

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL,
BENCH AT NAINITAL**

Present: Hon'ble Mr. Rajendra Singh

----- Acting Chairman

Hon'ble Mr. A.S.Rawat

-----Vice Chairman(A)

CLAIM PETITION NO. 57/NB/DB/2025

Trilok Chandra Arya (Male) aged about 52 Year s/o Sri Gusain Ram Arya
R/o Village Ganjali, P.O. Chirang, Bageshwar District-Bageshwar, presently
Serving as Head Bandi Rakshak (jail Head Warder), Sub Jail-Chamoli,
District-Chamoli.

.....**Petitioner**

Vs.

1. The State of Uttarakhand through Secretary, Jail Department, Civil Secretariat, Dehradun.
2. Uttarakhand Public Service Commission Gurukul Kangri Haridwar District Haridwar-249404 through its Secretary.
3. Inspector General of Prisons, Uttarakhand, Dehradun.
4. Additional Inspector General of Prisons, Uttarakhand, Dehradun.
5. The Superintendent of Sub-Jail Haldwani, District-Nainital.

.....**Respondents**

Present: Sri D.S.Mehta, Advocate for the petitioner
Sri Kishore Kumar, A.P.O. for the respondents No. 1, 3,4 & 5
Sri Ashish Joshi, Advocate for the respondent no. 2

JUDGMENT

DATED: AUGUST 07, 2026

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

By means of present claim petition, the petitioner seeks the following reliefs:

“A. To set aside the order dated 16.06.2025 passed by the respondent no. 1 and order dated 24.08.2022 passed by the respondent no. 4. (annexure no.1&2 in this petition)

B. To issue an order to directing and commanding the respondent to upgrade the ACR Entries of the petitioner for the year 2010-11 to 2020-21 respectively from good/unsatisfactory category to very good category.

C. To issue any other suitable order or direction which this Hon'ble Tribunal may deem fit and proper under the circumstance of the facts and circumstances of the case.

D. To award the cost of the application in favour of the applicant, otherwise the petitioner shall suffer irreparable loss and injury.”

2. Brief facts of the case, as per the claim petition, are as follows:-

2.1 The petitioner was initially appointed as *Bandi Rakshak* (Jail Warder) on 21.07.1992 and promoted to Head Bandi Rakshak / Head Jail Warder in 2014. Presently, he is discharging the duties of Deputy Jailer at District Jail, Chamoli.

2.2 Respondent No. 5 (Senior Superintendent at Sub Jail Haldwani, 2015–2020) recorded backdated ACRs for multiple years (2017–18 through 2020–21) all at once in a single stroke in respect of the petitioner. The petitioner came to know under RTI about the rejection of his candidature and the 2013 Government Notification, which provides that that "Good" was no longer equivalent to "Very Good" for promotion. Respondent No. 3 failed to mention this crucial rule when issuing the ACR notice.

2.3 Aggrieved by the denial of his promotion, the petitioner initially approached the Hon'ble High Court of Uttarakhand by filing Writ Petition (S/S) No. 1227 of 2022, which was disposed on 05.07.2022 with a direction to Respondent No. 3 to decide the petitioner's representation. Respondent No. 3 rejected the representation on 24.08.2022. Being dissatisfied with the same, the petitioner filed second Writ Petition (S/S) No. 2365/2022, which was transferred to this Tribunal. The same was also disposed of by this Tribunal vide

order dated 15.10.2024 with liberty to submit a memorial/representation to Respondent No. 1. Respondent No. 1 disposed of the appeal summarily without examining the merits.

2.4 When the petitioner came to know that he did not get promotion on the post of Deputy Jailer, he received information under RTI in the year 2022 regarding status of his ACRs during the year 2010-11 upto 2020-21 respectively and prior to it he was not aware about that these were lower grade entries. These lower grade entries were given to the petitioner by the respondent no. 5 malafidely.

2.5 On 13.09.2010, a Govt. Notification was issued categorizing annual entries into five heads (*Outstanding, Very Good, Good, Satisfactory, Bad/Unsatisfactory*), which was subsequently revised to four types. On 10.12.2012, another Government Order restored the original five-tier evaluation framework as per the G.O. dated 18.12.2003. The State subsequently framed the Uttarakhand Government Servants (Disposal of Representation against adverse, fair/satisfactory, good, very good, excellent Annual Confidential Reports and Allied Matters) Rules, 2015 (repealing the 2002 Rules). The respondents failed to adhere to the procedure mandated under these Rules.

