

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

(Through Audio Conferencing)

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

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

**CLAIM PETITION NO. 157/DB/2019**

1. Keshav Lal Todariya, s/o Late Sri Atma Ram Todariya, presently Retd. Assistant/ Executive/ Superintending Engineer, Rural Engineering Department, District Dehradun.
2. Darshan Singh Rawat s/o Late Sri Govind Singh, Rural Engineering Department, District Dehradun.
3. Lalit Mohan s/o Sri Dhani Ram, Rural Engineering Department, District Dehradun.
4. Vikram Singh s/o late Sri Ram Ratan Singh, Rural Engineering Department, District Dehradun.
5. Surendra Singh s/o Late Sri Jitar Singh, Rural Engineering Department, District Dehradun.
6. Ram Pal Singh s/o Sri Sultan Singh, Rural Engineering Department, District Dehradun.
7. Rakesh Kumar Sharma s/o Raj Kishore Sharma, Rural Engineering Department, District Dehradun.
8. Vinod Kumar Devrani s/o Chandra Mani Devrani, Rural Engineering Department, District Dehradun.
9. Arbind Mohan Garg s/o Late Sri Anand Mohan, Rural Engineering Department, District Dehradun.
10. Bachi Singh Negi s/o Late Sri Padam Singh, Rural Engineering Department, District Dehradun.
11. Sunil Kumar s/o Late Sri Ramesh Chandra, Rural Engineering Department, District Dehradun.
12. Krishna Pal Singh s/o Late Sri Prahalad Singh, Rural Engineering Department, District Dehradun.
13. Bahadur Ram Arya s/o Sri Khem Ram Rural, Rural Engineering Department, District Dehradun.

14. Narendra Singh Rawat s/o Maan Singh Rawat, Rural Engineering Department, District Dehradun.

15. Vijay Kumar Joshi s/o Late Sri Shiv Dutt Joshi, Rural Engineering Department, District Dehradun.

16. Ramesh Chandra s/o Late Sri Bala Dutt, Rural Engineering Department, District Dehradun.

.....Petitioners.

**VS.**

1. State of Uttarakhand through its Chief Secretary of Uttarakhand.
2. Secretary, Finance Department, Govt. of Uttarakhand Dehradun.
3. Principal Secretary, RWS Department, Govt. of Uttarakhand, Dehradun.
4. Chief Engineer, Rural Works Department, Uttarakhand, Dehradun.

.....Respondents.

Present: Dr. N.K.Pant, Advocate, for the petitioners.

Sri V.P.Devrani, A.P.O., for Respondents.

### **JUDGMENT**

**DATED: OCTOBER 31, 2020**

#### **Justice U.C.Dhyani (Oral)**

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

- (i) To quash the impugned Govt. Order No. 80211 dated 26.12.2017 and rejection order dated 01.11.2019, issued by the Principal Secretary/ Secretary, Rural Engineering Service Department, Government of Uttarakhand, wherein the benefits of revised grade pay of Rs.8700/- have not been granted to the petitioners.
- (ii) Directing Respondent No.3 to issue fresh Govt. Order for giving benefits of upgraded pay Rs.8700/- to the petitioners.
- (iii) Any other relief, to which petitioners are entitled.

#### **PETITIONERS' CASE**

2. Facts, giving rise to the present claim petition are as follows:

The petitioners were appointed as Junior Engineers in the Rural Engineering Service Department (RES) (*now known as Rural Works Department*) in the year 1978-79, by way of direct recruitment. They have retired as Executive Engineer/ Superintending Engineer (Ex.En./S.E.) from the said department. Pay scale of Rs.15600-39100/- grade pay Rs.7600/- is admissible as 3<sup>rd</sup> financial level promotion after 26 years on the post of direct recruitment under Govt. Orders No. 872 dated 08.03.2011, 313 dated 30.10.2012 and 770 dated 06.11.2013 (Copies: Annexures- A 3 to A5). Pay scale of Rs. 37400-67000/- grade pay Rs.8700/- has been sanctioned to the Ex.En./S.E. w.e.f. 01.01.2016 *vide* official gazette no. 526 dated 17.10.2012 of the Govt. of India (Copy: Annexure- A 6). Govt. has accepted the pay scale of Rs. 37400-67000/- grade pay Rs.8700/- for the Ex.En/ S.E., who were drawing pay scale of Rs.15600-39100/- grade pay Rs.7600/- on 17.12.2015 in response to the recommendations of the Pay Commission (Annexure: A 7).

