

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

Present: Sri V.K. Maheshwari

----- Vice Chairman (J)

&

Sri D.K. Kotia

----- Vice Chairman (A)

CLAIM PETITION NO. 34/DB/2013

Avtar Singh Chaudhri, S/o Shri Kundan Singh Chaudhari,
Stenographer (Retd.), R/o Village Kafloidi Post Maalai, Nauti
District Chamoli

.....Petitioner

VERSUS

1. State of Uttarakhand through Secretary, Animal Husbandry, Secretariat, Dehradun,
2. Director, Animal Husbandry Department, Uttarakhand, Mothorawala, Dehradun,
3. Additional Director, Animal Husbandry Department, Uttarakhand, Gopeshwar, Chamoli.

.....Respondents

Present: Sri Hem Pujari, Counsel
for the petitioner

Sri Umesh Dhaundiya, A.P.O.
for the respondents

JUDGMENT**DATE: JANUARY 14, 2015****DELIVERED BY SRI D.K.KOTIA, VICE CHAIRMAN (A)**

1. The petitioner has challenged the following two orders:

- (i) Order dated 25.05.2012 (Annexure: A-1) by which two promotional pay scales of the petitioner have been reduced/re-fixed and the third promotion is denied.
- (ii) Order dated 10.07.2012(Annexure: A-2) for recovery of Rs. 1,38,875/- from the petitioner as a result of re-fixation of two promotional pay scales.

2. The facts in brief are that the petitioner was initially appointed as Stenographer in Animal Husbandry Department on 21.07.1982 in the pay scale of Rs. 750-1100 (revised to Rs. 1400-2600 on 01.01.1986 and Rs. 5000-8000 on 01.01.1996). After completion of 14 years of satisfactory service, the petitioner was granted first promotional pay scale of Rs. 1640-2900 (Rs. 5500-9000 on 01.01.1996) on 07.03.1997 with effect from 21.07.1996 (Annexure : A-5).

3. Vide Government Order (G.O.) dated 07.11.1997 (Annexure: A-4), the pay scale of Rs.1640-2900 was

revised to Rs.2000-3200 (Rs.6, 500-10,500 on 01.01.1996). Thereafter, the petitioner was again granted the first promotional pay scale of Rs.6, 500-10,500 on 28.03.2011 (Annexure: A-9) with effect from 21.07.1996.

4. On completion of 24 years of satisfactory service, the petitioner was granted second promotional pay scale of Rs. 7450-11,500 on 27.01.2009 with effect from 21.07.2006.

5. The Government of Uttarakhand issued a Government Order regarding Assured Career Progression (ACP) on 08.03.2011 (Annexure: A-11) and provided three Assured career progression on continuous and satisfactory completion of 10, 18 and 26 years of service. On completion of 26 years of service, the petitioner claimed the third assured career progression (grade pay of Rs.5400 in the pay band) which was not allowed. The respondents also found first two promotional pay scales granted to the petitioner defective and by order dated 25.05.2012, the first two promotional pay scales were reduced and re-fixed and the third Career Progression was denied. Order dated 10.07.2012 for recovery of excess payment was also issued.

6. The petitioner retired on 31.05.2012 on attaining the age of superannuation. He had first challenged the orders dated 25.05.2012 and 10.07.2012 before the Hon'ble High

Court but the writ petition was dismissed by the Hon'ble High Court on the ground of availability of alternative remedy before the Tribunal. Hence, this petition.

7. The petition has been opposed on behalf of respondents and it has been stated in the counter affidavit that the petitioner had been granted first promotional pay scale of Rs. 1640-2900(Rs. 5500-9000 on 01.01.1996) on 07.03.1997 w.e.f. 21.07.1996. He was erroneously granted first promotional pay scale of Rs. 6,500-10,500 again on 28.03.2001 w.e.f. 21.07.1996. As a consequence, on completion of 24 years of service, the petitioner was accorded erroneously the second promotional pay scale (Rs.7450-11,500) also on 27.01.2009. Therefore, vide order dated 25.05.2012, the orders dated 28.03.2011 and 27.01.2009 were cancelled and the petitioner was accorded first promotional pay scale of Rs. 5500-9000 w.e.f. 21.07.1996 and the second promotional pay scale of Rs. 6500-10,500 w.e.f. 21.07.2006. The order dated 10.07.2012 was also issued to recover excess payment made to the petitioner on the basis of erroneous promotional pay scales.

