

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
BENCH AT NAINITAL**

Present: Hon'ble Mr. Justice U.C.Dhyani
----- Chairman
Hon'ble Mr. Rajeev Gupta
-----Vice Chairman (A)

CLAIM PETITION NO. 11/NB/DB/2020

Madho Ram Arya, aged about 62 years, s/o Late Sri Har Ram, r/o Talli Haldwani, J.R. Puran, near Satwal Petrol Pump, Transport Nagar, Haldwani, District Nainital.

.....Petitioner

vs.

1. State of Uttarakhand through Secretary, Rural Development Department, Government of Uttarakhand, Dehradun.
2. Commissioner, Rural Development, Uttarakhand, Pauri District Pauri Garhwal.
3. Chief Development Officer, Udham Singh Nagar.
4. District Development Officer, Udham Singh Nagar.
5. Block Development Officer, Gadarpur, District Udham Singh Nagar.
6. Director, Lekha Evam Haqdari, 23, Laxmi Road, Dalanwala, Dehradun.

.....Respondents

Present: Sri Bhagwat Mehra, Advocate for the Petitioner
Sri Kishore Kumar, A.P.O., for the Respondents

JUDGMENT

DATED: FEBRUARY 15, 2022

Per: Sri Rajeev Gupta, Vice Chairman (A)

This claim petition has been filed seeking the following reliefs:

"A. To set-aside the impugned communications dated 05.11.2019 and 28.11.2019 issued by the Respondent No. 5 (Annexure No. 1 and 2 to Compilation-I).

B. To set-aside the impugned orders dated 11.07.2018, 21.07.2018 and 29.12.2018 issued by the Respondent No. 5 (Annexure No. 3, 4 and 6 to Compilation-I).

C. *To set-aside the impugned order 21.12.2018 issued by the Respondent No. 4 (Annexure No. 5 to Compilation-I).*

D. *To declare the action of the Respondents in revising the Pay Fixation and making the recovery from the retiral dues as well as pensionary benefits of the petitioner, as arbitration and illegal.*

E. *To direct the Respondents, particularly Respondent No. 2 to forthwith release the recovered amount from the retiral dues of the petitioner, alongwith the interest at a rate to be specified by this Hon'ble Tribunal.*

F. *To direct the Respondents, particularly Respondent No. 4 and 5 to pay interest to the petitioner, on the amount of Gratuity for a delay of more than 13 months, at a rate to be specified by this Hon'ble Tribunal.*

G. *To direct the Respondents, particularly Respondent No. 2 to grant all consequential benefits to the petitioner.*

H. *To pass any other suitable order as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.*

I. *To allow the claim petition with cost."*

2. Brief facts according to the claim petition are as follows:

The petitioner retired from service on 31.05.2018 from the post of Assistant Block Development Officer, Block Gadarpur, District Udham Singh Nagar. After his retirement, the Respondent no. 5 passed one pay refixation order on 11.07.2018 amending earlier pay fixation order dated 22.06.2012 and directed for recovery of Rs. 11,934/-. The Respondent no. 5 *vide* letter dated 21.07.2018 informed the petitioner about this alleged recovery and also showed an amount of Rs. 50,400/- as excess payment towards vehicle allowance and as such, the petitioner was directed to deposit total Rs. 62,334/- in the Govt. Account. It was also mentioned in this letter that only after this, No Dues Certificate shall be issued and his pension papers shall be forwarded to higher authority. As the petitioner was in great need of money and was left with no other option, he deposited this amount on 26.07.2018. On the same day, Respondent no. 5 issued 'No Dues Certificate' to the petitioner.

On 06.08.2018, one complaint was made to the District Magistrate, Udham Singh Nagar by one Sri Manoj Devrari, levelling certain allegations. It further appears that the District Magistrate, Nainital on the same day, made an endorsement on the said complaint directing the Respondent No. 4 to submit a preliminary enquiry report in the matter. In pursuance thereof, the Respondent No. 4 submitted a preliminary enquiry report on 13.09.2018 to the District Magistrate, Nainital. It is submitted that the said alleged enquiry was conducted behind the back of the petitioner. Thereafter, the Respondent No. 4 issued a letter on 10.10.2018 to the petitioner to the effect that since the petitioner has been found guilty of the allegations as such the petitioner was directed to submit his reply in the matter. The Respondent no, 4 passed an order on 21.12.2018, stating therein that the petitioner along with other personnel were found guilty of financial irregularity in the enquiry report dated 13.09.2018 and as such recovery of Rs. 37,333/- was fastened against the petitioner. On 29.12.2018, the Respondent No. 5 passed another order ordering recovery of an amount of Rs. 989/- from the petitioner on the ground that in the revised pay fixation made on 27.12.2018, the said amount was found paid in excess to the petitioner.