Pay scale of Rs.15600-39100/- grade pay Rs. 7600 of the Ex. En./S.E. has been upgraded to the pay scale of Rs. 37400-67000/- grade pay Rs.8700/- *vide* G.O. dated 31.10.2017 of the Principal Secretary, Finance, Govt. of Uttarakhand (Annexure: A 8). Pay scale of Rs.15600-39100/- grade pay Rs. 7600/- of the departmental Ex. En./S.E. has been upgraded to the pay scale of Rs. 37400-67000/- grade pay Rs.8700/- *vide* G.O. dated 26.12.2017. It has been mentioned in the G.O. that the same will be applicable from the date of issuance (of such G.O.). The said G.O. has created anomaly in the pay scale and pension of the petitioners, as the same was not made applicable to the retired engineers before 31.10.2017. Petitioners have received grade pay Rs.7600/- as promotional time scale on the post of S.E. as 3<sup>rd</sup> financial level promotion.

Second para of G.O. dated 07.04.2011 provides that if the grade pay of a post is upgraded after the admissibility of the financial level promotion, then new grade pay in place of admissible grade pay, as received prior to the upgraded pay, shall be admissible to the concerned holders of the post (Annexure: A 9). Aggrieved with the impugned order dated 26.12.2017, the petitioners filed a combined representation (Annexure: A 10) on

25.02.2019 for granting benefits of the said G.O. to the retired engineers before 31.10.2017. Prior to making the representation dated 25.02.2019 by the petitioners, the Finance Department of the Govt. has issued a letter dated 08.02.2018, for collecting annual expenditure and number of (effected) engineers in the department concerned (Annexure: A11). Concerned department has provided the required information to the Finance Department *vide* letter dated 20.08.2018 (Annexure: A 12).

Finance Department, Government of Uttarakhand, has issued a Govt. Order on 12.09.2017 (Copy: Annexure- A13) to direct that grade pay of Rs.8700/- shall be applicable *w.e.f.* 01.01.2016. Benefits of said G.O. have not been granted to the petitioners. Petitioners filed a combined representation on 10.06.2019 (Annexure: A 14) for granting benefits of G.O. dated 12.09.2017 to the retired engineers before 31.10.2017. Benefit of G.O. dated 26.12.2017 is not being extended to the petitioners and the cut-off date fixed in the G.O. is illegal.

In fixing the cut-off date 26.12.2017, no approval was taken either of the Finance Department or RES Department. For fixing the date of commencement of G.O. dated 31.10.2017 and 26.12.2017, it was necessary to obtain the approval of these two departments as per *Uttar Pradesh Karya Niymawali, 1975*.

Equals cannot be treated unequally. The engineers, who retired before 31.10.2017 and the engineers who retired after 31.10.2017, cannot be treated differently. In Writ Petitions No. 236 of 2013, Ashok Kannaujia vs. State of U.P. and 1440 of 2013, Virendra Kumar Maurya vs. State of U.P., Hon'ble Allahabad High Court (Lucknow Bench) has held that the benefit of pay band (IV) with grade pay of Rs.8700/- shall be given to the engineers *w.e.f.* the date they are found eligible, along with arrears. SLP was filed against the said petitions and was dismissed. Thereafter, Govt. of U.P. issued Office Memorandum on 30.01.2015 for granting the benefits as per the orders of Hon'ble Courts.

As per Section 74 of the U.P. Reorganization Act, 2000, condition of service applicable to the employee immediately before the appointed day,

shall not be varied to his disadvantage, except with the previous approval of the Central Government. The Government should have made the said G.O. applicable *w.e.f.* 01.01.2016, *i.e.*, the date from which the recommendations of 7<sup>th</sup> Pay Commission were accepted.

Petitioners filed the claim petition no. 111/DB/2019 before this Tribunal, who had directed Chief Engineer, RES Department to decide the representation, *vide* order dated 12.09.2019, but the said representation has been dismissed by the said respondent, ignoring vital aspects. In Civil Appeal No. 1123/2015, *State of Rajasthan vs. Mahendra Nath Sharma*, Hon'ble Apex Court has observed that the State cannot take plea of financial burden to deny the legitimate dues of the employees.

Petitioners have, therefore, filed present claim petition for quashing Govt. Order dated 26.12.2017, as also the order passed on the representation of the petitioners and for directing Respondent No.3 to issue a fresh G.O. for giving benefit of upgraded grade pay of Rs. 8700/- to the petitioners.

