HIGH COURT OF JUDICATURE AT ALLAHABAD
WRIT - A No. - 20213 of 2023

Praveen Narayan

.....Petitioner(s)

Versus

State Of U.P. And 8 Others

.....Respondent(s)

Counsel for Petitioner(s) : Amar Jeet Singh, Praveen Narayan
Counsel for Respondent(s) : C.S.C.

Court No. - 34
Sl. No. 50

HON'BLE ANISH KUMAR GUPTA, J.

1. Heard Praveen Narayan the petitioner in person and Sri Raj Kumar Tiwari, learned standing counsel for the State.

2. The instant writ petition has been filed by the petitioner with the following prayers:

> *"I. Issue a writ order or direction in the nature of mandamus directing the respondents authorities to sanction the first promotional time pay scale from the date on which it was admissible to the petitioner w.e.f. 1.6.1998 payable to the petitioner in pursuance of the section 2(2)(c) GO No. 761/Karmik-1/1993 dated 30.6.1993 ignoring the adverse entry of year 1994-95 and the so called adverse entry of 1998-99 due to non communication to the petitioner.*
>
> *II. Issue a writ, order or direction in the nature of mandamus directing to the respondent authorities to pay the petitioner's arrear of salary along with interest up to date.*
> *III. Issue nature a writ, order or direction in the of mandamus directing to the respondent authorities to fix the second selection grade of time pay scale w.e.f. 01.06.2003 in place of 02.06.2004.*
> *IV. Issue a writ, order or direction in the nature of mandamus directing to the respondent authorities to fix the Second ACP w.e.f. 01.12.2008 in place of 01.12.2009.*
> *V. a Issue writ, order or direction in the nature of mandamus directing to the respondent authorities to fix the time Third ACP w.e.f. 01.06.2010 in*

place of 01.06.2011.

VI. Issue writ, order or direction in the nature of mandamus directing to the respondent authorities to fix the amount of pension of the petitioner after sanctioning the promotional pay scales from the admissible date and accordingly to pay the arrears of pension along with up to date interest. "

3. It is an admitted position that there was an adverse entry in the year 1994-95 against the petitioner which was duly communicated to the petitioner and against which the petitioner has also represented. However subsequent thereto there was another adverse entry in the year 1998-99 against the petitioner. The claim of the petitioner is that the said adverse entry of the year 1998-99 was never communicated to the petitioner. In this regard the aforesaid fact has also been admitted in para 10 of the counter affidavit filed on behalf of the respondents and the letter dated 14.11.2008 has been annexed as Annexure CA-2 to the counter affidavit wherein it has been categorically admitted that after examination of the old documents it could not be established that the adverse entry of the year 1998-99 was ever communicated to the petitioner. Learned counsel for the petitioner relying upon the UP Government Servant Disposal of Representation Against Adverse Annual Confidential Reports and Allied Matters Rules 1995 submits that in terms of the Rule 4 of the aforesaid Rules, 1995 the adverse entry is required to be communicated to the government servant within a period of 45 days and if the said adverse entry is not communicated within 45 days, the same cannot be treated as an adverse entry in terms of Rule 5 thereof.

4. Learned counsel for the petitioner has further relied upon the Government Order dated 30.06.1993. Clause 2 (2) (c) of the said G.O. provides for determination of the satisfactory service for the purpose of promotion and other increments to be granted. If in the period of consideration of the satisfactory service if any adverse entry is existing and thereafter for the next 5 years there is no adverse entry then the said adverse entry shall be ignored for the purpose of determination of the satisfactory work. Thus learned counsel for the petitioner submits though there was an adverse entry in the year 1994-95 against the petitioner and thereafter for next 5 years there was no adverse entries against the petitioner except the adverse entry of 1998-1999 which was never

communicated, therefore the impact of the adverse entry of the year 1998-99 cannot be read against the petitioner. Thus after 1994-95 till 2007 there was no adverse entry against the petitioner therefore when the claim of the petitioner for the purpose of fixation of time scale/ACP was considered, the said adverse entry of 94-95 was required to be ignored in terms of clause 2 (2) (c) of the Government Order dated 30.06.1993. Consequently the benefit of ACP could not have been denied to the petitioner.

5. Thus learned counsel for the petitioner submits that the petitioner was entitled for the grant of ACP/time scale ignoring the aforesaid adverse entries against the petitioner which has wrongly not been accorded to the petitioner. Government order dated 30.6.1993 provides that if there is only one adverse entry and thereafter for the next 5 years there is no adverse entry then that previous adverse entry shall be ignored. Further in terms of the Rules, 1995 if any adverse entry is not communicated to the concerned government employee that cannot be said to be an adverse entry against him and that also cannot be read as an adverse entry. Therefore the entry of the year 1998-99 cannot be read as an adverse entry against the petitioner due to want of communication and so far as the entry of the year 1994-95 is concerned the same is required to be ignored in terms of Clause 2 (2) (c) of the Government Order dated 30.6.1993.

