

**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. 38/NB/DB/2019

Naresh Chandra, aged about 46 years, s/o Shri Soran Singh, r/o R-124,
Shivalik Nagar, Ranipur, Haridwar.

.....Petitioner

vs.

1. State of Uttarakhand through Principal Secretary, Planning Department,
Government of Uttarakhand, Dehradun.
2. State Planning Commission through Secretary, Planning Department,
Government of Uttarakhand, IVth Floor, Vishwakarma Bhawan,
Secretariat Campus, Uttarakhand Secretariat, Dehradun.

.....Respondents

Present: Sri Hari Mohan Bhatia, Advocate, for the petitioner
Sri Kishore Kumar, A.P.O. for the respondents

JUDGMENT

DATED: JANUARY 25, 2023

Per: Sri Rajeev Gupta, Vice Chairman (A)

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

“(I) To issue a writ order or direction commanding the respondents to consider the case of the petitioner for absorption against the post of Senior Computer Programmer in the pay scale of Rs. 15600-39100, grade pay 6600 with all consequential benefits.

“(II) To issue a writ order or direction commanding the respondents to grant the benefit of the pay scale of Senior Computer Programmer in the pay scale of Rs. 15600-39100 (Grade pay 6600) as per the government order dated 17.10.2008 (Annexure No. A8 to the claim petition) and to further provide the benefit of revised ACP (Assured Career

Progression) according to the concerned Uttarakhand ACP Government Orders.

(III) To issue any other relief, which this Hon'ble Court may deem fit and proper in the circumstances of the case.

(IV) Cost of the petition may be awarded in favour of the petitioner."

2. The facts, giving rise in the instant petition are, as follows:

2.1 Petitioner was appointed as Programmer, on the recommendation of the U.P. Public Service Commission. Initially, he was posted in State Planning Institute, U.P. The appointment was made in the pay scale of Rs. 8000-275-13500. Petitioner belongs to the Schedule Caste category. He was born in Haridwar. When State of Uttarakhand was created, petitioner gave option to serve the State of Uttarakhand. On 11.06.2002, an order was issued by the Principal Secretary, Planning Department, specifying that the pay scale mentioned in the appointment order of the petitioner be read as Rs. 8550-275-14600. By way of said corrigendum, the pay scale was modified from Rs. 8000-275-13500/- to Rs.8550-275-14600 (Annexure: A5). Petitioner filed a writ petition No. 1311 (S/B) of 2013 before the Hon'ble High Court of Judicature at Allahabad. The said writ petition was disposed of on 03.12.2013, on the submission made about the fact that the issue regarding allocation of the petitioner is pending before the State Advisory Committee (Annexure: A6).

2.2 On the recommendation of the 6th Pay Commission, the pay scales were revised in the State of U.P. as well as in the State of Uttarakhand. In the State of U.P., the Govt. Order dated 08.12.2008 was issued by which the existing pay scale of Rs. 8000-275-13500/- in the pay band-2 was revised to the pay scale of Rs.9300-34800, grade pay-5400/-, pay scale of Rs. 8000-275-13500 in the Pay Band-3 (where appointment is made on the said pay scale through direct recruitment) in the pay scale of Rs. 15600-39100, grade pay-5400 and in the State of U.P., the pay scale of the petitioner who was appointed in the pay scale of Rs. 8550-275-14600 was also revised to the pay scale of Rs. 15600-39100 with the grade pay Rs. 5400.

2.3 In the State of Uttarakhand *vide* order dated 17.10.2008, the pay scales were revised and the pay scale of Rs. 8550-275-14600 in the Pay Band-3 was revised to Rs. 15600-39100 with the grade pay Rs. 6600/- (Annexure: A8). While filing C.A. before the Hon'ble High Court of Uttarakhand, the respondents specifically admitted that *vide* G.O. dated 03.06.2005, in the State Planning Commission, one post of Senior Computer Programmer, pay scale Rs.10000-15200/- has been created and the post having pay scale of Rs.8550-275-14600/- is not created/sanctioned in the cadre structure.

