

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

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

Hon'ble Mr.A.S.Nayal
-----Member (A)

CLAIM PETITION NO. 82/DB/2018

Chandrasen S/o Late Sri Duli Chand aged about 62 years R/o Gitanjali Enclave,
Lane No.2, near Doon University, Kedarpuram, Dehradun (Retired Joint Director
Tourism).

.....Petitioner

vs.

1. State of Uttarakhand through its Secretary, Department of Tourism,
Secretariat, Subhash Road, Dehradun.
2. Secretary to the State of Uttarakhand, Tourism Anubhag, Secretariat, Subhash
Road, Dehradun.
3. Director Tourism, Uttarakhand, Garhi Cantt. Near ONGC Halipad, Dehradun.

.....Respondents.

Present: Sri J.P.Kansal, Counsel for the petitioner.
Sri V.P.Devrani, A.P.O., for the Respondents.

JUDGMENT

DATED: MAY 22, 2019

Justice U.C.Dhyani (Oral)

By means of present claim petition, the petitioner seeks
following reliefs:

“ (a) The impugned order dated 24.08.2018 (Annexure- A1) be kindly
held illegal, against rules, orders and principles of natural justice and
be kindly quashed and set aside.

(b) The petitioner be kindly held entitled to get grade pay Rs.7600/-
with pay in pay band 3 *w.e.f.* 01.01.2006 and grade pay Rs.8700 /-
with pay in pay band 4 *w.e.f.* 06.05.2011 and the respondents be
kindly ordered and directed to pay to the petitioner the difference of
pay, D.A. other allowances and retiral benefits including pension due

and paid with interest thereon @ 9% per annum from the date of accrual till the date of actual payment to the petitioner.

(c) The petition be kindly allowed against the respondents any other relief in addition to or in modification of the above reliefs as this Hon'ble Tribunal deems fit and proper in the context of the facts and law of this claim petition.

(d) Rs.20,000/- as costs of this claim petition be kindly awarded to the petitioner against the respondents."

2. Brief facts, giving rise to present claim petition, are as follows:

The petitioner, after having selected through U.P. Public Service Commission, was substantively appointed on the post of Regional Tourist Officer *w.e.f.* 06.05.1985, in the pay scale of Rs.850-1720/-, which was revised from time to time, i.e., on 01.01.1986 and 01.01.1996 to Rs. 2250-400/- and Rs. 8000-13500/- respectively.

The petitioner was promoted to the cadre of Assistant Director *w.e.f.* 18.05.1993 in the then pay scale of Rs. 2350-4300/-, which was revised *w.e.f.* 01.01.1996 to Rs.8550-14600/-. Thereafter, petitioner was promoted to the post of Deputy Director, Tourism, *vide* Office Memorandum dated 23.02.2004, in the pay scale of Rs.10000-15200/-

Vide G.O. No. 395/XXVII/(7)/2008 dated 17.10.2008 (Annexure: A 5), orders were issued for fixation of pay of officers/ employees in the revised scale *w.e.f.* 01.01.2006. Para 12 of the aforesaid G.O. provides that the promotion is possible by two modes; one, by promotion from one Grade Pay to another Grade Pay; and another, by promotion from one Pay Band to another Pay Band.

According to the petitioner, he, on promotion to the cadre of Deputy Director, is entitled to Grade Pay of Rs.7600/-, in the light of para 12 of the aforesaid G.O., as on 01.01.2006, he was working on the post of Deputy Director, which is a promotional post, but the respondents have not allowed the same to the petitioner. Whereas petitioner was given the Grade Pay of Rs. 6600/-, one Dr. Abha Bhatt,

Regional Tourist Officer, who is much junior to the petitioner, was given Grade Pay of Rs.7600, on completion of 18 years, as 2nd financial up gradation. 2nd financial up gradation from Regional Tourist Officer is in the Pay Band and Pay Scale of Deputy Director.

Under the Assured Career Progression (for short, ACP) Policy, issued on 08.03.2011 (modified by G.Os. dated 07.04.2011, 30.10.2012 and 01.07.2013), on completion of 26 years continuous satisfactory service, Respondent No.3 had sanctioned 3rd financial up gradation benefits to the petitioner *w.e.f.* 06.05.2011, but, instead of allowing pay in Pay Band 4, Rs. 37400-67000/- with Grade Pay Rs.8700/-, petitioner has been allowed pay in Pay Band 3 with Grade Pay of Rs.7600/-. Petitioner, even after his superannuation, has been making requests in writing, but his representations were not decided by the authority concerned.

3. When the representations of the petitioner were not decided by the authority concerned, a claim petition No.38/SB/2015 was filed by him. The same was decided *vide* order dated 26.04.2018, as follows:

“ Claim petition is, accordingly, disposed of by directing Respondent No.1 to decide the representation of the petitioner, by a reasoned and speaking order, in accordance with law, at an earliest possible but not later than ten weeks of presentation of certified copy of this order along with a copy of representation .

