

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

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

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

**WRIT PETITION NO 200(S/S) OF 2018  
[RECLASSIFIED AND RENUMBERED AS CLAIM PETITION NO. 12/DB/2023]**

Indra Singh Negi, s/o Late Sri Dhan Singh, r/o Village Sarpani, P.O. Ustauli  
via Ghat Chamoli, District Chamoli.

.....Petitioner

**vs.**

1. The State of Uttarakhand through Secretary, Irrigation Department, Dehradun.
2. Chief Engineer and Head of Department, Irrigation Department, Uttarakhand, Dehradun.
3. Chief Engineer Level-II, Irrigation Department, Dehradun.
4. Superintending Engineer, Irrigation Work Division, Dehradun.
5. Executive Engineer, Irrigation Division, District Dehradun.

.....Respondents

Present: Sri Amar Murti Shukla, Advocate, for the petitioner  
Sri V.P.Devrani, A.P.O., for Respondents .

**JUDGMENT**

**DATED: JUNE 20, 2023.**

**Justice U.C.Dhyani (Oral)**

Hon'ble High Court of Uttarakhand at Nainital, passed an order, in WPSS No. 200/2018, Indra Singh Negi vs. State of Uttarakhand and others, on 30.11.2022, as follows:

“The present Writ Petition has been filed under Article 226 of the Constitution of India with the following main relief:-

Issue a writ, order or direction in the nature of Certiorari quashing the impugned order dated 17.01.2018 (Annexure-5) issued by respondent no.2.

2. Heard Mr. Amar Murti Shukla, learned counsel for the petitioner and Mrs. Anjali Bhargava, learned Additional Chief Standing Counsel for the State.

3. Mrs. Anjali Bhargava, learned Additional Chief Standing Counsel for the State, submitted that the present matter relates to the conditions of service of a public servant, therefore, the petitioner has alternate efficacious remedy to raise his grievances before the Uttarakhand Public Services Tribunal.

4. As the disputes raised in the present writ petition can be effectively adjudicated by the Uttarakhand Public Services Tribunal, the complete record along with the writ petition, after retaining the copies thereof, is being transmitted to the Uttarakhand Public Services Tribunal for hearing the writ petition as a claim petition in accordance with law.

5. The Uttarakhand Public Services Tribunal is also requested to consider entertaining the present matter as a claim petition taking into consideration this fact that the present matter has been pending for past four years.

6. The present Writ Petition (S/S No. 200 of 2018) stands disposed of accordingly.”

2. Writ Petition No. 200 (SS) of 2018 is, accordingly, reclassified and renumbered as Claim Petition No. 12/DB/2023. Since the reference in this Tribunal shall be of the writ petition filed before the Hon’ble High Court, but shall be dealt with as claim petition, therefore, the claim petition shall be referred to as ‘petition’ and petitioner shall be referred to as ‘petitioner’, in the body of the judgment.

### **PETITIONER’S VERSION**

3 Facts necessary for adjudication of the petition, are as follows:

3.1 Petitioner was appointed as a *Meth* in respondent department on 26.02.1982. The State Govt. introduced ACP Scheme *vide* Govt. Order dated 08.03.2011, which became effective from 01.09.2008. ACP Scheme was amended from time to time. The State Govt. issued an order on 18.09.2014, by which pay scale/grade pay of *Meth*, working in the Irrigation Department has been upgraded. (Copy of order dated 18.09.2014: Annexure-1). By virtue of G.O. dated 18.09.2014, the grade pay of Rs.2800/- has been upgraded to Rs. 4200/- and is available to the *Meth* after completion of 26 years of service. The

Executive Engineer of respondent department, *vide* order dated 23.11.2016 revised/ upgraded the pay scale/ grade pay of petitioner from Rs. 2800/- to Rs.4200/-, inasmuch as the petitioner has completed 26 years of service in the Cadre of *Meth* in 2008 (Copy of order dated 23.11.2016: Annexure- 2).

3.2 WPSS No. 1039/ 2012 and WPSS No. 536/2016 were filed challenging the selection process/ promotional exercise from the post of *Meth* to the post of Junior Assistant on the ground that the promotion can only be made from Class IV to Class III post on the basis of seniority. On the basis of judgment passed by Hon'ble High Court on 25.07.2014, the respondents started fresh exercise for promotion (Copy of Judgment dated 25.07.2014: Annexure- 3).

3.3 The Superintending Engineer, in compliance of *judgment* dated 25.07.2014 issued an order dated 12.03.2015, whereby the petitioner was promoted to the post of Junior Assistant from the post of *Meth*. In such order, it was mentioned that after joining as Junior Assistant, the petitioner will be entitled to the benefits of Junior Assistant *w.e.f.* 01.11.2013. The petitioner joined as Junior Assistant on 20.03.2015. He was, therefore, entitled to grade pay of Rs.4200/-, which was rightly given to him *vide* order dated 23.11.2016.