2.6 Under Sub-Rule (ii) of Rule 5 of the *Uttarakhand Jail Executive Subordinate (Non-Gazetted) Service Rules, 2016*, 25% of the posts of Deputy Jailer are to be filled by promotion through the Public Service Commission on the basis of "*seniority subject to the rejection of unfit*" from Chief Head Warders having completed 5 years of service. A combined seniority list is required to be prepared accordingly.

2.7 For the selection year 2021–22, 11 posts of Deputy Jailer were vacant. The petitioner's name featured at Serial No. 8 in the eligibility list of 16 candidates forwarded by Respondent No. 3 to Respondent No. 2 (Uttarakhand Public Service Commission) on 28.02.2022. Although the list erroneously noted in Remarks Column No. 8 that only the 2016–17 entry was uncommunicated, in reality, all

entries from 2010–11 up to 2020–21 fell under the uncommunicated category as they were never served within the prescribed period.

2.8 On 23.12.2021, the respondent department communicated the ACR entries for 2010–11 to 2020–21. However, this communication was legally defective as the department suppressed the 2013 Government Notification, which stipulated that "Good" would no longer be equivalent to "Very Good" for promotion purposes. The petitioner was not informed of the adverse consequences of these entries, thereby violating principles of natural justice and depriving him of an effective opportunity to object.

2.9 The Senior Superintendent District Jail Haridwar for the year 2017-18, 2018-19, 2019-2020 and 2020-21 respectively made ACR entries in a single stroke and by doing so, he did not follow the mandatory procedure for making entries in the ACR and also did not follow the mandate of the letter issued by the Deputy I.G. Prisons Uttarakhand for the purpose of making entries timely. Therefore, the belated ACR entries were made and after making these entries no information was given to the petitioner therefore, these entries from the year 2013-14 upto the year 2020-21 were the entries of uncommunicated category. This fact regarding non-communication in respect to the entries from the year 2013-14 upto 2020-21 is apparently clear from the reply dated 09.09.2022 given by the respondent department under RTI Act 2005 meaning thereby the respondent Commission through its DPC considered non-communicated entries of the petitioner from the year 2013-14 upto 2020-21 respectively therefore rejection of candidature of the petitioner based upon non-communicated entries from the year 2013-14 upto the year 2020-21 was wholly illegal arbitrary and not sustainable in the eye of law.

2.10 The respondent department for the first time i.e. on 23.12.2021 communicated ACR entries in respect to the year 2010-11 to 2020-21 to the petitioner. The respondents did not inform about the

Govt. Notification of the year of 2013, wherein, it was provided that the term 'Good' shall no longer be considered equivalent to "Very Good" for the for the purpose of promotion, and only "Very Good" would be treated as valid for such purposes but treated it as communicated. The aforesaid communication dated 23-12-2021 cannot be termed as a proper communication of the entries.

2.11 Thereafter on 28.02.2022, the respondent no. 3 sent a list of 16 eligible candidates for making promotion on the 11 posts of Deputy Jailers to the Uttarakhand Public Service commission, Haridwar i.e. respondent no.2. in this eligibility list of 15 candidates, the petitioner was at serial no 8 and in remark column no. 8 against it , it was mentioned that only annual entry of year 2016-17 was not communicated within time therefore this entry may not be considered for promotion, whereas, the entries of 10 years from 2010-11 to 2020-21 were falling within the definition of non-communicated entries because these entries were never communicated within prescribed period to the petitioner .

2.12 The DPC constituted by the Uttarakhand Public Service Commission found the petitioner ineligible in its meeting held on 04.03.2022 due to the reason that he failed to get the requisite marks for promotion on the basis of 10 years ACR entries and declared him unfit for promotion. Rest of the candidates who were junior to him were considered fit for promotion. On the basis of the list received from Uttarakhand Public Service Commission 11 candidates were promoted and they joined on the promotional posts of Deputy Jailer.

2.13 The contention of the petitioner is that the rejection of the representation vide order dated 24.08.2022 by the respondent no. 4 as well as rejection of order respondent no. 1 and candidature of the petitioner for promotion by the DPC was wholly illegal arbitrary and not sustainable in the eye of law. On 23.12.2021, the respondent jail department communicated ACR entries in respect to the year 2010-11 upto 2020-21 to the petitioner without informing a government

notification of the year of 2013, wherein it was provided that the term 'Good' shall no longer be considered equivalent to "Very Good" for the purpose of promotion, and only "Very Good" would be treated as valid for such purposes, this fact is deliberately suppressed by the competent authority. Whereas this is the duty of respondent to inform to petitioner to consequences of such ACR. If the respondent had informed about this, then the petitioner would have filed an objection in the ACR. Therefore, rejection of claim of the petitioner based upon un-communicated entries was a per-se illegal. The contention of the petitioner is that when the respondents no.4 and 1 came to conclusion that the competent authority committed procedural error of law while making entries then there was no occasion before him not to grant relief to the petitioner therefore impugned order dated 23.06.2025 as well as order dated 24.08.2022 illegal arbitrary and not sustainable in the eye of law. The impugned order passed by respondents is based on illegal arbitrary action which is not justified, impugned orders not sustainable and liable to be set aside.