2.4 Once the respondents did not sanction/create the post having pay scale of Rs. 8550-275-14600 in the State Planning Commission as per their notification dated 03.06.2005 and after the 6th Pay Commission, the pay band of Rs. 8550-275-14600 has been merged by the respondents in the grade pay of Rs.6600 then in that situation, the petitioner has every right to get the grade pay of Rs. 6600 in the State of Uttarakhand as per the revision of the pay scale in the State of Uttarakhand after the final allocation of the petitioner in view of Uttar Pradesh Reorganization Act, 2000 as the petitioner's final allocation relates back by the State Advisory Committee from the appointed day i.e., 09.11.2000. On 03.08.2012, the petitioner was granted the benefit of first ACP in U.P. and was placed in the pay scale of Rs. 15600-39100, grade pay Rs. 6600 w.e.f. 01.12.2008 (Annexure: A10).

2.5 A meeting of the State Advisory Committee was held on 18.07.2014, consequent upon the order passed by the Hon'ble High Court of judicature at Allahabad on 03.12.2013. The following decision was taken in the meeting-

"Agenda Item No. 4, Planning Department".

"Request of Shri Naresh Chandra for revision of allocation of Uttarakhand in pursuance of the order dated 03.12.2013 passed by the Hon'ble High Court in writ petition no. 1311 (S/B) of 2013".

The Committee was informed that Shri Naresh Chandra had given option for Uttarakhand, however he could not be allotted to Uttarakhand as only two posts were available in the cadre and both the posts were allocated to Uttar Pradesh as only 16% (approx) posts were to be allocated to Uttarakhand. The representative of Uttarakhand Govt. informed that at present no post of programmer is available in Uttarakhand, however, he agreed that if the Central Govt. allocates Shri Naresh Chandra to Uttarakhand, a post would be created to accommodate him. Accordingly, the committee recommended for revision of allocation of Shri Naresh Chandra from U.P. to Uttarakhand under the guidelines for allocation of SC/ST employees.

2.6 In pursuance to the meeting held on 18.07.2014, the petitioner was allocated to the State of Uttarakhand (Annexure: A12). The petitioner was relieved on 30.04.2015 (Annexure: A13). On the next date *i.e.* 01.05.2015 petitioner gave his joining to the Principal Secretary, Planning Department, Uttarakhand (Annexure: A14). On 29.05.2015, he submitted a representation to the Additional Member Secretary, State Planning Commission, Uttarakhand, Dehradun by which the said authority was apprised of the fact that the petitioner was appointed in the State of U.P. as Programmer and was *provided* the pay scale of Rs. 15600-39100 with grade pay of Rs. 7600/- in pursuance to the orders by which the said grade pay was allocated as benefit of second ACP. It was also informed that the post of Programmer in the State of U.P. is equivalent to the post of Senior Computer Programmer in the State of Uttarakhand. In the State of Uttarakhand, the post of Computer Programmer is in existence in the Grade pay of Rs. 4200/- and the post of Senior Computer Programmer is in existence in the pay scale of Rs. 15600-39100 grade pay Rs. 6600/-.

2.7 The petitioner was *provided* the pay scale of Rs. 15600-39100 with the grade pay Rs. 7600 as the benefit of second ACP by U.P. Govt. w.e.f. 23.10.2014. On 01.08.2015, the Principal Secretary, Planning Department of Uttarakhand passed an order by which petitioner was

granted the benefit of pay and allowances corresponding to the pay scale of Rs. 15600-39100 in the grade pay Rs. 6600 against the post of Senior Computer Programmer (Annexure: A17). For all practical purposes, the State Govt. has considered the appointment of the petitioner against the post of Senior Computer Programmer, but for the reasons best known to the State Govt., the order regarding the absorption of the petitioner on the said post was not passed. The petitioner had submitted the representation for his absorption on the post of Senior Computer Programmer in the pay scale of Rs. 15600-39100, grade pay Rs. 6600 or against a post, which carries the pay scale of Rs. 15600-39100 grade pay Rs. 6600 (Annexure: A18).