3.4 Two colleagues of the petitioner namely, Sri Shishupal Bisht and Sri Ratan Singh Jayada were granted benefit of G.O. dated 18.09.2014 and were sanctioned upgraded pay scale, but, later on, *vide* order dated 23.01.2015, the said benefits were taken away by the respondents. Sri Shishupal Bisht and Sri Ratan Singh Jayada preferred WPSS No. 2355/2017 before Hon'ble High Court, in which they claimed parity with the petitioner regarding the benefit of G.O. dated 18.09.2014.

3.5 The petitioner, after attaining the age of superannuation, retired on 31.07.2016.

3.6 The Hon'ble High Court while disposing of WPSS No. 2355/2017, directed Respondent No.2 to decide the representation of the petitioner on parity with the order relating to co-worker Indra Singh Negi and the recommendation of Executive Engineer within four weeks of the presentation of certified copy of this order.

3.7 As per the petition, the respondents, prior to deciding the representation of the aforesaid incumbents, with a view to defeat their claim, without assigning any valid reason and without providing any opportunity of hearing to the petitioner, *vide* impugned order dated 17.01.2018 cancelled the earlier order dated 23.11.2016, although the petitioner was actually promoted *vide* order dated 12.03.2015, but since he was given seniority from 01.11.2013, which is prior to issuance of G.O. dated 18.09.2014, hence, he is not entitled to grade pay Rs.4200 (Copy of order dated 17.01.2018: Annexure- 5). Aggrieved with the same, present petition has been filed by the petitioner. Relevant documents have been filed by the petitioner in support of his claim.

#### **RESPONDENTS' VERSION**

4. Written Statement has been filed on behalf of Respondent No.1. Counter Affidavit has been filed by Sri Ranjeet Singh, Deputy Secretary, Irrigation Department, Govt. of Uttarakhand, Dehradun. Sri D.K. Singh, Executive Engineer, Irrigation Division, Dehradun has filed Counter Affidavit on behalf of Respondents No. 2, 3, 4 & 5.

5. *Vide* order dated 01.03.2023, the Tribunal granted some time to the respondent department, to file supplementary C.A., on its request. Thereafter, Sri Dinesh Chandra Uniyal, Executive Engineer, Irrigation Division, Dehradun, Uttarakhand has filed supplementary C.A. on behalf of respondents. Documents have been filed by the respondents in support of their counter affidavit.

#### **PETITIONER'S SUBMISSIONS**

6. It is the submission of Ld. Counsel for the petitioner that petitioner had completed more than 26 years of service prior to issuance of G.O. dated 18.09.2014, hence he is legally entitled for grade pay of Rs.4200/-, which was granted by Respondent No.5 *vide* order dated 23.11.2016, therefore, recalling the same by Respondent No.5, that too without issuance of any show cause notice to the petitioner, is wholly illegal, unjustified and is in violation of principle of natural justice, inasmuch as the order dated 17.01.2018 has civil and evil consequences.

7. Ld. Counsel for the petitioner elaborated further that since the order dated 17.01.2018 has civil and evil consequences and salary is property within the meaning of Article 300 A of the Constitution, hence reducing the same, that too without any show cause or inquiry, is not only illegal and unjustified but also is in violation of principle of natural justice, therefore, the impugned order is not sustainable.

#### **RESPONDENTS' SUBMISSIONS**

8. Ld. A.P.O. drew attention of the Tribunal towards paragraphs 12 to 20 of the supplementary Counter Affidavit. Ld. A.P.O. submitted that on 18.09.2014, the State Government issued letter by which grade pay Rs.1800/- of the post of *Meth* was upgraded to the grade pay Rs. 1900/- and the effect of the said G.O. was prospective. Grade pay Rs. 2800/- of the petitioner has been upgraded to Rs. 4200/- due to wrong interpretation of Govt. letter dated 18.09.2014, on completion of 26 years of service as 3<sup>rd</sup> ACP.

8.1 After pay fixation of the petitioner, the matter was sent for proper verification to the finance controller of irrigation department, who returned the service book of petitioner to respondent no 5 with a comment that the pay fixation of the petitioner *vide* order dated 11.11.2016 is wrong and as per order dated 18.09.14 the petitioner is entitled to get the benefit of grade pay Rs.4200. On the advise of departmental finance controller, the petitioner has been granted the benefit of upgraded grade pay Rs 4200/-.

