

**STATE PUBLIC SERVICES TRIBUNAL, INDIRA BHAWAN,  
LUCKNOW.**

**CLAIM PETITION NO. 444/2014**

**ANIL KUMAR SRIVASTAVA**, aged about 50 years, Son of late Prem Chandra Lal Srivastava, Resident of 19F 2A, Stainley Road, Allahabad.

Petitioner

Versus

- 1- State of U.P. through Principal Secretary, Tax & Registration Department, U.P. Civil Secretariat, Lucknow.
- 2- Commissioner, Commercial Tax U.P. Vibhuti Khand, Gomti Nagar, Lucknow.

Respondents

Shri A.S. Tewari, Counsel of the petitioner  
Presenting Officer on behalf of the respondents

**JUDGMENT**

(Delivered by Hon'ble Shri Jitendra Kumar Singh, Member (Judicial))

The instant claim petition has been filed under Section -4 of the U.P. State Public Services Tribunal Act 1976 seeking following reliefs;-

- a) To quash the impugned order of punishment of adverse entry dated 23-09-2013 and the impugned order of rejection dated 13-3-2014 as contained in Annexure No. 1 and 2 respectively to this claim petition which all consequential benefits which have been denied to the petitioner on the basis of these impugned orders.
  - b) Any other relief which this Hon'ble Tribunal deems fit and proper in the circumstances of the case may kindly be granted in favour of the petitioner with the costs of this petition in favour of the petitioner.
- 2- The brief facts of the case are stated as under:-

i) That petitioner was appointed on the post of Trade Tax Officer. Later on the nomenclature was changed as Assistant Commissioner, Commercial Tax w.e.f. 3.9.2001 and he belongs to the Batch of 1992. The work and conduct of the petitioner has always been satisfactory. It is averred that when the petitioner was posted as Assistant Commissioner, Commercial Tax Mobile Squad Sultanpur, he was transferred to the post of Assistant Commissioner & State Representative Commercial Tax Faizabad vide order dated 3-8-2012. He handed over his charge on 3-8-2012 itself to one Shri Hari Singh i.e. his successor but Hari Singh has put in the date of accepting the charge on 20-11-2012. In this regard an explanation was called upon from the petitioner by the respondent no. 2 vide letter dated 7-5-2013 to the effect that he did not hand over the charge of Panji-5, Ceasure Memo, Show cause notice, new/old treasury receipt book, cash book and file and the charge of documents etc. and the same was given by the petitioner with delay on 20-11-2012 which is in violation of Rule-3 of Government Servant Conduct Rules 1956. In pursuance of letter dated 7-5-2013, a letter dated 18-07-2013 was written by the petitioner to the Additional Commissioner Grade-1, Commercial Tax Faizabad Zone Faizabad requesting therein that he may kindly be given details as to why Shri Hari Singh, Assistant Commissioner has indicated the date of handing over the charge as 20-11-2012 instead of 25-10-2012 so that he may submit his reply to the explanation dated 7-5-2013 but no cognizance was taken by the respondents. The disciplinary authority passed the impugned punishment order dated 23-09-2013 awarding adverse entry for the year 2012-13.

ii) Feeling aggrieved himself, the petitioner moved a representation on 21-10-2013 before the respondent no.1 stating therein that he was relieved from Sultanpur on 3-8-2012 and handed over charge to Sri Hari Singh on 3-8-2012 itself. Thereafter due to fracture in his leg on 4-8-2012, the petitioner remained on medical leave w.e.f. 4-8-2012 to 17-10-2012 and took charge of Assistant Commissioner Khand-2 on 18-10-2012 and immediately after taking over charge he handed over all the charge to Shri Hari Singh on 25-10-2012 but Hari Singh has indicated the date of receiving the charge on 20-11-2012 instead of 25-10-2012. The aforesaid representation was rejected vide order dated 13-03-2014.

iii). The grievance of the petitioner is that before passing the impugned punishment order, the comments which were made on the representation of the petitioner by the Commissioner, Commercial Tax were not made available to the petitioner on that basis his representation has been rejected by the respondent no.1. Neither any opportunity of hearing was given to him nor any delay was occurred on his part and he has been punished only on the version made by Shri Hari Singh. Thus the impugned order is violative of principle of natural justice and deserve to be quashed.

