

**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. 01/DB/2019

1. Sandeep Kumar Sharma s/o Sri Prem Dutt Sharma aged about 38 years, presently posted as Asst. Engineer R-APDRP Part B, Dehradun.
2. Manoj Prakash Singh Rawat s/o Sri Bachhi Singh Rawat aged about 44 years presently posted as AE (Planning) UPCL, VCV Gabar Singh Urja Bhawan, Dehradun.
3. Sunil Kumar s/o Sri Lalita Prasad aged about 41 years presently posted as SDO (EDSD) Vasant Vihar, UPCL, Dehradun.
4. Rajeev Kharakwal s/o Sri Manohar Lal Kharakwal aged about 37 years presently posted as A.E. (IT) UPCL, VCV Gabar Singh Urja Bhawan, Dehradun.
5. Sunil Uniyal s/o Sri D.N.Uniyal aged about 38 years presently posted as SDO (EDSD) Bhandari Bagh, UPCL, Dehradun.
6. Khayali Dutt Joshi s/o Late Sri Jaidatt Joshi aged about 50 years presently posted as SDO (EDSD) Sahastradhara Road, UPCL, Dehradun .
7. Santosh Dabral s/o Sri Ramanand Dabral aged about 42 years presently posted as A.E. (Meter), Doiwala, UPCL, Dehradun.
8. Ram Kumar s/o Sri Bhushan Lal Sharma aged about 45 years presently posted as Asst. Engineer R-APDRP Part B, Dehradun.
9. Jagdeep Kumar s/o Sri Shakti Singh aged about 45 years presently posted as Asst. Engineer RADRP Part B, Haridwar.
10. Shashikant Singh s/o Sri Chandreep Prasad aged about 39 years presently posted as SDO (EDSD) SIDCUL, UPCL, Haridwar.
11. Pawan Kumar s/o Sri Sitaram aged about 44 years presently posted as Asst. Engineer (Store) UPCL, Haridwar

.....Petitioners.

vs.

1. State of Uttarakhand through Secretary, (Energy) Civil Secretariat, Dehradun.
2. Managing Director, UPCL, VCVGS Urja Bhawan, Kanwali Road, Dehradun.
3. Director (HR), UPCL, VCVGS Urja Bhawan, Kanwali Road, Dehradun.
4. Director (Finance) UPCL, VCVGS Urja Bhawan, Kanwali Road, Dehradun.
5. General Manager (Finance), (Salary &Accounts), UPCL, VCVGS Urja Bhawan, Kanwali Road, Dehradun

.....Respondents.

Present: Sri Shashank Pandey, Advocate, for the Petitioner.
Sri V.P.Devrani, A.P.O., for Respondent No.1.
Sri S.K.Jain, Advocate, for Respondents No.2 to 5.

JUDGMENT

DATED: APRIL 09, 2021

Per: Shri Rajeev Gupta

This claim petition has been filed seeking following reliefs:

- (i) To issue order or direction, to set aside the order dated 21.02.2018 vide which the options of the petitioners have been returned in original.
- (ii) To issue order or direction, directing the respondents to agree to the options given by the petitioners and re-fix their salary in old pay-scale/ pay band and grade pay and fix the salary of petitioners in 7th Pay Commission after 3rd ACP in accordance with the options given by the petitioners.
- (iii) To give any other relief that this Hon'ble Court may deem fit and proper in the circumstances of the case.
- (iv) To give cost to the petitioners.

2. The claim petition briefly states as follows:

The petitioners are working as Assistant Engineers in Uttarakhand Power Corporation Ltd. (for short UPCL). The petitioners were appointed as Junior Engineers in the year 2002 and were promoted to the post of Assistant Engineers in the year 2009. The petitioners were given 1st, 2nd and 3rd Assured Career Progression(for short ACP) after completion of 9 years, 14 years and 19 years of service. Having been promoted in the year 2009 the petitioners were given 2nd ACP w.e.f. 01.07.2014 i.e. after completion of 5 years of service in the promoted post. Modified Assured Career Progression(for short MACP) Scheme was promulgated in the month of February, 2017 as per the 7th Pay commission.

