

**EFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL,
DEHRADUN**

Present: Hon'ble Mr. Justice J.C.S.Rawat

----- Chairman

&

Hon'ble Sri D.K. Kotia

----- Vice Chairman (A)

CLAIM PETITION NO. 27/2012

Ram Nath Sharma, S/o Pandit Mamraj, Assistant Land Records Officer
(Retired), R/o 4/9, Dhamawala, Dehradun

.....Petitioner

VERSUS

1. State of Uttarakhand through its Secretary, Revenue Department,
Subhash Road, Dehradun,
2. Chief Revenue Commissioner, Revenue Board, Uttarakhand,
Dehradun,
3. Director, Lekha Evam Haqdari, Uttarakhand, Dehradun
4. Collector, Dehradun.

.....Respondents

Present: Sri J.P.Kansal, Ld. Counsel
for the petitioner

Sri Umesh Dhaundiyal, Ld. A.P.O.
for the respondents

JUDGMENT

DATE: MAY 15, 2014

DELIVERED BY HON'BLE SRI D.K. KOTIA, VICE CHAIRMAN(A)

1. This claim petition has been filed to seek following main reliefs:-
“(a) A declaration be kindly made that the petitioner is entitled to get his 2nd promotional benefits as per order dated 01.09.2001 pension fixed based on his basic pay of Rs.9,100/- and accordingly the impugned order Annexure-A1 to this claim petition be kindly held arbitrary, wrong, against fundamental , constitutional and civil rights of the petitioner, illegal, against

the rules, orders and natural justice in so far as the fixation of pension of the petitioner on his basic pay less than Rs. 9,100/- is concerned and be kindly ordered to modify the same suitably.

(b) the respondents be kindly ordered to pay to the petitioner his basic pay @ Rs. 9,100/- for the period 01.12.2004 to 30.06.2005, and accord him retrial benefits, pension commutation and regular monthly pension based on his basic pay of Rs. 9,100/- together with interest thereon @12% per annum from the date of accrual to the date of actual payment to the petitioner.”

2. The facts in brief are that the petitioner who was promoted to the post of Assistant Registrar Qanoongo/Registrar Qanoongo in 1977 on completion of 24 years service was granted the benefit of 2nd promotional pay scale of Rs. 8000-275-13500 of Tahsildar's cadre on 01.09.2001 (Annexure A-9 to this claim petition). After that on the basis of an inspection report of the Additional Commissioner, Revenue dated 28.03.2003, it was found that the pay of the petitioner was wrongly fixed while granting second promotional pay scale of Rs. 8000 and therefore, a recovery of Rs. 1,43,498/- was imposed on the petitioner and the same was recovered from the gratuity of the petitioner. The retrial benefits were also sanctioned to the petitioner on the basis of reduced pay as per revised fixation. The petitioner thereafter made representations against the reduction of pay and recovery but the respondents did not communicate any decision and therefore the petitioner filed a claim petition no. 42/2006 before this Tribunal.

3. On 16.05.2008, this Tribunal passed the order and the relevant paragraphs of the order are as under:

“7. It is apparent on the face of record that pay fixation was done by the competent authority on second promotion of the petitioner by office order dated 01.9.2001(Annexure-9) and he continued to receive the pay and allowances at the same rate. His pay scales were reduced to Rs. 4000-6000/- on the basis of inspection report dated 28.3.2003(not audit report) issued from the office of Chief Revenue Commissioner, Uttarakhand (Annexure-A1) to Collector, Dehradun. It is well settled

principle of service jurisprudence that the reduction of pay is a major punishment which cannot be awarded without proper enquiry and affording reasonable opportunity of explaining the circumstances to the delinquent employee. In the matter of Bhagwan Shukla Vs. Union of India 1994 LADIC pg. 2493, Hon'ble Supreme Court held that, "In cases where pay is recovered, the employees must be afforded an opportunity to show cause. In the absence of such show cause notice, the principles of natural justice are violated." The petitioner not only made representation to the Collector but also filed a complaint before Lokayukta of the State.

8. The arguments of Ld. A.P.O. that since petitioner has accepted the recovery on account of wrong fixation of pay scale, therefore there was no need to issue any notice to the petitioner and there is no violation of any natural justice, cannot be accepted. It may be stated that though the inspection report was prepared on 28.3.2003 and petitioner filed his objection on 09.07.2003, however no decision was taken by the appointing authority till the date of his superannuation. Ld. Counsel for the petitioner vehemently argued that instead of deciding the controversy, the petitioner was forced to file an affidavit and accept the wrong fixation of the pay scale.