3- Of the petition, the O.Ps have been apprised of and by them their CA/Ws dated 10-7-2014 supported with affidavit dated 10-07-2014 have been filed on record. Accordingly the contentions of the petitioner have been refuted and it has been asserted thereby that on being transferred from the post of Assistant Commissioner (Sachal Dal) Commercial Tax Sultanpur, he did not hand over the charge of records to his successor Hari Singh the then Assistant Commissioner (Squad) Commercial Tax in time. Thereafter the explanation was called upon from the petitioner. Petitioner has submitted his reply on 18-7-2013 thereby he apprised that charge of the said post was handed over to Shri Hari Singh, Assistant Commissioner on 25-12-2012 but in relation to the above Shri Hari Singh, Assistant Commissioner informed through his letter dated 22-08-2013 that he obtained charge of the records through Typist Shri Mashroor Ahmad, Khand-2 Sultanpur due to which the dates 20-11-2012 were mentioned by him on the charge list. That after due consideration of all the points/pleas raised in the representation moved by the petitioner, the disciplinary authority has passed the punishment order. Petitioner was afforded full opportunity of his defend and there is no procedural or legal infirmity in passing the punishment order whereby he has been awarded adverse entry for the year 2012-13 which is a speaking and reasoned order, needs no interference.

4- It is relevant to point out that earlier the petitioner was awarded adverse entry for the year 2002-03 and his integrity was also withheld. In the year 2003-04 he has been censured twice vide order dated 09-12-2004 and 06-12-2007. In addition to this, against the petitioner a recovery of Rs. 43,200/- was also made from the petitioner and vide order dated

01-09-2008 his three increments has been withheld permanently. Thus the record of the petitioner has never been satisfactory. Petitioner is not entitled to get any relief and claim petition being devoid of merit deserves to be dismissed with costs.

5- Against the CA/Ws filed by the O.Ps , Rejoinder affidavit dated 08-11-2023 has been filed by the petitioner again reiterating the facts of the petition.

6- Heard Shri A.S.Tewari, learned counsel of the petitioner and P.O on behalf of the respondents.

7- The learned counsel for petitioner focused his argument mainly on this point that respondent no. 1 himself admitted in para-4 of the order dated 13-03-2014 whereby the representation of the petitioner has been rejected that Commissioner, Commercial Tax, U.P. has a right to punish the person relating to Group-B by way of minor punishment which shows that adverse entry was given to the petitioner treating it a minor penalty. Further he has been relied upon the case of **State Bank of India Vs T.J. Paul, 1999 SCC (L&S) 922** imposition of the penalty other than the one provided under rules is ultra virus, cannot be sustained in the eyes of law. The punishment which has been provided under rules can be awarded only.

8- In the light of submission made by the learned counsel for petitioner, I have gone through the U.P. Government Servant (Discipline and Appeal) Rules 1999 defining the minor penalties in Rule-3 which has been mentioned as under:-

**“3. Penalties- The following penalties may, for good and sufficient reason and as hereinafter provide, be imposed upon the Government Servants:-**

**Minor Penalties:**

**(i) Censure;**

**(ii) Withholding of increments for a specified period;**

**(iii) Stoppage at an efficiency bar;**

**(iv) Recovery from pay of the whole or part of any pecuniary loss caused to Government by negligence or breach of orders;**

(v) Fine in case of persons holding Group 'D' posts provided that the amount of such fine shall in no case exceed twenty-five per cent of the month's pay in which the fine is imposed.

**Major Penalties:**

- (i) Withholding of increments with cumulative effect;
- (ii) Reduction to a lower post or grade or time scale or to a lower stage in a time scale;
- (iii) Removal from the service which does not disqualify from future employment,
- (iv) Dismissal from the service which disqualifies from future employment.”

From the perusal of the above, it transpires that the punishment of adverse entry is nowhere prescribed in the Rules 1999 and the punishment awarded to the petitioner is not permissible in the Rules hence it is not justifiable to award the punishment of adverse entry to the petitioner.

On the basis of above whole discussion, I am of the view that impugned orders are not tenable in the eye of law hence this petition deserves merit and it is liable to be allowed.

**ORDER**

The claim petition is allowed. The impugned order dated 23-09-2013 and order dated 13-03-2014 (Annexure Nos-1 and 2) are hereby quashed. Petitioner will get all consequential benefits, if any that have been denied to him on the basis of these orders. There shall be no order as to costs.

Sd/-

(Jitendra Kumar Singh)

Member (Judicial)

Judgment signed, dated & pronounced today in the open Court.

Sd/-

(Jitendra Kumar Singh)

Member (Judicial)

Dated: 8<sup>th</sup> April 2024

M.Husain/Ps

