

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

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

----- Member (A)

WRIT PETITION NO. 1370 (S/S) OF 2021
[RECLASSIFIED AND RENUMBERED AS CLAIM PETITION NO.
06/NB/SB/2023]

Badri Dutt Bhatt (Male) aged about 59 years, S/o Late Durga Dutt Bhatt, R/o Jagdamba Colony, Kujauli District Pithoragarh.

.....Petitioner

Versus

1. Commissioner and Secretary, Board of Revenue Uttarakhand, Dehradun.
2. Commissioner, Kumaon Mandal, Nainital.
3. District Magistrate, Pithoragarh.
4. Pravindra Singh Diniya, S/o Sri Dham Singh Diniya Serving as Senior Administrative Officer, in the office of District Magistrate, Pithoragarh.

.....Respondents

Present : Sri Lalit Samant, Advocate for the petitioner
Sri Kishore Kumar, A.P.O. for the respondents

JUDGMENT

DATED : 30th OCTOBER, 2025

By means of this petition, the petitioner seeks the following relief:

- (i) *A writ, order or direction in the nature of certiorari to quash impugned order dated 27.08.2020 issued by respondent no.3*

contained as (Annexure No. 1 to the writ petition), impugned appellate order dated 08.02.2021 issued by respondent no.2 contained as (Annexure No. 6 to the writ petition) and order dated 21.05.2021 issued by respondent No. 1 contained as (Annexure No. 13 to the writ petition) and call for records.

- (ii) *Issue a writ order or direction in the nature of mandamus directing respondents to held a review D.P.C. to consider the case of the petitioner for promotion from the date of his entitlement.*
- (iii) *Issue a writ order or direction in the nature of mandamus directing respondents to promote the petitioner on the post of Senior Administrative Officer from the date his junior has been promoted with all consequential service benefits.*
- (iv) *Any other order or direction which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case.*
- (v) *Award cost of the Petition to the present Petitioner.*

2. In brief, the facts of the case are that the petitioner was initially appointed as Junior Assistant in the Department in the year 1991. Thereafter, the petitioner was promoted on the post of Ahalmad, Accountant, Chief Assistant in year 1997, 2009, 2011 respectively. On 09.08.2018, the petitioner was promoted on the post of Administrative Officer and posted in the office of respondent no.3. Since then, he is discharging his duties continuously as such. Till year 2019-20 work and conduct of the

petitioner always has been satisfactory. No complaint or adverse entry has ever been found against the petitioner. On 27.08.2020, the respondent No. 3 issued an official order, whereby, adverse entry was awarded to the petitioner. The allegation levelled against the petitioner were that he did not bring into the notice to the higher officials the fact that in year 2018-19 an adverse entry was awarded to one Smt. Manisha Chand serving as Senior Assistant in the office of respondent No. 3. Further allegation was levelled against the petitioner were that he did not bring into notice of the higher officials the annual entries related to giving benefit of A.C.P to the employees serving in the office of respondent No.3. The aforesaid order did not mention for which calendar year adverse entry has been given. It is significant one Smt. Manisha Chand Senior Assistant serving in the office of respondent no.3 was awarded adverse entry for the year 2018-19 by respondent No.3. On 22.12.2018 the allegation levelled against Smt. Manisha Chand that she did not follow directions given by higher officials and she is indifferent in discharging her day-to-day duties. Smt. Manisha Chand submitted representation to the respondent no.3 against official order dated 22.12.2018 issued by respondent No. 3, whereby, adverse entry was given to her for the year 2018-19. On representation of Smt. Manisha Chand a official note dated 31.12.2018 was prepared by Administrative Officer and Officer In-charge of the officer of respondent No. 3. On 01.01.2019, the respondent No.3 put an endorsement on the official note — “Last warning is given. If there is no improvement in financial year this

order will be reconsidered.” On 28.01.2018, respondent No.3 converted adverse entry of Smt. Manisha Chand into last warning. In this effect respondent No. 3 issued official order on 28.01.2019. Smt. Manisha Chand was awarded annual entry Excellent for the year 2018-19 by office in-charge Forest/Land Acquisition Office, Pithoragarh. Before imposing minor penalty respondent No.3 did not follow procedure given in Rule-10 of The Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003 (For Short “The Rules 2003”). The petitioner was not informed of the substance of the imputation against him and no explanation was called from the petitioner. The petitioner was not given any opportunity of hearing before awarding adverse entry. The petitioner submitted representation /appeal before respondent No. 2 on 10.09.2020 against his adverse entry. The petitioner contended entries in character-roll of the employees are to be made /maintained by Senior Administrative Officer/In-Charge Officer Room No. 10 of the office of respondent No.3. The petitioner further contended Sri Varun Aggarwal then officer In-Charge Forest, who provided the entry, has taken cognizance or not of the adverse entry and order dated 01.01,2019 is not related to General Establishment Office. The petitioner further contended to provide financial up-gradation under Modified Assured Career Progression (For Short MACP) as per G.O dated 17.02.2017, in every department screening committee is to be constituted by appointing authority. The screening committee having a Chairman and two other members, recommendation of screening committee