3. C.A./W.S. has been filed on behalf of official respondents mainly stating therein that:-

3.1 प्रतिवेदक अधिकारी के रूप में कारागार अधीक्षकों द्वारा कर्मचारियों के वार्षिक गोपनीय प्रविष्टियों का अंकन किया जाता है, जिसके आधार पर ही ग्रेडिंग अंकित की जाती है। तत्समय प्रचलित व्यवस्थानुसार कारागार वरिष्ठ अधीक्षक/अधीक्षक द्वारा प्रतिवेदक/समीक्षक अधिकारी के रूप में अपने अधीनस्थ बन्दीरक्षक संवर्ग के कार्मिकों की वार्षिक गोपनीय प्रविष्टियां अंकित की जाती थीं तथा महानिरीक्षक कारागार द्वारा स्वीकृताधिकारी के रूप में उन्हें स्वीकृत किया जाता था। इसी व्यवस्था के अन्तर्गत श्री मनोज कुमार आर्य, तत्कालीन वरिष्ठ अधीक्षक, उप कारागार, हल्द्वानी सम्प्रति वरिष्ठ अधीक्षक, जिला कारागार, हरिद्वार द्वारा प्रतिवेदक अधिकारी के रूप में याची की वर्ष 2017-18 से 2020-21 तक की वार्षिक गोपनीय प्रविष्टियां वर्ष 2021-20 में एक साथ अंकित की गयीं, जिन्हें स्वीकृताधिकारी द्वारा उप कारापाल पदोन्नति के समय वर्ष 2020-21 में अनुमोदित किया गया। इस वार्षिक गोपनीय प्रविष्टियों को इस मुख्यालय के पत्र संख्या-8759, दिनांक 22.12.2021 द्वारा याची को संसूचित किया गया।

3.2 उत्तराखण्ड कारागार विभाग के अन्तर्गत चयन वर्ष 2021-22 के सापेक्ष उप कारापाल के रिक्त पदों पर उत्तराखण्ड लोक सेवा आयोग के पत्र दिनांक 11.03.2022 द्वारा शासन को की गयी संस्तुति के अनुसार याची जो पात्रता सूची के क्रमांक 8 पर अंकित था, को उनकी चयन वर्ष 2021-22 से 10 वर्ष पूर्व की चरित्र प्रविष्टियों में मात्र 02 प्रविष्टियां उत्तम या उच्चतर श्रेणियों में वर्गीकृत होने के कारण उत्तराखण्ड (लोक सेवा आयोग क्षेत्रान्तर्गत) राज्याधीन सेवाओं में “अनुपयुक्त को अस्वीकार करते हुए ज्येष्ठता” एवं “श्रेष्ठता” के आधार पर पदोन्नति द्वारा किये जाने वाले चयनों में अपनायी जाने वाली प्रक्रिया विनियमावली, 2010 के नियम-3 के क्रम में पदोन्नति हेतु अनुपयुक्त घोषित किया गया है।

3.3 याची द्वारा वर्ष 2016-17 की प्रतिकूल वार्षिक गोपनीय प्रविष्टि को छोड़कर शेष वार्षिक गोपनीय प्रविष्टियों वर्ष 2010-11 से 2015-16 तथा वर्ष 2020-21 की श्रेणी पर अपनी सहमति दी गयी। याची को प्रदान की गयी वर्ष 2016-17 की प्रतिकूल वार्षिक गोपनीय प्रविष्टि संसूचित न कराये जाने की आपत्ति का निस्तारण करते हुए, उक्त प्रतिकूल वार्षिक गोपनीय प्रविष्टि को याची की पदोन्नति एवं अन्य सेवा सम्बन्धी मामलों के प्रयोजनार्थ प्रतिकूल नहीं समझा गया। याची का प्रत्यावेदन दिनांक 05.04.2022 को महानिरीक्षक कारागार, उत्तराखण्ड के कार्यालय आदेश संख्या-2290 दिनांक 24.08.2022 द्वारा निस्तारित कर दिया गया था।