2.8. When nothing was done in the case of the petitioner, he sought information under RTI Act on 12.05.2016 and the information supplied on 18.05.2016 would reveal that the department had time and again submitted the proposal for the absorption of the services of the petitioner on the post of Senior Computer Programmer in pay scale of Rs. 15600-39100, grade pay Rs. 6600/-. The petitioner had sought further information under RTI and the information supplied on 26.07.2016 would reveal that the respondents were lingering the matter of the petitioner on the pretext that Service Rules have yet not been framed, as such, the matter of the petitioner be kept pending *sine-die* till the decision is taken by the State Govt. for framing the Rules. Petitioner submitted representation on 12.07.2016 also informing the department that persons who are working in the State of U.P. were allowed to join in the State of Uttarakhand on posts, which were carrying the higher pay scale than the post on which the said persons were working in the State of U.P. Petitioner again submitted a representation on 03.08.2016 informing the provisions of the U.P. Reorganization Act, 2000. As per Section 74(2), the services rendered by a person prior to the appointed day, if he is deemed to be allocated to any State under Section 73, shall be deemed to have been rendered in connection with the affairs of that State. In the present case, the allocation of the petitioner relates back to 09.11.2000 and, as

such, it would be presumed that the services rendered by the petitioner, though, actually in the State of U.P. were rendered by him in the State of Uttarakhand.

2.9 In Writ Petition No.330 (S/B) of 2016, *vide* order dated 11.10.2018, a clear-cut direction was given by the Hon'ble High Court to consider the case of the petitioner for absorption on the post of Senior Computer Programmer on the basis of noting at page no. 72 of the paper-book. The respondents are bound by the directions given by the Hon'ble High Court of Uttarakhand, they cannot ignore the noting mentioned at page no. 72. The respondents have not only violated the order of the Hon'ble High Court, but have passed the order without giving attention to the noting mentioned at page no. 72 of the paper book. Such order is under challenge in the present claim petition.

3. Counter Affidavit was filed by the Secretary, Planning, Govt. of Uttarakhand mainly stating the following:

3.1 The Hon'ble High Court disposed of the writ petition bearing No. WPSB No. 330/2016, Naresh Chandra vs. State *vide* order dated 11.10.2018 (Annexure 2 to the claim petition). In the said order directions were given to the respondents to consider the case of the petitioner for absorption on the post of Senior Computer Programmer on the basis of noting at page no. 72 of paper book. The perusal of the order makes it clear that the Hon'ble High Court has directed the respondents to consider the case of petitioner and not to absorb the petitioner on the post of Senior Computer Programmer.

3.2 On creation of State of Uttarakhand, the petitioner availing the option under U.P. Reorganization Act, filed an application dated 29.09.2000 (Annexure 4 to the claim petition) to serve the State of Uttarakhand as his first option. However, later the petitioner filed an application dated 05.10.2000 before the Director General, Administration, State Planning Commission, U.P. along with an amended

option dated 30.09.2000 expressing his intention to continue his service in U.P. and stating therein that the earlier option dated 29.09.2000 was filed inadvertently as since he is handicapped, he will not be able to serve in the hilly regions of the State of Uttarakhand.

3.3 The petitioner was initially appointed in the State Planning Commission U.P. on the post of Programmer in the pay scale of Rs. 8550-275-14600 (Annexure: 5 to the claim petition) and after the creation of the State of Uttarakhand, the petitioner could not be allocated to Uttarakhand because after the creation of State of Uttarakhand, the two posts of Programmer which were available in the cadre were allocated to the State of U.P. as only 16 % of posts were to be allocated to Uttarakhand. Hence the services of the petitioner could not be allocated to the State of Uttarakhand.

