

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

Present: Hon'ble Mr. Ram Singh

-----Vice Chairman (J)

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

CLAIM PETITION NO. 93/DB/2020

Smt. Sheela Panwar, aged about 60 years, W/o Late Sri Tikam Singh Panwar, R/o 118/1, Neelkant Vihar, Patharia Peer, Kalidas Road, District Dehradun.

.....Petitioner

Vs.

State of Uttarakhand through its Additional Chief Secretary, Secretariat Administration, Uttarakhand Civil Secretariat, Govt. of Uttarakhand, Dehradun.

.....Respondent

Present: Dr. N.K.Pant, Ld. Counsel for the petitioner.

Sri V.P.Devrani, Ld. A.P.O. for the respondent.

JUDGMENT

DATED: MAY 28, 2021

HON'BLE MR. RAJEEV GUPTA, VICE CHAIRMAN (A)

1. This claim petition was initially filed by Sri Tikam Singh Panwar in October, 2020, seeking the following reliefs:

“(i) To quash the impugned Office Order dated 29.07.2020 issued by the Respondent.

(ii) To issue directions to the respondent to grant the benefit provided in Office Order dated 16th April, 2015, by sanctioning the Upgraded pay scale of Rs. 10,000/- in the pay scale of Rs. 37400-67000 on the Addl. Secretary from 01st October 2016, along with arrear as has been granted to Arjun Singh, Additional Secretary (Retd.).

(iii) To issue the direction directing the respondent to revise, refix and release the pensioner benefits to the petitioner, by fixing the pension in the upgraded pay scale of Rs. 37400-67000 with grade of Rs. 10,000/- of the post of Additional Secretary

w.e.f. 01.10.2016 with interest at the rate of 9% per annum along with arrears.

(iv) To award the cost of the petition or to pass such order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case."

2. During pendency of the petition, Sri Tikam Singh Panwar (petitioner) passed away and the name of Smt. Sheela Panwar W/o Sri Tikam Singh Panwar, has been substituted as claimant/petitioner in the claim petition.

3. Learned A.P.O. has filed Counter Affidavit on behalf of the respondent/State and subsequently R.A. of the petitioner has also been filed.

4. The facts of the case are as follows:

Vide O.M. No.820 dated 16.04.2015, the facility of grade pay of Rs. 10,000/- was provided against two posts of Additional Secretaries in the Secretariat Cadre, having total strength of 09 posts. To get this facility, the Additional Secretaries of the Secretariat Cadre, were required to have rendered 09 years of service in such capacity or completed 25 years of service as Gazetted Officer.

The above G.O. was acted upon when Sri Kishan Nath and Sri R.C. Lohani were granted the benefits after holding a Screening/DPC committee dated 27.04.2015. Sri Kishan Nath retired on 30.09.2016 whereas, Sri R.C.Lohani retired on 31.08.2016 hence, w.e.f. 01.10.2016, both the upgraded posts of grade pay of Rs. 10,000/- fell vacant and the right had accrued to other two persons against two vacant posts w.e.f. 01.10.2016. Sri Arjun Singh who was next in the seniority of the Additional Secretaries, filed Writ Petition before the Hon'ble High Court when his case was not considered for granting the benefit of O.M. dated 16.04.2015. In two rounds of litigation, a direction was issued by the Hon'ble High Court to the Government to grant the benefit of such G.O. dated 16.04.2015. Ultimately, Sri Arjun Singh was granted such benefit of upgraded pay Rs. 10,000/-w.e.f. 01.09.2016, in compliance of the judgment of the Hon'ble High Court dated 08.08.2018. However, it was

granted subject to the decision taken in the SLP to be filed before the Hon'ble Apex Court. The SLP of the government was also dismissed. In this way, against one post out of two, Sri Arjun Singh was granted arrears of Grade Pay of Rs. 10,000/- w.e.f. 01.09.2016 and interest till the date of actual payment and he was allowed this benefit till the date of his retirement in the month of April 2019. The State Government on the date of grant of the benefit of higher pay to Sri Arjun Singh on 05.10.2018, also took a decision to cancel the provisions of the O.M. dated 16.04.2015 for future. The said G.Os. read as under:

“उत्तराखण्ड शासन
सचिवालय प्रशासन (अधि0) अनुभाग-1
संख्या: 1552/XXXI(1)/2018-विविध-12/2014
देहरादून: दिनांक 05 अक्टूबर, 2018

कार्यालय ज्ञाप

सचिवालय प्रशासन (अधि0) अनुभाग-1 के कार्यालय ज्ञाप संख्या: 820/विविध-12/XXXI(1)/2014, दिनांक 16-04-2015 द्वारा सचिवालय सेवा संवर्ग के अन्तर्गत अपर सचिव के स्वीकृत/सृजित कुल 09 पदों में से ही 02 पदों को अपर सचिव, वेतनमान 37400-67000, ग्रेड वेतन रू0 10000/- व्यक्तिगत वेतन के रूप में उच्चिकृत किये जाने का प्राविधान किया गया है। शासन द्वारा सम्यक् विचारोपरान्त कार्यालय ज्ञाप संख्या 820/विविध-12/XXXI(1)/2014, दिनांक 16-04-2015 के उक्त प्राविधान को भविष्य हेतु समाप्त किये जाने का निर्णय लिया गया है।

हरबंस सिंह चुघ
सचिव”

“उत्तराखण्ड शासन
सचिवालय प्रशासन (अधि0) अनुभाग-1
संख्या: 1554/XXXI(1)/2018-विविध-12/2014
देहरादून: दिनांक 05 अक्टूबर, 2018

कार्यालय ज्ञाप

सचिवालय प्रशासन (अधि0) अनुभाग-1 के कार्यालय ज्ञाप संख्या: 820/विविध-12/XXXI(1)/2014, दिनांक 16-04-2015 द्वारा सचिवालय सेवा संवर्ग के अन्तर्गत अपर सचिव के स्वीकृत/सृजित कुल 09 पदों में से ही 02 पदों को अपर सचिव, वेतनमान 37400-67000, ग्रेड वेतन रू0 10000/- व्यक्तिगत वेतन के रूप में उच्चिकृत किये जाने का प्राविधान किया गया है। शासन द्वारा सम्यक् विचारोपरान्त उक्त प्राविधान को भविष्य हेतु समाप्त किये जाने का निर्णय लिया गया है।

2- रिट संख्या: 168(एस0/बी0)/2018 श्री अर्जुन सिंह बनाम उत्तराखण्ड राज्य में मा0 उच्च न्यायालय, नैनीताल द्वारा पारित आदेश दिनांक 08-08-2018 के विरुद्ध शासन

द्वारा मा0 उच्चतम् न्यायालय में विशेष अनुज्ञा याचिका दायर किये जाने का निर्णय लिया गया है।

3- इस सम्बन्ध में मा0 उच्च न्यायालय, नैनीताल के पारित आदेश दिनांक 08-08-2018 का क्रियान्वयन किये जाने हेतु लिये गये निर्णय के क्रम में श्री अर्जुन सिंह अपर सचिव को दिनांक 01-09-2016 से वेतनमान रू0 37400-67000, ग्रेड वेतन रू0 10000/- व्यक्तिगत वेतन का लाभ अनुमन्य किया जाता है। श्री अर्जुन सिंह, अपर सचिव को यह लाभ मा0 उच्चतम् न्यायालय में दायर की जाने वाली विशेष अनुज्ञा याचिका के निर्णय के अधीन होगा।

हरबंस सिंह चुघ
सचिव”

The State Government granted the above benefit of higher pay to Sri Arjun Singh on 05.10.2018 and on the same date also issued another O.M. No. 1552 vide which, the provisions of O.M. dated 16.04.2015 were decided to be put to an end for future.