3.4 याची द्वारा उत्तराखण्ड शासन को प्रस्तुत प्रत्यावेदन दिनांक-25.11.2024 को अपर सचिव, गृह अनुभाग-2, उत्तराखण्ड शासन के कार्यालय ज्ञाप संख्या-306416/XX (2) / 25-01(02)/2025 (E-82624), दिनांक 16.06.2025 में उल्लेख किया गया कि “स्वीकर्ता प्राधिकारी द्वारा वार्षिक गोपनीय प्रविष्टियों के उच्चीकरण के सम्बन्ध में कोई समुचित तथ्य आधार उपलब्ध नहीं कराये जाने तथा उत्तराखण्ड सरकारी सेवक (प्रतिकूल, अच्छा/संतोषजनक, उत्तम, अति उत्तम, उत्कृष्ट वार्षिक गोपनीय रिपोर्टों का प्रकटीकरण एवं उनके विरुद्ध प्रत्यावेदन और सहबद्ध मामलों का निपटारा) नियमावली, 2015 के नियम 4 (2) एवं 4(3) में संसूचित प्रविष्टियों के विरुद्ध प्रत्यावेदन प्रस्तुत किये जाने की अधिकतम सीमा व्यतीत होने के कारण प्रकरण के कालातीत होने के दृष्टिगत याची का प्रत्यावेदन दिनांक 25.11.2024 को बलहीन पाते हुए निस्तारित किया गया।

3.5 याची की वार्षिक गोपनीय प्रविष्टियों पर स्वीकृताधिकारी द्वारा सहमति अभिलिखित किये जाने के उपरान्त कारागार मुख्यालय के पत्र संख्या -8759/08/उप जेलर पदोन्नत/2021, दिनांक 22.12.2021 के द्वारा उक्त वार्षिक गोपनीय प्रविष्टियां याची को संसूचित की गयी। याची द्वारा वर्ष 2016-17 की प्रतिकूल वार्षिक गोपनीय प्रविष्टि को छोड़कर शेष वार्षिक गोपनीय प्रविष्टियों वर्ष

2010-11 से 2015-16 तथा वर्ष 2020-21 की श्रेणी पर अपनी सहमति दी गयी। याची को प्रदान की गयी वर्ष 2016-17 की प्रतिकूल वार्षिक गोपनीय प्रविष्टि संसूचित न कराये जाने की आपत्ति का निस्तारण करते हुए, उक्त प्रतिकूल वार्षिक गोपनीय प्रविष्टि को याची की पदोन्नति एवं अन्य सेवा सम्बन्धी मामलों के प्रयोजनार्थ प्रतिकूल नहीं समझा गया।

3.6 याची को प्रदान की गयी वार्षिक गोपनीय प्रविष्टियों पर याची द्वारा दिये गये प्रत्यावेदन को उत्तराखण्ड सरकारी सेवक (प्रतिकूल, अच्छा/संतोषजनक, उत्तम, अति उत्तम, उत्कृष्ट वार्षिक गोपनीय रिपोर्टों का प्रकटीकरण एवं उसके विरुद्ध प्रत्यावेदन और सहबद्ध मामलों का निपटारा) नियमावली, 2015 के अन्तर्गत सक्षम प्राधिकारी, प्रतिवादी सं०-4 द्वारा याची को प्रदान की गयी वर्ष 2016-17 की प्रतिकूल वार्षिक गोपनीय प्रविष्टि संसूचित न कराये जाने की आपत्ति का निस्तारण करते हुए, उक्त प्रतिकूल वार्षिक गोपनीय प्रविष्टि को याची की पदोन्नति एवं अन्य सेवा सम्बन्धी मामलों के प्रयोजनार्थ प्रतिकूल नहीं समझा गया। इस मुख्यालय के आदेश संख्या-2290/10रिट1227/एस/एस/2022, दिनांक 24.08.2022 द्वारा निस्तारित किया गया है।

3.7 याची को संसूचित की गयी वार्षिक गोपनीय प्रविष्टियां 2010-11, 2011-12, 2012-13, 2014-15, 2015-16, 2017-18, 2018-19, 2019-20, 2020-21 पर याची द्वारा सहमति प्रदान की गयी याची द्वारा वर्ष 2016-17 की वार्षिक गोपनीय प्रविष्टि के विरुद्ध दिये गये प्रत्यावेदन के सम्बन्ध में कारागार मुख्यालय के पत्र संख्या-8830 दिनांक 31.12.2021 के द्वारा याची को प्रदान की गयी वर्ष 2016-17 की प्रतिकूल वार्षिक गोपनीय प्रविष्टि संसूचित न कराये जाने की आपत्ति का निस्तारण करते हुए, उक्त प्रतिकूल वार्षिक गोपनीय प्रविष्टि को याची की पदोन्नति एवं अन्य सेवा सम्बन्धी मामलों के प्रयोजनार्थ प्रतिकूल नहीं समझा गया।