The 7th Pay Commission was introduced in the year 2016 by Respondent No.1. The UPCL issued office order dated 28.11.2017 for circulation of 7th Pay Commission pay matrix along with new MACP

Scheme. This office order was based on various Govt. Orders, one of which was the G.O. dated 28.12.2016. Clause 5 of the scheme adopted by the Corporation clearly indicates that the employees had the option to continue in his existing pay scale/ pay band and grade pay till some future date or the date of next financial up-gradation. Clause 6 of the scheme provides for giving the option form for choosing the option within 3 months of circulation of the scheme. The option form itself was enclosed as Appendix -2 of the scheme. Accordingly, the petitioners submitted the options in this option form to continue in the existing pay scale/ pay band and grade pay of 6th Pay Commission till the time of up-gradation as per the 6th Pay Commission, i.e. till 01.07.2019, when the petitioners will complete 5 years in 2nd ACP and be awarded 3rd ACP. However, Respondent No.5 vide impugned order dated 21.02.2018 (Annexure: A 1), returned the option forms of the petitioners in original. No reason was specified as to why the option forms were being returned. The petitioners immediately made representation to Respondent No.5 through proper channel, explaining the entire position, enclosing the option form once again. No action was taken on the representation of the petitioners. However, their salaries were fixed according to the provisions of 7th Pay Commission in the month of May, 2018 w.e.f. 01.01.2016. Petitioners again made a representation dated 01.10.2018 to the Respondent No.2 through proper channel reiterating the law position. The petitioners again prayed that they should be permitted to continue in the old pay scale/ pay band and grade pay till the time of 3rd ACP. The petitioners also mentioned Rule 23 of Chapter IV of U.P. Fundamental Rules. Rule 23(1) of the Financial Handbook, Volume (II-IV), U.P. fundamental Rules which is also applicable in UPCL specifically says that:

“the holder of a post the pay of which is changed shall be treated as if he were transferred to a new post on the new pay: provided that he may at his option retain old pay until the date on which he has earned his next or any subsequent increment on the old scale, or until he vacates his post or ceases to draw pay on that time-scale. The option once exercised is final.”

Thus not only the rule position but the Fundamental Rules are very clear that an option has to be given to the person whose salary is being altered and the person has a right to exercise the option whether he opts to continue drawing his salary in the old scale or the new scale. Respondents have refused to give this option to the petitioners while earlier, employees were given option to continue in the same pay scale or new pay scale and they were permitted to continue as per their options.

Hence, present claim petition.

3. C.A./W.S. has been filed on behalf of Respondents No. 2 to 5, submitting that the options submitted by the petitioners were not in accordance with the provisions of the UPCL's order dated 28.11.2017 (Annexure: R-2) and G.O. dated 28.12.2016 (Annexure: R-5), [which have also been annexed with the claim petition as Annexure: A-6 (colly)]. UPCL's order dated 28.11.2017 is the adoption of the G.O. dated 25.09.2017 (Annexure: R-1) and Govt. Notification dated 28.12.2016 and also G.O. dated 30.12.2016 and G.O. dated 17.02.2017. The G.O. dated 17.02.2017 (Annexure: R-8) clearly indicates that the provisions of old ACP Scheme are applicable up to 31.12.2016 and w.e.f. 01.01.2017, the provisions of new MACP Scheme are applicable. As per the old ACP Scheme, the petitioners' 3rd ACP was due on 01.07.2019, while as per UPCL's order dated 28.11.2017, MACP Scheme has been adopted in UPCL and provisions of old ACP were stopped, therefore, the contention of the petitioners that they should have been given the opportunity to choose the date 01.07.2019 as option for 7th Pay Commission, is totally misconceived and denied. The option forms of the petitioners were returned in original clarifying reasons that the option given by the petitioners was not as per the provision of the orders of Uttarakhand Government and UPCL. As the representations of the petitioners were against the provisions of the G.O. dated 25.09.2017 followed by UPCL's order dated 28.11.2017, they were not considered by UPCL. The salary of the petitioners was fixed in accordance with the provisions of 7th Pay Commission in the month of May, 2018 w.e.f. 01.01.2016. As per the MACP Scheme, their 3rd Career Progression shall become due in July, 2024. Petitioners want to stay in the

