentioned in the category of the punishments awarded both minor and major to the delinquent officials. The relevant paras of the judgement passed by this Tribunal in claim petition No. 11/NB/DB/2021, Dr. M.K.Tiwari vs. State of Uttarakhand & others, as also relied upon the petitioner are as under:

"9. In Civil Appeal No. 3550 of 2012, Vijay Singh vs. State of U.P. & others, (2012)5 SCC 242, following has been observed by the Hon'ble

Supreme Court in paras 7, 8, 9, 10, 11, 12, 13, 16 and 17 of the decision, which are quoted herein below for convenience:

"7. The only question involved in this appeal is as to whether the disciplinary authority can impose punishment not prescribed under statutory rules after holding disciplinary proceedings.....

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8. Admittedly, the punishment imposed upon the appellant is not provided for under Rule 4 of Rules 1991. Integrity of a person can be withheld for sufficient reasons at the time of filling up the Annual Confidential Report. However, if the statutory rules so prescribe it can also be withheld as a punishment. The order passed by the Disciplinary Authority withholding the integrity certificate as a punishment for delinquency is without jurisdiction, not being provided under the Rules 1991, since the same could not be termed as punishment under the Rules. The rules do not empower the Disciplinary Authority to impose "any other" major or minor punishment. It is a settled proposition of law that punishment not prescribed under the rules, as a result of disciplinary proceedings cannot be awarded.

9. This Court in State of U.P. & Ors. v. Madhav Prasad Sharma, (2011) 2 SCC 212, dealt with the aforesaid Rules 1991 and after quoting Rule 4 thereof held as under:

"16. We are not concerned about other rule. The perusal of major and minor penalties prescribed in the above Rule makes it clear that sanctioning leave without pay is not one of the punishments prescribed, though, and under what circumstances leave has been sanctioned without pay is a different aspect with which we are not concerned for the present. However, Rule 4 makes it clear that sanction of leave without pay is not one of the punishments prescribed. Disciplinary authority is competent to impose appropriate penalty from those provided in Rule 4 of the Rules which deals with the major penalties and minor penalties. Denial of salary on the ground of no work no pay cannot be treated as a penalty in view of statutory provisions contained in Rule 4 defining the penalties in clear terms.

(Emphasis added)"

10. The Authority has to act or purport to act in pursuance or execution or intended execution of the Statute or Statutory Rules. (See: The Poona City Municipal Corporation v. Dattatraya Nagesh Deodhar, AIR 1965 SC 555; The Municipal Corporation, Indore v. Niyamatulla (dead) by his Legal representatives, AIR 1971 SC 97; J.N. Ganatra v. Morvi Municipality, Morvi, AIR 1996 SC 2520; and Borosil Glass Works Ltd. Employees Union v. D.D. Bambole & Ors., AIR 2001 SC 378).

11. The issue involved herein is required to be examined from another angle also. Holding departmental proceedings and recording a finding of guilt against any delinquent and imposing the punishment for the same is a quasi-judicial function and not administrative one. (Vide:

Bachhittar Singh v. State of Punjab & Anr., AIR 1963 SC 395; Union of India v. H.C. Goel, AIR 1964 SC 364; Mohd. Yunus Khan v. State of U.P. & Ors., (2010) 10 SCC 539; and Chairman-cum-Managing Director, Coal India Ltd. & Ors. v. Ananta Saha & Ors., (2011) 5 SCC 142).

Imposing the punishment for a proved delinquency is regulated and controlled by the statutory rules. Therefore, while performing the quasi-judicial functions, the authority is not permitted to ignore the statutory rules under which punishment is to be imposed. The disciplinary authority is bound to give strict adherence to the said rules.

Thus, the order of punishment being outside the purview of the statutory rules is a nullity and cannot be enforced against the appellant.

12. This very ground has been taken by the appellant from the very initial stage. Before the appellate authority such a ground was taken. Unfortunately, the appellate authority brushed aside the said submission observing that the judgments mentioned by him to the effect that integrity could not be withheld as punishment not prescribed under the statutory rules, had no application to the case, and therefore, in that respect no further consideration was necessary. The order of punishment imposed by the disciplinary authority did not require any interference. The revisional authority rejected the revision as not maintainable observing as under:

“Representation is not maintainable. Withholding of integrity certificate does not come under punishment under 1991 RulesTherefore, the revision is returned without hearing on merit on the ground of non maintainability.