3.8 याची की वर्ष 2010-11 से 2020-21 की वार्षिक गोपनीय प्रविष्टियों पर स्वीकृताधिकारी द्वारा सहमति अभिलिखित किये जाने के उपरान्त कारागार मुख्यालय के पत्र संख्या-8759/08/उपजेलर पदो०/2021, दिनांक 22.12.2021 के द्वारा उक्त वार्षिक गोपनीय प्रविष्टियां याची को संसूचित की गयी है। श्री मनोज कुमार आर्या, तत्कालीन वरिष्ठ अधीक्षक, उप कारागार, हल्द्वानी द्वारा अपने अधीनस्थ कार्मिकों की वार्षिक गोपनीय प्रविष्टियां शासनादेशों में दिये गये नियमों/प्राविधानों के अन्तर्गत प्रत्येक वर्ष अंकित/अभिलिखित न किये जाने और अधीक्षक, उप कारागार, हल्द्वानी द्वारा उपलब्ध करायी गयी कार्मिकों की वार्षिक गोपनीय प्रविष्टियां वर्ष 2017-18, 2018-19, 2019-20, 2020-21 एक साथ अंकित किये जाने के सम्बन्ध में श्री मनोज कुमार आर्या, वरिष्ठ अधीक्षक, जिला कारागार, हरिद्वार का स्पष्टीकरण प्राप्त किया

गया। याची द्वारा प्रस्तुत प्रत्यावेदन दिनांक 05.04.2022 को इस मुख्यालय के कार्यालय आदेश संख्या-2290/10/रिट/1227/एस/एस/2022, दिनांक 24.08. 2022 द्वारा निस्तारित किया गया। मा० उच्च न्यायालय उत्तराखण्ड नैनीताल में योजित रिट याचिका संख्या-2365/एस/एस/22 त्रिलोक चन्द्र आर्य बनाम राज्य में पारित आदेश दिनांक 15.12.2022 द्वारा उक्त वाद को मा० उत्तराखण्ड लोक सेवा प्राधिकरण, नैनीताल को हस्तान्तरित किया गया। याचिकाकर्ता के द्वारा योजित की गयी वर्तमान याचिका असत्य एवं भ्रामक तथ्यों पर आधारित है, जो कि खारिज होने योग्य है।

4. C.A./W.S. has been filed on behalf of respondent no.2 (Uttarakhand Public Service Commission), mainly stating therein that:-

4.1 A list of 16 eligible personnel was submitted to the Uttarakhand Public Service Commission for promotion. The meeting of DPC was held on 03-03-2022 for promotion on 11 vacant posts of Deputy-Jailor for the Selection Year 2021-22 under the Uttarakhand Prison Department. The DPC examined the Annual Character Roll and Service Records of the eligible personnel for promotion on the vacant post of Deputy Jailor for the Selection Year 2021-22. The Commission recommended the names of the 11 persons for promotion on the vacant post of Deputy Jailor as per the Part III- Recruitment, Rule-5(2) of the Uttarakhand Jail Subordinate (Non-Gazetted) Service Rules, 2016 on the basis of "seniority subject to rejection of unfit" and as per the Uttarakhand Public Service Commission Consultation Selection Promotion (Process) Rules, 2003, (as amended from time to time).

4.2 The petitioner Shri Trilok Chandra Arya (Sl. No.20) was placed at Sl. no. 8 in the eligibility list sent by the concerned department. Upon perusal of 10 years entries prior to the Selection Year 2021-22, it was observed, that only 2 of his entries were classified in the "Excellent" or "Outstanding" category. As per the provision of the Rule-3(3) of the Procedure Regulations, 2010 to be adopted for Promotion in the services under the State Government (within the purview of Public Service Commission) on the basis of "Seniority subject to rejection of Unfit" and "Merit", it has been

specifically provided that "If five or more character entries in the character entries of the last 10 years of the candidate included in the eligibility zone have been classified in the "Excellent" or "Outstanding" category and the entries of the two years immediately prior to the consideration are not adverse, then such candidate will be declared "suitable" for promotion by the Departmental Promotion Committee." Therefore, the petitioner Shri Trilok Chandra Arya has been found unfit for promotion as

4.3 The petitioner is challenging the order dated 16-06-2025 passed by the Secretary, Jail Department, Civil Secretariat, Government of Uttarakhand Dehradun (Respondent no.1) and order dated 24-08-2022 (Annexure No.2) passed by the Additional Inspector General of Prisons, Uttarakhand, Dehradun (Respondent no.4) by which the representations made by the petitioner with respect to his ACR has been rejected. The Commission proceeds/ holds the DPC as per the requisition sent by the State Government alongwith relevant service rules. The petitioner is not entitled for any relief as sought by him therefore, the claim petition be dismissed with costs against the answering respondent.