### **RESPONSE OF THE RESPONDENTS**

3. Counter Affidavit has been filed on behalf of Respondents No. 1 to 4. According to C.A. filed by Sri G.B.Oli, Additional Secretary, Rural Development, Government of Uttarakhand, Assured Career Progression (ACP) scheme was introduced in the year 2011 and as per G.O. dated 08.03.2011, ACP scheme was made applicable from 01.09.2018 to the employees in the pay band of Rs.7500-12000/- with revised grade pay of Rs.4800/- and from 01.01.2016 to the employees in the pay band of Rs.8000-13500/- with revised grade pay of Rs.5400/-. Under ACP scheme, employees are entitled to next higher pay scale as mentioned in the pay matrix table dated 17.10.2008 (Copy of G.O. dated 08.03.2011: Annexure- CA 1).

4. Clarification was issued on 07.04.2011, clarifying the G.O. dated 08.03.2011. Sub- para 2(1) (ka) was introduced in Para 1 (Copy of G.O. dated 07.04.2011: Annexure- CA 2). *Vide* G.O. dated 30.10.2012, ACP was made applicable to all the Govt. employees irrespective of their pay scales and grade pays, *w.e.f.* 01.09.2018 (Copy: Annexure- CA 3). In the year 2013,

G.O. dated 08.03.2011 was amended *vide* G.O. dated 06.11.2013 (Copy: Annexure- CA 4). As per amended G.O. dated 06.11.2013, all substantively appointed Govt. employees with grade pay Rs. 4800/- or less, shall be given the (next higher) promotional pay scale, if promotion avenues are available in the relevant Service Rules and, in case no post of promotion is available in such Rules, then they shall be given next higher pay scale, as is mentioned in the pay matrix table in G.O. dated 17.10.2008.

5. Prior to 26.12.2017, the pay scale of S.E. in the RES Department was Rs.15600-39100/- with grade of Rs.7600/- (unrevised). Initial appointment of the petitioners was on the post of Junior Engineer. All the petitioners completed more than 26 years of service by the year 2009. On completing 26 years of service, petitioners were already granted benefit of 3<sup>rd</sup> ACP w.e.f. 01.09.2008, in view of G.O. dated 08.03.2011. 01.09.2008 is the date from which the ACP scheme was implemented for employees with grade pay Rs.4800 or less.

6. All the petitioners retired from RES in the years 2016 and 2017. Petitioner No. 4 was the last to retire on 30.09.2017. At present, no petitioner is in service.

7. Ministry of Urban Development Central Engineering (Civil) 'Group A' Rules, 2012, were framed by the Government of India for its employees. In 2012 Rules, the pay band of the post of S.E. was fixed as Rs. 37400-67000/- grade pay Rs.8700/-, by the Central Government. State Pay Committee, in its report, recommended the same pay scale for S.Es. working in the State. As a result of such recommendations, anomalies occurred in fixation of pay scale of S.Es., working in the State. The issue was referred to State Pay Redressal Committee for its decision. The said Committee, *vide* report dated 17.12.2015, recommended grant of pay scale of Rs. 37400-67000/- grade pay Rs.8700/-. The recommendations of the committee were forwarded to the Finance Department, who issued G.O. dated 31.10.2017, granting this pay scale and grade pay. The Engineering Departments also issued their G.Os. relying upon the G.O. dated 31.10.2017. Since all the petitioners had retired from service on or before 30.09.2017, therefore, benefit of G.O. increasing the pay scale was not extended to the petitioners, inasmuch

as, they had retired from service on 30.09.2017. In other words, since the pay scales were increased *vide* G.O. dated 26.12.2017 of the Rural Works Department (RES), and the petitioners retired from service before 30.09.2017, therefore, they were not extended the benefits of increased pay scale. (Copy of G.O. dated 26.12.2017: Annexure- CA 8).

8. After G.O. dated 31.10.2017, PWD issued its G.O. on 07.12.2017, granting grade pay of Rs. 8700/- to S.Es. working in PWD for fixing the higher pay band. The matter was referred to Finance Department. Finance Department, *vide* G.O. dated 24.01.2018, clarified that all the J.Es., who have been given benefit under G.O. dated 06.11.2013 on or before 31.12.2016, shall be given the benefits as mentioned in G.O. dated 07.04.2011 prospectively (Copy of G.O. dated 24.01.2018: Annexure- CA 10). Petitioners are not covered by G.O. dated 24.01.2018, because they had already retired before issuance of G.O. dated 26.12.2017, therefore, they are not entitled to the higher grade pay of Rs.8700/-, according to respondent department.

### **REJOINDER**

9. Rejoinder Affidavit has been filed on behalf of the petitioners reiterating the facts contained in the claim petition and making a reference of G.O. dated 12.09.2017 in support of their claim petition.