Emphasis added)”

13. We fail to understand, if the revisional authority was of the view that integrity could not be withheld as punishment, why the mistake committed by the disciplinary authority as well as by the appellate authority could not be rectified by him. This shows a total non-application of mind. In such a fact-situation, the subordinate officer has to face the adverse consequences without any fault on his part. The grievance raised by the appellant that recording the past criminal history of an accused is relevant in non-bailable offences only as it may be a relevant factor to be considered at the time of grant of bail, and he did not record the same as it was a bailable offence, has not been considered by any of the authorities at all. Undoubtedly, the statutory authorities are under the legal obligation to decide the appeal and revision dealing with the grounds taken in the appeal/revision etc., otherwise it would be a case of non-application of mind.

*16. Undoubtedly, in a civilized society governed by rule of law, the punishment not prescribed under the statutory rules cannot be imposed. Principle enshrined in Criminal Jurisprudence to this effect is prescribed in legal maxim *nulla poena sine lege* which means that a person should not be made to suffer penalty except for a clear breach of existing*

law. In *S. Khushboo v. Kanniammal & Anr.*, AIR 2010 SC 3196, this Court has held that a person cannot be tried for an alleged offence unless the Legislature has made it punishable by law and it falls within the offence as defined under Sections 40, 41 and 42 of the Indian Penal Code, 1860, Section 2(n) of Code of Criminal Procedure 1973, or Section 3(38) of the General Clauses Act, 1897. The same analogy can be drawn in the instant case though the matter is not criminal in nature.

Thus, in view of the above, the punishment order is not maintainable in the eyes of law.

17. In the result, appeal succeeds and is allowed. The impugned order dated 8.7.2010 withholding integrity certificate for the year 2010 and all subsequent orders in this regard are quashed. Respondents are directed to consider the case of the appellant for all consequential benefits including promotion etc., if any, afresh taking into consideration the service record of the appellant in accordance with law.

[Emphasis supplied]

9. It would be appropriate to quote Rule 3 of the Uttarakhand Govt. Servant (Discipline and Appeal) Rules, 2003 by which minor and major penalties to be imposed upon the Govt. Servant have been prescribed, which reads as under:

“3. Penalties- The following penalties may, for good and sufficient reason and as hereinafter provided, be imposed upon the Government Servant -

(a) Minor Penalties

- (i) Censure;
- (ii) Withholding of increments for a specified period;
- (iii) Recovery from pay of the whole or part of any pecuniary loss caused to Government by negligence or breach of orders;
- (iv) Fine in case of persons holding Group "D" posts

Provided that the amount of such fine shall in no case exceed twenty five percent of the months pay in which the fine is imposed.

(b) Major Penalties -

- (i) Withholding of increments with cumulative effect;
- (ii) Reduction to a lower post or grade or time scale or to lower stage in a time scale;
- (iii) Removal from the Service which does not disqualify from future employment;

(iv) Dismissal from the Service, which disqualifies from future employment."

10. In view of the above, it is settled law that any punishment imposed upon any employee which is not provided in any relevant rules is non-est in the eyes of law. Special adverse entry, as has been stated, is not a punishment under Rule 3 of the Uttarakhand Govt. Servant (Discipline and Appeal) Rules, 2003. Hence, the impugned orders dated 19.08.2016, 28.01.2018, 28.11.2020 and 02.06.2023 are liable to be set aside and the claim petition is liable to be allowed.

ORDER

The claim petition is hereby allowed. The impugned orders dated 19.08.2016, 28.01.2018, 28.11.2020 and 02.06.2023 are hereby set aside. Respondents are directed to grant all the consequential benefits to the petitioner from due date, taking into account the service record of the petitioner, in accordance with law, within three months on presentation of certified copy of this judgment. No order as to costs.

RAJENDRA SINGH
VICE CHARMAN (J)

A.S.RAWAT
VICE CHARMAN (A)

*DATED: DECEMBER 09, 2025
DEHRADUN
KNP/RS*