5. The petitioner has also filed Rejoinder Affidavits to the C.A./W.S. filed on behalf of the respondents R.A. denying contents made in the Counter Affidavits and has reiterated the averments of the claim petition.

6. We have heard learned Counsels for the parties and perused the records carefully.

7. Learned Counsel for the petitioner has argued that rejection of the representation of the petitioner vide order dated 24.08.2022 by respondent no. 4 as well as rejection of order by respondent no. 1 and candidature of the petitioner for promotion by the DPC was wholly illegal arbitrary and not sustainable in the eye of law due to the reason that his ACR entries of 10 years were not communicated in time. The respondent no. 5 while posted as Senior Superintendent in Sub Jail

Haldwani malafiedly and deliberately gave lower grade entries to the petitioner. The respondent department communicated ACR entries in respect to the year 2010-11 to 2020-21 on 23.12.2021 and never informed about the Govt. Notification of the year of 2013, which provides the terms 'Good' shall no longer be considered equivalent to "Very Good' for the purpose of promotion, and only "Very Good' would be treated as valid for such purposes. Due to which the petitioner remained unaware of the Government order of 2013 and could not file objection in respect of the ACRs.

8. Learned A.P.O. argued that the petitioner consented to the Annual Confidential Entries communicated for the years 2010-11, 2011-12, 2012-13, 2014-15, 2015-16, 2017-18, 2018-19, 2019-20, and 2020-21. The representation submitted by the petitioner against the Annual Confidential Entry for the year 2016-17, concerning the objection that the adverse entry had not been communicated to him, the Prison Headquarters, vide letter no. 8830 dated 31.12.2021 decided that the said adverse Annual Confidential Entry would not be treated as adverse for the purposes of the petitioner's promotion and other service-related matters. After the Accepting Authority recorded its concurrence regarding the petitioner's Annual Confidential Entries for the years 2010-11 to 2020-21, the said entries were communicated to the petitioner vide Prison Headquarters letter no. 8759/08/Deputy Jailor Promotion/2021, dated 22.12.2021. The representation submitted by the petitioner was disposed vide Office Order No. 2290/10/Writ/1227/S/S/2022 dated 24.08.2022 of the Headquarters. Pursuant to the order dated 15.12.2022 passed in Writ Petition No. 2365/S/S/22 (Trilok Chandra Arya vs. State) filed before the Hon'ble High Court of Uttarakhand at Nainital, the said matter was transferred to the Hon'ble Uttarakhand Public Services Tribunal, Nainital. The present petition filed by the petitioner is based on false and misleading facts and is liable to be dismissed.

9. It has been argued on behalf of learned Counsel for the Respondent no.2 (Uttarakhand Public Service Commission) that the

DPC was held on 03.03.2022 at the Uttarakhand Public Service Commission, Haridwar for promotion on 11 vacant posts of Deputy Jailor for the Selection Year 2021-22. A list of 16 eligible personnel was submitted to the Uttarakhand Public Service Commission (UKPSC) for the purpose of promotion. The DPC examined the Annual Character Roll and Service Records of the eligible personnel and considered them on the basis of "Seniority subject to rejection of unfit" and "Merit" in accordance with the provisions of the Procedure Regulations, 2010. The Commission there after recommended the names of 11 persons for promotion on the vacant post of Deputy Jailor. The petitioner Shri Trilok Chandra Arya (sl. No. 20) was placed at sl no. 8 in the eligibility list sent by the concerned department. It was found that only 2 of his entries were classified in the "Excellent" or "Outstanding" category awarded 10 years entries prior to 2020-21. As per the provision of the Rule-3(3) of the Procedure Regulations 2010 adopted for promotion in the services under the State Government (within the purview of Public Service Commission) on the basis of "Seniority subject to rejection of Unfit" and "Merit", it is provided that "If five or more entries in the character entries of the last 10 years of the candidate included in the eligibility zone have been classified in the "Excellent" or "Outstanding" category and the entries of the two years immediately prior to the consideration are not adverse, then such candidate will be declared "suitable" for promotion by the Departmental Promotion Committee." The petitioner was not found fit for promotion.