3.4 After the creation of the State of Uttarakhand, the structure of State Planning Commission was created *vide* G.O. bearing No. 392/48(2002)-XXVI-SPC/2005 dated 03.06.2005. In the said structure there was no post in the pay scale of Rs. 8550-275-14600 (revised pay scale 15600-39100 grade pay Rs. 6600). However, after the allocation of the petitioner to the State of Uttarakhand in compliance of the order dated 10.11.2014 (Annexure 12 to the claim petition) the petitioner was given the pay scale of Rs. 15600-39100 grade pay Rs. 6600 (i.e. revised pay scale of Rs. 8550-275-14600) *vide* office order dated 01.08.2015 (Annexure 17 to the claim petition) only in furtherance of the consent expressed by the representative of the State of Uttarakhand before the Central Govt. that in case of allocation of the petitioner a new post equivalent to Programmer in U.P. shall be created. Hence, to maintain the status of the petitioner and to cause him no financial loss until the creation of the post of Programmer, the petitioner was given pay scale of Rs. 15600-39100 grade pay Rs. 6600/-. Finally in the year 2018, a post of Programmer has been created in the structure of State Planning Commission in the pay scale of Rs. 15600-39100 grade pay Rs. 5400

(Level-10) and the petitioner has been duly absorbed on the said post *vide* office order bearing no. 102/XXVI/2015-one (11) 2004 dated 11.05.2018. Hence the contention of the petitioner that the petitioner has every right to get the grade pay of Rs. 6600/- is misconceived and not acceptable.

3.5 It is wrong to allege that the post of programmer in State of U.P. is equivalent to post of Senior Computer Programmer in State of Uttarakhand. In State of U.P., the pay scale of Programmer is Rs. 15600-39100 grade pay of Rs. 5400/- whereas the pay scale of Senior Computer Programmer in State of Uttarakhand is Rs. 15600-39100 grade pay of Rs. 6600/-, hence it is clear that both the posts are not equivalent. Moreover, in the earlier structure of State Planning Commission there was no post of Programmer but recently *vide* G.O. dated 11.05.2018 (Annexure CA-3) post of Programmer has been created in the pay scale of Rs. 15600-39100 grade pay Rs. 5400. As per the existing structure, the grade pay of Computer Programmer is Rs. 4200/- who will be promoted to the post of Programmer in the Grade Pay Rs. 5400 who will further be promoted to the post of Senior Computer Programmer in Grade Pay Rs. 6600. The Uttarakhand State Planning Commission Programmer Service Rules, 2019 have been framed which have been duly sent to the State for its approval and at present the said Rules are pending approval at the end of the State.

3.6 The State Government never considered the appointment of the petitioner against the post of Senior Computer Programmer. The petitioner was only granted pay of Rs. 6600/- equivalent to that of Senior Computer Programmer to cause no financial loss to the petitioner until the creation of the post of Programmer. The post of Senior Computer Programmer is a promotional post and therefore the petitioner cannot directly be absorbed on the said post. The post of Programmer has been duly created and petitioner has been duly absorbed on the said post. Further in compliance of the order passed by the Hon'ble High Court

dated 11.10.2018 a committee was constituted to consider the case of the petitioner for absorption on the post of Senior Computer Programmer in State of Uttarakhand. The said committee duly filed its report dated 12.02.2019. On the basis of the said report and after the perusal of the record, the respondent no. 1 rightly came to the conclusion that the petitioner cannot be absorbed against the post of Senior Computer Programmer and therefore rejected the representation of petitioner *vide* office order dated 18.02.2019.

3.7 After the allocation of the employees to State of Uttarakhand and until their absorption, higher pay scales were granted just to protect the employees from any financial loss until the creation of the post. However, all the said employees were given only the approved pay scale after creation of the post/absorption. The petitioner was allocated to the State of Uttarakhand only *vide* order dated 10.11.2014. Before the said date the petitioner was serving in the State of U.P. and was receiving all the benefits from the State of U.P., hence his services before the said date cannot be presumed to be rendered in State of Uttarakhand. The respondents have duly considered the case of the petitioner in compliance of the order dated 11.10.2018 but since the petitioner could not be absorbed on the post of Senior Computer Programmer as per the noting at page no. 72 and 73 of the paper book, therefore his representation has been duly rejected *vide* order dated 18.02.2019 which deserves to be upheld by this Tribunal.

