

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

Present: Hon'ble Mr. Rajendra Singh
----- Vice Chairman (J)
Hon'ble Mr. Rajeev Gupta
-----Vice Chairman (A)

CLAIM PETITION NO. 60/NB/DB/2021

Narayan Ram, aged about 62 years, s/o Shri Mangal Ram, r/o Village-
Uprara Munauli, P.O. Balgari, District Pithoragarh.

.....Petitioner

vs.

1. State of Uttarakhand through Secretary, Irrigation, Government of Uttarakhand, Secretariat Complex, Subhash Road, Dehradun.
2. Chief Engineer, Minor Irrigation, Dehradun.
3. Superintending Engineer, Minor Irrigation, Nainital.
4. Executive Engineer, Minor Irrigation, Divisional Office, Pithoragarh.

.....Respondents

Present: Sri Harish Adhikari, Advocate for the Petitioner
Sri Kishore Kumar, A.P.O., for the Respondents

JUDGMENT

DATED: SEPTEMBER 07, 2022

Per: Hon'ble Mr. Rajeev Gupta, Vice Chairman (A)

This claim petition has been filed seeking the following reliefs:

"1) To quash the impugned orders dated 18.01.2021, 10.05.2021 and 28.05.2021 passed by respondent no. 4 (Annexure no. A1 to compilation-I).

2) To direct the respondents to pay the post retiral benefits including the consequential benefits in accordance with the pay scale of the petitioner as on the date of petitioner's superannuation i.e. 31.05.2020.

3) To direct the respondents to pay the claim relating to the pending medical bills and T.A. Bills of the petitioner.

4) To pass any other suitable order as this Hon'ble Tribunal may think fit and proper in the circumstances of the case.

5) Award the cost of the claim petition in favour of the applicant."

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

2.1 The petitioner was appointed as Assistant Boring Technician on 08.01.1991. He was granted the benefit of 1st Assured Career Progression (ACP) after satisfactory service of 14 years *vide* order dated 26.04.2006 issued by the respondent no. 4. The petitioner was promoted on the next higher post of Boring Technician *vide* order dated 23.11.2011 in Pay Band of Rs. 5200-20200, Grade Pay Rs. 2400. After completion of 18 years' service on 28.01.2009, the petitioner was granted 2nd ACP with Grade Pay Rs. 2800/- *vide* order dated 21.07.2012. The petitioner was given the promotional pay scale of Rs. 9300-34800, Grade Pay Rs. 4600/- *vide* order dated 19.08.2017.

2.2 The G.O. dated 03.06.2019 provides for Grade Pay of Rs. 5400 to the Junior Engineers promoted from the cadre of Assistant Boring Technician/Boring Technician.

2.3 The petitioner superannuated on 31.05.2020. On 18.01.2021 without prior notice, respondents issued a recovery of Rs. 6,20,801.00 (Rs. Six Lac Twenty Thousand Eight Hundred and One only) against the petitioner and further it has been directed that the Grade Pay of the petitioner is reduced from Rs. 4600 to Rs. 2800. Thereafter impugned orders dated 10.05.2021 and 28.05.2021 have been passed by respondent no. 4 where recovery of Rs. 4,99,547/- has been worked out. The respondents have not paid the post-retiral dues as well as other benefits of the petitioner such as T.A. Bills, Medical Bills, GIS, Gratuity and Pension.

2.4 The petitioner has received the payment of General Provident Fund and earned leave. The other post retiral dues are still unpaid by the respondents. The contention of the petitioner is that the impugned orders dated 18.01.2021, 10.05.2021 and 28.05.2021 have been passed against the

petitioner after his retirement of service without granting any opportunity of hearing. After the retirement of the petitioner, recovery of Rs. 4,99,547/- *vide* orders dated 10.05.2021 and 28.05.2021 is not only illegal but arbitrary also. The reduction of pay scale/Grade Pay of a retired employee/petitioner by way of impugned orders dated 18.01.2021, 10.05.2021 and 28.05.2021 is arbitrary, unreasonable, in violation of Article 14,21 and 300A of the Constitution of India.

2.5 The petitioner cannot be penalized for any action/inaction on the part of the respondents after his retirement, inasmuch as the salary and other benefits which have already been availed by the petitioner and consumed assuming it as his property, cannot be taken away by the respondents by way of an arbitrary and illegal order. Similarly situated person namely Rajender Pandey, who retired just a month before the petitioner, has been given the benefit of Grade Pay Rs. 4600/- at his retirement and consequently his pension is being computed on the basis of Grade Pay Rs. 4600/. Before approaching this Tribunal, applicant filed a writ petition under Article 226 before Hon'ble High Court of Uttarakhand being Writ Petition (S/S) 531 of 2021 seeking the same relief which, on alternate remedy being available before the Tribunal was dismissed as withdrawn with liberty to file a claim petition *vide* judgment and order dated 20.04.2021.

