

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

Present : Hon'ble Mr. Capt. Alok Shekhar Tiwari

----- Member (A)

Claim Petition No. 05/NB/SB/2024

Pankaj Sanwal, aged about 45 years, S/o Sri Bhawani Datt Sanwal, at presently posted as Machinist in Govt. ITI Haldwani, Nainital (U.K.)

..... Petitioner

Versus

1. State of Uttarakhand, through Secretary, Skill Development & Employment Dept., Dehradun
2. Director, State Skill Development & Employment Dept., Haldwani, Nainital.
3. Principal, Government ITI, Haldwani, Nainital.

..... Respondents

Present : Sri M. C. Pant, Advocate for the petitioner
Sri Kishore Kumar, A.P.O. for the respondents

JUDGMENT

DATED : **03 JULY, 2025**

This claim petition has been filed seeking the following relief:-

- “(i). to issue appropriate order or declaration to declare the impugned order dated 25.09.2023 passed by the respondent No. 1, thereby, rejecting the representation of the

petitioner against the downgraded marks and adverse entry awarded by respondent No. 2 is per se illegal, nonest, contrary to rule, arbitrary and malicious and to quash the same and all consequential orders malicious, and void ab-initio as well as the downgraded marks and adverse entry awarded by respondent No. 2 in his service record during the period 19.08.2021–31.03.2022 and quash the same alongwith its effect and operation after calling the entire records keeping in view of the facts highlighted in the body of the petition.

- (ii). to direct the respondents to upgrade the downgraded marks and entry of the petitioner had it been the impugned orders were never in existence and also to declare that the impugned orders shall not be treated as impediment in the service career of the petitioner specifically in the matter of financial up-gradation as well as promotion keeping in view of the facts highlighted in the body of the petition.
- (iii) to award damages and compensation from the arraying officers to the petitioner in tune of such amount which the Court deem

fit and proper in the circumstances of the case against the malafide and malicious act of such persons keeping in view of the facts highlighted in the body of the petition.”

2. In brief, the facts of the case are that the petitioner is posted as Instructor (Machinist) in Class-III cadre in State Industrial Training Institute, Haldwani (Nainital). The petitioner was awarded adverse entry by the Accepting Authority (Director Training) of the Institute in respect of alleged dissatisfactory work, poor teaching efficiency, lack of knowledge of latest technology and pedagogy, absence from office, not taking interest in the work, needs to improve attitude to become better Instructor irrespective of the fact that the Principal, who is also reporting/reviewing officer had never mentioned any of such things and even awarded the petitioner 09 Grading Point on the Annual Confidential Reports with excellent as a remark. However, the Accepting Authority reduced the petitioner to 06 points and wrote remarks which tarnished the character and career of the petitioner and caused damage to his reputation. Then, the petitioner preferred a representation dated 11.04.2023 to the respondent No. 1 against the adverse entry and stated his contentions and requested to expunge the aforesaid adverse entry and also requested to upgrade the downgrade entries awarded to him in previous years, which was rejected by the

respondent No. 1 through the office order dated 25.09.2023 (**Annexure No. 1** to the claim petition). The entire work of the day in the institution is calculated by the Reviewing Officer/Reporting Officer, i.e., the Principal of the Institute and based upon that work only the petitioner was awarded 09 grade points and an excellent remark. The petitioner preferred a representation dated 11.04.2023 and categorically replied to each and every imputation which were made basis to award the aforesaid adverse entry as under: So far as the imputation regarding non-satisfactory of work he has given all facts alongwith details of each and every work performed by him and also mentioned that for his work he was appreciated by the Higher Officers and was even promoted and he was always diligent for Government work and worked in duty of Election Commission of India itself shows that the imputation for non-satisfactory work has no substance. Similarly in reply to the imputation of being absent from the duties, he has mentioned that he was present for only 29 days in the institute as he was on duty of Election Commission from 19th August, 2021 – March 2022 and such imputation was made on the basis of the same. The petitioner is shocked that on such basis awarding adverse entry is not proper and legal and such attempt of the Accepting Authority is due to personal grudge and vengeance. Similarly the Accepting Authority in his remarks tries to paint the petitioner as someone who is not interested in his job and is not able to teach students efficiently which is completely based upon twisted facts