4. R.A. has been filed by the petitioner reiterating the averments of the claim petition and further stating the following:

4.1 Respondents have accepted that the pay scale of Rs. 8550-14600 is equivalent to Rs. 15600-39100 grade pay Rs. 6600/- in revised pay scale and also in compliance of order dated 10.11.2014 (Annexure no. 12 to the claim petition), the petitioner was given the pay scale of Rs. 15600-39100 grade pay Rs. 6600/- (*i.e.* revised pay scale of Rs. 8550-14600) *vide* office order dated 01.08.2015. Once the respondents have

admitted that equivalent pay scale of Rs. 8550-14600 is 15600-39100, grade pay Rs. 6600 which was also given to the petitioner, then why the respondents have created the post of Programmer in lower pay scale of grade pay of Rs. 5400/-.

4.2 The petitioner requested the respondents that if the post of Programmer is to be created then it must be in the pay scale of Rs. 15600-39100 grade pay Rs. 6600/- which is equivalent pay scale of the original pay scale of Rs. 8550-14600, however, since a post in the structure of State Planning Commission of equivalent pay scale Rs. 15600-39100, grade pay Rs. 6600 of Senior Computer Programmer is already existing, therefore, there were no need to create the post and the petitioner should be absorbed in the equivalent post of Senior Computer Programmer. The post of Senior Computer Programmer in the structure of State Planning Commission of State of Uttarakhand is in the pay scale of Rs. 15600-39100 grade pay Rs. 6600 and the petitioner's post of Programmer in the State of Uttar Pradesh was in the pay scale of Rs. 8550-14600 (revised pay scale Rs. 15600-39100 grade pay Rs. 6600 as per Uttarakhand Government pay revision order), therefore, both posts having the same scale of pay. Only nomenclature of the post, tries to mislead as the word 'Sr.' exists in Sr. Computer Programmer. It is relevant to mention here that according to the State Planning Commission Programmer Service Rules, 2019, Computer Programmer of pay scale Rs. 4200/- would be promoted to pay scale of Rs. 5400/- *i.e.* from level 07 to level 10. It is beyond understanding how an employee can be promoted up by three stages.

4.3 It is also relevant to mention here that another employee of the same department *i.e.* Planning Department, Sri Gauri Shankar Pandey who was appointed initially in same post of Programmer of pay scale of Rs. 8550-14600 in U.P. has been given the benefits of revised pay scale Rs. 15600-39100, grade pay Rs. 6600 and all the benefits of ACP as per Government Orders issued by the Uttarakhand State.

4.4 In the structure of State Planning Commission of Uttarakhand (vide G.O. dated 03.06.2005) no post exists from which the post of Senior Computer Programmer can be filled by promotion, as there exists a lower post of grade pay Rs. 4200/- which cannot be promoted to Rs. 6600/- (from level 07 to level 11). Therefore, the absorption of the petitioner cannot be denied on the basis that post of Senior Computer Programmer is promotional post.

4.5 All the employees who are allowed to join in the State of Uttarakhand in higher pay scale were not only still working in the same pay scale but most of the employees have also been promoted to the next higher post and scale from time to time. The post of Programmer in the structure of State Planning Commission should be created in the grade pay of Rs. 6600/- as it is the equivalent pay scale of the pre-revised scale of Rs. 8550-14600/- as per Uttarakhand Govt. Orders relating to revision of pay scales.