old pay scale up to 30.06.2019 and w.e.f. 01.07.2019 they want to opt for the 7th Pay Commission pay scales and as per their perception, 01.07.2019 is their ACP date, which does not exist and as per new MACP Scheme, their 3rd MACP shall fall due on 1st July, 2024 for which they had not opted for.

4. During pendency of the claim petition, a resolution was passed by the Board of Directors, UPCL that the ACP provisions which were applicable in the UPCL till 31.12.2016, for 1st, 2nd and 3rd ACP to be given after 9 years, 14 years and 19 years of service from the date of appointment on the induction post in the earlier pay matrix, be applied as such even after 01.01.2017 and this resolution was sent to the Govt. for approval vide UPCL letter dated 24.07.2019.
5. Various hearings of the Tribunal were adjourned with the consent of Ld. Counsel for the parties, awaiting the decision of the Govt. on this proposal. However, the Government's decision is still awaited.
6. We have perused the file and heard Ld. Counsel for the petitioner, Ld. A.P.O., representing Respondent No.1 and Ld. Counsel for Respondents No. 2 to 5. Ld. Counsel for the petitioner has also submitted written arguments.
7. The contention of Ld. Counsel for the petitioner is that the Board of UPCL had adopted the recommendations of 7th Pay Commission in its 79th Board Meeting held on 28.03.2017. However, the UPCL Board of Directors has not adopted the MACP Scheme which is requirement of Clause 14 of the G.O. dated 17.02.2017 for MACP. Hence, the scheme of MACP was never made applicable to the employees of UPCL. The Uttarakhand Government Servant Pay Rules, 2016, as adopted by UPCL, do not provide any reference to either ACP or MACP. The Board's resolution of adopting the recommendations of 7th Pay Commission was approved by the Govt. vide G.O. dated 25.09.2017. However, the Govt. also directed that the ACP be converted into MACP. Article 50(19) of the Articles of Association of the UPCL, which is a Govt. Company incorporated under Companies Act, 1956, clearly mentions that it is only the Board that has power to make, vary or repeal the byelaws for the officers or employees of

the company. Thus the Govt. had no power to direct the repeal of ACP or implementation of MACP. However, it did so, and the Respondent No.2 (Managing Director) without the approval of Board, as was required under Articles of Association, issued Office Order dated 28.11.2017 (Annexure: R-2).

8. The Govt., vide letter dated 22.02.2019, wrote to the three Power Corporations including UPCL, to provide Board's resolution to the Govt. as per Clause 14 of the G.O. dated 17.02.2017 for application of MACP in the Corporations. The UPCL Board, however, has resolved that the old ACP Scheme would continue in UPCL and has sent the resolution for the same for approval of the Govt.. As per the earlier resolution of the Board of UPCL, ACP is still applicable to the petitioners and till date the Board has not passed any resolution for repealing the scheme and giving them MACP. On 01.07.2019, the rights of the petitioners to receive 3rd ACP, as per the provisions of ACP Scheme have accrued. Any subsequent resolution passed by the Board cannot take away the accrued right to ACP under the old Rules even if such resolution made applicable with retrospective effect. Ld. Counsel for the petitioner has also cited a case law *Chairman, Railway Board & others vs. C.R. Rangadhamaiah & others Etc. (1997) 6 SCC 623*, in support of his contention that the accrued right cannot be taken away retrospectively.