because since the petitioner has joined his duties since 2014, there has never been a single instance of such matter which would have proved the same. The act of the Accepting Authority seems to be filled with biasness and malice and needs kind indulgence of this Hon'ble Tribunal. The petitioner was also awarded bonus by the Principal for doing commendable work in the year 2021 and the petitioner never have had any complaints about his work. This itself proves that the petitioner is a hardworking and knowledgeable Instructor with a clean record. Thus, the adverse entry by the Accepting Authority is unjust and lacks merit and liable to be expunged. The imputation regarding improvement in attitude is totally misleading and false and also based on vague assertion. It is not clear what is the intention of the Accepting Authority regarding such remarks were but it seems that the adverse entry was made by his against the petitioner was due to personal grudge because there has not been any proof supporting the allegations in the remarks of the Accepting Authority. The Accepting Authority did not disclose any technical remarks and suggestions which itself shows his act and mindset condition for levelling false imputations against the petitioner. The petitioner also mentioned the facts about the negligence of Accepting Authority regarding his duties and his humiliating act against the subordinate officer, thus, the charge of the imputation against the petitioner cannot be sustained. The imputation regarding that on job training was not done by the Accepting

Authority is totally false and based upon false conjectures and surmises as there has never been any proceedings from the sides of the Principal itself, thus, the imputation is not true and the adverse entry cannot be sustained. Respondent No. 1 in a cryptic order rejected the representation of the petitioner in utter disregard to the provisions of Rule of 2015 and in spite of noting of this fact that the Accepting Authority has not provided his comments against the representation made by the petitioner during the time limit as prescribed by the rules and till date also the same is not available, the respondent No. 1 rejected the representation of the petitioner by saying that the representation of the petitioner is no force. This reasoning is perverse and contrary to law. No reason has been assigned in the impugned order why the respondent No.1 came to the conclusion that why the representation of the petitioner is no force. In absence of any reasoning, the impugned order cannot be sustained in the eyes of law. Apart from this, the language used in the rules of 2015 clearly stipulates that the representation of the employee against any adverse entry shall be considered and will be decided by speaking order. A bare perusal of the impugned order does show that the impugned order is neither a speaking order nor can be said that any consideration by applying judicious mind be made. Learned Counsel for the petitioner relied upon the case of Devdutt vs. Union of India followed by another judgment in Sukhdev Singh, claim petition No. 20/NB/DB/2014 Chandra Singh Imlal vs.

State of Uttarakhand and others, and various judgments passed in S. Ramchandraraju vs. State of Orissa Appeal (Civil) 5815 of 1994 Suppl (2) SCR 828, Vishwanath Pratap Singh vs. State of Bihar WP (C) 419 of 2000 alongwith 505 of 2000, J.T. 2001 (1) SC 161, State Bank of India vs. Kashinath Kher 1996 (2) S.L.R. 282. Hence, in this background the impugned order is liable to be set-aside. Hence, this claim petition has been filed by the petitioner before the Uttarakhand Public Services Tribunal, Nainital Bench, Nainital.

3. CA/WS has been filed on behalf of the respondents No. 1 to 3 by learned APO, in which, it has been stated that:-

3.1. याची राजकीय औद्योगिक प्रशिक्षण संस्थान, हल्द्वानी में अनुदेशक मशीनिष्ट के पद पर तैनात है। याची को स्वीकर्ता अधिकारी निदेशक, प्रशिक्षण द्वारा प्रतिकूल प्रविष्टि दी गयी है, गलत है। इस सम्बन्ध में यह उल्लिखित किया जाना है कि 01 अप्रैल 2021 से 31 मार्च 2022 की अवधि में 02 स्वीकर्ता अधिकारियों द्वारा गोपनीय चरित्र अंकन किया गया है। दिनांक 01 अप्रैल, 2021 से लेकर दिनांक 18 अगस्त, 2021 तक तत्कालीन स्वीकर्ता अधिकारी द्वारा ओवर ऑलग्रेड 09 अंकित किया गया है एवं दिनांक 19 अगस्त, 2021 से दिनांक 31 मार्च, 2022 तक तत्कालीन स्वीकर्ता अधिकारी द्वारा ओवर ऑलग्रेड 06 अंकित किया गया है। शासनादेश दिनांक 09 जून, 2023 द्वारा उत्तराखण्ड राज्यधीन सेवाओं के अन्तर्गत श्रेणी क, ख एवं ग के कार्मिकों की वार्षिक गोपनीय प्रविष्टि ऑनलाईन अंकित किये जाने तथा प्रविष्टियों के मूल्यांकन में निम्नानुसार अंक निर्धारित किये गये हैं:-