Against the aforesaid punishment order, the petitioner submitted a detailed representation on 10.01.2019 to the Respondent No. 3 to reconsider the matter. Ultimately the Respondent No 6 issued the pension payment order on 25.06.2019 of the petitioner *i.e.* after a delay of about 13 months. By means of this order, an amount of Rs. 15,14,799/- was sanctioned towards Gratuity to the petitioner and the same was paid after a delay of 13 months. As such, the petitioner submitted a representation on 19.09.2019 to the Respondent No. 4 claiming interest on the delayed payment of Gratuity. The petitioner again submitted a reminder in the matter on 28.10.2019 to the Respondent No. 4. Ultimately the Respondent No. 5 *vide* letter dated 05.11.2019 virtually rejected the request of the petitioner. Thereafter, again *vide* letter dated 28-11-2019, similar approach was shown by the Respondent No. 5 towards the request of the petitioner. Being dissatisfied with the aforesaid letters, the petitioner again submitted a representation on

02.12.2019 to the Respondent No. 5, copy of which was also sent to all the Respondents. When nothing was done, as such the petitioner submitted another representation, on 09.12.2019 to the Respondent No. 6 whose copy was also sent to other Respondents. Thereafter, the Respondent No. 6 directed the Respondent No. 5 to take decision in the matter *vide* letter dated 23.12.2019. Till date, no further action has been taken by the Respondent No. 5 in pursuance of the aforesaid letter dated 23.12.2019.

All the aforesaid punishment orders as well as recovery orders were passed in utter violation of principles of natural justice as well as in violation of Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003. The same were passed behind the back of the petitioner without giving any opportunity of hearing to him. The traveling allowance was validly paid to the petitioner by the authorities under the orders issued by Respondent No. 1 and Respondent No. 2 from time to time. It is submitted that the said allowance was paid to all the employees of the rank of the petitioner throughout the State which are thousands in number, however, the recovery of the same was made only from the petitioner. Such State of affairs cannot be justified in any manner.

Hence this petition.

3. Counter Affidavit has been filed on behalf of the Respondents No. 1 to 5 mainly stating that the respondent department in view of the Government Order No. XXVII (7) 40 (IX) 2011 dated 28.11.2017 issued a notice for recovery of the amount of Rs. 50,400/- against the payment of vehicle allowance on the query raised by the Pension Department. The petitioner who was an Assistant Block Development Officer, having the knowledge of this fact that he was not entitled for vehicle allowance, made an application to the authorities concerned on 01.08.2015 and on 12.01.2017 and requested to pay the vehicle allowance from 2013 at the rate of Rs. 1,200/- per month. Pursuant to his application, the respondents' authorities released the amount of vehicle allowance in his favour and also to the other similarly situated Assistant Block Development Officers.

After the knowledge of Government Order dated 28.11.2017, the department has issued a recovery notice to the Assistant Block Development Officers working in the department or retired for recovery of the amount paid to them for vehicle allowance on 09.04.2018. Pursuant to the recovery order, the Assistant Block Development Officers have deposited the recovery amounts and the petitioner also deposited the same. It is pertinent to mention here that neither the working Assistant Block Development Officers nor the retired Assistant Block Development Officers including the petitioner have challenged the Government Order No. XXVII (7) 40 (IX) 2011 dated 28.11.2017 before appropriate forum and thus, it is clear that they have accepted the Government Order and pursuant to that, deposited the recovery amount. Thus, the contention of the petitioner regarding the recovery amount of vehicle allowance, i.e., Rs. 50,400/- is misconceived and based on twisted facts and misrepresentation. So far as the recovery of Rs. 11,934/- towards the wrong fixation of pay is concerned, it is stated that when the Pension Department raised a query about the wrong fixation then it came into knowledge of the respondent department that the pay of the petitioner had wrongly been fixed on 14.08.2010 and the same was corrected in the service records of the petitioner and thereafter, without any delay same was submitted to the Pension Department and the petitioner was directed to deposit the excess payment of Rs 11,934/- *vide* recovery order No. 435 dated 02.06.2018 and pursuant to the recovery order the petitioner deposited the amount of Rs. 62,334/- on 21.07.2018. The contention of the petitioner regarding the interest on his pensionary benefit is misconceived and based on twisted facts because the respondent department without any inordinate delay rectified the queries made by the respondent No. 6 and the respondent No. 6 after being satisfied on the records released the retiral dues of the petitioner. Thus, the relief claimed by the petitioner in the present claim petition is not tenable and the same is liable to be dismissed with costs.