10. Based on the arguments of learned Counsel for the parties and perusal of the record, it is clear that the adverse entries for the aforesaid years 2010-11 to 2020-21 were not communicated to the petitioner in time. So, in accordance with the Rules; as well as the judicial precedence, the un-communicated entries can never be read against an employee at the time of promotion. This has been decided in the Judgment of Hon'ble Apex Court and the Judgment of Hon'ble High Court of Uttarakhand, passed in Writ Petition (S/S) No. 1370 of

2019, Bhola Dutt Sharma vs. State of Uttarakhand & others in which the judgments of the Hon'ble Supreme Court have been cited. The relevant paragraphs of the judgments are being reproduced as under:

"7. The learned counsel for the petitioner argued that, in view of the aforesaid reasoning, that since the adverse entries for the aforesaid years were never communicated to the petitioner, hence in accordance with the Rules; as well as in accordance with the judicial precedence the un-communicated entries can never be read against an employee in considering of his claim for the grant of promotional pay scale, ACP benefit or the promotion itself. He submits that in view of the pronouncements, laid down in Dev Dutt Vs. Union of India and others, as reported in AIR 2008 SC 2513, the relevant paragraphs are quoted hereunder:-

"9. We do not agree. In our opinion every entry must be communicated to the employee concerned, so that he may have an opportunity of making a representation against it if he is aggrieved.

10. In the present case the bench mark (i.e. the essential requirement) laid down by the authorities for promotion to the post of Superintending Engineer was that the candidate should have 'very good' entry for the last five years. Thus, in this situation the 'good' entry in fact is an adverse entry because it eliminates the candidate from being considered for promotion. Thus, nomenclature is not relevant, it is the effect which the entry is having which determines whether it is an adverse entry or not. It is thus the rigours of the entry which is important, not the phraseology. The grant of a 'good' entry is of no satisfaction to the incumbent if it in fact makes him ineligible for promotion or has an adverse effect on his chances.

24. It may be mentioned that communication of entries and giving opportunity to represent against them is particularly important on higher posts which are in a pyramidal structure where often the principle of elimination is followed in selection for promotion, and even a single entry can destroy the career of an officer which has otherwise been outstanding throughout. This often results in grave injustice and heart-burning, and may shatter the morale of many good officers who are superseded due to this arbitrariness, while officers of inferior merit may be promoted.

39. In the present case, we are developing the principles of natural justice by holding that fairness and transparency in public administration requires that all entries (whether poor, fair, average, good or very good) in the Annual Confidential Report of a public servant, whether in civil, judicial, police or any other State service (except the military), must be communicated to him within a reasonable period so that he can make a representation for its upgradation. This in our opinion is the correct legal position even though there may be no Rule/G.O. requiring communication of the entry, or even if there is a Rule/G.O. prohibiting it, because the principle of non-arbitrariness in State action as envisaged by Article 14 of the Constitution in our opinion requires such communication. Article 14 will override all rules or government orders.

41. We, however, make it clear that the above directions will not apply to military officers because the position for them is different as clarified by this Court in *Union of India v. Major Bahadur Singh*: (2006)1SCC368 . But they will apply to employees of statutory authorities, public sector corporations and other instrumentalities of the State (in addition to Government servants)."

8. Hon'ble Apex Court, in its judgement in the case of *Sukhdev Singh Vs. Union of India and others*, as reported in AIR 2013 SC 2741, in its para 8 has held as under:-

"8. In our opinion, the view taken in *Dev Dutt* that every entry in ACR of a public servant must be communicated to him/her within a reasonable period is legally sound and helps in achieving threefold objectives. First, the communication of every entry in the ACR to a public servant helps him/her to work harder and achieve more that helps him in improving his work and give better results. Second and equally important, on being made aware of the entry in the ACR, the public servant may feel dissatisfied with the same, Communication of the entry enables him/her to make representation for upgradation of the remarks entered in the ACR. Third, communication of every entry in the ACR brings transparency in recording the remarks relating to a public servant and the system becomes more conforming to the principles of natural justice. We, accordingly, hold that every entry in ACR- poor, fair, average, good or very good - must be communicated to him/her within a reasonable period."