### **DISCUSSION**

10. Petitioners were appointed, on regular basis, as Junior Engineers in Rural Engineering Service Department in the grade pay of Rs.4600/-in the years 1978 and 1979. When they were promoted as Assistant Engineers, they were given grade pay of Rs. 5400/-. On actual promotion from Assistant Engineer to Executive Engineer, the petitioners were given grade pay of Rs.6600/-. On completion of 26 years of satisfactory service, the petitioners got the grade pay of Rs.7600/- of the promotional post of S.E., when 3<sup>rd</sup> ACP was given to them. All the petitioners reached the age of superannuation in the years 2016 and 2017. Petitioner No. 4 was the last to retire from service on 30.09.2017.

11. Govt. of India introduced amendments in Central Rules on 17.10.2012. Pay scale of S.E. Rs.15600-39100, grade pay Rs.7600/- was upgraded to Rs.37400-67000/- grade pay of Rs. 8700/-.

12. *Vide* G.O. dated 31.10.2017 of the Finance Department and subsequent G.O. dated 26.12.2017 of RWD, pay scale of S.E. was enhanced from grade pay of Rs. 7600/- to Rs. 8700/-. All the petitioners had retired by then.

13. The petitioners' demand is that the cut-off date for increasing the grade pay of S.Es. from Rs. 7600/- to Rs. 8700/- , as per the above G.Os., is wrong and this cut-off date should be the same as the date on which the Govt. of India upgraded the grade pay of S.Es. or at least 1<sup>st</sup> January, 2016 when the 7<sup>th</sup> Pay Commission pay scales were implemented and the level-13 (corresponding Grade Pay Rs. 8700/-) pay matrix was revised. Deciding cut-off date is a policy matter. According to the petitioners, cut-off date, in the instant case, is illegal. We are not persuaded to accept such contention of Ld. Counsel for the petitioners, for the very reason that, deciding a cut-off date is a policy matter and is within the domain of the Executive. The question is, can a Court issue a direction to any authority to say that such cut-off date is not proper. If such directions are given by the Court, the same will amount to entering into the realm of Executive, unless the Court finds that it is violative of Article 14 of the Constitution, or contrary to (some other)Rules of the Govt. One person will come and say, for example, that 01.01.2016, as cut-off date, is not proper. Another will come and say 01.01.2015 is not proper. The third one will say 01.01.2014 is not proper. Person, to whom, that date does not suit, will always say that such a date is illegal. There is no end to it. This Tribunal is, therefore, of the view that no direction regarding a cut-off date can be given to the Executive, unless the same is in violation of any law or contrary to some other Govt. Orders. No interference, therefore, seems to be called for in the cut-off date prescribed in the G.O. dated 26.12.2017.

14. The view taken by this Tribunal is fortified by the following decisions of Hon'ble Supreme Court:



Hon'ble Supreme Court in the decision rendered in Sita Ram Bansal and others vs. State of Punjab and others, (1997) 9 SCC 250, in Para 3, has observed as under:

“3. Shri Dhingra, learned counsel for the petitioners, contended that in view of the judgments of this Court in Union of India v. Deoki Nandan Aggarwal 1992 (S1) SCC 323, R. L. Marwaha v. Union of India ( 1987 (4) SCC 31 and M. C. Dhingra v. Union of India ( 1996 (7) SCC 564, the cut-off date is arbitrary; the pensionary benefits should be extended to the retirees prior to the cut-off date; otherwise, it violates Article 14 of the Constitution. We find no force in the contention. It is true that the pension is not a bounty but a right earned by the persons while in service. But, unfortunately, the pensionary scheme was not in vogue prior to the retirement of the petitioners. The pension scheme came to be introduced for the first time with effect from 1-4-1990 and it was applied to persons serving the municipalities drawn from All India Service or the Provincial Service. Subsequently, that was extended to other employees in the non-provincial service. The later GO also applied to those who retired between 1-4-1990 and 28-7-1994, the date on which the scheme was extended to the non-provincialised employees. In other words, all of them have been treated as a class and no invidious discrimination has been meted out to them. Thus, the date of 1-4-1990 bears rationality, namely, the scheme for the first time was introduced on that date. All those employees who retired prior to that date were treated as a class and those employees either in service or retiring on and after that date have been treated as a separate class and the scheme was extended to it. Thus, we find that there is no illegality in introducing the cut-off date; nor does it violate Article 14. The ratio in the above judgments has no application to the facts in this case.”

