

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

CLAIM PETITION NO. 63/SB/2019

1. Sh. Mohan Prasad Khansali, s/o Late Sri Daulat Ram Khansali, retd. Private Secretary, Govt. of Uttarakhand, r/o Village Ratanpur, post Naya Gaon, Shimla Road, Dehradun.
2. Sh. Dinesh Chandra Purohit, s/o Late Sri Khimanand Purohit, Retd. Private Secretary, Govt. of Uttarakhand, r/o 67/1, Swastik Residency, C.S. Garhwali Marg, Banjarawala, District Dehradun, Uttarakhand.
3. Sh. Harshvardhan Joshi, s/o Late Sri Ghanshyam Joshi, Retd. Private Secretary, Govt. of Uttarakhand, r/o Pian View School Lane, Vansthali, Ballupur, Dehradun.

.....**Petitioners**

vs

1. State of Uttarakhand through Secretary, Secretariat Administration Department, Govt. of Uttarakhand, Subhash Road, Dehradun.
2. Secretary/Principal Secretary, Finance, State of Uttarakhand, Civil Secretariat, Dehradun.

.....**Respondents**

Present: Sri L.K.Maithani, Advocate for the petitioners
Sri V.P.Devrani, A.P.O., for the Respondents.

JUDGMENT

DATED: MARCH 06, 2024

Justice U.C.Dhyani (Oral)

By means of present claim petition, the petitioners seek following reliefs:

"i) To issue order or direction to the concerned respondent to refix/upgrade the pay of the petitioners to the pay scale 6500-10500 since the date of their merger i.e. 25.06.2002 as was given to the juniors and other similarly situated persons by the order dated 07.08.2014 of respondent No. 1.

ii) To issue order or direction directing to the respondents to allow the benefit of Illrd ACP after completion of 26 years of service to the petitioners at par to their juniors i.e. since 01.09.2008 with all arrears.

issue an order or direction to the respondents to grant the 18% interest on the arrears of the above amounts/benefit.

ii) To issue any other order or direction which this court may deem fit and proper in the circumstances of case in favour of the petitioner.

iii) To award the cost of petition.”

[Emphasis supplied]

2. The petitioners are retired Private Secretaries of the Secretariat, Govt. of Uttarakhand. Learned Counsel for the petitioners drew attention of the Bench towards the minutes of the Screening Committee held for giving financial upgradation to the Private Secretaries of Secretariate cadre, which (committee) *vide* report dated 14.07.2014 (Annexure-A5) recommended for the revision of promotional pay scale of 28 private secretaries since the date of merger i.e. 25.06.2002. Based on the recommendation of the Screening Committee, respondent no. 1 *vide* office order dated 07.08.2014 (Annexure-A6) amended the previous office orders dated 15.02.2013 and 27.08.2013 and upgraded the first promotional pay scale received by those private secretaries prior to merger under time scale-pay scale, since the date of merger i.e. since 25.06.2002 in the pay scale of Rs. 6500-10500 and accordingly granted the benefit of Second ACP Grade Pay of Rs. 6600 and third ACP, grade pay of Rs. 7600 on competition of 16 and 26 years of service. **The submission of learned Counsel for the petitioner is that similar financial upgradation may kindly be directed to be given to the petitioners of present claim petition.**

3. Learned Counsel for the petitioners submitted that the beneficiaries of Office Order dated 07.08.2014 have been given financial upgradation of Rs. 6500-10500 since the date of their merger in SAD and consequential benefits regarding ACP *etc.* were given to them accordingly. Several documents have been filed on behalf of the petitioners in support of their pleadings.

4. Respondents have contested the claim petition by filing Written Statement. C.A. has been filed by Sri Bhupal Singh Manral,

Secretary, In-charge, Administration Secretariat, Govt. of Uttarakhand. Learned A.P.O. submitted that the petition has no legs to stand on merits. The same is also barred by limitation. Hence, claim petition should be dismissed with costs.