9. Finance Department of Uttarakhand Govt. vide notification dated 28.12.2016 (Annexure: R-5) issued the Uttarakhand Government Servant Pay Rules, 2016 and the G.O. dated 17.02.2017 about MACP (Annexure: R-8). These Pay Rules were made applicable from 01.01.2016 and Rule 5 thereof, has the provision for selection of option to continue in the old pay scale till a certain time and the option form is enclosed to these Rules as Appendix-2. Vide G.O. dated 17.02.2017, MACP was made applicable w.e.f. 01.01.2017 also stating that the provisions of the earlier ACP Scheme shall continue in matters where ACP is due up to 31.12.2016. The Power Department of the Govt., which is the Administrative Department of UPCL, issued G.O. dated 25.09.2017 to the three Power Corporations including UPCL, approving the 7th Pay Commission pay scales and also stating that in place of earlier ACP Scheme, the MACP Scheme, as per G.O. dated

17.02.2017 of the Finance Department shall be applicable from 01.01.2017 and in continuation of this G.O., the UPCL issued the Office Order dated 28.11.2017 implementing the 7th Pay Commission pay scales from 01.01.2016 and the MACP Scheme w.e.f. 01.01.2017 and also stated that the earlier ACP Scheme shall continue till 31.12.2016. The option form, which was annexed as Appendix-2 to the Uttarakhand Govt. Servant Pay Rules, 2016, was also enclosed with this Office Order of UPCL along with G.Os.

10. The option forms, as submitted by the petitioners, have been returned by the impugned order stating that they are not according to the orders of the Govt./ UPCL.

11. We do not agree with the contention of Ld. Counsel for the petitioner that Uttarakhand Government Servant Pay Rules, 2016 do not provide any reference to ACP. First proviso to Rule 5 of these Rules says that, a Govt. servant can select option of drawing his pay in the present pay structure till the date of his next or any future increment or till the date of vacation of that post or till the date of stoppage of withdrawal of salary in the present pay structure. Second proviso to Rule 5 of these Rules states that if, between 01.01.2016 and the date of notification of these Rules (which is 28.12.2016), a Govt. servant has got higher pay band and grade pay/ pay scale due to promotion, up-gradation of pay band/ grade pay, time scale/ACP, that Govt. servant can select the option of adopting the revised pay matrix from the date of getting higher pay band and grade pay/ pay scale in such manner. The option form in Appendix-2 to these Rules, accordingly, has relevant options. Perusal of the option forms submitted by the petitioners, shows that they have selected options to remain in the old pay band and grade pay till 01.07.2019, the date of 3rd financial up-gradation. This is not correct because as per the second proviso to Rule 5 of the Pay Rules, if their financial up-gradation had fallen due between 01.01.2016 and the date of notification of these Rules, which was 28.12.2016, only then they could have selected the option to remain in the old pay structure till such date of financial up-gradation, or they could have indicated any future date of their annual increment, but could not have linked it to a supposed financial up-gradation, which in their view was due

to them on 01.07.2019. Further, the ACP Scheme was implementable only up to 31.12.2016, as per the G.O. and the order of UPCL, therefore, the petitioners could not presuppose 01.07.2019 to be the date of their 3rd financial up-gradation, which as per the scheme of MACP fell due on 01.07.2024.

12. From the above, it is clear that the petitioners' options were not exercised according to the limits and provisions of the G.O. and UPCL's order and, therefore, Respondent No.5 returned the same by impugned order dated 21.02.2018. We find that there is no violation of Rule 23(1) of the Financial Handbook, Volume II-IV, UP Fundamental Rules, because the option forms had the provision for retention of the old pay structure till the next or any subsequent increment or until the vacation of the post or cessation of drawing pay of that time scale because these options were duly provided in the option form, enclosed as Appendix-2 to the Pay Rules, notified on 28.12.2016 and the petitioners could have exercised any such options but they could not have specified the date 01.07.2019 as the date of their 3rd financial up-gradation in the option form as the same was against the second proviso to these Rules. To make it clear, they could have opted to remain in the old pay structure till the date of 3rd annual increment or even beyond that but could not indicate any date beyond 28.12.2016 as the date of 3rd financial up-gradation. Further, the petitioners could not presuppose this date as the date of 3rd ACP as vide G.O. dated 25.09.2017 and UPCL's order dated 28.11.2017, ACP Scheme was applicable only up to 31.12.2016 to be followed by MACP Scheme from 01.01.2017.