*[Emphasis supplied]*

Hon'ble Supreme Court in the decision of Hariram Gupta (dead) through L.R. Kasturi Devi vs. State of U.P., (1998) 6 SCC 328, has observed in Para 9, as under:

“ 9. The only other question that survives for our consideration is whether the ratio in Nakara's case will assist the appellant in getting the relief sought for? In D.S. Nakara and others vs. Union of India (1983) 1 SCC, 305 the question for consideration before this Court was whether on the basis of date of retirement the retirees can be classified into different groups and thereupon make provision granting some benefits to one group denying the others? In the aforesaid case the provisions for pension was applicable to all retirees and, therefore, pensioners form a class as a whole. But when Liberalised Pension Scheme was introduced the said Scheme was made applicable to a group of pensioners and not to all and therefore, it was held by this Court that pensioners form a class as a whole and cannot be micro-classified by an arbitrary, unprincipled and unreasonable eligibility criteria. it is to be noted that the aforesaid judgment was considered by this Court In the subsequent Constitution Bench judgment of Krishna Kumar vs. Union of India (1991) 4 SCC, 207 wherein the decision of Nakara (supra) was explained and it was held that the pension retirees and provident fund retirees do not form one homogeneous class on the other hand the Rules governing the provident fund and its contribution are entirely different from the Rules governing pension and, therefore, it would not be reasonable to argue what is applicable to the pension retirees must also equally be applicable to Provident Fund retirees must also equally be applicable to Provident Fund retirees. It was further held in the aforesaid case that the rights of each individual retiree finally crystallised on his retirement where after no continuing obligation remained in case of those who are governed by Provident Fund Rules whereas in case of Pension retirees the obligation continues till the death of the employee. This Court categorically held that Nakara (supra) cannot be an authority for the decision in Krishna Kumar (supra). In Union of India vs. B.P.N. Menon (1994) 4 SCC 68 a similar question came up for consideration and distinguishing Nakara and following Krishna Kumar and other similar cases the Court held that whenever the Government or an authority, which can be held to be a State within the meaning of Article 12 of the Constitution, frames a scheme for persons who have superannuated from service, due to many constraints, it is not always possible to extend the same benefits to one and all, irrespective of the dates of superannuation. As such any revised scheme in respect of post-retirement benefits, if implemented with a cut-off date, which can be held to be reasonable and rational in the light of Article 14 of the Constitution, need not be held to be invalid. Whenever a revision takes place, a cut-off date becomes imperative because the benefit has to be allowed within the financial resources available with the Government.

When the Army personnel claimed the same pension irrespective of their date of retirement this Court in the Constitution Bench case of the Indian ex-services League vs. Union of India, (1991)2 SCC 104, the Court considered the grievance of ex-servicemen who had laid the claim on the basis of nakara (supra) but ultimately negated the same and followed Krishna Kumar (supra). In All India Reserve Bank Retired Officers Association vs. Union of India, (1192) Suppl 1 SCC 664, when the validity of the introduction of Pensions scheme in lieu of Contributory Provident Fund Scheme was challenged on the ground that Bank employees who retired prior to 1.1.1986 have not been given the benefit of the said scheme it was held by this Court that there is no arbitrariness in the same.”

*[Emphasis supplied]*

D.S. Nakara’s decision (*Supra*) appears to be of no help to the petitioners in the instant case.

In the decision of State of Punjab vs. Ram LubhayaBagga, (1998) 4 SCC 117, Hon’ble Apex Court, in Para 25, has observed as below:

“25. Now we revert to the last submission, whether the new State policy is justified in not reimbursing an employee, his full medical expenses incurred on such treatment, if incurred in any hospital in India not being a Government hospital in Punjab. Question is whether the new policy which is restricted by the financial constraints of the State to the rates in AIIMS would be in violation of Article 21 of the Constitution of India. so far as questioning the validity of governmental policy is concerned in our view it is not normally within the domain of any court, to weigh the pros and cons of the policy or to scrutinize it and test the degree of its beneficial or equitable disposition for the purpose of varying modifying or annulling it, based on however sound and good reasoning, except where it is arbitrary or violative of any constitutional, statutory or any other provision of law. When Government forms its policy, it is based on number of circumstances on facts, law including constraints based on its resources. It is also based on expert opinion. it would be dangerous if court is asked to test the utility, beneficial effect of the policy or its appraisal based on facts set out on affidavits. The Court would dissuade itself from entering into this realm which belongs to the executive. It is within this matrix that it is to be seen whether the new policy violates Article 21 When it restricts reimbursement on account of its financial constraints.”

