

**IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL**

ON THE 2ND DAY OF SEPTEMBER, 2022

BEFORE:

HON'BLE SHRI JUSTICE MANOJ KUMAR TIWARI

Writ Petition (S/S) No. 1306 of 2022

BETWEEN:

Veer Singh YadavPetitioner

(By Mr. Amar Murti Shukla, Advocate)

AND:

State of Uttarakhand & others. ...Respondents

(By Mr. P.C. Bisht, Additional Chief Standing Counsel for the
State of Uttarakhand/respondents)

JUDGMENT

Heard learned counsel for the parties.

2. Petitioner is serving as Assistant Teacher in a Government Primary School in District Udham Singh Nagar. By means of this writ petition, he has sought the following reliefs: -

"a) Issue a writ order or direction in the nature of Certiorari quashing the impugned order (Annexue-5) issued by District Education Officer Udham Singh Nagar.

b) Issue a writ order or direction in the nature of Mandamus commanding and directing the respondents to consider the case of petitioner for promotion to the post of Head Master Primary School w.e.f. 28.10.2021 i.e. the date when similarly situated and junior incumbents to the petitioner have been extended promotion."

3. The impugned order has been passed by District Education Officer (Elementary), Udham Singh Nagar. The same is on record as Annexure-5 to the writ petition. By the said order, petitioner's claim for promotion to the post of Headmaster in Government Primary School has been rejected on following grounds: -

- A) An adverse entry was given to him for the reporting year 2020-21; and
- B) Departmental Enquiry is pending against him.

4. Learned counsel for petitioner submits that no adverse entry was ever communicated to petitioner in his entire service career, therefore, the statement made in the impugned order that petitioner was given adverse entry for reporting year 2020-21 is incorrect. He further submits that no charge-sheet has been issued to petitioner till date, therefore, the statement that Departmental Enquiry has been initiated against him, is also incorrect. Thus according to him, denial of promotion to him is without any reason or justification.

5. Learned counsel for petitioner has referred to paragraph nos. 13 & 14 of the writ petition, which are reproduced below: -

"13. That the respondent has taken false and flimsy grounds while rejecting the claim of petitioner. The ground that there is adverse entry in the service record of petitioner for year 2020-21 has no relevance as the said adverse entry has never been communicated to the

petitioner and therefore the alleged adverse entry cannot be taken into considering while considering the petitioner's claim for promotion.

14. That further ground that inquiry is pending against the petitioner is also not sustainable as the petitioner has never been issued any show cause or charge sheet in the alleged inquiry and he is not aware about the alleged inquiry, therefore merely in the garb of alleged inquiry, which is behind the back of petitioner, the petitioner cannot be deprived from his promotional avenues."

6. The averments made in paragraph nos. 13 & 14 of the writ petition have been vaguely denied in the counter affidavit, however, it is nowhere stated in the counter affidavit that adverse entry for reporting year 2020-21 was communicated to petitioner. Similarly, there is no averment in the counter affidavit that charge-sheet was served upon petitioner. Paragraph no. 29 of the counter affidavit talks about a letter, alleged to have been issued to petitioner on 31.08.2020, whereby he was asked to remain present before the joint inspection committee on 01.09.2020.

7. On a specific query to learned State Counsel regarding communication of adverse entry and service of charge-sheet in respect of disciplinary enquiry to the petitioner, learned State Counsel fairly submitted that based on material available on record, he is not in a position to make any statement regarding communication of

adverse entry to petitioner or service of charge-sheet upon him.

8. Un-communicated adverse report cannot be relied upon to deny promotion to a government servant in view of Rule 5 of "Uttarakhand Government Servants (Disposal of Representation against Adverse Annual Confidential Report and Allied Matters), Rules 2002, which 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 Handbook, 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."

9. In view of aforesaid statutory provision, an adverse entry, which has not been communicated to petitioner, cannot be relied upon for denying promotion to him.

10. Even otherwise also, Hon'ble Supreme Court in the case of Abhijit Ghosh Dastidar v. Union of India, reported in (2009) 16 SCC 146 has held as under: -

"8. Coming to the second aspect, that though the benchmark "very good" is required for being considered for promotion, admittedly the

entry of "good" was not communicated to the appellant. The entry of "good" should have been communicated to him as he was having "very good" in the previous year. In those circumstances, in our opinion, non-communication of entries in the annual confidential report of a public servant whether he is in civil, judicial, police or any other service (other than the armed forces), it has civil consequences because it may affect his chances of promotion or getting other benefits. Hence, such non-communication would be arbitrary, and as such violative of Article 14 of the Constitution. The same view has been reiterated in the aboveresferred decision (Dev Dutt case [(2008) 8 SCC 725 : (2008) 2 SCC (L&S) 771 : (2008) 7 Scale 403] , SCC p. 738, para 41) relied on by the appellant. Therefore, the entries "good" if at all granted to the appellant, the same should not have been taken into consideration for being considered for promotion to the higher grade. The respondent has no case that the appellant had ever been informed of the nature of the grading given to him."

11. In support of his contention that a disciplinary enquiry is initiated against petitioner, learned State Counsel referred to letter dated 04.03.2022 issued by District Education Officer (Elementary), which is on record as Annexure-13 to the counter affidavit. Perusal of the said letter reveals that petitioner was asked to put forth his version regarding incomplete work of school building construction, failing which recovery proceedings or departmental proceedings would be

initiated against him. The said letter however cannot be treated as charge-sheet. There is nothing on record to show that disciplinary enquiry was initiated by issuing a charge-sheet to the petitioner.

12. It is settled position in law that departmental/disciplinary enquiry is initiated when charge-sheet is issued against a person. In the present case, there is no charge sheet issued to petitioner, therefore, it cannot be said that disciplinary enquiry is initiated or pending against him.

13. Since criteria for promotion is seniority subject to rejection of unfit, therefore a senior teacher can only be passed over, if he is found to be unfit for promotion. The material brought on record is not sufficient for holding petitioner unfit for promotion.

14. In such view of the matter, denial of promotion to petitioner, on the grounds mentioned in the impugned order, cannot be sustained in the eyes of law.

15. Accordingly, writ petition is allowed and the impugned order dated 10.03.2022 is quashed. The Competent Authority is directed to re-consider petitioner's claim for promotion, as per law, within six weeks from the date of production of certified copy of this order.

(MANOJ KUMAR TIWARI, J.)