9. In view of the facts and circumstances of the case, the appointing authority of the petitioner was required to issue a notice to the petitioner along with the copy of the inspection report but there is no such notice on the record. It appears that neither any enquiry was made nor any opportunity was afforded to the petitioner regarding wrong fixation of the higher pay scale. The inspection note has been made sole basis for the recovery which is against the principle of natural justice. The Government to whom the representations were referred by the Collector for decision, have been sleeping over the matter for two years i.e. till his retirement. No speaking order regarding wrong fixation has been made nor the order dated 01.09.2001 regarding fixation of pay has been modified

by the competent authority. In these circumstances, admission of the petitioner cannot be taken with freewill or without coercion. In our opinion, there has been gross violation of natural justice and therefore the recovery made against the petitioner after his retirement from his retrial benefits, is against the law and procedure and cannot be sustained.

10. In view of the aforesaid discussion, we are of the view that the petitioner is entitled to receive back Rs. 1,43,498/- recovered from the retrial benefits of the petitioner with simple interest @6% per annum till the payment is made to the petitioner.

11. Respondents, in their discretion may proceed against the petitioner on the basis of the inspection note of the Revenue Commissioner and after undergoing proper procedure, may pass appropriate order deemed fit in the circumstances.”

4. Against the order of the Tribunal in para 3 above, the respondents filed a writ petition no. 82/2009 before the Hon’ble High Court of Uttarakhand, Nainital which upheld the judgment of this Tribunal and dismissed the petition. Hon’ble High court in its judgment held as under:

“7. Having heard the learned counsel for the parties and having perused the affidavits filed in the writ petition, the court is of the opinion that the order of the Tribunal does not require any interference. We find that the second promotional pay scale was fixed by the Collector and that there was no misrepresentation or fraud played on the part of the employee. Consequently, we are of the opinion that since there was no fault on the part of the employee, the excess amount so paid to the employee could not be recovered.

8. In Ram Briksh Ram Vs. State of U.P. & others 2007(2) UPLBEC 1544, a Division Bench of Allahabad High court held that if certain benefits, pay scale, etc. was given to an employee incorrectly during his service period and no

misrepresentation or fraud was played on the part of the employee, in that event, the excess amount paid to the employee could not be recovered. Similar view was again taken in Ramesh Chand Tyagi Vs. Director, Agriculture Marketing, Lucknow & another 2007(2) UPLBEC 1593 and in Ram Murti Singh Vs. State of U.P. & others 2006 (3) UPLBEC 2415 and Awadha Nath Tripathi Vs. Chief Development Officer, Sant Kabir Nagar & others 2005(1) UPLBEC 493.

9. In Sahib Ram Vs. State of Haryana & others 1995 Suppl.(1) SCC 18, the Supreme Court also held that where revised scale of pay was paid, which was not on account of the misrepresentation made by the employee, the employee could not be held at fault and the excess amount so paid could not be recovered. Similar view was again reiterated by the Supreme Court in Syed Abdul Qadir & others Vs. State of Bihar & others 2009 (1) SCC (L&S)744.

10. In view of the aforesaid, since admittedly the respondent employee had not misrepresented nor played any fraud and that the promotional pay scale was erroneously paid by the State Government, the excess amount so paid could not be recovered since the employee was not at fault.

11. The contention of the learned Additional Chief Standing Counsel for the petitioners that the respondent employee himself admitted and gave an affidavit that the excess amount may be recovered and, consequently, the petitioners were justified in recovering the amount is patently erroneous. The Tribunal has considered this aspect of the matter and found that the affidavit given by the employee was under coercion and had been given so that the employee could receive his post retrieval dues. On the other hand, we find that the employee had also made a representation, which remained pending and the recovery of the amount has been made without giving any notice and without giving any opportunity of hearing to the employee. In view of the aforesaid, this court

does not find any error in the order passed by the Tribunal.

The writ petition fails and is dismissed accordingly.”

5. The Hon'ble Supreme Court on 10.5.2011 also dismissed the SLP no. CC 7430/2001 filed by the respondents against the judgment of Hon'ble High Court on facts.

6. The respondents in pursuance to the above mentioned orders/judgments refunded to the petitioner recovered amount of Rs. 1,43,498/- with 6% p.a. interest thereon.

7. The main contention of the petitioner in the claim petition is that while “recovery” done has been refunded but the respondents have not paid the balance amount of salary from 01.12.2004 till his retirement and the retrial benefits (monthly pension, commuted pension etc.) on the basis of his last admissible pay of Rs. 9100 per month as per his entitlement of 2nd promotional scale of pay of Rs. 8000/- granted vide order dated 01.09.2001. It is also contended that the petitioner has made representations on 10.08.2011 and 14.11.2011, but of no avail. It is also contended that the order of pay fixation dated 01.09.2001 granting second promotional scale is in force even now and it has not been cancelled or modified.