*[Emphasis supplied]*

In the decision of Union of India vs. Lieut (Mrs) E. Iacats, (1997)7 SCC 334, in Paras 4 and 5, Hon’ble Apex Court has observed as below:

“4.The next question relates to payment of pension. Under Army Instruction No. 14 which was in force at the material time, the respondent, either on the date of her appointment or on the date of her retirement, or at any time during her service, did not have the benefit of pension on retirement. The terms and conditions of service were known to her at the time when she joined the service. At the time of joining service she has signed an agreement to abide by the Rules and Regulations governing Military Nursing Service (Local) from time to time. She has claimed that pensionary benefits which were conferred for the first time to all those who retired on or after 1st October 1983 should be given to her although she retired much prior to that date. Although she has not challenged the cut off date as arbitrary, reliance in this connections is placed by her on the decision in the case of D.S. Nakara and Ors. Vs. Union of India (1983 1 SCC305). This decision has been subsequently explained and distinguished in a number of cases. In the case Dr. (Mrs.) Sushma Sharma etc. etc. v. State of Rajasthan &Ors. (AIR 1985 SC 1367 at 1379) this Court cited with approval the observations of this Court in Union of India &Anr. Etc. V. Parameswaran Match Works Ltd. (AIR 1974 SC 2349) to the effect that the choice of date as a basis of classification cannot always be dubbed as arbitrary unless it is capricious or whimsical. In the case of State of West Bengal &Ors. v. Ratan Behari Dey &Ors. (1993 (4) SCC 62) this court considered the pension scheme introduced by the Calcutta Municipal Corporation from 1.4.1977. It upheld the validity of the cut-off date. Nakara's case (supra) was distinguished on the ground that in Nakara's case by an artificial cut-off date, distinction was sought by the same rules. However, when a pension schema is introduced from a given date. there are two sets of

employees who are governed by two different sets of rules. They cannot be treated as similarly situated. As the cut-off date was retrospective, this Court also examined the reasonableness of this retrospective operation. It found the cut-off date to be reasonable, it being based upon the date of appointment of the pay Commission. In a recent decision in the case of Commander, Head Quarter, Calcutta & Ors. V. Capt. Biplabendra Chanda (1997 (1) SCC 208) new rules reducing the minimum qualifying service for pension came into affect from 1.1.1986. The respondent who had retired prior to this date was not granted pension under the old rules as he did not qualify for pension under those rules. This Court, distinguishing Nakara's case (supra), held that he cannot be retrospectively made eligible under the new rules. Pensioners under the old rules and pensioners under the new rules are not similarly situated. Each set of retiring employees will be governed by their own rules in force when they retire.

5. The respondent, therefore, cannot claim the benefit of a scheme which came into operation from a date subsequent to the date of her retirement. The respondent also did not contend either before the High Court or in the grounds of appeal before us that a cut-off date for grant of pensionary benefits is arbitrary or unreasonable. Even otherwise in view of the fact that a study team was first appointed and pursuant to its report certain benefits were given after considering the report of the study group would show that the cut-off date had a logical nexus with the decision to grant these benefits on the basis of the report of the study team. fresh financial benefits which are conferred also have to be based on proper estimates of financial outlay required. Bearing in mind all relevant factors, if such a benefit is conferred from a given date, such conferment of benefits from a given date cannot be considered as arbitrary or unreasonable.”

Hon'ble Supreme Court in the decision of Union of India and others vs. M.V. Valliappan and others, (1999) 6 SCC 259, has observed, in Para 12, as below:

“Next ground is with regard to violation of Article 14. The amendment is brought with effect from 1st April, 1980 and is to apply in relation to assessment years 1980-81 and thereafter. It is true that two distinct classes are created one of families having partial partition which has taken place prior to the cut off date and other of partial partition taking place after the cut off date. Benefit which is conferred upon those assesseees who have partially partitioned their property prior to the cut off date is not withdrawn and others who partitioned their property after the cut off date would not get the same, but that would hardly be a ground for holding it as violative of Article 14. It is settled law that differentiation is not always discriminatory. If there is a rational nexus on the basis of which differentiation has been made with the object sought to be achieved by particular provision, then such differentiation is not discriminatory and does not violate the principles of Article 14 of the Constitution. This principle is too well- settled now to be reiterated by reference to cases. Further, whether the same result or better result could have been achieved and better basis of differentiation could have been evolved is within the domain of Legislature and must be left to its wisdom. In the present case, there is intelligible basis for differentiation and the classification is having rational nexus of achieving the object of preventing the creation of further multiple Hindu undivided families for reduction of tax liabilities. Further, for the validity of the Section, it is not necessary for the legislature to withdraw the benefit which is already conferred.”