8. It has also been stated on behalf of the respondents in the counter affidavit that the petitioner is not entitled for the third assured career progression as the department of Animal Husbandry had devised its own system of promotion for the cadre of Stenographer by accepting the

staffing pattern according to the G.O. of the Finance Department dated 08.03.2011 (Annexure: CA-8), and a G.O. dated 19.07.2011 (Annexure: CA-9) has been issued by the Animal Husbandry Department in this regard. Thus, as per condition laid down in para 4 on page 4 of the G.O. dated 08.03.2011 regarding ACP (Annexure: A-11), the petitioner cannot get the benefit of third career progression under the scheme of ACP.

9. A rejoinder affidavit has been filed on behalf of the petitioner and mainly the facts pleaded in the main petition have been reiterated. It has additionally been stated in the rejoinder that the petitioner had completed his 26 years of service on 21.07.2008 and the G.O. of the ACP scheme was issued on 08.03.2011. The promotion scheme based on staffing pattern for stenographer in Animal Husbandry Department came into existence on 19.07.2011 and therefore, the petitioner is entitled to get third career progression as per the Scheme of ACP dated 08.03.2011.

10. A supplementary counter affidavit has also been filed on behalf of the respondents reiterating the facts already stated in the counter affidavit.

11. We have heard both the parties at length and perused the available record carefully.

12. There are two questions involved in this case:
- (i) Whether rectification (and thereby reduction) in first two promotional pay scales is proper or not.
 - (ii) Whether the petitioner is entitled for the third career progression after completion of 26 years of service according to the ACP Scheme of 08.03.2011 or not.

13. Firstly, we take up the question of reduction/rectification of first two promotional pay scales. Learned counsel for the petitioner argued that as per G.O. dated 07.11.1997, the pay scales of Stenographers were revised. The pay scale of Rs.1640-2900(Rs.5,500-9,000 on 01.01.1996) was increased to Rs. 2,000-3,200(Rs. 6500-10500 on 01.01.1996) and therefore, the order dated 28.03.2001 which granted first promotional pay scale of Rs.6500-10500 was in order. Learned A.P.O. has contended that the petitioner had already been granted the first promotional pay scale of Rs. 5,500-9,000 on 07.03.1997 and he was again granted the first promotional pay scale erroneously on 28.03.2001. The perusal of the order dated 28.03.2011 shows that it does not mention anything about the modification in the earlier order of 07.03.1997. It is also clear from the record that the order of 07.03.1997 has also not been withdrawn or recalled.

14. The G.O. dated 07.11.1997 though revises the pay scale yet it is not unconditional. The G.O. mentions that

there will be only one post in the pay scale of Rs. 2000-3200 who remains attached to the Director. The petitioner has not been able to show that his pay scale was revised as per the G.O. dated 07.11.1997. He has also not been able to show that he was attached to the Director. The G.O. also makes it clear that the higher grades would be provided according to the seniority. It has also not been shown by the petitioner that he was the senior most in order to get the pay scale of Rs.2000-3200 prescribed for one post of the Stenographer. On the insistence of the Tribunal, the counsel for the petitioner submitted the Service Book of the petitioner. The perusal of the Service Book reveals that the petitioner was not sanctioned the revised pay scale of Rs.2000-3200 according to the G.O. of 07.11.1997. The petitioner was also asked by the Tribunal to file the seniority list of the Stenographers. A seniority list dated 31.01.1998 of Stenographers serving in the "plain areas" of Uttar Pradesh was filed in which name of the petitioner is not there. The petitioner could not produce the seniority list of Stenographers serving in "hill areas" of Uttar Pradesh. In the light of discussion as above, we are of the view that the petitioner was granted first promotional pay scale of Rs. 6,500-10,500 again on 28.03.2001 without any basis which is not legally sustainable and therefore, it would not be fair and just to interfere in the orders dated 25.05.2012 and 10.07.2012 in so far as the orders relate to the rectification/re-fixation of first two promotional scales and to recover the excess amount paid to the petitioner.