5. Two Claim Petitions No. 106/DB/2019 and 107/DB/2019 were filed before this Tribunal by Sri Tikam Singh Panwar and Sri Govind Ballabh Oli respectively, contending that their rights had matured to get enhanced pay scale before 05.10.2018 and because of inaction on the part of the Government, they cannot be denied such benefit. These two claim petitions were decided by this Tribunal *vide* Judgment and Order dated 05.03.2020. The relevant part of this judgment and order is reproduced as below:-

“14.....It is contended by the petitioners that against two posts of higher grade falling vacant w.e.f. 01.10.2016, the persons next in the seniority, having merit and experience, were having right to be considered to get this scale. On this analogy, Sri Arjun Singh, then senior most in the cadre, was allowed the benefit after intervention of the court whereas, for remaining other post, no decision was taken. This one post was lying vacant since 01.10.2016 and both the petitioners have contended that they were having the qualifications to be considered for such higher grade of Rs. 10,000/- as they have completed 09 years of service on the post of Additional Secretary and were having good service record. It is contended that the next senior after Sri Arjun Singh was Sri Tikam Singh Panwar, thereafter, Sri G.B. Oli, were also having the required qualification to be considered for the post before setting aside the concerned G.O. dated 16.04.2015, on 05.10.2018.

15. *Learned counsel for the petitioners also contended that, rights of both the petitioners had accrued and matured, to get the benefit of enhanced pay scale and simply for the reasons of, inaction on the part of the government, they cannot be denied of such benefit. The inaction of the respondents is arbitrary, discriminatory and illogical. Once the right had accrued and matured against the vacant posts before setting aside the G.O. dated 16.04.2015 in 2018, the petitioners were having every right to be considered and to get the benefit of such G.O.*

16. *We agree with this argument that all the eligible persons having required qualifications and merit, had a right to be considered to get the benefit against one post lying vacant since 01.10.2016. But we do not agree with the argument of the petitioners that all the eligible persons, who acquired qualification to be considered for that post, will get the benefit because of the reasons that when there is only one post vacant, then, right will accrue only against that one post to anyone person, whosoever may be in the line of seniority and merit, and there is a requirement of action on the part of the government to consider the service record of all the qualified persons, to grant the benefit of upgraded pay scale against one post of the upgraded pay of Rs. 10,000/-.*

17. *There is difference between 'having eligibility for getting higher pay' and 'having his right matured' against the post. Several persons may be qualified to get a benefit, but the right will mature only to such number of persons against number of vacant posts, and only those persons in the order of seniority and merit, will be entitled to get such benefits.*

18. *Hence, the court is of the view that even if the provision of G.O. dated 16.04.2015 was cancelled vide order dated 05.10.2018 (Annexure: 1) for future, but against one post lying vacant since 01.10.2016, the petitioners as well as other qualified persons having required qualification, were and are having right to be considered for getting such benefit, with the conditions that only one person will get this benefit because the post against which the benefit is allowed was only one as the other post was occupied by Sri Arjun Singh, who continued on the same and retired after enforcement of the G.O. dated 05.10.2018. Although, the claim of the persons against both the posts, will not accrue after 05.10.2018, but against one post lying vacant since 01.10.2016, all eligible persons whose right had matured, should be considered by the government whether they have approached the Hon'ble High Court or not. It is the requirement of law that only one person will get this benefit against one post. Who will be that person, it has to be considered and decided by the Government after considering their claim and records.*

19. *Learned A.P.O. has argued that now, there is no such post in the cadre and the representations were made by the petitioners for considering such benefit, after issuance of the G.O. dated 05.10.2018 hence, their claim was rightly rejected. We do not*

agree with this argument because the petitioners' right was accrued & matured on 01.10.2016 against those posts, and against one post of grade pay of Rs. 10,000/-, only one person is entitled. For that purpose, Government has to consider the record of the eligible persons and thereafter, such benefit will be granted to one person.

20. The argument of the petitioners that both the petitioners should be allowed such benefit, cannot be accepted because of the reasons that only one post was vacant and anyone of them will get this benefit, who will be that person, it has to be decided by the respondents through appropriate Committee/DPC at their level. Respondents cannot discriminate Sri Kishan Nath and Sri R.C. Lohani and the petitioners in case of implementation of the G.O. dated 16.04.2015. However, it is very much clear that no right will accrue to any person, after issuance of the G.O. dated 05.10.2018, if the posts fell vacant after this period. The prayer to quash G.O. No. 1552 dated 05.10.2018, cannot be accepted as the same was the prerogative of the Government and the Government was within their right to discontinue the benefit for future.