8. The main contentions in the counter affidavit filed by the respondents are that on the basis of the inspection report, the pay fixation of the petitioner after 2nd promotional scale on 01.09.2001 was modified and reduced; the petitioner had himself admitted over payments; his review application before this Tribunal against the order passed by the Tribunal in claim petition no. 42/2006 was also dismissed; he has already been refunded the “recovery” amount with interest as per Tribunal's order and therefore, further claims of the petitioner are not tenable. In the rejoinder affidavit, the petitioner has contended the same points as mentioned in the claim petition.

9. We have heard both the parties and perused the record carefully.

10. Learned counsel for the petitioner argued that the order of pay fixation dated 01.09.2001 is in force even today and the pay of the

petitioner has been reduced in re-fixation without providing opportunity of hearing to the petitioner which is against the principles of natural justice. He has also argued that the due procedure of law has not been followed to reduce pay and pension of the petitioner. He further contended that in spite of representations by the petitioner against the reduction in pay as a result of pay fixation, no decision was taken by the respondents and communicated to the petitioner. Learned A.P.O. argued that the petitioner is not entitled to 2nd promotional scale of Rs. Rs. 8000 as per rules but could not demonstrate any order by the competent authority to re-fix the pay resulting in reduction of pay except the entries in the Service Book in this regard. It would be worthwhile to again mention the second part of the order of the Tribunal in the petition no. 42/2006 which reads as under:

“The respondents, in their discretion may proceed with the matter from the stage inspection note was forwarded to the Collector. The appointing authority of the petitioner may pass speaking order regarding excessive payment to the petitioner as a result of wrong fixation of pay on second promotion after hearing the petitioner”

Written statement filed by the State is silent on above part of the Tribunal's order. When asked specifically, learned A.P.O. could not clarify the position in this regard. This Tribunal then directed the Registrar of the Tribunal to send a D.O. Letter to the Secretary, Revenue communicating him the operative portion of the order of the Tribunal passed in claim petition No. 42/2006 to file through the concerned officer subordinate to him the affidavit as to whether they are going to proceed by issuing show cause notice to the petitioner or they have decided not to proceed against the petitioner as the discretion has been given to the State. The Collector, Dehradun vide his letter dated 23.08.2013 informed the Registrar that the amount of “recovery” has been refunded with interest to the petitioner in compliance of the Tribunal's order dated 16.5.2008; the review application of the petitioner has been dismissed by the Tribunal on 02.07.2008; the contempt petition has also been dismissed (as not pressed) by the Tribunal on 25.11.2011 as the petitioner was satisfied by the compliance; no further action is required with respect to the Tribunal's

order dated 16.05.2008 and issuance of a separate speaking order is not necessary.

11. In Tribunal's order in claim petition no. 42/2006, the respondents were directed to refund the amount of recovery made from the petitioner with interest and in their discretion the respondents could proceed with the matter of wrong fixation of pay after undergoing proper procedure and after hearing the petitioner. It is clear that respondents have decided not to proceed with the matter as directed by the Tribunal. Under these circumstances, the question before us is whether the petitioner is also entitled to get benefit of pay fixation order dated 01.09.2001 for the purpose of arrears of salary and retrial benefits. Learned A.P.O. could not demonstrate that order dated 01.09.2001 has been cancelled or modified after hearing the petitioner at any time after passing the same. Learned A.P.O. and also the record available on file could also not show that the representations of the petitioner in 2003 and 2011 were decided by the respondents. Therefore, we are of the view that the reduction in pay as a result of re-fixation of pay after the original fixation of pay in 2001 without giving an opportunity of hearing to the petitioner is against the principles of natural justice and therefore, bad in the eye of law. On the basis of the above discussion, we reach the conclusion that the petitioner is entitled to get all the benefits of the pay fixation order dated 01.09.2009 for salary and retrial benefits.

ORDER

The petition is allowed. The impugned order dated 19.09.2005 (Annexure-A-1) is set aside. The petitioner is entitled to get arrears of his salary and retrial benefits on the basis of the pay fixation order dated 01.09.2001 shown at Annexure-A-9 to this claim petition. The respondents are directed to pay due claims of the petitioner accordingly within a period of three months with interest @6% per annum. No order as to costs.

Sd/-

JUSTICE J.C.S.RAWAT
CHAIRMAN

Sd/-

D.K.KOTIA
VICE CHAIRMAN (A)

DATE: MAY 15, 2014
DEHRADUN
KNP