

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT DEHRADUN**

(Through audio conferencing).

Present: Hon'ble Mr. Justice U.C.Dhyani

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

CLAIM PETITION NO. 82/DB/2021

Sri Raghubar Datt Pant, aged about 61 years, s/o Late Sri Shiromani Pant, r/o 17-A, Lane No. 1, Ashirwad Enclave, Near Ballupur, District Dehradun, Uttarakhand.

.....Petitioner

vs.

1. State of Uttarakhand through Secretary, Irrigation, Govt. of Uttarakhand, Dehradun.
2. Engineer-in-Chief, Uttarakhand Irrigation Department, Madho Singh Bhandari Bhawan, Yamuna Colony, District Dehradun.

.....Respondents

Present: Sri Abhijay Singh Panwar, Advocate, for the petitioner.
Sri V.P.Devrani, A.P.O., for respondents.

JUDGMENT

DATED: SEPTEMBER 01, 2021

Justice U.C.Dhyani (Oral)

RELIEFS PRAYED FOR

By means of present claim petition, petitioner seeks the following reliefs:

“a. To issue direction or order to the respondents directing them to immediately consider the petitioner’s representations dated 06.01.2020 and 01.10.2020 and grant the notional increment for the period 01.07.2019 to

30.06.2020, as on 30.06.2020, for the purpose of computation of pensionary benefits.

b. To issue direction or order to the respondents directing them to immediately recalculate or compute the pensionary benefits of the petitioner after grant of notional increment and compensate the petitioner for the short fall in the difference of the amount which has been granted to the petitioner already.

c. To issue any other suitable order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

d. To award the cost of the claim petition in the favour of the petitioner.”

PETITIONER'S VERSION

2. Facts, necessary for adjudication of present claim petition, are as follows:

2.1 . The petitioner joined the Irrigation Department as Junior Engineer in the year 1981 and he was promoted to the posts of Assistant Engineer and Executive Engineer in the years 2010 and 2017 respectively. Petitioner retired as Executive Engineer on 30.06.2020 from the office of Engineer-in-Chief, Irrigation Department, Uttarakhand.

2.2 He is entitled to one notional increment on the date of his retirement on 30.06.2020, although the increment would fall on 01.07.2020 (one day after the date of his retirement). Petitioner filed a representation on 06.01.2020 (Annexure: A- 1) to the Senior Staff Officer (Budget), office of the Engineer-in-Chief along with copies of judgment rendered by Hon'ble Madras High Court in *Writ Petition No. 15732/2017, P. Ayyamperumal vs. the Registrar, Central Administrative Tribunal, Chennai & others* on 15.09.2017 and order dated 23.07.2018 of Hon'ble Supreme Court rendered in *Special Leave Petition (Civil) Diary No. 22283/2018*. The said representation of the petitioner was forwarded by Respondent No.2 on 06.02.2020 (Annexure: A-3) to the Secretary, Irrigation Department, Govt. of Uttarakhand (Respondent No.1) for seeking directions in respect of the petitioner's request for notional increment for the period *w.e.f.* 01.07.2019 to 30.06.2020 on the date of his retirement *i.e.* 30.06.2020, while the yearly increment fell on 01.07.2020.

2.3 Petitioner submitted another representation on 01.10.2020 for grant of a notional increment for the purpose of computation of pensionary benefits, which representation was also forwarded by Engineer-in-Chief, Irrigation Department, Uttarakhand to the Secretary, Irrigation Department, Govt. of Uttarakhand *vide* letter dated 21.10.2020 (Annexure: A 5).

2.4 The Joint Secretary, Irrigation Department, Govt. of Uttarakhand, *vide* letter dated 31.12.2020 (Annexure: A-6) sent to Engineer-in-Chief, disposed of the representation of the petitioner directing that ‘the instant case of the petitioner and cases of similar nature should be forwarded after scrutinizing the matter rationally in the light of the existing financial rules, in future also’. The respondent department has denied the relief to the petitioner as per existing financial rules. Petitioner seeks relief on the strength of the decision of Hon’ble High Court of Judicature at Madras, SLP against which was dismissed.