21. In such circumstances, we are of the view that there is a need for such direction to the respondents to consider the claim of the petitioners against one post of upgraded grade pay of Rs. 10,000/- to anyone of them, after considering their service records. Both the petitions need to be disposed of accordingly.

ORDER

The claim petitions are partly allowed and impugned rejection orders dated 06.05.2019 are set aside.

Both the claim petitions are disposed of, with the direction to the respondents to consider the claim of the petitioners, as well as other qualified persons, against one post of Additional Secretary for granting of the upgraded grade pay of Rs. 10,000/- after considering their service records through an appropriate Committee/DPC and to grant such benefit to any one of the claimant, w.e.f. 01.10.2016, within a period of four months from the date of this order.

No order as to costs.

Let copy of this order be placed in the file of Claim Petition No. 107/DB/2019, Govind Ballabh Oli vs. State & others."

6. Pursuant to the above judgment and order of this Tribunal, the respondent/State conducted a Departmental Promotion Committee on 29.07.2020 for selection on one post of Additional Secretary with Grade Pay of Rs. 10,000/- (Personal Pay), which is at Annexure No. A1 of the Claim Petition. The last two paras of the same, are reproduced as below:-

“10. राज्य लोक सेवा अधिकरण के उक्त आदेश दिनांक 05.03.2020 के विरुद्ध मा0 उच्च न्यायालय में प्रतिवाद किये जाने अथवा आदेश का अनुपालन किये जाने के सम्बन्ध में न्याय विभाग का परामर्श प्राप्त किया गया है। न्याय विभाग द्वारा निम्नवत् परामर्श दिया गया है:-

“यह उल्लेखनीय है कि उक्त व्यवस्था समाप्त किये जाने की तिथि से पूर्व से शासनादेश दिनांक 16.04.2015 के अर्न्तगत 01 पद रिक्त चला आ रहा है। अतः उस 01 रिक्त पद पर यथोचित समिति/डी0पी0सी0 के द्वारा पात्र को ग्रेड पे रू0 10,000/- दिया जाना उचित है। यदि किसी कार्मिक का अधिकार उक्त शासनादेश दिनांकित 05.10.2018 के जारी होने के पूर्व उत्पन्न हुआ है तो ऐसे कार्मिकों में से यथोचित समिति/डी0पी0सी0 द्वारा रिक्त पद के सापेक्ष 10,000/- ग्रेड पे0 दिये जाने का आदेश उचित प्रतीत होता है।”

11- उक्त समस्त तथ्यों के अवलोकनोपरान्त एवं न्याय विभाग द्वारा दिये गये परामर्श के आलोक में समिति, निम्नवत् संस्तुति करती है:-

(क) पात्रता सूची में उल्लिखित अपर सचिवों में से श्री टीकम सिंह पंवार, अपर सचिव सम्प्रति से0नि0 को दिनांक 01 अक्टूबर, 2016 से पद समाप्ति की तिथि अर्थात् 05 अक्टूबर, 2018 तक की अवधि हेतु अपर सचिव वेतनमान रू0 37400-67000 ग्रेड वेतन रू0 10,000/- वैयक्तिक वेतन के रूप में स्वीकृत किये जाने की संस्तुति।

(ख) चूंकि मा0 मंत्रिमण्डल द्वारा लिये गये निर्णय के अनुपालन में कार्यालय ज्ञाप सं0 1552 दिनांक 05.10.2018 द्वारा कार्यालय ज्ञाप दिनांक 16.04.2015 में उल्लिखित प्राविधानों को भविष्य हेतु समाप्त हो जाने के दृष्टिगत सचिवालय सेवा संवर्ग के अन्य किसी भी कार्मिक को उक्त लाभ अनुमन्य न किये जाने की संस्तुति।