Hence this claim petition.

3. The claim petition was admitted *vide* order dated 06.08.2021 by this Tribunal which also provided that the respondent department shall release admissible provisional pension to the petitioner, without unreasonable delay, as orally prayed for by learned Counsel for the petitioner.

4. Counter Affidavit was filed on behalf of respondent no. 4 (An identical Counter Affidavit has been filed later on, on behalf of respondent no.1) mainly stating that:

4.1 The petitioner gave application dated 21.02.2017 and 01.08.2017 to the answering respondent in which the petitioner made a prayer that he has completed 26 years of service and is still getting the grade pay of Rs. 2800 and further requested for the grade pay of Rs. 4600 as his similarly situated persons are getting the grade pay of Rs. 4600. While considering the said application, it was found that in all other Divisions of Minor Irrigation Department, Uttarakhand, the eligible Boring Technicians have been promoted to the post of Junior Engineer and those Boring Technicians/ Assistant Boring Technicians who were not promoted but were eligible for ACP were given the grade pay of the post of Junior Engineer of Rs. 4600 as the benefit of ACP. While considering the application of the petitioner, the answering respondent found that the petitioner had satisfactorily completed 18 years of service as Assistant Boring Technician as on 28.01.2009 and was granted second ACP as grade pay Rs. 2800/- from Grade Pay Rs. 2400/- vide order dated 21.07.2012. According to the provisions made in the G.O. no. 770 dated 06.11.2013, the employees getting grade pay of Rs. 4800/- or less, where the post of promotion is available, will be given grade pay of promotional post as promotional pay scale/financial up gradation. This G.O. came into effect from 01.11.2013. Thus the answering respondent on the basis of the fact that the same benefit of ACP was given to Shri Rajender Pandey, Boring Technician, M.I. Division, Nainital (presently retired), Shri Rajesh Kamboj, M.I., Division, Pauri (Presently retired), Shri Girish Chandra Lohani M.I. Division, Almora allowed the benefit of ACP to the petitioner vide office order 386 dated 19.08.2017. But in the same office order, it was clearly mentioned that if in later stage any objection is raised in the fixation of pay, the amount of excess payment made will be recovered from the salary of the petitioner.

4.2 After the implementation of the abovementioned G.O., it was found that the benefit of ACP was wrongly given to Boring Technicians and the department, pursuant to the G.O. no. 277 dated 03.06.2019 in which the Government directed to recover the excess amounts paid to the Boring Technicians, the orders of recovery were issued against the

abovementioned Boring Technicians for recovering the excess amount and pursuant to the recovery orders all the abovementioned Boring Technicians have deposited the excess amount taken as the grade pay of Junior Engineer as the benefit of ACP in compliance to Govt. Order no. 277 dated 03.06.2019. In paragraph no. 2 of the G.O. no. 277 dated 03.06.2019, it is mentioned that the last post of promotion under the Assistant Boring Technician cadre is Boring Technician, in view of which such Assistant Boring Technicians who have not been promoted to the post of Junior Engineer as per Junior Engineer Service Rules, 2003 are permitted Rs. 2400, Rs. 2800 and Rs. 4200 as First, Second and Third ACP respectively. Only next pay/grade pay will be admissible as MACP. The upgradation of grade pay from that of Boring Technician to the grade pay of Junior Engineer is not admissible to the petitioner as the petitioner was never promoted to the post of Junior Engineer.

4.3 The service documents of the petitioner were sent to the Finance Controller, Minor Irrigation Department, Uttarakhand for checking. The Finance Controller vide letter no. 1344 dated 28.12.2020 has pointed out that the department has wrongly fixed the pay of the petitioner and ignored the G.O. no. 277 dated 03.06.2019 and directed to rectify the mistake and also directed to recover the excess amount from the pension bills of petitioner. In compliance to the direction given by the Finance Controller, the answering respondent re-fixed the salary of the petitioner and issued the recovery order for excess amount of payment of Rs. 620801.00 vide order no. 675 dated 18.01.2021. Thereafter, the pension case of the petitioner was sent to the Chief Treasury Officer, Pithoragarh for further action. The Chief Treasury Officer vide its letter no. 680 dated 19.03.2021 and 35 dated 19.04.2021 marked error on the pension case. For redressal of the said error, the petitioner was given the benefits of third ACP from 28.01.2017 and fixation of salary was done vide office order no. 50 dated 10.05.2021. Recovery of Rs. 4,99,547.00 was estimated and to settle the post retirement dues, the case was sent to Treasury Officer for further action. The re-fixation and estimate of recovery made by respondent no. 4

was sent to the petitioner vide letter no. 73 dated 28.05.2021 (Annexure A1 of claim petition) and the petitioner was directed to present objections at the office of answering respondent. But the petitioner has not filed any objections to the order dated 28.05.2021.