DISCUSSION

3. The petitioner relies upon the judgment rendered by Hon’ble High Court of Judicature at Madras on 15.09.2017 in *Writ Petition No. 15732/2017, P. Ayyamperumal vs. the Registrar, Central Administrative Tribunal, Chennai & others*. Last two paragraphs of the said judgment are important and are, therefore, reproduced herein below for convenience:

“In the case on hand, the petitioner got retired on 30.06.2013. As per the Central Civil Services (Revised Pay) Rules, 2008, the increment has to be given only on 01.07.2013, but he had been superannuated on 30.06.2013 itself. The judgment referred to by the petitioner in State of Tamil Nadu, rep.by its Secretary to Government, Finance Department and others v. M.Balasubramaniam, reported in CDJ 2012 MHC 6525, was passed under similar circumstances on 20.09.2012, wherein this Court confirmed the order passed in W.P.No.8440 of 2011 allowing the writ petition filed by the employee, by observing that the employee had completed one full year of service from 01.04.2002 to 31.03.2003, which entitled him to the benefit of increment which accrued to him during that period.

7.The petitioner herein had completed one full year service as on 30.06.2013, but the increment fell due on 01.07.2013, on which date he was not in service. In view of the above judgment of this Court, naturally

he has to be treated as having completed one full year of service, though the date of increment falls on the next day of his retirement. Applying the said judgment to the present case, the writ petition is allowed and the impugned order passed by the first respondent-Tribunal dated 21.03.2017 is quashed. The petitioner shall be given one notional increment for the period from 01.07.2012 to 30.06.2013, as he has completed one full year of service, though his increment fell on 01.07.2013, for the purpose of pensionary benefits and not for any other purpose. No costs.”

[*Emphasis supplied*]

4. Union of India and others filed Special Leave Petition before Hon’ble Supreme Court, who, on 23.07.2018, was pleased to pass the following order:

“Delay condoned.

On the facts, we are not inclined to interfere with the impugned judgment and order passed by the High Court of Judicature at Madras.

The special leave petition is dismissed.”

5. Petitioner moved a representation on 06.01.2020(Annexure: A-1) to the Senior Staff Officer (Budget), office of Engineer-in-Chief, Irrigation Department, Uttarakhand for granting notional increment and related post retiral service benefits.
6. The Engineer-in-Chief, *vide* letter dated 06.02.2020 (Annexure: A 3) sought guidance of the Secretary, Irrigation Department, Govt. of Uttarakhand on the representation dated 06.01.2020. The petitioner moved second representation on 01.10.2020. Engineer-in-Chief again wrote to Secretary, Irrigation Department on 21.10.2020 (Annexure: A 5), soliciting guidance from the Government. The Joint Secretary, Irrigation Department, Govt. of Uttarakhand *vide* letter dated 31.12.2020 (Annexure: A 6) directed the Engineer-in-chief, Irrigation Department for carefully examining the issue in the light of relevant financial rules and then send a proposal to the Govt. Such letter dated 31.12.2020 of the Govt. was communicated by Senior Staff Officer (Budget), Engineer-in-Chief, to the petitioner *vide* letter dated 10.05.2021.

7. It is the submission of Ld. Counsel for the petitioner that the matter has not been examined at the level of Engineer-in-Chief, Irrigation Department, Uttarakhand to enable the Govt., in the Irrigation Department, to take a decision in the matter. Ld. Counsel for the petitioner, therefore, prays for directing the respondents to take a decision in his matter.

PRAYER RESTRICTED

8. After arguing the claim petition at some length, Ld. Counsel for the petitioner confined his prayer only to the extent of directing the respondents to immediately consider petitioner's representations dated 06.01.2020 and 01.10.2020, in accordance with law, to which Ld. A.P.O. has no objection.

ORDER

9. Without prejudice to rival contentions, the claim petition is disposed of at the admission stage by directing respondents to consider petitioner's representations dated 06.01.2020 and 01.10.2020, by a reasoned and speaking order, in accordance with law, at an earliest possible but not later than 08 weeks of presentation of certified copy of this order, along with copies of his representations enclosing the documents in support thereof.
10. Needless to say that the decision so taken shall be communicated to the petitioner soon thereafter.
11. It is made clear that the Tribunal has not expressed any opinion on the merits of the claim petition.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: SEPTEMBER 01, 2021
DEHRADUN