ह0/-
(अरुणेन्द्र सिंह चौहान)
अपर सचिव

ह0/-
(भूपाल सिंह मनराल)
सचिव (प्रभारी)

ह0/-
(राधा रतूड़ी)
अपर मुख्य सचिव

ह0/-
(उत्पल कुमार सिंह)
मुख्य सचिव”

7. The petitioner was aggrieved against this decision of the Committee, because the other Additional Secretaries who were granted the benefit of upgraded grade pay of Rs.10,000/- in terms of the O.M. dated 16.04.2015 continued to get upgraded pay of Rs. 10,000/- till their retirement and their pensions have also been fixed on that basis, whereas the Grade Pay of Rs.10,000/- has been sanctioned to the claim petitioner upto 05.10.2018 only and after which, his Grade Pay has again been brought down to Rs. 8900/- and pension has also been fixed on the basis of this Grade Pay only. The petitioner retired on 31.12.2018 while

Sri Arjun Singh retired on 30.04.2019. The similarly situated employees have been treated differently without any justifiable and plausible reason. Hence this petition.

8. In the Counter Affidavit, it has been pointed out that Annexure-A1 to the claim petition is not a Government Order dated 29.07.2020 but are the minutes of meeting and the relevant Office Order is dated 25.08.2020 granting the benefit of Grade Pay of Rs. 10,000/- as personal pay to the petitioner from 01.10.2016 to 05.10.2018. This Office Order has been annexed as Annexure CA-1 to the Counter Affidavit. Paras 17 and 18 of the C.A. state as under:

“17. That in reply to the contents of paragraph No. 4.36 of the said petition it is reiterated that the Hon’ble Tribunal in its order dated 5.03.2020 passed in Claim Petition No. 106/DB/2019 and 107/DB/2019 categorically held that any one person will get the benefit of upgraded grade pay of Rs. 10,000/- as there was only one vacant post. The Hon’ble Tribunal further held that it is very clear that no right will accrue to any person after issuance of G.O. dated 05.10.2018. After giving the aforesaid findings in the operative portion the Hon’ble Tribunal directed the respondents therein to consider the claim of the petitioners as well as other qualified persons against one post of Additional Secretary for granting the upgraded grade pay of Rs. 10,000/- after considering their service records through an appropriate committee/DPC and once the said consideration was done, such benefit was to be granted to the claimant w.e.f. 01.10.2016. The detailed reading of the said order makes it clear that firstly the Hon’ble Tribunal held that benefit was to be given to only one claimant and the said claimant was to be determined by the appropriate committee/DPC, secondly the benefit which was to be given was the upgraded grade pay of Rs. 10,000/- that too from 01.10.2016 till 05.10.2018 and lastly no order was passed for granting any interest on the said benefit. Following the aforesaid order in its true letter and spirit based on the approval of the committee and the Hon’ble Chief Minister, the claimant who was entitled to the benefit was decided to be the petitioner, the benefit of the upgraded grade pay of Rs. 10,000/- was granted to the petitioner from 01.10.2016 till 05.10.2018 as per the judgment and order of the Hon’ble Tribunal and lastly since there was no order regarding the grant of the interest therefore the order dated 25.08.2020 did not find any mention about grant of any interest.

18. *That the claim petition is completely baseless as same challenges the MOM dated 29.07.2020 which is not legally tenable, secondly the same deserves to be dismissed on the ground of Res-judicata as claim petition 106/DB/2019 based on the same facts has already been decided and thirdly since an appropriate order has been passed in compliance of the judgment and order dated 05.03.2020 same has been filed therefore there is no cause of action for filing the instant claim petition. Hence for the reasons stated above the petitioner is not entitled for the grant of any relief and the petition deserves to be dismissed."*

9. In the R.A., it has been stated that *vide* order dated 25.08.2020, the grant of the benefit of Grade Pay of Rs. 10,000/- to the petitioner has been restricted upto 05.10.2018 only when the Tribunal had passed order for similar benefit as has been granted to Sri Arjun Singh. In the matter of Sri Arjun Singh, the Hon'ble High Court had also observed that similarly situated persons cannot be treated differently. The benefit of Grade Pay of Rs. 10,000/- has been given to Sri Arjun Singh from the date of his entitlement till his retirement while it has been granted only upto 05.10.2018 to the petitioner. The main thrust of the R.A. is that petitioner should have been considered and granted benefit similar to Sri Arjun Singh.