are to be presented before concerning appointing authority for approval. As per G.O. dated 17.02.2017 a screening committee was constituted through vide official order No. 199 dated 30.10.2018 to provide benefit of A.C.P to the employees of Revenue Department of the District Pithoragarh. Under this scheme at the time of financial up-gradation and regular promotion salary is to be determined. The petitioner placed all details regarding to provide benefit of A.C.P. to the eligible employees before screening committee after noting from register available in room No.-10 office of Senior Administrative Officer/In-Charge officer of office of respondent No. 3. On their direction, the petitioner placed all the details and documents before screening committee. Apart from all these the petitioner placed all details and documents before screening committee as per direction given to him time to time. The petitioner did not conceal anything from screening committee. The petitioner specifically stated before awarding minor Punishment, i. e., adverse entry no opportunity of hearing in any manner was given to the petitioner, He was not given any written warning which is against principal of natural justice. The petitioner requested order dated 27.08.2020 may be quashed. respondent no.2 did not consider at all representation of the petitioner and did not give any finding about submission of the petitioner— opportunity of hearing was not given to the petitioner before awarding adverse entry. Respondent No.2 rejected representation of the petitioner. Rule-7 of The Uttarakhand Government Servant (Disposal of Representation against adverse

annual confidential reports and Allied matters) Rules, 2015 (For Short "The Rules, 2015") stipulates— The competent authority or accepting authority as the case may be, or any other authority nominated by him in this behalf, shall maintain a register in such form as may be specified by Government from time to time and shall make appropriate entries therein. In the present case in hand register for making entries of the employees of office of respondent No.3 is to be maintained by Senior Administrative Officer and his office room No. 10. Aforesaid register is not in control and possession of the petitioner. The petitioner followed directions of his superior authority, i. e., senior Administrative Officer. No action was taken against aforesaid official. It is significant as per Rule-3 (g) of the Rules, 2015 the petitioner has been awarded category 'Good' entry for calendar year 2020-21 in his annual confidential report. The petitioner got aforesaid annual report under RTI which was furnished to him on 07.07.2021. Respondent No. 1 issued final (amended) seniority list 2019 of the Administrative Officers serving in different District Offices. In this seniority list petitioner was placed at serial No. 27 and respondent No.4 was placed at serial No. 28. In pursuance of aforesaid seniority list office of respondent No.3 also issued district-wise final seniority list 2019. In aforesaid seniority list . name of the petitioner was placed at serial No. 1 whereas respondent No. 4 was placed at serial No. 2. Respondent No. 1 made promotion on the post of Senior Administrative Officer from the post of Administrative Officer. In aforesaid promotion list junior to the petitioner, i.e., respondent No. 4 was promoted and

placed at serial No. 18, whereas name of the petitioner was not shown in the promotion list. The petitioner submitted representation before respondent No. 1 stating in the seniority list dated 28.09.2020 his name has been placed at serial No. 27, but his name has not been shown in promotion list. The petitioner requested he may be intimated why his name has not been included in the promotion list. The petitioner again submitted representation before respondent No. 1. The petitioner contended his name has not been included in the promotion list of Senior Administrative Officer. The petitioner further contended since last 10 years he has not been awarded any adverse entry till year 2019-20 his all annual entries are correct. The petitioner is entitled for promotion on the post of Senior Administrative Officer on the basis of his last 10 years annual entries. The petitioner requested he may be promoted on the post of Senior Administrative. No action was taken on the representation of the petitioner, petitioner, petitioner again submitted representation to the respondent No. 1 stating allegations levelled against the petitioner are baseless and requested his adverse entry may be cancelled and he may be promoted on the post of Senior Administrative Officer. respondent No. 1 not considered submissions made by the petitioner in his representation. On 21.05.2021 rejected representation of the petitioner stating second appeal was not maintainable; his appeal has already been rejected by the respondent No. 2 on 08.02.2021. Respondent No. 1 further made observation for promotion on the post of Senior Administrative Officer adverse entry of the year