6. The Rule 4 and 5 of Rules, 1995 read as unde:

> ***"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 45 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 or 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 therefor under this rule.

Explanation. In computing the period prescribed under this rule for any matters specified in this sub-rule the period already expired on the date of the commencement of these rules shall not be taken into account.

Rule 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.".*

7. Clause 2 (2)(c) Government Order dated 30.06.1993 reads as under:

"शासनादेश संख्या: 761/ कार्मिक-1/1993

दिनांक : 30 जून, 1993 की प्रतिलिपि

विषय : सन्तोषजनक सेवा का निर्धारण।

महोदय,

शासन के संज्ञान में यह तथ्य लाया गया है कि सेवा सम्बन्धी प्रकरण (यथा स्थायीकरण, दक्षता रोक पार कराने, समयमान वेतनमान दिये जाने, सी० एस० आर० के अनुच्छेद 470 (बी) के तहत पेंशन से कटौती किये जाने आदि मामलों) में सम्बन्धित सरकारी सेवकों की "सन्तोषजनक सेवा के निर्धारण हेतु कोई निश्चित मानक निर्धारित न होने के कारण विभिन्न स्तरों पर सक्षम प्राधिकारियों द्वारा स्वविवेक से अलग-अलग निर्णय लिये जाते हैं, फलस्वरूप इस बात की सम्भावना बनी रहती है कि किसी मामले में जिन की सेवाभिलेखों के आधार पर सेवाओं को सन्तोषजनक माना गया हो, उसी स्तर के सेवाभिलेखों के होते हुए भी किसी दूसरे मामले में सेवाओं को संतोशजनक न माना जाये।

*2.*यद्यपि सन्तोषजनक सेवा के निर्धारण का विषय नितान्त सब्जेक्टिव प्रकृति: का विषय है और सभी संगत सेवाभिलेखों का उन्हें अभिलिखित किये जाने की परिस्थितियों के परिपेक्ष्य में गहनता से अध्ययन करने के पश्चात् ही सक्षम प्राधिकारी द्वारा इस विषय में समुचित निर्णय लिया जा सकता है, तथापि सक्षम प्राधिकारियों की सहायता हेतु शासन द्वारा सम्यक् विचारोपात इस विषय में निम्नलिखित सामान्य मार्गदर्शक सिद्धान्त तय किये गये है-

(1) स्थायीकरण के सम्बन्ध में निर्णय लेने के लिये केवल परिवीक्षा काल और जहां नियमानुसार परिवीक्षा काल को बढ़ाया गया हो वहां बढ़ाये गये परिवीक्षा काल सहित सम्पूर्ण अवधि के सेवाभिलेखों को ही आधार बताकर यह निर्णय लिया जाये कि परिवीक्षा काल में सम्बन्धित सरकारी सेवक की सेवायें सन्तोषजनक रही हैं या नहीं।

(2) दक्षतासेक पार कराने, समयमान वेतनमान स्वीकृत करने तथा सी० एस० आर० के अनुच्छेद 470 (बी) के तहत पेंशन की अनुमन्यता आदि अन्य सभी विषयों में सन्तोषजनक सेवा का निर्धारण करने हेतु निम्न कित निर्देशों को दृष्टि में रखा जाये:

*(*अ) सन्तोषजनक सेवाओं के विषय में निर्णय लेने के दिनांक

के पूर्व जिस समय तक के अभिलेखों के आधार पर सम्बन्धित सरकारी सेवक को सन्तोषजनक सेवा के आधार पर कोई लाभ अनुमन्य कराया जा चुका हो अथवा उसे पदोन्नति प्रदान की जा चुकी हो अथवा उ उसका स्थायीकरण किया जा चुका हो अथवा उसे दक्षता रोक अनुमन्य कराय जा चुका हो, । उन सेवाभिलेखों को पुन: विचार में नं लिया जाये, वरन् उसके पश्चात् के सेवाभिलेखों के आधार पर ही सन्तोषजनक सेवाओं का निर्धारण किया जाये।

(ब) यदि उस अवधि में उसके सेवाभिलेखों उपरोक्तानुसार विचार क्षेत्र में आते हैं. किसी वर्ष की सत्यनिष्ठा प्रमाणित न की गयी हो परन्तु अनुवर्ती समस्त वर्षों (जिसकी संख्या कम से कम 5 अवश्य हो) की सत्यनिष्ठा लगातार प्रमाणित की जाती रही हो तो केवल उस एक वर्ष की अप्रमाणित सत्यनिष्ठा के आधार सेवाओं को असन्तोषजनक न माना जाये।

