

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

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

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

CLAIM PETITION NO. 74/SB/2019

Sri Sundru Bharti, s/o Late Sri Bakhtawar Lal, aged about 61 years, Retd.,
Area Rationing Officer, r/o G-24, Mehunwala Mafi Rishi Vihar,
Dehradun, Uttarakhand.

.....Petitioner

VS.

1. State of Uttarakhand through Secretary, Food and Civil Supplies,
Government of Uttarakhand, Secretariat, Subhash Road, Dehradun
2. Commissioner, Food and Civil Supplies, Government of Uttarakhand,
Secretariat, Subhash Road, Dehradun.
3. Joint Cmmissioner, Food and Civil Supplies, Government of
Uttarakhand, Secretariat, Subhash Road, Dehradun.
4. District Supply Officer, Dehradun.
5. Senior Treasury Officer, Treasury, Dehradun.

.....Respondents.

Present: Sri L.K.Maithani, Advocate, for the Petitioner.

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

JUDGMENT

DATED: MARCH 04, 2022.

Justice U.C.Dhyani (Oral)

By means of the present claim petition, the petitioner seeks the
following reliefs:

“i) To quash the impugned order dated 05.04.2019 (Annexure: A-1) and impugned punishment order dated 07.04.2009 (Annexure: A-2), with its effect and operation.

ii) To issue an order or direction to the concerned respondent to sanction and release the pension of the petitioner and further issue an order or direction to the concerned respondent to pay the arrear of the pension since the date of retirement up to the date of actual payment with 12% interest on the amount/arrear of pension of every month since the first day of every month up to the date of actual payment.

iii) To issue an order or direction to the concerned respondent to pay the other retiral dues i.e., commutation and gratuity with interest as admissible on the delayed payment from the date of retirement up to the date of actual payment.

iv) To issue any other order or direction which this Court may deem fit and proper in the circumstances of the case in favour of the petitioner.

v) To award the cost of petition.”

2. On 06.01.2021, this Tribunal passed the following order:

“Dated: 06.01.2021

Present: Sri L.K.Maithani, Advocate, for the Petitioner.

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

During arguments it has been pointed out that the pension and gratuity of the petitioner has not been released so far as the question of stoppage of annual increment is pending consideration at the level of the Government.

Ld. A.P.O. is directed to inform the Government to take a decision on the pending issue within 3 weeks and ensure the payment of admissible pension, gratuity and arrears to the petitioner within six weeks from today.

List on 26.02.2021.

Let a copy of this order be supplied to Ld. A.P.O. today itself.”

3. During arguments, it was pointed out that the pension and gratuity of the petitioner has not yet been released. On 26.02.2021, Ld. A.P.O. sought and was granted time to file the compliance affidavit, as directed on 06.01.2021.

4. On 18.03.2021, compliance affidavit was filed by Ld. A.P.O., on behalf of respondents, copy of the same was supplied to Ld. Counsel for the petitioner, who sought and was granted time up to 16.04.2021 to file objections, if any, to the same. Such time was extended for further 10 days,

vide order dated 16.04.2021. Time to file objections on the compliance affidavit was continued to be enlarged, from time to time, on the request of Ld. Counsel for the petitioner. Objections on the compliance affidavit, supported by an affidavit were filed in the Tribunal on 16.08.2021. It is the submission of Ld. Counsel for the petitioner that the petitioner has retired on 28.02.2018. As per the compliance report, the pension and other retiral dues have been paid to the petitioner *vide* PPO No. 3341 dated 15.01.2021. This fact clearly shows that the respondents paid the pension and retiral dues i.e. gratuity to the petitioner after a delay of 34 months (2 years 10 months). The delay in payment was not due to the fault of the petitioner, therefore, as per rules the interest on the delayed payment as per GPF rate should be given to the petitioner. It is the submission of Ld. Counsel for the petitioner that the petitioner has not been paid the interest on delayed payment of the dues.

5. Ld. Counsel for the petitioner also submitted that a Tax of Rs.1,04,033/- has been deducted from the retiral dues of the petitioner. According to Ld. Counsel for the petitioner, the deduction of Tax from the retiral dues is wrong. In reply, Ld. A.P.O. submitted that such deduction was, probably, TDS, which the employer can always deduct and the same can be accounted for in the income-tax return by the employee.

6. During course of the arguments, Ld. Counsel for the petitioner confined his prayer only to the extent that the respondent department be directed to pay interest on delayed payment of pension and gratuity.

7. Ld. A.P.O. informed the Bench that other retiral benefits, such as GPF, Leave Encashment, etc. have already been released to the petitioner. Ld. Counsel for the petitioner admitted such fact. He only submitted that the interest on delayed payment of pension and gratuity be directed to be paid by the respondents, at an early date.