2020-21 shall be taken into consideration as per procedure. As per Rule-3 (1) of Uttarakhand State Services Procedure for Promotion (Outside per view of Public Service Commission) Rules, 2013 (For Short "The Rules, 2013") criteria for promotion is seniority subject to rejection of unfit. The aforesaid rules further states senior most employees will be considered for promotion first and foremost, after categorizing him fit or unfit then second placed employee will be considered likewise. This process will continue till suitable candidates are available against vacant posts. Rule-6 of aforesaid Rules, 2013 stipulates — The employee who has been declared unfit shall be informed that he has been declared unfit by Departmental Promotional Committee. In the case at hand this mandatory provision has not been followed by respondents. No intimation was given to the petitioner why his name has not been included in the promotion list or he has been declared unfit for promotion on the post of Senior Administrative Officer. The action of the respondents is arbitrary, unreasonable and violative of article 14, 16, 21 of the constitution of India.

3. Counter Affidavit has been filed on behalf of the respondents No. 2 & 3 by Sri Puran Singh Bisht, Additional Chief Standing Counsel, High Court of Uttarakhand, in which it has been stated that the respondent no. 3, i.e., District Magistrate, Pithoragarh in the year 2018 awarded adverse entry against the petitioner due to the reason that the petitioner neither follow the

directions of the Higher Authorities nor finalize the on-table work in accordance to service manual as per the directions of the Higher Authorities. It is clear that the act of the petitioner itself reflected that he has never finished on work sincerely in the interest of the Department. It is further made clear that the State Government constituted one Departmental Promotional Committee and a meeting was held on 25.06.2020, however, in the said meeting the petitioner produced records as well as Annual Confidential Report of the employees, like Smt. Manisha Chand, but after perusing ACP of Smt. Manisha Chand some irregularities were found, in fact, District Magistrate, Pithoragarh as awarded adverse entry against Smt. Manisha Chand in the year 2018-2019, this fact is also not mentioned in the service book of Smt. Manisha Chand by the petitioner. It is relevant that the petitioner has been recorded in the service book of Smt. Manisha Chand as $\beta m R d'' V \beta$, meaning thereby, the petitioner did not mention/disclose actual entries in the service book of Smt. Manisha Chand being a competent authority of the Department.

The competent authority of the Department also constituted one Scrutiny Committee regarding for grant of 3rd ACP benefit on the basis of the service record. In the said meeting neither the petitioner produced Annual Confidential Report ACR in respect of employees properly nor recorded actual entry of the employee in the service record which was granted by the Higher

Authority of the Department as per the performance of the employees.

It is made clear that the petitioner could not follow the direction of the Higher Authority and the District Magistrate, Pithoragarh prior awarding adverse entry in the various occasions giving warning to the petitioner for improvement of work, but the same was not done by the petitioner.

The petitioner filed appeal against the order dated 27.08.2020 passed by the District Magistrate, Pithoragarh before the Commissioner, Kumaun Mandal, Nainital, the Appellate Authority also dismissed the appeal of the petitioner vide its order dated 08.02.2021, thereafter the petitioner preferred 2nd appeal before the Board of Revenue, the Board of Revenue also dismissed 2nd Appeal of the petitioner in view of the Uttarakhand Government Servant (Disposal of Representation against the Adverse Confidential Report and Allied Matters) Rules, 2015. The Board of Revenue saying that in view of the above rule the second appeal also not maintainable. Thereafter, the respondent No. 1 prepared seniority list of the Administrative Officers ultimately on the basis of the service record as well as on the basis of the seniority list provided promotion to the respondent No. 4 accordingly.

4. Rejoinder Affidavit has been filed on behalf of the petitioner denying the contention of the respondents and has reiterated the averments made in the writ petition (Claim Petition).

5. Learned Counsel for the petitioner argued that neither the petitioner was ever given any show-cause notice by the Punishing Officer before awarding the impugned adverse entry to the petitioner, nor was the petitioner ever given official information regarding the adverse entry in accordance with Rule 10 (2) of the Uttaranchal Government Servant (Discipline and Appeal) Rules, 2003. So much so, that the petitioner was not even given any opportunity of hearing before awarding the impugned adverse entry. This is the reason why the counter affidavit provides only a vague reply in the first and second appeal about these allegations forwarded by the petitioner in the para-9 of the instant petition. Further, there is no rebuttal in the counter affidavit regarding the petitioner's allegations that in fact, the register of annual entries was not supposed to be maintained by the petitioner, but by the Senior Administrative Officer instead. Therefore, in realty, the petitioner has been penalized for a mistake which was neither committed by him, nor was included in the official duty of the petitioner as per the work distribution in force at that time.