15. Now, we take up the second question regarding the entitlement of the petitioner for the third assured career progression according to the G.O. of the ACP Scheme dated 08.03.2011. In order to appreciate the arguments of the learned counsel for the petitioner and the learned A.P.O on this issue, it would be appropriate to reproduce para-4 on page 4 of the G.O. of the ACP Scheme dated 08.03.2011 which reads as follows:

“4. यदि किसी संवर्ग/पद के संबंध में समयमान वेतनमान/समयबद्ध आधार पर प्रोन्नति की कोई विशिष्ट व्यवस्था शासनादेशों अथवा सेवा नियमावली के माध्यम से लागू हो तो उस व्यवस्था को भविष्य में बनाये रखने अथवा उसके स्थान पर ए०सी०पी० की उपर्युक्त व्यवस्था लागू करने के संबंध में संवर्ग नियंत्रक प्रशासकीय विभाग द्वारा सक्षम स्तर से निर्णय लिया जाये। किसी भी संवर्ग/ पद हेतु समयमान वेतनमान/समयबद्ध आधार पर प्रोन्नति की कोई विशिष्ट व्यवस्था तथा ए०सी०पी० की व्यवस्था दोनों एक साथ लागू नहीं होगी।”

16. Learned A.P.O. contended that on 08.03.2011, the Finance Department of the State Government issued a G.O. (Annexure: CA-8) by which promotional opportunities were provided to the Stenographers of the State according to the staffing pattern scheme. On the basis of this G.O. of the Finance Department, the Department of Animal Husbandry issued a G.O. dated 19.07.2011 (Annexure: CA-9) and determined the number of posts of Stenographers in various pay scales for promotion purpose.

Therefore, learned A.P.O. argued that since promotion opportunities have been provided to the Stenographers and the department of Animal Husbandry has issued the G.O. on 19.07.2011, the petitioner is not entitled to get the third assured career progression under the G.O. of the ACP Scheme due to condition laid down in para 4 on page 4 of the Scheme.

17. The learned counsel for the petitioner in counter has argued that the petitioner had completed 26 years of service on 21.07.2008 and the G.O. of the ACP Scheme was issued on 08.03.2011. Therefore, the case of the petitioner for third career progression is covered under the Scheme of ACP as the department of Animal Husbandry has issued G.O. only on 19.07.2011 i.e. after the entitlement of the third pay scale to provide promotion opportunities to its Stenographers. We agree with the contention of the petitioner that the said GO dated 19.07.2011 is not applicable to his case.

18. In the light of discussion in paragraphs 15, 16 and 17 above, we are of the view that the respondents have wrongly denied the progression on the basis of para 4 on page 4 of the ACP G.O. as on the date of introduction of the ACP scheme, no system of the promotion of Stenographers existed in the department of Animal Husbandry and the G.O. of the department dated 19.07.2011 is applicable with prospective effect only and

therefore, the petitioner who has completed 26 years of service on 21.07.2008 is entitled to get the third career progression under the G.O. of the ACP Scheme dated 08.03.2011.

19. Under the above circumstances, we reach the conclusion that while rectification/re-fixation in respect of first two promotional pay scales need not be interfered, but the petitioner is entitled for the third assured career progression according to the G.O. of the ACP Scheme dated 08.03.2011.

ORDER

The petition is partly allowed. That part of impugned order dated 25.05.2012 is set aside, which disallows the third assured career progression to the petitioner. The petitioner is entitled to get the third assured career progression according to the G.O. of the ACP Scheme dated 08.03.2011. Respondents are directed to grant this scale to the petitioner within a period of three months from today. No order as to costs.

Sd/-

V.K.MAHESHWARI
VICE CHAIRMAN (J)

Sd/-

D.K.KOTIA
VICE CHAIRMAN (A)

DATE: JANUARY 14, 2015
DEHRADUN

KNP