8.2 Meanwhile it has come into the knowledge of department that sub treasury Srinagar Garhwal has raised objections on granting the benefit of Rs 4200/- as a 3<sup>rd</sup> ACP benefit to the *Meth*, who had been initially appointed in the grade pay Rs 1900/- substantively. Thereafter the adjustment order dated 17.01.2018 was issued to recover the excess payment to the petitioner. The said order has been challenged before the Hon'ble High Court and now this matter is sub-judice before this Tribunal.

8.3 In the entire service period of 35 years, the petitioner has been given the benefit of three promotional pay-scales from the direct recruitment post of *Meth*. The post of *Meth* is in grade pay Rs. 1900/-, as such he is legally entitled to get the benefit of 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> ACP in grade pay of Rs. 2000/-, 2400/-, 2800/- but erroneously on the recommendation of finance controller of

the department, the petitioner has been given the benefit of 3<sup>rd</sup> ACP in grade pay Rs 4200/-, which is not admissible to him and also he has been given an actual promotion on the post of Junior Assistant on 01.11.2013 by the department.

8.4 No inquiry proceedings under the Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003 (as amended in 2010) have been initiated against the petitioner, therefore, there is no need to provide opportunity of hearing or to serve a show-cause notice to the petitioner. As per the recommendation of the finance controller of irrigation department, the said benefit has been given to the petitioner, but later on said benefit has been cancelled *vide* order dated 17.01.2018.

8.5 In compliance of the Hon'ble High Court's Judgment passed in WPSS No. 2355/2017, the petitioners (*Meth*) had been given promotion in Group 'C' post *i.e.* Junior Assistant in the pay scale /Pay band Rs. 5200-20200 Grade pay 2000/- w.e.f. 01.11.2013 hence the lien of the petitioner on the post of *Meth* came to an end on 01.11.2013, therefore the G.O. dated 18.09.2014 is not applicable to the petitioner due to change in service cadre as Junior Assistant, thus on this ground the petitioner does not have any case claiming the pay scale on the post of *Meth*.

## **DISCUSSION**

9. It has been stated in Paragraphs 13 and 19 of the supplementary Counter Affidavit that due to wrong interpretation of Govt. order dated 18.09.2014, grade pay Rs. 2800/- of the petitioner was upgraded to Rs. 4200/- on completion of 26 years of service as 3<sup>rd</sup> ACP. It has also been admitted by the respondents in Para 19 of the supplementary Counter Affidavit that the petitioner was neither given a show cause notice nor was given opportunity of hearing before passing the impugned order. It is the submission of Ld. A.P.O. that neither any inquiry proceedings under the Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003 (as amended in 2010) have been initiated against the petitioner nor there was any need to issue show cause notice. Hence, neither any show cause notice nor opportunity of hearing was given to the petitioner before passing the impugned order, inasmuch as terms and conditions of the fixation order itself stipulates that in case, any

discrepancy is found by the higher officers/ Finance Controller in fixation of salary, the same will be recovered from the petitioner.

10. This fact is under no dispute that the petitioner has retired from the post of Junior Assistant before passing the impugned order.

11. The petitioner was given monetary benefit, which was in excess of his entitlement. The monetary benefits flowed to him consequent upon a mistake committed by the respondent department in determining the emoluments payable to him. The respondent department has admitted that it is a case of wrongful fixation of salary of the petitioner. Long and short of the matter is that the petitioner was in receipt of monetary benefit, beyond the due amount, on account of unintentional mistake committed by the respondent department.

12. It will not be out of place to mention here that the , Hon'ble Apex Court in Paragraphs 6, 7 & 8 of the decision rendered in *State of Punjab vs. Rafiq Masih*, (2015) 4 SCC 334, has observed as under:

"6. In view of the conclusions extracted hereinabove, it will be our endeavour, to lay down the parameters of fact situations, wherein employees, who are beneficiaries of wrongful monetary gains at the hands of the employer, may not be compelled to refund the same. In our considered view, the instant benefit cannot extend to an employee merely on account of the fact, that he was not an accessory to the mistake committed by the employer; or merely because the employee did not furnish any factually incorrect information, on the basis whereof the employer committed the mistake of paying the employee more than what was rightfully due to him; or for that matter, merely because the excessive payment was made to the employee, in absence of any fraud or misrepresentation at the behest of the employee.

7. Having examined a number of judgments rendered by this Court, we are of the view, that orders passed by the employer seeking recovery of monetary benefits wrongly extended to the employees, can only be interfered with, in cases where such recovery would result in a hardship of a nature, which would far outweigh, the equitable balance of the employer's right to recover. In other words, interference would be called for, only in such cases where, it would be iniquitous to recover the payment made. In order to ascertain the parameters of the above consideration, and the test to be applied, reference needs to be made to situations when this Court exempted employees from such recovery, even in exercise of its jurisdiction under Article 142 of the Constitution of India. Repeated exercise of such power, "for doing complete justice in any cause" would establish that the recovery being effected was iniquitous, and therefore, arbitrary. And accordingly, the interference at the hands of this Court.