उत्कृष्ट	8.01—10.00 अंक
अतिउत्तम	6.01—8.00 अंक
उत्तम	4.01—6.00 अंक
अच्छा / सन्तोषजनक	2.01—4.00 अंक
खराब / असन्तोषजनक (प्रतिकूल)	0—2.00 अंक

उक्त तालिका से स्पष्ट है कि दिनांक 19.08.2021 से दिनांक 31.03.2022 तक तत्कालीन स्वीकर्ता अधिकारी द्वारा दिये गये ओवर ऑलग्रेड 06 उत्तम श्रेणी के अन्तर्गत है। अतः याची का यह कहना कि उसको प्रतिकूल प्रविष्टि दी गयी है स्वीकार किये जाने योग्य नहीं है।

3.2 याची द्वारा उत्तराखण्ड शासन द्वारा दिनांक 28.04.2015 को जारी की गयी अधिसूचना उत्तराखण्ड सरकारी सेवक गोपनीय रिपोर्ट का प्रकटीकरण नियमावली, 2015 के नियम-04 (2) के अन्तर्गत अपना प्रत्यावेदन स्वीकर्ता अधिकारी से एक पेंक्ति ऊपर के प्राधिकारी प्रतिवादी संख्या-01 को प्रेषित किया गया। प्रतिवादी संख्या-01 ने याची द्वारा दिये गये प्रत्यावेदन के कम में दिनांक 18.09.2023 को याची को अपना पक्ष रखने हेतु अवसर प्रदान किया गया। प्रतिवादी संख्या-01 ने अपने कार्यालय ज्ञाप दिनांक 25.09.2023 में उल्लेख किया है कि “श्री सनवाल द्वारा सुनवाई में रखे गये पक्ष के कम में सम्यक् विचारोपरान्त श्री पंकज सनवाल अनुदेशक द्वारा प्रस्तुत प्रत्यावेदन बलहीन होने के कारण निरस्त करते हुये स्वीकर्ता प्राधिकारी के मन्तव्य एवं प्रदत्त ग्रेडिंग से सहमति व्यक्ति की जाती है।” राज्य में लागू पदोन्नति व्यवस्था एवं ए0सी0पी0 व्यवस्था के अन्तर्गत उत्तम श्रेणी पाने वाले कार्मिकों को भी पदोन्नति एवं ए0सी0पी0 के लाभ अनुमन्य होते हैं।

उक्त के आधार पर याची की याचिका बलहीन होने के कारण निरस्त किये जाने योग्य है।

4. Learned Counsel for the petitioner did not file any rejoinder affidavit against the CA/WS filed on behalf of the respondents.

5. I have heard the learned Counsels for the parties and perused the records.

6. Learned Counsel for the petitioner has mainly focused his argument on the following three points:-

(a) That the petitioner has always been a good worker and, therefore, has always been awarded “Excellent” or “Outstanding” entries during earlier years by the Superior Officers.

(b) That in this instant matter the Accepting Authority has been prejudiced against the petitioner because the petitioner had been able to give very few days into his parent Department during the period under scrutiny as the petitioner had been engaged most of the time in the works related to the Elections. Further, since the petitioner is an active position holder in the Departmental Employees Association,

therefore, the Accepting Authority, i.e., the Director had a grudge against the petitioner,

- (c) That as per Uttarakhand Government Servant (Disposal of Representation against Adverse Annual Confidential Report) Rules, 2015 and several landmark judgments as quoted in the petition, the petitioner's representation dated 11.04.2023 should have been accepted. However, the respondent No. 1 rejected the petitioner's representation on 25.09.2023 by a non-speaking order.