9. In Prabhu Dayal Khandelwal Vs. Chairman, Union Public Service Commission and others, as reported in AIR 2015 SC 3057, the Hon'ble Apex Court has held as under:-

“7. In the above view of the matter, we are satisfied that the impugned order passed by the High Court, deserves to be set aside, inasmuch as, the claim of the Appellant could not be ignored by taking into consideration, uncommunicated Annual Confidential Reports for the years 1995-1996, 1996-1997 and 1998-1999, wherein the Appellant was assessed as "good". In the absence of the aforesaid entries, it is apparent, that the remaining entries of the Appellant being "very good", he would be entitled to be considered fit for the promotion, to the post of Chief Commissioner of Income Tax, on the basis of the then prevailing DoPT guidelines, and the remaining valid Annual Confidential Reports.

8. On the issue, whether the representations filed by the Appellant against the Reports for the years 1995-1996, 1996-1997 and 1998-1999 need to be taken to their logical conclusion, we are of the view, that since almost two decades have passed by since the aforesaid Annual Confidential Reports were recorded, it would be too late in the day to require the Authorities to adjudicate upon the representations made by the Appellant as against the uncommunicated Annual Confidential Reports.”

10. It has provided that the Annual Confidential Entries are mandatorily required to be communicated to an employee against whom the entries are made in order to enable the employee to get his grievance redressed against the adverse entries by filing the representation, which is statutory in nature in accordance with the Rules, which are framed under the proviso to Article 309 of the Constitution of India, namely “The Uttarakhand Government Servants (Disposal of Representation Against Adverse Annual Confidential Reports and Allied Matters) Rules, 2015.”

11. It is clear from the aforesaid judgements that every entry in the ACRs of public servant must be communicated to him, within a reasonable period, whether it is poor, average, good or very good. This affects the employees in two ways: (1) had the entry been communicated to him, he would know about the assessment of his work & conduct by his superiors, which would enable him to improve

his work in future, and (2) he would have an opportunity of making a representation against the entry if he feels unjustified and prays for its upgradation. The Hon'ble Supreme Court also has held that non-communication of entries, certainly has civil consequences because it affects adversely employee's chances of promotion and other service benefits.

12. Rule 5 of the Uttarakhand Government Servants (Disposal of Representation against adverse, fair/satisfactory, good, very good, excellent Annual Confidential Reports and Allied Matters) Rules, 2015, reads as under:-

5. Report not to be treated adverse - Except as provided in Rule 56 of the Uttar Pradesh Fundamental Rules contained in Financial Hand-Book, Volume-II, Parts-II to IV. Where an adverse report is not communicated or a representation against an adverse report has not been disposed of in accordance with Rule 4, such report shall not be treated adverse for the purposes of promotion, crossing of Efficiency Bar and other service matters of the Government Servant concerned."

13. The Rule 56 of the Uttar Pradesh Fundamental Rules contained in the Financial Handbook Parts II to IV also lays down that any uncommunicated adverse entry will not be read as adverse entry against an employee to deny a service benefit.

14. The law relating to the recording of ACRs has been covered under the rules and also well settled by a catena of judgments of the Hon'ble Supreme Court. The Hon'ble Supreme Court has held that every entry, irrespective of whether it is poor, average, good, very good, or outstanding, should be communicated to the concerned government servant within a reasonable period. Non-communication of any entry is arbitrary and violative of Article 14 of the Constitution of India. Accordingly, an uncommunicated entry/grade in an ACR cannot be acted upon and deserves to be expunged.

15. In view of the above, the Tribunal holds that the 10 years of ACR entries (2010–11 to 2020–21) in respect of the petitioner were

recorded collectively in a single stroke at a belated stage and were not communicated within the statutory timeframe prescribed under the 2015 Rules. Due to ignorance of the GO of 2013, the petitioner could not assess the impact of this order on promotion. So, due non-communication of these entries in time, these entries should not have been read against him at the time of his promotion.

16. Hence, in view of the facts in the claim petition, the judgements of the Hon'ble Apex Court and the Hon'ble High Court, the impugned orders dated 16.06.2025 (passed by Respondent No. 1) and 24.08.2022 (passed by Respondent No. 4) are liable to be quashed and the claim petition is liable to be allowed.

ORDER

The claim petition is hereby allowed. The impugned rejection orders dated 16.06.2025 (passed by Respondent No. 1) and 24.08.2022 (passed by Respondent No. 4) are hereby quashed. The respondents are directed to convene a review DPC, which shall consider the name of the petitioner for promotion to the post of Deputy Jailor from the date his juniors have been promoted. No order as to costs.

(RAJENDRA SINGH)
ACTING CHAIRMAN

(A.S.RAWAT)
VICE CHAIRMAN (A)

DATE: AUGUST 07, 2026
DEHRADUN.
KNP