*[Emphasis supplied]*

15. In the case of *State of Rajasthan and others vs. Mahendra Nath Sharma, Civil Appeal No. 1123/2005*, some employees got the benefit of revision of pay scale with effect from 01.01.1986 vide notification dated 03.06.1988. Hon'ble Supreme Court observed in its judgment dated 01.07.2005 that the State cannot take a plea of financial burden to deny the legitimate dues of the employees. In Writ Petitions No. 236 of 2013, *Ashok Kannaujia vs. State of U.P.* and 1440 of 2013, *Virendra Kumar Maurya vs. State of U.P.*, Irrigation department issued orders for recovery of excess

amount paid to the petitioners (serving Engineers of U.P.), which recovery was set aside by Hon'ble Allahabad High Court. SLPs filed by the State of U.P. were dismissed by Hon'ble Supreme Court. State of Uttarakhand was not a party in the aforesaid writ petitions (*there was no occasion for the same*). Moreover, the reliefs to the petitioners were granted by Hon'ble Allahabad High Court precisely on the basis of a G.O. which was issued by the Govt. of U.P. (*after the appointed day*). Here, Govt. of Uttarakhand has not issued such G.O. State Govt. (of U.P.) granted reliefs to the petitioners after the SLPs were dismissed. Facts of Kannaujia and Maurya's case (Supra) are distinguishable from the facts of this case.

16. Reference of Section 74 of the U.P. Re-Organization Act, 2000 has also been made in the pleadings and in the arguments by Ld. Counsel for the petitioners. It relates to conditions of service applicable to the employees immediately before the appointed day. It says that the same shall not be varied to its disadvantage without the previous approval of the Central Govt. The petitioners have failed to show that as to how the conditions of service applicable to them immediately before the appointed day have been varied to their disadvantage. The G.O. of U.P. came only after 09.11.2000 (the appointed day), when the SLPs of the State against the decisions of Hon'ble Allahabad High Court (Lucknow Bench) were dismissed by the Hon'ble Supreme Court. Section 74 of the U.P. Re-Organization Act, 2000 has application in relation to the conditions of service applicable to an employee immediately before appointed day. If U.P. Govt. has issued an Office Memorandum on or after 09.11.2000, the same is not binding on the Govt. of Uttarakhand. The State of Uttarakhand came into existence on 09.11.2000. Section 74 does not foresee or visualize future events. It only gives assurance for maintaining or enhancing service conditions, as were existing on the appointed day. It does not do prophesy. The State of U.P. and State of Uttarakhand are separate States, much less separate legal entities, after 09.11.2000 and, therefore, this Tribunal is unable to accept the submission of the petitioners that the conditions of service of the petitioners have been varied to their disadvantage by not applying the G.O. dated 26.12.2017 retrospectively.

17. No doubt, the equals cannot be treated unequally. But, in the instant case, the petitioners have not been able to make out as how they have been treated differently or unequally with similarly placed persons? It is the submission of Ld. A.P.O. that the Govt. has taken a conscious decision to provide a cut-off date in the Govt. Order dated 26.12.2017 which has no retrospective operation, therefore, it is not open to the petitioners to challenge the contents, much less, the cut-off date specified therein, in this claim petition. We agree with such submission of Ld. A.P.O.

**WHETHER THE PETITIONERS ARE ENTITLED TO ANY RELIEF?**

18. Learned counsel for the petitioners has argued that the Finance Department's G.O. dated 12th September 2017 *vide* which the pay matrix of grade pay of Rupees 8700 has been revised from 1 January 2016 has not been applied in their case. Further the G.O. of Finance department dated 28 December 2018 which says that the promoted persons will not get lesser pay than the directly recruited persons has also not been applied in their case. We find that the G.O. dated 12th September 2017 is revision of the level 13 pay column of the pay Matrix table of the seventh pay commission. This corresponds to the earlier grade pay of Rs 8700 while column 12 of this pay matrix table corresponds to the earlier grade pay of Rs 7600. This pay matrix table was applied from 1-1-2016. The G.O. dated 12th September 2017 increased the pay in this column 13 *w.e.f.* 1-1-2016, but it doesn't mean that column 12 (grade pay Rs 7600) was replaced by column 13 (grade pay Rs 8700). For the petitioners and other similarly placed persons who continued in service, pay was given in level 12 only till September 2017. Afterwards, when the grade pay of serving persons was revised to Rupees 8700 corresponding to level 13 then they were given the enhanced pay as mentioned in the revised level 13 *vide* G. O. dated 12th September 2017.