4. Separate Counter Affidavit has been filed on behalf of the Respondent no. 6 mainly stating that the contention of the petitioner that his retiral dues have been paid after a delay of more than one year is a matter of

record, but the delay has been caused due to some discrepancies in the service record of the petitioner and after rectification by the department of the petitioner, the same have been paid to the petitioner without any further delay. This Counter Affidavit further states that the answering respondent department has received the pension papers of the petitioner sent by the department on 02.04.2019 and the answering respondent *vide* letter No. 37 dated 25.06.2019 issued the pension authorization certificate and sanctioned the gratuity of Rs. 15,14,799.00/-. The delay caused in sanction of the pension is due to the department of the petitioner and there is no delay on part of the answering respondent.

5. Rejoinder Affidavit has been filed on behalf of the petitioner mainly stating that the reliance placed by the Respondent No. 1 to 5 on the government order dated 28.11.2017 is totally misconceived and misplaced. It appears that the Respondents have tried to take shelter of the aforesaid government order just to cover up their case. The petitioner was granted the benefit of transport allowance by the Respondents themselves keeping in view the government orders prevalent at the relevant time. Moreover, before making recovery, no opportunity of hearing was ever afforded to the petitioner. As per the settled legal position, any order, which entails civil and evil consequences to any person, cannot be passed without following the principle of natural justice and same is a nullity in the eyes of law.

In the Rejoinder Affidavit, the contentions of the Counter Affidavits of both Respondents no. 1 to 5 and Respondent no. 6 have been denied and the averments made in the claim petition are reiterated. It is also stated that Respondent No. 6 has fairly admitted that the pension papers of the petitioner were sent after a delay of more than 10 months by the department itself and delay caused in the matter was at the level of department of the petitioner. As such, in any view of the matter, the Claim Petition deserves to be allowed with cost.

6. We have heard learned Counsel for the parties and perused the record.

7. When the claim petition was admitted, the question of delay was left open to be decided at the time of final hearing. We observe that the reliefs sought by the petitioner fall in two categories-(i) to pay interest on delayed payment of gratuity and (ii) to set aside the impugned recovery orders and release the recovered amount. We also observe that no recoveries have been made from the retiral dues of the petitioner; rather he has deposited the relevant amounts himself after which his no dues have been issued/pension papers have been forwarded.

8. So far as the first point about the interest on delayed payment of gratuity is concerned, it is noted that the pension payment order has been issued on 25.06.2019 *vide* which his gratuity has been sanctioned and the petitioner submitted his representation on 19.09.2019 to respondent no. 4 claiming interest on the delayed payment of gratuity. For non-payment of this interest, the time limit to approach this Tribunal is within one year thereafter and the claim petition has been filed on 18.02.2020, which is well within time.

8.1 As far as the second point about recovery is concerned, it is noted that the petitioner deposited the amount of Rs. 62,334/- on 21.07.2018 which included Rs. 50,400/- as excess payment for vehicle allowance and Rs. 11,934/- which was due to the refixation of pay. The corresponding letter of the petitioner addressed to the Block Development Officer, Gadarpur, Udham Singh Nagar is at Annexure No. 8 of the claim petition, which states that in pursuance of the direction of office letter dated 21.07.2018, Rs. 62,334/- have been deposited *vide* cheque no. 000066 and request has been made to issue the 'No Dues Certificate'. In this letter, the petitioner has not objected to this recovery being made from him. Learned Counsel for the petitioner during the arguments has referred to the decision of this Tribunal dated 20.06.2018, passed in Claim Petition No. 38/NB/DB/2015, Jagdish Chandra Sanwal vs. State of Uttarakhand & others and judgment of Hon'ble High Court in Writ Petition No. WPSS No. 718 of 2016, according to which, consent under duress of the petitioner cannot be made a basis for the recovery from the retiral dues if the same is not justifiable otherwise. In the instant case, we observe that it is not a case of recovery from the retiral dues but a case

where the petitioner has himself deposited the amount by way of settlement of dues to get 'No Dues Certificate'. Even otherwise, to challenge the same before this Tribunal, the limitation was upto one year which has ended on 21.07.2019. We, therefore, hold this relief to be time barred as the claim petition has been filed on 18.02.2020.