5. Relevant documents have been filed in support of the W.S. Learned A.P.O. submitted that petitioners were appointed in the pay scale of Rs. 4000-6000 in Irrigation Department of erstwhile State of U.P. on 05.05.1973, 01.07.1971 and 02.03.1974 respectively. On completion of 10 years of service, they were given first promotional scale of Rs. 4500-7000/-. On completion of 16 years of service, they were given the benefit of second promotional scale of Rs. 5000-8000/-. Thereafter, after completion of 24 years of service, they were given pay scale of Rs. 5500-9000/- in the parent department. On creation of State of Uttarakhand, they were merged on the post of Private Secretary in pay scale of Rs. 5500-9000/- on 25.06.2002. Thereafter, on 10.12.2004, they were promoted on the post of P.S. Grade-I in the pay scale of Rs. 6500-10500/-. They have been given the benefit of First ACP in the pay scale Rs. 15600-39100 grade pay 5400/-. They were given the second ACP in the pay scale of Rs. 15600-39100 grade pay Rs. 6600/-. Learned A.P.O. further submitted that as per the provisions of Rule 6(1), 6(8) and 6(9) of the Uttarakhand Secretariat Merger Rules, 2002, those employees who were merged in Secretariat should be given benefit of pension and gratuity only on the basis of service rendered in their parent department. They were not entitled to ACP, Seniority etc. They were given second ACP, grade of Rs. 6600/-. Before the benefit of third ACP, petitioners retired on 31.12.2010, 31.03.2011 and 30.06.2011 respectively. He further submitted that petitioners had taken benefit of more than five higher promotional pay scales during entire length of service. Hence, petitioners are not entitled to benefit of IIIrd ACP in the grade pay of Rs. 7600/-.

6. In reply, learned Counsel for the petitioners submitted that the same was the case with beneficiaries of office order dated 07.08.2014 (Annexure-A6).

7. It is cardinal principle of law that similarly situated person should not be treated differently. When 28 employees of P.S. cadre, out of which 3 juniors (namely Roop Chand Gupta, Prakash Chandra Bhatt and Rajbala Tomar) to the petitioners, were given some service benefit, how can the petitioners be treated differently?

8. **A case of consideration for granting financial upgradation to the petitioners by SAD, on the basis of parity is made out.**

9. At this juncture, learned A.P.O. submitted that Special Audit Unit was constituted to find out whether benefit of second and third ACP to 28 beneficiaries of Office Order dated 07.08.2014 (Annexure-A6) was rightly given or not. The Committee found that the benefit was wrongly given to such 28 employees *vide* order dated 26.02.2019. Recovery of excess and over payment due to grant of wrong benefit of ACP was calculated *vide* order dated 04.08.2020 in respect of Roop Chand Gupta, Prakash Chandra Bhatt and Rajbala Tomar. Although, it has not been recovered from the beneficiaries of Office Order dated 07.08.2014 as yet, but the same is under process, as the parity of pay scales can only be claimed as against rightful/valid/legal order and not against wrongful/invalid/illegal order. Hence, there is no discrimination with the petitioners.

10. Learned Counsel for the petitioners submitted that the benefit of upgradation of pay scale Rs. 6500-10500 given since the date of merger on the basis of G.O. dated 23.08.2005, has not been taken away from the beneficiaries of Office Order dated 07.08.2014. The recovery is from ACP and that is why the amount (of recovery) is very less.

11. Learned Counsel for the petitioners submitted that the same is the case of the petitioners of present claim petition. The case of the petitioners and 28 beneficiaries of Office Order dated 07.08.2014 (Annexure-A6) is identical.

12. Article 14 of the Constitution of India provides that 'the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India'. Equal protection means the right to equal treatment in similar circumstances [AIR 1955 SC 795, AIR 1952 SC 75]. There should be no discrimination between one person or another, if their position is same [AIR 1951 SC 41]. Action must not be arbitrary, but must be based on some valid principle which itself must not be irrational or discriminatory [AIR 1979 SC 1628, AIR 1980 SC 1992]. The principle does not take away from the State the power of classifying persons for legitimate purposes [AIR 1951 SC 318]. The State is very much competent to exercise its discretion and make classification [(1997) 6 SCC1]. It amounts to denial of equal protection when there is no reasonable basis for the differentiation [AIR 1953 SC 1991, AIR 1957 SC 877, AIR 1959 SC 609].

13. The claim petition is disposed of by directing respondent no. 1, Secretary, SAD, to consider the case of the petitioners in parity with the case of beneficiaries of Office Order dated 07.08.2014 (Annexure-A6), in accordance with law.

14. Learned Counsel for the parties submitted that such order may be passed by Single Bench of the Tribunal.

15. Claim petition thus stands disposed of. No order as to costs.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATED: MARCH 06.03.2024
DEHRADUN.
KNP