

**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)

CLAIM PETITION NO. 59/SB/2021

Shri Devendra Kumar Rana, aged about 61 years, s/o Shri Ram Lal Singh Rana,
r/o Lane No. 18, Rajeshwar Nagar, Phase-II, Sahastradhara Road, Dehradun.

.....Petitioner

vs.

1. State of Uttarakhand through Secretary, Power/Energy, Govt. of Uttarakhand, Dehradun.
2. Chairman of Uttarakhand Power Corporation Limited and Secretary, Power, Secretariat, Govt. of Uttarakhand, Rajpur Road, Dehradun.
3. Managing Director, Uttarakhand Power Corporation Limited, Urja Bhawan, Kanwali Road, Dehradun.
4. Director, Human Resource and Development, Uttarakhand Power Corporation Limited, Urja Bhawan, Kanwali Road, Dehradun.
5. Director, Finance, Uttarakhand Power Corporation Limited, Urja Bhawan, Kanwali Road, Dehradun.

.....Respondents

Present: Sri Abhishek Chamoli, Advocate for the petitioner
Sri V.P.Devrani, A.P.O., for the Respondent no.1
Sri A.S.Bisht, Advocate for Respondents no. 2 to 5

JUDGMENT

DATED: AUGUST 03, 2023

Mr. Rajeev Gupta, Vice Chairman (A) (Oral)

The petitioner joined the respondent corporation in 2008 and retired on 31.07.2020. After retirement, he was reemployed *vide* order dated 05.08.2020 on the same post which he was occupying earlier and the reemployment letter stipulates that the honorarium shall be payable

to him as per O.M. no. 9298 dated 11.12.2012. The petitioner resigned from the same on 31.10.2020. The petitioner has been paid Rs. 3, 33, 940/- as honorarium for the period of reemployment. The petitioner's claim is that in this calculation, the Dearness Allowance (D.A.) on the basic pay has not been calculated. The respondent corporation's contention is that in the letter of contractual appointment, as per the corporation's O.M. dated 11.12.2012, D.A. is not to be paid.

2. The basic issue in this petition is the interpretation of the O.M. dated 11.12.2012, the relevant clause of which is Clause no. 8, which states that after deduction of the pension (before commutation) from the last pay drawn on the post held before retirement, the balance amount shall be admissible as honorarium to the re-employed person. In addition to this, no other type of allowance shall be admissible nor any benefit of annual increment etc. shall be admissible.

3. The contention of learned Counsel for the petitioner is that the last pay drawn is last basic pay + D.A., and not only the last basic pay. The contention of learned Counsel for the respondents is that the stipulation made in this Clause no. 8 about no other type of allowance being admissible means that no D.A. is payable to the re-employed person.

4. The Tribunal observes that Clause-8 of this O.M. dated 11.12.2012 mentions 'the last pay drawn before retirement minus pension (before commutation)', it does not state the last drawn basic pay minus pension (before commutation). The principle of last pay drawn minus pension is generally followed in Government organizations also for re-employment after retirement, where the last pay drawn means, the last basic pay + D.A. According to the petitioner, while other ingredients of pay like Personal Pay, House Rent Allowance, Uttarakhand Development Allowance, Medical Allowance and Special Allowance (non-technical) are not be paid on re-employment, the D.A. should have been paid to him in addition to the basic pay minus pension and accordingly, payment should

have been made, which has not been done. He is not demanding other ingredients/allowances, which have been specifically forbidden in the O.M. dated 11.12.2012 of the respondent corporation.

5. The Tribunal further observes that the last drawn pay of any employee essentially means the last drawn basic pay + D.A. thereon and had the term 'last drawn basic pay' been mentioned in the O.M. dated 11.12.2012, the contention of the respondent corporation would have been correct. However, only 'last drawn pay' has been written in the O.M. dated 11.12.2012 and the same should be interpreted as last drawn basic pay + D.A. thereon and, accordingly, from this amount, after deducting the pension (before commutation), the amount so derived, should have been paid as honorarium to the petitioner.

6. In the light of the above, the respondent corporation is directed to rework the honorarium for the period, the petitioner was kept on re-employment, and pay balance amount due to him, within 8 weeks of presentation of certified copy of this order.

7. In the circumstances of the case, we are not inclined to order any interest on the balance amount to be paid to the petitioner. However, if the payment of the balance amount is not made to him within a period of eight weeks of presentation of certified copy of this order, the delay in payment of balance amount would attract interest @ 6% p.a. to be paid in addition to the petitioner for the further period of delay.

8. The claim petition is disposed of as above. No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: AUGUST 03, 2023
DEHRADUN
KNP