

(2011) 09 AHC CK 0343
In the Allahabad High Court
Case No : Writ Petition No. 1775 (SB) of 2011

State of U.P. and Another

APPELLANT

Vs

Ram Lagan Singh Yadav

RESPONDENT

Date of Decision : 30-09-2011

Acts Referred:

Uttar Pradesh Fundamental Rules — Rule 56
Uttar Pradesh Government Servants (Disposal of Representation Against Adverse Annual Confidential Reports and Allied Matters) Rules, 1995 — Rule 1, 4(1), 5

Citation : (2011) 9 ADJ 363

Hon'ble Judges : Surendra Vikram Singh Rathore, J; Pradeep Kant, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard the Learned Counsel for the petitioner Sri Rajnish Kumar and perused the impugned order passed by the State Public Services Tribunal.
2. The Tribunal in the claim petition preferred by the respondent, challenging his supersession on the post of Deputy Commissioner, Commercial Tax in the Departmental Promotion Committee held on 15.1.2010, accepted the plea of the respondent that the adverse entry for the year 2001-02 could not have been treated as adverse for considering promotion or crossing of efficiency bar and other service benefits in view of Rule 5 of the U.P. Government Servants (Disposal of Representation against Adverse Annual Confidential Reports & Allied Matters) Rules, 1995 (hereinafter referred to as the Rules of 1995) and consequently, directed that while considering the case of the petitioner for promotion to the next higher post with effect from the date of promotion of his juniors, the adverse remarks for the year 2001-02 shall not be treated as adverse.
3. The sole ground which has been urged by the counsel for the State is that the claim petition itself was highly barred by limitation and, therefore, Tribunal committed manifest error in entertaining such a delayed petition and issuing the

aforesaid direction.

4. In support of the aforesaid plea, it has been urged that the adverse entry related to the year 2001-02, which was communicated to the petitioner in the year 2003 itself and, therefore, his grievance against the adverse entry could have been brought before the Tribunal only within the time of limitation from the date of communication of the said entry on which the cause of action first accrued but the petitioner waited for seven long years and approached the Tribunal only in the year 2010, which makes the petition barred by limitation.

5. The entry for the year 2001-02 was in two parts; one was for the period commencing from 3.7.2011 to 12.11.2001 and the other was for the period 15.11.2001 to 31.3.2002. The entry for the period 15.11.2001 to 31.3.2002 is adverse as the petitioner was assessed as "poor" with certain adverse remarks. This entry was finalised by the appointing authority on 15.3.2003. This entry was communicated to the petitioner on 15.5.2003 i.e. after expiry of more than 45 days, as prescribed under Rule (1) of the Rules of 1995. The entry for the period 3.7.2011 to 12.11.2001 was assessed as "Uttam" by the reporting authority but the reviewing authority downgraded it to "achchha", without recording any reason. Representation was made with respect to this downgrading on 22.5.2003, which was not disposed of, though the State denies of receiving any such representation.

6. According to the State, representation was made on 20.11.2009 i.e. much beyond the prescribed period of limitation under the rules and the same was rejected on 23.11.2009, holding it to be inadmissible, which order has also not been challenged.

7. Counsel for the State has also relied upon a judgment of the apex Court in the case of Union of India (UOI) and Others Vs. M.K. Sarkar, wherein the Apex Court in Para 15, observed as under:

15. When a belated representation in regard to a "stale" or "dead" issue/ dispute is considered and decided, in compliance with a direction by the Court/Tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the "dead" issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a Court's direction. Neither a Court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.

8. The plea, therefore, is that the issue of limitation or delay and laches should be considered with reference to the original cause of action and not on the basis of a subsequent order or cause of action.

9. Admittedly, the entry for the year 2001-02, which was in two parts, was

communicated on 15.5.2003. This period of communication obviously was beyond the prescribed 45 days period under Rule 4(1) of the Rules of 1995.

Rule 5 of the Rules of 1995 lays down as under:

5. 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 representation against the adverse report has not been disposed of in accordance with Rule 4, such report shall not be treated adverse for the purpose of promotion, crossing of Efficiency Bar and other service matters of the Government Servant concerned.

10. A bare perusal of the aforesaid rule, reveals that if an adverse entry is not communicated within the time prescribed or if the representation is made within the prescribed period and the same is not decided within the statutory period, such an entry cannot be read as adverse for the purpose of promotion, crossing of efficiency bar and other service benefits.

11. This provision thus, rests an obligation upon the State or the department not to consider such an adverse entry, if, in the meantime, any promotion is to take place or the question of crossing of efficiency bar by the Government servant arises. It is not necessary under the language used in Rule 5 for the Government servant to make a representation and raise a plea that such an entry cannot be treated to be adverse. Even if the Government servant does not make a representation against such an entry, which has been communicated beyond the period prescribed, it would not give authority or power to the State to consider the said entry, while considering the promotion or crossing of efficiency bar, irrespective of the fact, whether any representation has been made by the Government servant or not.

12. Rule 5 mandates the State Government or the appointing authority not to take into account such an adverse entry, which does not conform to the Rules of 1995.

13. In the instant case, even accepting the plea of the State that the respondents contention that he made representation in the year 2003 itself is not correct, and the representation was made in the year 2009, still on the premises, which we have discussed above, when the matter regarding promotion was considered in the year 2010, such an entry could not have been taken into account.

14. The cause of action in this case would not arise merely by award of adverse entry but in fact, would arise when that entry was given effect to, and the respondent stood superseded by the Departmental Promotion Committee in the year 2010 by taking the said entry into consideration. It is the supersession of the respondent, on an illegal premise, against which cause of action accrued to file the claim petition. The claim petition was well within time, from the date when he was superseded on the basis of an entry, which could not have been

relied upon in view of the legal statutory provision.

15. That being the position, we do not find any ground to entertain the petition.

16. The petition is dismissed.