19. We find that the G.O. dated 28-12-2017 is about the pay anomaly between promoted persons and direct recruits caused during the sixth pay commission and is not relevant to the case in hand, because at the level of Superintending Engineer, all persons are promoted and there is no direct recruitment. Further, till the petitioners were in service (up to September, 2017), none of their juniors was getting more pay than them.

20. It was also learnt during the arguments that the grade pay of superintending engineer has been revised to Rupees 8700 with effect from 31st October 2017 and not from 26 December 2017 as the initial G.O. of finance department in this regard was issued on 31st October 2017 and other engineering departments had followed the same as the cut-off date for the revision of the grade pay. Before this date, all those who were getting grade pay of 8700 (Level 13) were having that not as the grade pay of the post of superintending engineer but were either working as Chief Engineer, level 2 (post with grade pay of Rs 8700) or working on subordinate posts who got their 3rd ACP with grade pay of Rupees 8700, because they started their career as Assistant Engineers, the post with grade pay of RS 5400 and got first, second and third ACPs with grade pays of Rupees 6600, 7600 and 8700 respectively. These persons got level 13 from 1-1-2016 itself along with subsequent revision of this level. The grade pay of directly appointed JEs like the petitioners continued after third ACP to be Rs 7600 (level 12) and it was revised to level 13 only on 31-10-2017. The petitioners having retired before this date remained at level 12 only and we understand that this must be the case in all engineering departments of the State.

21. Much emphasis has been laid by the petitioners to direct the respondents to grant them reliefs on the basis of Kannaujia's decision (*supra*). This Tribunal has already mentioned above that Kannaujia's decision (*supra*) is based upon a G.O. issued by the Govt. of U.P. after the appointed day. When Irrigation department of U.P. failed to appreciate it, petitioners approached Lucknow Bench of Hon'ble Allahabad High Court. They succeeded. State of U.P. preferred SLPs, which were dismissed. Govt. of U.P., then, complied with such decision of Hon'ble Courts. No such G.O., as was issued by Govt. of U.P., was issued by the Govt. of Uttarakhand. State of U.P. and State of Uttarakhand are separate legal entities. No legal right, therefore, accrues to the petitioners in the instant case. Had any G.O. been issued by the Govt. of U.P., before the appointed day, the same would have been applicable in the State of Uttarakhand, by virtue of U.P. Re-organization Act, 2000. It is always open to the State of Uttarakhand to repeal, amend or modify any G.O. of U.P. and bring out its own G.O. The decision of Kannaujia's case (*supra*) is on different footing and is not binding on the

State of Uttarakhand. SLPs preferred against the decisions of Hon'ble Allahabad High Court were simply dismissed. It is the submission of learned A.P.O. that no principle of law has been laid down by Hon'ble Apex Court while dismissing the SLPs. We agree with such submission of learned A.P.O. The doctrine of precedent does not apply to an order rejecting an SLP [*Hari Singh vs. State of Haryana, (1993) 3 SCC 114*]. It is not fair or proper to read a sentence from the judgments of Hon'ble Courts, divorced from the complete context in which it was given and to build up a case treating as if that sentence is the complete law on the subject [*J.K. Industries Ltd. vs. Chief Inspector of Factories & Boilers, (1996) 6 SCC 665 (para 23)*]. No relief can, therefore, be given by this Tribunal on the basis of decisions, which have been quoted above or on the basis of G.Os. referred to above.

22. It shall, however, be open to the Govt. of Uttarakhand to review its decision. The discretion to issue a fresh G.O., on the lines of G.O. issued by the Govt. of U.P., to give financial benefits to the petitioners and similarly situate employees, from an earlier date, vests with the Govt. of Uttarakhand. The decision should, however, be well informed by reason.

23. We are given to understand that exercise for revising the grade pay of Rupees 7600 of the post of superintending engineer to Rupees 8700 from an earlier date is under way. The Government may consider the same at an early date so that some of the petitioners and similarly placed engineers in other departments may be benefited by the same. If the same is not possible, the Government may consider revising the pension of petitioners and similarly placed persons with effect from 31<sup>st</sup> October, 2017 worked out on the basis of their last pay as upgraded to level 13 on this date.

24. The claim petition is disposed of with the observations, as above. In the circumstances, no order as to costs.

**(RAJEEV GUPTA)**  
VICE CHAIRMAN (A)

**(JUSTICE U.C.DHYANI)**  
CHAIRMAN

DATE: OCTOBER 31, 2020  
DEHRADUN