

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No. 53 of 2015 (S/B)

Bhagwati Prasad Madhwal.

..... Petitioner.

Versus

State of Uttarakhand and others.

..... Respondents

Mr. D.S. Patni, Advocate for the petitioner.

Mr. Pradeep Joshi, Standing Counsel for the State of Uttarakhand/respondent nos.1 & 2.

Mr. Manoj Tewari, Senior Advocate assisted by Mr. Alok Mehra and Mr. Nandan Arya,
Advocates for the respondent no.3.

Dated: 30.04.2015

Coram: Hon'ble K.M. Joseph, C.J.

Hon'ble V.K. Bist, J.

K.M. Joseph, C.J. (Oral)

Petitioner has approached this Court feeling aggrieved by the manner in which his claim for the post of Director, Fisheries has been dealt with. Petitioner is presently working as a Deputy Director, Fisheries. The private respondent is working as a Joint Director. According to the petitioner, DPC has not recommended him for promotion only on the basis of the adverse entry against him. According to the petitioner, the entry was satisfactory. His complaint is that the said entry was not communicated to him. He applied under the Right to Information Act. According to him, he obtained it on 8th January, 2015. He immediately filed a representation to the next higher Authority, who was none other than the Minister-in-charge, Fisheries. Petitioner incidentally though is on a substantive appointment in the Department of the Fisheries, he was at that time working in the Fisheries Development Agency.

2. The Minister acting on his representation replaced the entry 'satisfactory' with the entry 'excellent'.

3. The writ petition is resisted by both the Government and the private respondent, who, in fact, in the meantime, has been

recommended for promotion as Director by the DPC. This Court has granted an interim order in regard to the same.

4. According to the respondents, no store can be laid by the decision of the Minister. The Minister has no role to play, runs the argument and, therefore, it is the case that in the case of the petitioner, who is a Deputy Director, the reporting authority is the Director; the reviewing authority is the Secretary and the accepting authority is the Forest Rural Development Commissioner. Therefore, in this scenario, in law, the Minister had no authority.

5. According to the petitioner, on the other hand, the Minister was in the Committee of Management of the Development Agency, in which the petitioner was working at that time and he was the competent body to consider the representation against the adverse entries.

6. We heard the learned counsel for the petitioner, the learned senior counsel for the party respondent and also the government pleader.

7. The matter is one, which is governed by the statutory rules in the form of 'Uttaranchal Government Servants (Disposal of Representation Against Adverse Annual Confidential Reports And Allied Matters) Rules, 2002'. Rule 4 of the said Rules reads as under:

“4. Communication of adverse report and procedure for disposal of representation.—

(1) Where a report in respect of a Government Servant is adverse or critical, Wholly or in part, hereinafter referred to as adverse report, the whole of the report shall be communicated in writing to the Government Servant concerned by the accepting authority or by an officer not below the rank of reporting authority nominated in this behalf by the accepting authority, within a period of 90 days from the date of recording the report and a certificate to this effect shall be recorded in the report.

(2) A Government Servant may, within a period of 45 days from the date of communication of adverse report under sub-rule (1) represent in writing directly and also through proper channel to the authority one rank above the accepting authority hereinafter referred to as the competent authority, and if there is no competent authority to the

accepting authority itself, against the adverse report so communicated:

Provided that if the competent authority or the accepting authority, as the case may be, is satisfied that the Government Servant concerned had sufficient cause for not submitting the representation within the said period, he may allow a further period of 45 days for submission of such representation.

(3) The competent authority or accepting authority as the case may be, shall, within a period not exceeding one week from the date of receipt of the representation under sub-rule (2), transmit the representation to the appropriate authority, who has recorded the adverse report, for his comments, who shall, within a period not exceeding 45 days from the date of receipt of the representation furnish his comments to the competent authority of the accepting authority as the case may be:

Provided that no such comments shall be required if the appropriate authority has ceased to be in, or has retired from, the service or is under suspension before sending his comments.