8. As between two parties, if a determination is rendered in favour of the party, which is the weaker of the two, without any serious detriment to the other (which is truly a welfare State), the issue resolved would be in consonance with the concept of justice, which is assured to the citizens of India, even in the Preamble of the

Constitution of India. The right to recover being pursued by the employer, will have to be compared, with the effect of the recovery on the employee concerned. If the effect of the recovery from the employee concerned would be, more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer to recover the amount, then it would be iniquitous and arbitrary, to effect the recovery. In such a situation, the employee's right would outbalance, and therefore eclipse, the right of the employer to recover."

*[Emphasis supplied]*

13. Based on the decision, rendered by Hon'ble Apex Court in Syed Abdul Qadir vs. State of Bihar, (2009) 3 SCC 475 and hosts of other decisions, which were cited therein including B.J. Akkara vs. Union of India, (2006) 11 SCC 709, the Hon'ble Apex Court concluded thus:

"18. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

14. Hon'ble High Court of Uttarakhand has passed an order on 12.04.2018, in WPSS No. 1346 of 2018, Smt. Sara Vincent vs. State of Uttarakhand and others, as under:

"This question is no more res integra in view of the judgment rendered by their Lordships of the Hon'ble Supreme Court in (2015) 4 SCC 334 in the case of State of Punjab and others Vs. Rafiq Masih (White Washer) and others. Their Lordships have held as under:

18. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decision referred to herein above, we may, as a ready reference, summarize the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (Or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.



(iii) Recovery from the employees, when the excess payment has been made for a period of excess of five years, before the order of recovery is issued.

(iv) Recovery in case where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

In any other cases, where the court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

Accordingly, the writ petition is allowed. Impugned order is quashed and set-aside.

Pending application, if any, also stands disposed of accordingly."

15. This fact is under no dispute that neither show cause notice was given to the petitioner nor any opportunity was given to him before passing the impugned order. In the W.S., which has been filed on behalf of the respondents, denial in Para 14 is evasive.

16. Petitioner stated in paragraph 20 of the petition that order dated 17.01.2018 has civil and evil consequences and salary is property within the meaning of Article 300 A of the Constitution, hence reducing the same, that too without any show cause or inquiry, is not only illegal and unjustified but also is in violation of principle of natural justice, therefore, the impugned order is not sustainable. It is the submission of Ld. A.P.O. that the impugned order has been passed to adjust the excess payment, it has not been passed to recover the excess payment made to the petitioner by way of punishment or is not punitive in nature.

17. In the supplementary Counter Affidavit, which was filed as per the direction of the Tribunal, it is admitted that neither show cause notice was served upon the petitioner nor any opportunity was given to him before passing the impugned order, although, the reasons have been assigned in the C.A./W.S. for neither serving the show cause notice nor giving opportunity of hearing before passing the impugned order, but they are not sufficient. The violation of principles of natural justice is writ large on the face of record. The petitioner was sanctioned grade pay of Rs.4200/- and he enjoyed such an enhancement for seven long years, therefore, the same could not have been reduced without giving him due opportunity of hearing. Impugned order dated 01.07.2018 has civil and evil consequences. The salary is a property within the meaning of Article 300 A of the Constitution of India.

18. Moreover, it is trite law that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out, as has been observed by Hon'ble Apex Court in *Mohinder Singh Gill vs. Chief Election Commissioner, New Delhi and others*, (1978) 1 SCC 404.

19. It will be quite useful to reproduce the observations of Hon'ble Mr. Justice Vivian Bose in *Commissioner of Police, Bombay vs. Gordhandas Bhanji*, AIR 1952 SC 16, herein below for convenience:

“Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he Intended to do Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

Orders are not like old wine becoming better as they grow older”

20. Order impugned cannot sustain and is liable to be set aside, leaving it open to the respondent authority to proceed only after affording due opportunity of hearing to the petitioner. However, there shall be no recovery of excess payment from the petitioner.

21. Order impugned dated 17.01.2018 (Annexure: 5) is set aside leaving it open to the respondent department to proceed only after affording opportunity of hearing to the petitioner, as discussed above. No order as to costs.

**(RAJEEV GUPTA)**  
**VICE CHAIRMAN (A)**  
 (virtually from Nainital)

**(JUSTICE U.C.DHYANI)**  
**CHAIRMAN**

*DATE: JUNE 20, 2023*  
*DEHRADUN*