Needless to say that the decision so taken, shall be communicated to the petitioner soon thereafter”.

4. Respondent No.1, *vide* order dated 24.08.2018 (copy Annexure: A 1), did not agree with the submissions of the petitioner. His representation was, accordingly, rejected. Hence, present claim petition, in the second round of litigation.
5. Principal legal grounds taken by the petitioner, in present claim petition, are as follows:

- (i) According to ACP policy and modifications/ clarifications made therein, the petitioner is entitled to get three financial up-gradation, but the respondents have failed to accord these benefits to the petitioner;
- (ii) As per Govt. Order dated 17.10.2008 (Annexure: A 4), which relates to fixation/ regulation of pay, since promotion also means either grant of next grade pay or pay band, therefore, petitioner is entitled to get his pay fixed in pay band-3 with grade pay Rs.7600/- and not Rs.6600/-; and
- (iii) The petitioner could not have been allowed lower grade pay than what was granted to his junior.

6. In the Counter Affidavit/ Written Statement, facts given in the claim petition have been contradicted. It has been averred, in the C.A., that a committee, under the chairmanship of Secretary, Tourism, Government of Uttarakhand, was constituted to consider the grievances of the petitioner. It was found, by the Screening Committee, that petitioner was already granted benefit of 3rd ACP after 26 years of service. Before that, he was granted two promotions. He was also promoted to the post of Joint Director on 28.06.2013. In this way, since the petitioner was already granted three promotions and benefit of 3rd ACP, therefore, he is not entitled to any other benefit under the relevant Govt. Orders and Rules.

7. Rejoinder Affidavit has been filed by the petitioner by reiterating that in revision of pay of officers and employees of Respondent No. 1, *vide* resolution dated 17.10.2008, the post of Assistant Director (Tourism) was merged with the post of Deputy Director (Tourism) and Assistant Director was designated as Deputy Director (Tourism), *w.e.f.* 01.01.2006. So, in fact, till 01.01.2006, petitioner got benefit of only one promotion and not two promotions. Further, as provided in Para 12 of G.O. dated 17.10.2008 (Annexure: A 4), promotion is possible by two modes, *viz*, one, by promotion from one grade pay to another grade pay, and another by promotion from one pay band to another pay

band. Since, the petitioner was holding promotional post of Deputy Director, he was entitled to get grade pay Rs.7600/-, but he has wrongly been allowed grade pay of Rs. 6600/- only. *Vide* office order dated 23.12.2011 (Annexure: A 5), Dr. Abha Bhatt, Regional Tourist Officer (for short, non-respondent), who is much junior to the petitioner, was given benefit of 2nd ACP with grade pay Rs.7600/- on completion of 18 years' service. A senior cannot be allowed lesser salary than his junior. Since Dr. Abha Bhatt, who is junior to the petitioner, has been allowed higher grade pay, in terms of G.O. dated 30.12.2012 (Annexure: A 8), therefore, petitioner will be deemed eligible for 2nd ACP benefit of the post of Deputy Director *w.e.f.* 01.01.2006. Accordingly, he is entitled to get grade pay Rs.7600/-, as has been allowed to his junior, Dr. Bhatt. Even according to Para 2(iii) of G.O. dated 08.03.2011(Annexure: A6), the petitioner is entitled to three financial up-gradation in the pay scale, *w.e.f.* 01.01.2006.

8. The grievance of the petitioner is that, he, on promotion to the cadre of Deputy Director, is entitled to grade pay of Rs7600/-, in the light of para 12 of the aforesaid G.O., as, on 01.01.2006, he was working on the post of Deputy Director, which is a promotional post, but the respondents have not allowed the same to the petitioner. Whereas, petitioner was given the grade pay of Rs.6600/-, Dr. Abha Bhatt, Regional Tourist Officer, who is much junior to the petitioner, was given grade pay of Rs.7600/- on completion of 18 years, as 2nd financial up-gradation from Regional Tourist Officer in the pay band and pay scale of Deputy Director.
9. When direction was given by this Tribunal on 26.04.2018 to decide the representation of the petitioner, Respondent No.1 decided the same by passing an elaborate order on 24.08.2018 (Copy: Annexure- A1). A comparative chart of pay band and grade pay (under ACP scheme), as admissible to the petitioner, who retired as Joint Director, Tourism and Dr. Abha Bhatt (non-respondent), who is working as Joint Director, Tourism, has been given by Respondent No.1, which

decision is under challenge in present claim petition. The contents of comparative chart shall form part of this order.