(4) The competent authority or the accepting authority, as the case may be, shall, within a period of 120 days from the date of expiry of 45 days specified in sub-rule (3) consider the representation along with the comments of the appropriate authority, and if no comments have been received without waiting for the comments, and pass speaking orders—

(a) Rejecting the representation; or

(b) Expunging the adverse report wholly or partly as he considers proper.

(5) Where the competent authority due to any administrative reasons, is unable to dispose of the representation within the period specified in sub-rule (4), he shall report in this regard to his higher authority, who shall pass such orders as he considers proper for ensuring disposal of the representation within the specified period.

(6) An order passed under sub-rule (4) shall be communicated in writing to the Government Servant concerned.

(7) Where an order expunging the adverse report is passed under sub-rule (4), the competent authority or the accepting authority as the case may be shall omit the report so expunged.

(8) The order passed under sub-rule (4) shall be final.

(9) Where any matter for--

(i) communication of an adverse report;

(ii) representation against an adverse report;

(iii) transmission of representation to the appropriate authority for his comments;

(iv) comments of the appropriate authority; or

(v) disposal of representation against an adverse report is pending on the date of the commencement of these rules, such matters shall be dealt with and disposed of within the period prescribed therefore under this rule.”

8. It is submitted by the learned counsel for the petitioner that the Minister is the authority one rank above the accepting authority and, therefore, all is well with the decision of the Minister in this case.

9. Per contra, it is submitted by the learned senior counsel for the private respondent, as also, the Government pleader, who got instructions in the matter that the Minister was not an authority within the meaning of sub-rule (2) of Rule (4), that is to say that he was not one rank above the accepting authority. Rule clearly provides in the proviso that if there is no competent authority, then the representation has to be made to the accepting authority itself against the adverse entry, which is so communicated.

10. This is a case, where apparently the adverse entry was not communicated as such; it was the petitioner, who applied under the Right to Information Act, and he obtained the same in January, 2015 and he made a representation on 23rd January, 2015. If the Minister had no authority, he should have placed the matter before the competent authority, namely, the accepting authority, instead of deciding it himself.

11. The learned senior counsel for the private respondent brings to our notice that there is yet another obstacle for the petitioner in succeeding to get promotion, as the petitioner is being proceeded against in the departmental proceedings on the charge of financial irregularities committed by him.

12. Learned counsel for the petitioner would submit that it is not on the said ground that the petitioner has lost in the proceeding by the DPC and it was on the solitary ground of the adverse entry that he was not recommended.

13. We would think that the interest of justice requires that the representation given by the petitioner in respect of the entry, by

which he felt aggrieved, should receive attention at the hands of the competent authority, which is the accepting authority though we stand informed by Sri D.S. Patni, that presently the Minister is given authority as the authority one rank above the accepting authority.

14. In such circumstances, we dispose of the writ petition as follows:

The representation, which the petitioner made before the Minister, learned government pleader submits that the same will be made over to the Commissioner, who is described as the accepting authority in the counter affidavit within a period of one week from today and the Commissioner will consider the representation of the petitioner, in accordance with law, and take a decision on the same within a period of ten days from the date on which the representation is placed before him. If the petitioner's representation is considered favourably at the hands of the Commissioner, the Commissioner will place it before the DPC within a period of one week from the date of its decision. Then, necessarily the DPC will hold a review meeting and will consider the case of the petitioner and the private respondent in the light of the decision as aforesaid. This, the DPC will do within a period of two weeks from the same. If the decision of the Commissioner is by way of rejecting the representation of the petitioner, then we direct that it will be open to the Government to act on the recommendation already made by the DPC, by which the private respondent stands recommended for promotion, within a period of ten days from the date of decision of the Commissioner. In such eventuality, we also leave it open to the petitioner to work out his remedies against the order passed by the Commissioner.

(V.K. Bist, J.)
30.04.2015

(K.M. Joseph, C.J.)
30.04.2015

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