(स) यदि उस अवधि में. जिसके सेवाभिलेख उपरोक्तानुसार विचार क्षेत्र में आते हों. कोई निन्दो प्रविष्टि विद्यमान हो और उस निन्दा प्रविष्टि से सम्बन्धित घटना की तिथि के बाद की अगले पांच वर्ष की अवधि में कोई अन्य प्रतिकूलता (यथा प्रतिकूल प्रविष्टि, दण्ड आदि) न हो तो उस निन्दा प्रविष्टि को सन्तोषजनक सेवा के मूल्यांकन हेतु विचार में नं लिया जायें अर्थात उसे नजरन्दाज कर दिया जाये।

(द) यदि सम्बन्धित अवधि में किसी सरकारी सेवक को सुझावात्मक: प्रविष्टि या चोतावनी दी गयी हो तो सुझावात्मक प्रविष्टि / चेतावनी को सन्तोषजनक सेवा के मूल्याकन हेतु विचार में न लिया जायें।

(य) यदि, सम्बन्चित अवधि में निन्दा प्रविष्टि से भिन्न कोई अन्य लघु दण्ड या वृहद दृष्ण्ड दिया गया हो अथवा एक से अधिक बार पांच वर्ष के अन्तराल से कम अवधि में निन्दा प्रविष्टि दी गयी हो, तो सन्तोषजनक सेवा के मूल्यांकन हेतु सम्बन्धित अवधि के समस्त सेत्राभिलेखों के आधार पर सावधानीपूर्वक विचार कर सक्षम प्राधिकारी द्वारा स्वविवेक से समुचित निर्णय लिया जाये।

(र) यदि सम्बन्धित अवधि में एक से अधिक वर्षों की सत्यनिष्ठा पांच वर्ष के अन्तराल से कम अवधि में अप्रमाणित कर दी गयी हो तो सामान्यतया उक्त अवधि की सेवाओं को असन्तोषजनक समझा जाये।

(3) अनुरोध है कृपया इस विषय पर निर्णय लेते समय उपरोक्त सिद्धान्तों का भलीभांति अनुपालन सुनिश्चित करें तथा इन्हें अपने अधीनस्थ सक्षम प्राधिकारियों के संज्ञान में भी ला दें, ताकि उनके स्तर पर भी उपरोक्त सिद्धान्तों का अनुपालन सुनिश्चित किया जा सके।

(4) उपरोक्त मार्गदर्शक सिद्धान्त केवल सक्षम प्राधिकारियों के पथ प्रदर्शनार्थ है। ये किसी विषय पर इस सम्बन्ध में लागू नियमों को अवक्रमित नहीं करते हैं और न ही इस सम्बन्ध में सक्षम प्राधिकारियों के विवेकाधिकार के विरुद्ध किसी सरकारी सेवक को किसी प्रकार का कोई अधिकार प्रदान करते हैं।

भवदीय,
ओ० पी० आर्य
सचिव ।"

8. Thus from the aforesaid Rules it is apparent that any adverse entry made against a government servant is required to be communicated to him within a period of 45 days and if the said adverse entry is not communicated within 45 days then that cannot be read against the employee as adverse entry. The aforesaid Government Order dated 30.6.1993 categorically provides that if after an adverse entry is made and for the next 5 years there is no adverse entry against a government servant the said adverse entry shall be ignored for the purpose of determination of the satisfactory work of such government servant.

9. In view of the aforesaid provisions of Rules, 1995 as well as the Government Order dated 30.6.1995, in the considered view of this court the petitioner has been wrongly denied the benefit of ACP/time scale reading the entry of the year 1998-99 as an adverse entry against the petitioner as the same was never communicated to him and this fact has been admitted in the letter dated 14.11. 2008. Thus the adverse entry of the year 1998-99 could not be read against the petitioner and the adverse entry of the year 1994-95 ought to have been ignored in terms of the Government Order dated 30.06.1993 for the determination of the satisfactory work of the petitioner for the purposes of granting the time scale/ACP to the petitioner.

10. In such view of the matter the instant writ petition is **allowed**. Since the petitioner has already been superannuated, the respondents are

directed to calculate the benefits of the ACP/time scale whichever may be available to the petitioner at the relevant point of time ignoring the aforesaid adverse entry of the year 1998-99 in terms of Rule 5 of Rules, 1995 and ignoring the adverse entry of the year 1994-95 in terms of the Clause 2 (2) (c) of the Government Order dated 30.06.1993. All consequential benefits shall be paid to the petitioner within period of 8 weeks from the date of communication of certified copy of this order.

October 23, 2026
o.k.

(Anish Kumar Gupta,J.)

Digitally signed by :-
OM KRISHNA CHOUDHARY
High Court of Judicature at Allahabad