

BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT DEHRADUN

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

----- Chairman

Hon'ble Mr. D.K.Kotia

-----Vice Chairman (A)

CLAIM PETITION NO. 18/DB/14

Virendra Kumar Sharma,S/o Late Tara Chand Sharma aged about 59 years, presently posted as Amin in Provincial Division, P.W.D., Dehradun.

.....Petitioner

VERSUS

1. State of Uttarakhand through Principal Secretary, P.W.D., Civil Secretariat, Dehradun.
2. Executive Engineer Provincial Division, P.W.D., Dehradun.

.....Respondents.

Present: Sri Shashank Pandey, Ld. Counsel
for the petitioner.
Sri Umesh Dhaundiyal, Ld. P.O.
for the respondents.

JUDGMENT

DATED: AUGUST 07, 2014.

(Justice J.C.S. Rawat, (Oral)

1. This petition has been filed by the petitioner for seeking following relief:
 - a. To issue an order or direction quashing the impugned order dated 11.10.2013(Anneuxre-1).
 - b. To give any other relief that the Hon'ble Court may deem fit and proper in the circumstances of the case.
 - c. To give the cost of the petition to the petitioner."

2. It is admitted case of the parties that the petitioner was initially appointed as temporary Amin on 1.1.1986 in the Public Works Department, U.P. and thereafter he was made permanent vide order dated 28.6.1994. The petitioner has been discharging his duties since then and he had been getting the pay scale of subsequent revised pay scale whenever they fell due. The petitioner, all of a sudden received the impugned order dated 11.10.2013 by which the pay scale of the petitioner was substantially reduced without affording any opportunity to him to show cause .
3. The respondents contested the petition and alleged in the written statement that the Government order dated 8.12.1989 clearly provides that the Amins, who are working in the P.W.D., would get the pay scale of Rs.825-1200/- and the said pay scale has been fixed by the Government order which is Annexure R-1 to the petition. The W.S. further reveals that the respondents had supported the impugned order of the Chief Engineer and the respondents have further stated that the petitioner's pay has been correctly calculated and the recovery has been made in accordance with law.
4. We have heard learned counsel for the parties and perused the record.
5. The said controversy has come before this Tribunal in claim petition No. **49/T/2009 Bhagat Ram Mishra Vs. State & others** decided on 27.4.2012. In that case the petitioner was initially appointed in the P.W.D. in the year 1986 on the post of Amin in the erstwhile State of U.P. and thereafter he was granted the same pay scale which has been provided to the petitioner. After hearing the claim petitioner, the Tribunal held as under:

“8 The controversy lies in a narrow compass regarding the equality of the petitioners, who are Amins with Roller Driver, Truck Driver, Jeep Driver, Tractor/ Tanker Driver etc. which existed till 1.1.1986.

9. Ld. counsel for the petitioner submitted that before 1.1.1986, the pay scales of Amins/ Electricians and the pay scale of Roller Driver, Truck Driver, Jeep Driver, Tractor/ Tanker Driver etc. were same. However, subsequently,

without any reason, the petitioners have been denied equality with the Roller Driver, Truck Driver, Jeep Driver, Tractor/ Tanker Driver etc. In view of the G.O. dated 8.11.1993, they were treated equivalent to Roller Driver, Truck Driver, Jeep Driver, Tractor/ Tanker Driver and all of a sudden, without giving any reason, the petitioners were put in an inferior pay scale and recovery had been ordered against them.

10. Per contra Ld. A.P.O. submitted that the order dated 16.3.1998 makes it abundantly clear that the petitioners are not equivalent and cannot be given the pay scale of Roller Driver, Truck Driver, Jeep Driver, Tractor/ Tanker Driver.