10. We have heard the arguments of learned Counsel of both sides and perused the record.

11. We find that the respondent/State has wrongly interpreted this Tribunal's Judgment and Order dated 05.03.2020 to mean that the benefit of upgraded grade pay of Rs. 10,000/- was to be given to one person from 01.10.2016 till 05.10.2018. The same has not been stated anywhere in this Tribunal's Judgment and Order. The opinion of the State's law department as mentioned in para 10 of Annexure A1 to the claim petition and reproduced in this judgment above, also does not state the same. The date of 05.10.2018 is relevant only to the extent that right of the employee should have been matured before this date and it is not to limit the grant of Grade Pay of Rs. 10,000/- upto this date only. Sri Arjun Singh was given Grade Pay of Rs. 10,000/- *vide* O.M. No. 1554

dated 05.10.2018 w.e.f. 01.09.2016, but the same has not been limited upto 05.10.2018. Sri Arjun Singh has retired after Sri Tikam Singh Panwar but he has continued to get Grade Pay of Rs.10,000/- till his retirement and subsequently his pension has also been fixed on the basis of this Grade Pay. The earlier recipients of the Grade Pay Rs. 10,000/-, Sri Kishan Nath and Sri R.C. Lohani are also getting pension on the basis of the Grade Pay of Rs. 10,000/- only. There was no reason to discriminate the case of Sri Tikam Singh Panwar from the case of Sri Arjun Singh. They had become eligible to get this Grade Pay on 01.10.2016 and 01.09.2016 respectively and orders in both their cases have been passed after the decision to discontinue the benefits of Grade Pay of Rs. 10,000/- for future, has been taken. The O.M. No. 1554 dated 05.10.2018 issued in the case of Sri Arjun Singh, mentions in the first paragraph that the provisions of Grade Pay of Rs. 10,000/- as personal pay to two posts of Additional Secretaries has been decided to be put to an end for future. This very O.M. which grants Grade Pay of Rs. 10,000/- to Sri Arjun Singh w.e.f. 01.09.2016 does not limit grant of this Grade Pay upto 05.10.2018 only. We, therefore, hold that under some misconception, the respondent/State has limited this benefit upto 05.10.2018 only in the case of Sri Tikam Singh Panwar. The same is unjustified and against the principles of natural justice, as two similarly placed employees cannot be treated differently.

12. We, therefore, hold that Sri Tikam Singh Panwar was entitled to receive the Grade Pay of Rs. 10,000/- as personal pay till the date of his retirement and subsequently, his pension/family pension should have been worked out on the basis of his Grade Pay of Rs. 10,000/-. The Tribunal in its Judgment and Order dated 05.03.2020 has not granted any interest on the delayed payment of this Grade Pay. However, it was unjustified to stop the Grade Pay of Rs. 10,000/- to Sri Tikam Singh Panwar after 05.10.2018 and on the arrears of the same, we feel that the interest @9% per annum, which was provided in the case of Sri Arjun

Singh should also be provided in the case of Sri Tikam Singh Panwar. Therefore, the petition is decided with the following order.

ORDER

Respondent/State is directed to extend the benefit of Grade Pay of Rs. 10,000/- to Sri Tikam Singh Panwar beyond 05.10.2018 also till the date of his retirement and his pension/family pension be also worked out on the basis of this Grade Pay of Rs. 10,000/-. The arrears of salary and pension/family pension be worked out and be paid along with interest @ 9% per annum for the delay after 05.10.2018 as discussed above. This payment may be made to the petitioner within three months from the date of this order.

Petitioner be also paid Rupees Three Thousand as special cost towards cost of litigation by the respondent.

(RAM SINGH)
VICE CHAIRMAN (J)

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

DATE: MAY 28, 2021
DEHRADUN
KNP