8.2 The petitioner had also deposited an amount of Rs. 37,333/- on 27.02.2019 pursuant to the recommendation of recovery made in the letter of District Development Officer, Udham Singh Nagar dated 13.09.2018 about double disbursement of the money for construction of houses to certain beneficiaries. After this, 'No Dues Certificate' was issued again in his favour on 02.03.2019 as has been stated in the letter of Block Development Officer, Gadarpur to the petitioner dated 28.11.2019 (Annexure no. 2 to the claim petition). Observing that the claim petition has been filed on 18.02.2020, the claim about this recovery is within time.

9. In view of the above, we observe that except for the relief relating to the recovery of the amount of Rs. 62,334/-, the other reliefs are not time barred.

10. The Block Development Officer, Gadarpur in his letter to the petitioner dated 05.11.2019 (Annexure no. 1) has explained the reasons for delay in payment of the gratuity. This letter states that at the time of retirement itself, *vide* office letter No. 401 dated 31.05.2018, the petitioner has been informed about the wrong fixation of his pay in the earlier years and also about certain documents to be produced by the petitioner in the matter. We observe that subsequently *vide* letter dated 21.07.2018, the petitioner has been informed to deposit the excess payment made earlier and on the same day, the petitioner has given a cheque for that amount *vide* his letter (Annexure no. 8 to the claim petition) without objecting to this recovery. Subsequently his No Dues Certificate has been issued. *Vide* his letter dated 02.12.2019 addressed to the Block Development Officer, Gadarpur (Annexure no. 16), the petitioner has stated that on the date of his retirement (31.05.2018) there were no government dues on him and no enquiry was

pending and as per rules, the gratuity should have been paid to him by 31.08.2018 which was not done. Therefore, interest is due on the gratuity from 01.09.2019 onwards. In this letter, the petitioner has demanded interest on the delayed payment of gratuity at the rate of 8%. We observe that at the time of retirement itself petitioner was informed about certain recoveries which were being worked out and also about certain documents to be produced by the petitioner. Ideally, this exercise should have been completed before the retirement of the petitioner but it was completed in July 2018 only, after a period of two months. Since the petitioner was also required to produce certain documents, this delay of two months cannot be attributed to the department alone. However, after issue of 'No Dues Certificate' in July, 2018, his pension papers should have been processed in the next three months *i.e.* upto October, 2018 and immediately thereafter his gratuity should have been paid.

11. We also observe that further delaying the payment of gratuity on account of subsequent complaint about excess disbursement of amount for construction of houses was not justified. At least, the department could have paid the remaining amount of gratuity after retaining Rs. 37,333/- which was recommended to be recovered from the petitioner. The field enquiry has been done by the District Development Officer, Udham Singh Nagar without participation of the petitioner in the same. Though the explanation of the petitioner has been subsequently called and the petitioner has furnished his explanation. The papers filed before us further show that the petitioner has deposited this recovery amount of Rs. 37,333/- on 27.02.2019 after which 'No Dues Certificate' has again been issued in his favour as mentioned in Annexure no. 2 of the claim petition. The respondent department according to this letter has attributed this delay also to the petitioner in the disposal of his pension matter. However, the Tribunal finds it to be unacceptable inasmuch as the department could have paid the gratuity in time and if this money was to be recovered, it could have been recovered from his pension and other retiral dues. In any case, the department should have at the most

retained an amount of Rs. 37,333/- from his gratuity and paid the remaining amount.

12. In view of the above, we hold that the gratuity of the petitioner should have been paid by 31.10.2018 and for the delay in payment of gratuity after this date, he is entitled to get simple interest at the rate of 8% per annum till the date of actual payment of the gratuity. This Tribunal, in accordance with Govt. Orders and various rulings of Hon'ble Courts has ordered interest to be paid at the rate of 8% per annum on the delayed payment of gratuity in other claim petitions as well.

13. Regarding recovery of Rs. 37,333/- which the petitioner has already deposited, but is still aggrieved against the same, we hereby order that the petitioner shall make a representation to the Secretary, Rural Development, Govt. of Uttarakhand within a period of one month from the date of this order stating all the facts and circumstances and reasons as to why the recovery should not have been made from him. On the receipt of such representation with certified copy of this order, the Secretary, Rural Development Department, Govt. of Uttarakhand shall dispose of the same by a reasoned and speaking order within a period of three months thereafter and if this recovery or part thereof is found unjustified, the same shall be refunded to the petitioner.

14. Order, as above.

15. The claim petition is, accordingly disposed of. No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: FEBRUARY 15, 2022
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