13. It was vehemently argued by Ld. Counsel for the petitioners that UPCL's order dated 28.11.2017 was issued without proper authority and G.O. dated 25.09.2017 was not adopted by the Board of Directors of UPCL before issuing UPCL's order dated 28.11.2017. We asked respondents about the approval of Board of Directors, who informed on 26.03.2021 that the G.O. dated 25.09.2017 was implemented in UPCL by the Managing Director vide UPCL's order dated 28.11.2017, exercising the powers delegated to him vide 36th Board of Directors meeting dated 19.09.2007. It was also argued that this delegation of power to the Managing Director was not as such to authorize him to issue this order on his own without the

approval of the Board of Directors. Ld. Counsel for the petitioners, as stated in his written submissions, reiterated that the Article 50(19) of the Articles of Association of UPCL clearly mentions that it is only the Board that has power to make, vary or repeal the bylaws for the officers and employees of the company and the Govt. has no power to direct the repeal of ACP or implementation of MACP. Further perusal of Articles of Association of UPCL leads us to Article 68 (iii), which reads as follows:

“68(iii) The Govt. of Uttarakhand may from time to time issue directive to the company as to the exercise and performance of its functions in matters involving the security of the State or substantial public interest and to the finances and conduct of business and affairs of the company and in the like manner may vary and annual any such, directive(s) so issued.”

14. Thus, as per the Articles of Association, the Govt. of Uttarakhand has the powers to issue directive to UPCL, which the UPCL is bound to comply with. The Managing Director, UPCL has already complied with the G.O. dated 25.09.2017 by issuing UPCL's order dated 28.11.2017. Accordingly, the 7th Pay Commission pay scales have come into force and are being given to the employees of the UPCL. It cannot be said after the issuance of these Govt./ UPCL orders that the ACP Scheme continues beyond 31.12.2016. The resolution of UPCL for extending the scheme beyond 31.12.2016 has not been approved by the Govt. and is still reported to be pending consideration. We understand that the Govt. will take a suitable view on the same after considering similar demands from other Govt. Corporations and State Govt. employees. It can be understood that such a decision cannot be taken for one Corporation alone as employees of other Corporations and Govt. would immediately demand parity and benefit on the same line.

15. A question arises, as to what is applicable in UPCL after 31.12.2016— ACP or MACP?

MACP was required to be adopted by the Board of Directors of UPCL as per the provisions of the relevant G.O., which has not been done so far and rather a proposal for extending the old ACP Scheme beyond 31.12.2016 has been sent to the Govt. for approval. However, the UPCL's order dated 28.11.2017 spells out that MACP is applicable from 01.01.2017 onwards and the same holds ground till any modification is made to these orders.

The old scheme of ACP is certainly not applicable in the UPCL after 31.12.2016 and does not give any accrued right to the petitioners to claim that their 3rd ACP was due on 01.07.2019. The UPCL had notified vide order dated 28.11.2017 that the 3rd ACP Scheme is only applicable up to 31.12.2016 and, therefore, no right could accrue to the petitioners on a subsequent date, i.e. 01.07.2019 for claiming 3rd ACP from this date.

16. On the basis of the above analysis, we hold that the petitioners' option forms were rightly returned by Respondent No.5 by impugned order as they were not according to the orders of Uttarakhand Government/UPCL. After 31.12.2016, 3rd ACP has no existence and fixation of the salary of the petitioners in 7th Pay Commission pay scales after the same has no meaning.
17. The reliefs prayed for by the petitioners cannot be granted and the claim petition is hereby dismissed. No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: DATED: APRIL 09, 2021
DEHRADUN

VM