11. The controversy has been resolved by the Hon'ble High Court in Writ petition No. 55(S/B)/04 Tilak Raj Verma Vs. Public Services Tribunal decided along with three writ petitions, whereby the Hon'ble High Court of Uttarakhand has quashed the order dated 16.3.1998 treating the Electricians in the matters of pay scale as equivalent to Roller Driver, Truck Driver, Jeep Driver, Tractor/ Tanker Driver on the ground that the order dated 16.3.1998 was passed without assigning any reason. The case of the Electricians and that of the petitioners is exactly the same. ."

6. A similar controversy also arose before the Division Bench of Hon'ble High Court in the case of **Tilak Raj Verma Vs. Public Services Tribunal, Uttaranchal in writ petition No. 55/04 (SB)** in which the Electrician claimed the same pay scale which has been sought by the petitioner in this case. The matter of the Electrician came for consideration before the Hon'ble High Court and the Hon'ble Court held as under:-

"There cannot be any dispute that an Electrician cannot be equivalent to them. However, in the matter of pay scale, Electrician as well as Roller Driver, Jeep Driver, Truck Driver and Tractor Driver, immediately prior to 1.1.1986, were the same. Order dated 8.12.1989 did not indicate why Roller Driver, Jeep Driver, Truck Driver and Tractor Driver, who were entitled to same pay scale as that of Electrician, will get a better pay scale from 1.1.1986. Then again while increasing the pay scale of Roller Driver, Jeep Driver, Truck Driver and Tractor Driver, in the said letter dated 8.12.1989, it was held out that similar higher pay scale would be available to similar people, who are equivalent to Roller Driver, Jeep Driver, Truck Driver and Tractor Driver. The matter was put to rest by a clarification issued by the Government on 8.11.1993, where it

was held out that, amongst others, Electricians are also equivalent. Subsequently, it was purported to be held out in the order dated 16.3.1998 that electricians are not equivalent. No reason, however, in support thereof was furnished. While Roller Driver, Jeep Driver, Truck Driver and Tractor Driver were equivalent to electrician immediately before 0.1.1986 in the same matter of pay scale, how they could become unequal with effect from 1.1.1986 had not attempted to be explained either in the orders referred to above or in the objection filed before the Tribunal or in the counter affidavit filed to the present writ petition. Petitioners approached the Tribunal to obtain a declaration that equality of the petitioners, who are Electricians, with Roller Driver, Jeep Driver, Truck Driver and Tractor Driver, which existed since prior 1.1.1986, could not be ignored suddenly without any reason."

The perusal of the judgment of the Hon'ble High Court clearly reveals that order dated 8.12.1989 has been quashed by the Hon'ble High Court in the above writ petition. Thus the Govt. order dated 8.12.1989 is not in existence now. The respondents cannot take the assistance of the said order.

7. The judgment of the Tribunal in the case of Bhagat Ram Mishra (supra) also covers the controversy because the petitioner was an Amin in that case, in which the order of the respondents had been quashed. It was brought to the notice of the Tribunal that both the judgments had attained the finality. In view of the above, the aforesaid judgment of this Tribunal squarely covers the controversy which is before us and we follow the judgment delivered by the Division Bench of Tribunal.
8. It has been alleged by the petitioner that the petitioner has not been given any opportunity before reducing the pay scale from back date, as such the order is also bad in the eyes of law. The perusal of the record reveals that the petitioner has not been given any opportunity before passing the impugned order. The impugned order does not disclose any reason as to why the re-fixation of the pay has been made.
9. The petition is allowed. The order dated 11.10.2013 is hereby set aside and the petitioner should be allowed to continue in the pay scale of

Rs. 950-1500/- and he is entitled all the benefits of promotional pay scale on the said pay scale and the recovery which is to be made from the petitioner on the ground of the excess amount of pay which was paid to the petitioner on the basis of difference of pay scale, is also hereby quashed. The petitioner will also get the retiral benefits on the basis of pay scale which he was drawing prior to the impugned order dated 11.10.2013.

(D.K.KOTIA)
VICE CHAIRMAN (A)

(JUSTICE J.C.S.RAWAT)
CHAIRMAN

DATE: AUGUST 07, 2014
DEHRADUN

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