7. Learned Counsel for the petitioner has drawn the attention of the Tribunal towards Rule-4, 5 & 8 of the abovementioned Rules, 2015 and emphasized that reduction of annual entry marks from 09 to merely 06 by the Accepting Authority, i.e. Director is akin to an adverse entry, when it is read alongwith the pen picture as recorded by the respondent No. 2 about the performance of the petitioner, **"Mr. Pankaj Sanwal who is Instructor, Machinist needs to focus more on his actual job profile, i.e., teaching the students and engaging with students in practical trainings and in workshops, but this was poorly lacking whenever officers or I enquired and reviewed about him. The OJT part was totally not done, his**

teaching efficiency is also subject matter of to further improvement and training. Mr. Pankaj specifically need to groom himself to the latest technology and pedagogy to get students trained as industry ready when they approach for the job to the industry. In all Pankaj needs a lot of improvement in his capacity of teaching and workshop training as Instructor and also need to improve for his attitude. In my view, he has got the potential to be a good Instructor, but for it, he will have to focus on the core values of teaching and ethics.” Therefore, the provisions of the above quoted Rules, 2015 would spontaneously be attracted in this instant matter. As per the Learned Counsel, the Rule-5 would be positively attracted in this matter as also the Rule-8 (1) would be applicable upon the Officer, who has delayed the disposal of the petitioner’ representation dated 11.04.2023. Further, a non-speaking rejection of the representation is null and void as the Deciding Authority has not applied its mind on the matter, as per the arguments put forward by the petitioner’s Counsel.

8. Learned A.P.O has emphatically argued that this instant matter does not pertain to an adverse entry. In fact, as per his subjective satisfaction the Accepting Authority/Director has only changed the category of the confidential entry from “Excellent” to “Good”, and he has boldly mentioned his opinion and perception about the performance of the petitioner in the pen picture, giving out the reasons very vividly. Since the marks and

category awarded by the Accepting Authority/Director are in accordance with the pen picture, there is apparently no anomaly in the judgment of the Accepting Authority/Director. So far as the allegation regarding a non-speaking rejection order dated 25.09.2023 is concerned, prima facie, there was no case of the petitioner in this instant matter as there was no adverse entry awarded as such. So, the representation was a futile exercise from the very beginning. Due to the same reason the Rules and Rulings as quoted in the claim petition and relied upon by the learned Counsel for the petitioner would also not be attracted in this instant matter, the learned A.P.O. argued.

9. The Tribunal has gone through the entire facts and evidences available on the case-file and has summarized the matter as below:-

- (i) The Annual Confidential Entry is the backbone of bureaucracy. It works as a carrot for the hardworking employee, while it works as a stick against the irresponsible work culture. Therefore, it is a necessary evil, without which there will be an environment of chaos due to a culture of insubordination, arbitrariness and non-accountability within the Departments and Organizations.

- (ii) The Annual Confidential Entries are subjectively based upon the perception of Initiating Officer, Forwarding Officer and the Accepting Authority. There is no fixed scale or measuring tape for judging this subjective perception of the evaluating authorities. The level of perception of the Initiating Officer might be very much different as compared to the Accepting Authority, who looks upon the things in a much wider perspective. Therefore, while the Initiating Officer is focusing merely upon the personal behaviour and performance of a particular employee and is much prone to the behavioural aspect of a particular employee, the Accepting Authority would perceive the overall performance of an employee in comparison to all the equally situated employees within his jurisdiction, since he has to run the organization systematically, methodically and coherently. Therefore, while the Initiating Officer in this instant matter has rated the petitioner's performance as "Excellent" the Accepting

Authority may find it “Not so Excellent” while evaluating the performance in the entirety of the organization, as has been manifested in the pen picture as written by the Accepting Authority about the performance of the petitioner.

(iii) Since the grievance of petitioner in this instant matter is not actually an adverse entry, but only the **phobia** of it, therefore it is not unreasonably detrimental to the future career of the petitioner. The Rules and Rulings as quoted by the petitioner’s Counsel do not appear relevant in this instant matter. Further, since there was no cause of action available to the petitioner there was not much deliberation needed while deciding the petitioner’s representation dated 11.04.2023. Therefore, it would be incorrect to insinuate the Deciding Authority for not having written a lengthy rejection order in the name of a speaking order.

(iv). So far as the petitioner’s emphasis on Election works is concerned, it is a lame excuse as these peripheral works, though might be important and

time bound, yet they do not provide leave or laxity from the actual departmental work for which a particular employee's service exists, and for which he draws his salary from the public exchequer.

10. In view of above observations made in the body of the judgment, the claim petition is liable to be dismissed.

ORDER

Accordingly, the claim petition is hereby dismissed. No orders as to costs.

(Capt. Alok Shekhar Tiwari)
Member (A)

DATE : JULY 03rd, 2025
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