4.4 Thereafter, the Chief Treasury Officer, Pithoragarh vide his letter no. 203 dated 28.07.2021 again pointed out error in the pension case of the petitioner and having the knowledge of the same the answering respondent after curing the errors again sent the pension proposal vide revised order no. 281 dated 01.08.2021 of fixation of salary by mentioning total recovery of excess amount of Rs. 6,37,622.00. It is also relevant to mention here that the department had issued recovery orders against the similarly situated persons like the petitioner who were wrongly allowed the benefit of the grade pay of Rs. 4600 from 01.11.2013. The petitioner and other similarly situated persons had not challenged the government order dated 03.06.2019 before any forum of law. Thus, it is evident that all the affected persons accepted the Government Order no. 277 dated 03.06.2019. Thus, the recovery issued against the petitioner is just and proper and the similarly situated persons have also deposited the recovery amount and not objected the same. Hence the claim petition of the petitioner deserves to be dismissed.

4.5 The petitioner has been given provisional pension form the month of June to May 2021 vide order no. 74 dated 28.05.2021. The payment made to the petitioner for his claimed bills of T.A. is as below:

S.No.	From when	Upto	Amount paid
1	23.07.2016	30.04.2017	3000-00
2	05.05.2017	24.08.2017	3700-00
3	08.09.2017	24.04.2018	6400-00
4	03.05.2018	29.07.2018	2500-00

No other claim for T.A. bills have been made by the petitioner to the office of respondent no. 4. Also no supporting documents have been

annexed by the petitioner regarding the Medical Reimbursement. The petitioner's gratuity and pension case has been forwarded to the Chief Treasury Officer, Pithoragarh after removing the objection vide letter no. 355 dated 10.08.2021.

4.6 The petitioner completed 26 years of service on 28.01.2017. The employees working under Uttarakhand Government were sanctioned revised pay scale according to G.O. number 290 dated 28.12.2016. As per G.O. No. 11 dated 17.02.2017, the Government implemented modified assured career promotion scheme (MACP). According to the said G.O., the MACP was implemented from 01.01.2017 and the provisions of assured career promotion scheme implemented earlier were applicable in cases of liability upto 31.12.2016. According to the modified assured career promotion scheme, if any employee has not been promoted during his entire service period then he will be eligible to get 3 financial upgradations on completing regular and satisfactory service of 10, 20, 30 years respectively which will be calculated from date of joining after substantive appointment on the post of direct recruitment. The petitioner was given benefits of second ACP on 28.01.2009 with grade pay of Rs. 2800. After that, on completion of 10 years of regular and satisfactory service, the petitioner was given 3rd MACP on 28.01.2019.

4.7 Shri Rajender Pandey joined Minor Irrigation Department as Assistant Boring Technician on 01.07.1986 and superannuated from the post of Boring Technician subdivision Nainital on 31.01.2020. According to the provision given in the G.O. 770 dated 06.11.2013, Mr. Pandey was also given the wrong grade pay of Junior Engineer of Rs. 4600 while he was on the post of Boring Technician. The said wrong grade pay of Rs. 4600 was corrected to grade pay of Rs. 4200 and recovery of excess payment of Rs. 180288/- was made by Executive Engineer, Minor Irrigation Division Nainital vide order no. 226 dated 27.07.2020. Post retirement, Shri Pandey has submitted the amount of excess payment made to him.

4.8 The petitioner, like his colleagues, was given grade pay of Rs. 4600 and in compliance of G.O. no. 277 dated 03.06.2019 recovery of excess amount was calculated. The petitioner has not challenged the above said G.O. in this claim petition. Thus, it is evident that the petitioner has no objection to G.O. no. 277 dated 03.06.2019.

5. The petitioner has filed identical Rejoinder Affidavits to the above Counter Affidavits mainly reiterating certain averments of the claim petition and further stating that the respondents cannot recover the payment of salary from the petitioner in view of the settled preposition of law as well as the petitioner cannot be penalized and harassed by making recovery after retirement of service for which petitioner has no role to play in fixation of salary or grant of other monetary benefits given by respondents. The petitioner has further contended that if similarly situated persons have not challenged the recovery of excess payment that does not mean that petitioner's right to challenge the recovery is washed away. The petitioner deserves all rights to challenge the recovery of salary being done by respondents.