6. Learned A.P.O., in his argument has admitted that during the D.P.C. held in the month of November of that year no cognizance should have been taken of the adverse entry awarded to the petitioner in the month of August 2020. There has been a

technical error in not promoting the petitioner in the D.P.C. under question. Further, learned A.P.O. argued that since the first appeal has been decided on the basis of the documentary evidences, and the second appeal before the Board of Revenue does not lie in this instant matter, as per rules, therefore, the rejection orders passed in the first and second appeals are procedurally correct. Also, an adverse entry in itself is not a punishment as per the rules. Accordingly, the petition does not hold water and deserves to be dismissed.

7. At the outset only, it is apparent that this claim petition had been filed originally before the Hon'ble High Court of Uttarakhand at Nainital as Writ Petitioner No. 1370 (S/S) of 2021, which was relegated by the Hon'ble High Court to this Tribunal vide its order dated 07.12.2022, and the same is being adjudicated by this Tribunal in the same form, treating it as a claim petition. Therefore, the prayers put forward by the petitioner in the original writ petition, have been adjudicated upon by this Tribunal considering it as a claim petition only, notwithstanding the original prayers for issue of a writ, order or direction in the nature of certiorari/mandamus etc., which are beyond the jurisdiction of this Tribunal. For this clerical mistake, the claim petition is not being dismissed.

8. After having perused the record and documents, it appears, prima facie, that there has been an unintentional mistake in awarding the impugned adverse entry to the petitioner, and in

not promoting him during the impugned D.P.C. on the basis of following grounds:-

- (i) The petitioner was never given a show-cause notice before awarding the adverse entry,
- (ii) The petitioner was never informed officially about the impugned adverse entry,
- (iii) In the work distribution, it seems that the petitioner was not deputed to maintain the said annual entry register for which he has been penalized,
- (iv) The petitioner had never been given an opportunity of hearing before the impugned adverse entry;
- (v) During the D.P.C. under question it seems that there has taken place a technical error in not promoting the petitioner on the basis of the adverse entry under question in the month of August 2020.

9. Learned Counsel for the petitioner in his rebuttal drew attention of the Tribunal towards the fact that the petitioner is a retired employee at present and at the most, in case this petition succeeds, he would get only a notional promotion, not disturbing the seniority of other employees, who are still in service, but would gain a little bit financially, in the form of his pensionary benefits.

Therefore, he could be given at least an opportunity to present a representation afresh on the basis of the highlighted mistakes, before the appropriate authorities, who, could be directed to decide the fresh representation in a time bound manner.

10. Prima-facie, it is evident that there have been certain unintentional mistakes in this matter under question and hence, the Tribunal agrees that an opportunity should be provided to the petitioner to submit a representation afresh, strictly limiting itself to the new facts brought before this Tribunal in the instant petition, which must be decided by the appellate authority in a time bound manner.

ORDER

Accordingly, the claim petition is allowed. The impugned order dated 27.08.2020 issued by respondent No. 3 (contained as Annexure No. 1 to the petition), impugned appellate order dated 08.02.2021 issued by respondent No. 2 (contained as Annexure No. 6 to the petition) and order dated 21.05.2021 issued by respondent No. 1 (contained as Annexure No. 13 to the petition) are hereby kept in abeyance with a direction to the petitioner that he will submit a fresh representation supported by an affidavit to that effect before the Appellate Authority for a de novo consideration within 30 (Thirty) days from this judgment, who would look into the matter considering the points of view that this Tribunal has observed as significant and decide the petitioner's

appeal afresh on its merit with a judicious application of mind. The Appellate Authority shall decide the representation within 60 (Sixty) days from the date of submission of a fresh representation by the petitioner supported by an affidavit to that effect, alongwith a certified copy of this Tribunal's judgment in this instant matter. The petitioner is directed to mention only those facts and pleadings in the fresh representation which are of conclusive nature as observed by this Tribunal, and no new facts or documents/evidences would be submitted into the fresh representation that had not been submitted earlier in this instant claim petition. No orders as to costs.

(Capt. Alok Shekhar Tiwari)
Member (A)

DATE: 30th OCTOBER, 2025
NAINITAL
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