10. Respondent No.1, by a speaking order, has mentioned, in the order under challenge, as to how the benefit of Govt. Order No. 589/XXVII(7)/40(IX)/2011 dated July 01, 2013 (for short, G.O. of 2013) has been given to the petitioner. It has also been mentioned in Annexure: A 1 that a Screening Committee was constituted, under the chairmanship of Respondent No.1, for considering grant of ACP to eligible employees. It was found that the petitioner has been given all the benefits, which are admissible to an officer/ employee under ACP scheme of 01.07.2013.
11. Although, the details of pay band and grade pay, as admissible to the petitioner and non-respondent have been given, in Annexure: A 1, but nowhere it has been mentioned as to how non-respondent was granted benefit, as is claimed by the petitioner in his claim petition, which is his grievance. In other words, justification of benefit given to non-respondent has not been explained in the impugned order.
12. Although, at the first blush, it appears that the benefit of G.O. of 2013 has been given to the petitioner, but on a detailed study of the file, this Tribunal finds that there is something more to it than meets the eye.
13. Ld. A.P.O. vehemently opposed the claim of the petitioner, while justifying Annexure: A 1, by pointing out Para 1(7) in G.O. dated 08.03.2011 (Copy: Annexure- A 6) that financial up-gradation under ACP scheme is purely personal, and the same has nothing to do with *inter se* seniority of the employees. Since much emphasis is laid by Ld. A.P.O. on Para 1(7) of G.O. dated 08.03.2011, therefore, it will be appropriate to reproduce the said paragraph herein below for convenience:

“Financial up-gradation admissible under ACP scheme is purely personal and it has nothing to do with the seniority of an employee. It will not be permissible for a senior employee to make a claim for higher pay/ grade pay on the sole ground that the junior is getting higher pay/ grade pay than him.”

[Note: This G.O., Annexure-A 6, has been clarified by G.O., Annexure- A 8]

14. If we look at the decision, which is taken on the representation of the petitioner, Ld. A.P.O. appears to be justified in his stand when he argues that it is not permissible for the petitioner to challenge the grade pay of non-respondent, who is admittedly junior to him. Annexure- A 6 also deals with ACP. As has been stated above, the petitioner appears to have been given benefit admissible to him under ACP scheme. But, another G.O. No. 313/xxvii(7)40(ix)/2012 was issued by the Finance Department on 30.10.2012 (Copy: Annexure A 8). Sub-para(4) of Para 2 of Annexure- A 8 assumes greater significance for elucidating controversy in hand and, therefore, said para [2(4)] is being reproduced herein below for convenience:

“If an employee is promoted and his grade pay, under the ACP scheme is lesser than the grade pay being given to his junior, senior employee shall be entitled to grade pay, admissible to his junior, from the day such enhanced grade pay was given to his junior. This will be applicable when the source of recruitment and conditions of service of the senior and junior employees are the same. Further, had the senior employee not been promoted, even then he will be eligible to get financial up-gradation under ACP scheme from the day his junior got the same.....”

15. A reference of decision rendered by Hon’ble Apex Court in Er.Gurcharan Singh Grewal vs. Punjab State Electricity Board, 2009 (2) SLR 1, has been given, in which, Hon’ble Court has held that it is contrary to the settled principle of law that a senior cannot be paid lesser salary than his junior. If there was difference in the incremental benefits in the scales, such anomaly should not have been allowed to continue and ought to have been rectified.
16. It may be noted here that explanation given in Para 2 of the chart in Annexure- A 7 had reiterated Para 1(7) of Annexure- A 6, that financial up-gradation under ACP scheme is purely personal in nature and has nothing to do with *inter se* seniority of officers/ employees.

17. G.O. dated 30.10.2012 (Annexure- A 8) has deviated from the stand taken in earlier Govt. Orders of March, 2011 and April, 2011. Rather, altogether different view has been taken in the G.O. of 2012 (Annexure- A 8), saying that if a junior officer/ employee is getting some pay under ACP scheme, then his senior will not get lesser pay than his junior, provided the source of recruitment and service conditions of both the employees are similar. In the instant case, the source of recruitment and conditions of service of the petitioner and non-respondent, are similar. This fact has been noted in Para 4 of Annexure- A 1.
18. Thus, although it has been mentioned that the benefit of ACP, as admissible to the petitioner under G.O. of 2013, has already been given to the petitioner, but the representation does not appear to have been decided keeping in mind the aforesaid explanation, as given in Para 2(4) of G.O. dated 30.10.2012 (Annexure- A 8).
19. Now, one more question arises for consideration of this Court. Whether Para 2(4) of G.O. dated 30.10.2012 was not to be considered while taking decision in accordance with G.O. dated 01.07.2013 (Annexure- A 9)? It may be noted here that the representation of the petitioner has been decided by Respondent No.1 according to G.O. dated 01.07.2013. On a bare reading of Annexure- A 9, it is clear that Para 2(4) of Annexure- A 8 has not been interfered with while drafting and issuing Annexure- A 9. G.O. dated 30.10.2012 (Annexure- A 8) does not appear to have been gone into by the Screening Committee, headed by Respondent No.1. So is the case with *proviso* to sub para (b) of Para 2 of G.O. dated 08.03.2011 (Annexure- A 6) also, which does not appear to have been considered by the Screening Committee while deciding the representation of the petitioner.
20. Respondents have claimed that the representation of the petitioner has been decided as per G.O. dated 01.07.2013 (Annexure- A 9). *Per se*, it appears that the representation has been decided as per the guidelines provided in such G.O. On deeper consideration of Annexure- A 9, it is found that the amendments to the explanation of Govt. Orders dated 08.03.2011 and 07.04.2011, as have been mentioned in para 2(4) of G.O. dated 30.10.2012 (Annexure- A 8), still