6. We have heard learned Counsel for the petitioner and learned A.P.O. and perused the record.

7. Learned Counsel for the petitioner has also produced the following rulings in support of his argument:

(i) State of Punjab and others vs. Rafiq Masih (White Washer) and others (2015)4 SCC 334.

(ii) Thomas Daniel vs. State of Kerala & others, decided on 02.05.2022 by Hon'ble Apex Court.

(iii) Judgment dated 14.06.2022 of the Hon'ble High Court of Uttarakhand in Writ Petition (S/S) No. 1593 of 2021, Balam Singh Aswal vs. Managing Director and others, along with 26 other writ petitions.

8. The judgment of Hon'ble Apex Court in Rafiq Masih (supra), summarizes certain situations of hardship which would govern employees

on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. The judgment of Hon'ble Apex Court in Thomas Daniel (*supra*) is also on similar lines.

9. The Tribunal observes that the order dated 19.08.2017 (Annexure: A5), *vide* which upgraded grade pay of Rs. 4600 (Grade pay of the post of Junior Engineer) was sanctioned to the petitioner, also mentioned that if in this pay fixation objection from any level is made, then the recovery of the excess payment made to the petitioner will be done from his pay. Further the G.O. dated 03.06.2019 (Annexure: A6 to the claim petition), which states that those Assistant/Technicians whose promotion has not been made on the post of Junior Engineer according to the Junior Engineers Service Rules, 2003 will get Grade Pays of Rs. 2400/-, Rs. 2800/- and Rs. 4200/- as First, Second and Third ACP respectively and in the form of MACP only the next pay/grade pay shall be admissible, has not been objected to or challenged by the petitioner. The recovery and reduction of Grade Pay has been made only in furtherance of this G.O. The Tribunal would also refer to the judgment of Hon'ble Apex Court in Chandi Prasad Uniyal vs. State of Uttarakhand (2012)8 SCC in which it has been directed: ".....Any amount paid/received without authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment." Keeping in view the fact that the order sanctioning Grade Pay of Rs. 4600 to the petitioner dated 19.08.2017 was conditional and provided for recovery of excess amount if objection is raised from any level, the Tribunal observes that the proposed recovery can be made in the case of the petitioner.

10. In point no. v. of para 47 of its judgment in the bunch of Writ Petition (S/S) no. 1595 of 2021 along with 26 other writ petitions, the Hon'ble High Court has observed the following:

point no. v of para 47.....under the normal service jurisprudence, it was expected that the respondents ought to have provided an opportunity of

hearing and should have conducted an enquiry before curtailing the retiral benefits, which was payable to the retired employees, and hence, in the absence of there being any such enquiry ever conducted before taking the impugned action of curtailment of the retiral benefits, the entire action of the respondents would be bad, and that too, lastly particularly, when the extension of service benefit was as a consequence of the decision-making process taken by their own competent authorities, who had fixed the wages, out of which, the benefits has been consistently extended by the respondents and derived by the petitioners and fraud is not an aspect, which has been attributed, argued and established by document on record, against the petitioners, of wrongful extension of ACP benefits to them.

11. The Tribunal notes that the impugned order dated 28.05.2021 proposed the recovery of the excess paid amount of Rs. 4,99,547/- from the service gratuity of the petitioner, providing opportunity to the petitioner to present his case within 10 days of the receipt of the letter. However, the petitioner has not submitted any objection in response to the same. The respondents have further revised the amount of recovery as Rs. 6,37,622/- as mentioned in para 4.4 of this judgment.

12. The Tribunal holds that if the petitioner still wants to make objection against the recovery and reduction of his Grade Pay to the respondents, he should be provided an opportunity for the same. The respondents are hereby directed to again provide an opportunity of hearing to the petitioner and conduct an enquiry about his medical bills and other pending claims according to the spirit of the judgment of Hon'ble High Court in the bunch of writ petition (S/S) no. 1593 of 2021 and 26 other writ petitions. Respondents may, thereafter, pass a reasoned and speaking order finalizing his retiral benefits. The entire exercise be completed within three months of the date of production of certified copy of this order.

13. The claim petition is disposed of with the above directions/ observations. No order as to costs.

(RAJENDRA SINGH)
VICE CHAIRMAN (J)

(RAJEEV GUPTA)
VICE CHAIRMAN(A)

DATED: SEPTEMBER 07, 2022
DEHRADUN
KNP