8. Hon'ble Apex Court in the case of **S.K.Dua vs. State of Haryana and Another, (2008)1 Supreme Court Cases (L&S) 563**, has held that even in the absence of specific Rule or order for providing interest, an employee

can claim interest on the basis of Articles 14,19 and 21 of the Constitution of India as retirement benefits are not a bounty. The relevant paragraph of the judgment is reproduced below:

“13..... If there are statutory rules occupying the field, the appellant could claim payment of interest relying on such rules. If there are administrative instructions, guidelines or norms prescribed for the purpose, the appellant may claim benefit of interest on that basis. But even in absence of statutory rules, administrative instructions or guidelines, an employee can claim interest under Part III of the Constitution relying on Articles 14,19 and 21 of the Constitution. The submission of the learned counsel for the appellant, that retiral benefits are not in the nature of “bounty” is, in our opinion, well founded and needs no authority in support thereof.”

9. In the case of Civil Appeal No. 7113 of 2014, D.D. Tiwari (D) v. Uttar Haryana Bijli Vitran Nigam Ltd. & Others, Hon’ble Supreme Court has held, in paragraphs 3 and 4, as under:-

“3. The High Court has adverted to the judgments of this Court particularly, in the case of State of Kerala & Ors. Vs. M. Padmanabhan Nair, wherein this Court reiterated its earlier view holding that the pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement, but, have become, under the decisions of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be dealt with the penalty of payment of interest at the current market rate till actual payment to the employees. The said legal principle laid down by this Court still holds good in so far as awarding the interest on the delayed payments to the appellant is concerned.....”

10. In SLP (Civil) No. 1427/2009 arising out of the Civil Appeal No. 6770 of 2013 and SLP (Civil) No. 1428/2009 arising out of Civil Appeal No. 6771of 2013, State of Jharkhand & others vs. Jitendra Kumar Srivastava & another, Hon’ble Supreme Court has held, as under:

“2. Crisp and short question which arises for consideration in these cases is as to whether, in the absence of any provision in the Pension Rules, the State Government can withhold a part of pension and/or gratuity during the pendency of departmental/ criminal proceedings? The High Court has -answered this question, vide the impugned judgment, in the negative and hence directed the appellant to release the withheld dues to the respondent. Not happy with this outcome, the State of Jharkhand has preferred this appeal.

7. It is an accepted position that gratuity and pension are not the bounties. An employee earns these benefits by dint of his long, continuous, faithful and un-blemished service. Conceptually it is so lucidly described in D.S. Nakara and Ors. Vs. Union of India; (1983) 1 SCC 305 by

Justice D.A. Desai, who spoke for the Bench, in his inimitable style, in the following words:

“The approach of the respondents raises a vital and none too easy of answer, question as to why pension is paid. And why was it required to be liberalised? Is the employer, which expression will include even the State, bound to pay pension? Is there any obligation on the employer to provide for the erstwhile employee even after the contract of employment has come to an end and the employee has ceased to render service?

What is a pension? What are the goals of pension? What public interest or purpose, if any, it seeks to serve? If it does seek to serve some public purpose, is it thwarted by such artificial division of retirement pre and post a certain date? We need seek answer to these and incidental questions so as to render just justice between parties to this petition.

The antiquated notion of pension being a bounty a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in Deoki Nandan Prasad v. State of Bihar and Ors.[1971] Su. S.C.R. 634 wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a Government servant coming within those rules is entitled to claim pension.

It was further held that the grant of pension does not depend upon any one’s discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in State of Punjab and Anr. V. Iqbal Singh (1976) 111 LLJ 377 SC”

15..... As we noticed above, so far as statutory rules are concerned, there is no provision for withholding pension or gratuity in the given situation. Had there been any such provision in these rules, the position would have been different.”

11. Hon’ble High Court of Uttarakhand at Nainital in WPSB No. 257 of 2010, Pradeep Kumar vs. State of Uttarakhand and others, decided on 24.06.2013, has observed as under:

“..... Respondent No.2 is directed to reach to the petitioner gratuity, provident fund and leave encashment, to which the petitioner is otherwise entitled together with interest to be calculated at the rate of 10 per cent per annum from the date of his superannuation until the date of payment.”

12. In Claim Petitions No. 30/DB/2013, Dwarika Prasad Bhatt vs. State and others, decided on 22.09.2016, 72/DB/2018, Dhanesh Chandra Bhatt vs. State and others, decided on 13.02.2018 and 29/DB/2019, Sita Ram Sharma vs. State and others decided on 20.02.2019, this Tribunal, relying

upon the Govt. Order dated 10.08.2004 , ruled that the petitioners' claim for interest on delayed payment of Pension and Gratuity was justified and the petitioners should be paid interest on arrears of pension and gratuity, after three months of the date of retirement till the date of actual payment. The rate of interest for delayed payment of gratuity and pension shall **be simple rate of interest payable on General Provident Fund during the relevant period**

13. On the basis of facts mentioned in the claim petition, the petitioner is entitled to interest on delayed payment of pension and gratuity, as above.

14. The claim petition is, accordingly, disposed of by directing respondent department to pay admissible interest on the delayed payment of pension and gratuity to the petitioner at an earliest possible and without unreasonable delay. No order as to costs.

RAJEEV GUPTA
VICE CHAIRMAN (A)

JUSTICE U.C.DHYANI
CHAIRMAN

DATED: MARCH 04, 2022
DEHRADUN.

VM