remain in force. The same has not been obliterated while drafting Annexure-A 9. We have noticed that certain paras of Annexure- A 8 have, although been amended, apart from other Govt. Orders, which do not require reference, in the context of present case, but para 2(4) of Annexure- A 8 remains intact. A transliteration of para 2(4) of Annexure- A8 has already been given by us in one of the foregoing paragraphs of this judgment.

21. The import of Annexure- A 9, as we have been able to understand, is that the previous G.Os. shall remain intact, unless amended or modified by Annexure- A 9, which relates to grant of ACP to the employees of the State Government. Para 2(4) of Annexure- A 8, which has a reference of para 1(7) of G.O. dated 08.03.2011 and point no.2 of para of G.O. dated 07.04.2011, which were amended by the selfsame para of Annexure- A 8, indicates that if grade pay of a senior employee, on promotion, is lesser than his junior, then, in that case the senior shall be given same grade pay which was granted to his junior, from the same date, provided the source of recruitment and conditions of service of both are the same. In other words, a senior will be eligible to get financial up-gradation from the same day on which his junior was given such benefit.

22. This Tribunal is inclined to remit the matter back to the Screening Committee, headed by Respondent No.1, primarily, because of two reasons, viz, Dr. Abah Bhatt has not been arrayed as party respondent, who seems to be proper party to the claim petition and opportunity of hearing to her appears to be necessary for proper adjudication of the dispute projected by the claim petitioner before this Tribunal. It is settled law that the claim petition cannot be dismissed for non-joinder of necessary party. The second and most important reason is that, fixation of pay and determination of parity is a complex matter which is for the executive to discharge. While taking a decision in the matter, several relevant factors are to be considered, which the Tribunal is not equipped to consider, for the lack of requisite expertise in financial matters. In the context of complex nature of issues involved, the far

reaching consequences of a decision in the matter and its impact on the administration of the State Government, Courts have taken the view that ordinarily Courts should not try to delve into administrative decisions pertaining to pay fixation and pay parity. The Courts should approach such matters with restraint and interfere only when they are satisfied that the decision of the Government is patently irrational, unjust and prejudicial to a section of employees and the Government, while taking the decision has ignored factors, which are material and relevant for a decision in the matter. Even in a case where the Courts hold the order passed by the Government to be unsustainable, then, ordinarily a direction should be given to the State Government or the authority taking the decision, to reconsider the matter and pass an appropriate order.

23. The representation of the petitioner was not decided taking into consideration para 2(4) of Annexure- A 8 and *proviso* to sub para (b) of Para 2 of G.O. dated 08.03.2011 (Annexure- A6). This Tribunal, therefore, considers it fit to remit the matter back to the Screening Committee, headed by Respondent No.1, to look into the matter afresh and decide his representation in the light of amendment/ modification carved out in para 2(4) of G.O. dated 30.10.2012 (Annexure- A 8) and *proviso* to sub para (b) of Para 2 of G.O. dated 08.03.2011 (Annexure- A6). Since Dr. Bhatt has not been arrayed as party respondent by the petitioner, and it will not be fruitful to put the clock back, therefore, it will also be advisable if she is also heard, by Respondent No.1, while deciding the representation of the petitioner, afresh.
24. Order impugned dated 24.08.2018 (Annexure- A 1) is, accordingly, set aside. The matter is remitted to Respondent No.1 to decide the representation of the petitioner, afresh, in the light of Annexure- A 9, read with para 2(4) of Annexure- A 8, and *proviso* to sub para (b) of Para 2 of G.O. dated 08.03.2011 (Annexure- A6), in accordance with law and after affording an opportunity of hearing to the petitioner as well as Dr. Abha Bhatt, at an earliest possible, but not later than twelve weeks of presentation of certified

copy of this order along with self contained representation enclosing relevant Govt. Orders and documents.

25. The claim petition is, accordingly, disposed of. In the circumstances, no order as to costs.

(A.S.NAYAL)
MEMBER (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: MAY 22 , 2019
DEHRADUN

VM