5. This Tribunal passed the following order on 16.08.2022:

“After hearing arguments of learned Counsel for the parties at length, the judgment was reserved on 13.07.2022 and the parties were asked to file written submissions, if they so desire. Written submission dated 16.07.2022 has been filed by learned Counsel for the petitioner, in which, it has been stated that Sri Gauri Shankar Pandey, who was appointed in the year 1997 on the post of Programmer in the Economic & Statistic Wing of Planning Department in the pay scale of Rs. 8550- 14600/- in the State of U.P., has been given the benefit of 1st ACP in the pay scale of Rs. 15600-39100/- Grade Pay of Rs. 7600 and 2nd ACP in the Pay Scale of Rs. 37400-67000, grade pay of Rs. 8700/- vide order dated 29.01.2019 of the Planning Department. Copy of this order has also been enclosed with the written submission as Annexure no. 1. The case of Sri Gauri Shankar Pandey has also been mentioned by the petitioner in para 12 of the R.A. as below:

“12.....It is also relevant to mention here that another employee of the same department i.e. Planning Department, Mr. Gauri Shankar Pandey who was appointed initially in same post of programmer of pay scale of Rs. 8550-14600 in U.P. has been given the benefits of revised pay scale Rs. 15600-39100 grade pay Rs. 6600 and all the benefits of ACP as per Government Orders issued by the Uttarakhand State.”

Learned A.P.O. has sought many opportunities to file Supplementary Affidavit to the R.A. filed by the petitioner, but the same has not been filed. Learned A.P.O. has submitted that he had contacted the department many times for filing Supplementary Affidavit to the R.A. filed by the petitioner, but no instructions have been received by him.

The grant of above 1st and 2nd ACPs to Sri Gauri Shankar Pandey shows that he must have been absorbed on the post of Programmer by the Govt. of Uttarakhand in the Pay Scale of Rs. 15600-39100, Grade Pay Rs. 6600/- as the next higher grade pays/scale have been given to him as 1st and 2nd ACP. In the interest of justice, it is necessary to know the following: -

- (i) The post and the pay scale/grade pay on which Sri Gauri Shankar Pandey was absorbed in Uttarakhand Govt. with copy of the corresponding Govt. Order about the staff structure.*
- (ii) Sri Gauri Shankar Pandey and the petitioner, both were on the same post of Programmer in Planning Department of U.P. Why Sri Pandey has been absorbed by Govt. of Uttarakhand on the post in grade pay of Rs. 6600/- while the petitioner is being absorbed on the post in grade pay of Rs. 5400/-?*
- (iii) Was a post of Programmer in the Economics and Statistic Wing of the Planning Department of Uttarakhand available before joining of Sri Gauri Shankar Pandey or was it subsequently created? What were/are the further promotional prospects from the post of Programmer in the Economics and Statistic Wing?*
- (iv) If the petitioner had been allocated to Uttarakhand and had joined the Uttarakhand Govt. in the time of 5th Pay Commission, what post and in what pay scale/grade pay would have been created for his absorption.*

Respondents may file the above information along with affidavit by 08.09.2022."

6. In response to the above order of the Tribunal, Supplementary C.A. has been filed on behalf of the respondent no. 1 stating that after allocation of Sri Gauri Shankar Pandey, Programmer to Uttarakhand vide U.P. Govt. Office Memorandum dated 20.09.2005, the Planning Department created the post of Programmer in the Economics and Statistics Directorate in the pay scale Rs. 8550-14600 vide O.M. dated 05.09.2008 from the date of joining of Sri Gauri Shankar Pandey. After the revision of the pay scales, Pay Band-3 Rs. 15600-39100, grade pay Rs. 6600

was given to Sri Gauri Shankar Pandey. The petitioner's 5th Commission's pay scale of Rs. 8550-14600 was revised to Pay Band-3 Rs. 15600-39100, grade pay Rs. 5400 in the 6th Pay Commission in U.P. and according to the same, one post of Programmer in this pay scale was created in the cadre structure of the State Planning Commission vide G.O. dated 02.04.2018 and according to G.O. dated 11.05.2018, the petitioner has been given the Pay Band-3 Rs. 15600-39100, grade pay Rs. 5400. All posts of the Economics and Statistical Department of Uttarakhand were created after the allocation of personnel from U.P. to Uttarakhand. In Economics and Statistical Department, for further promotion from the post of Programmer, one temporary post (dying cadre) each of Deputy Director, Computer and Joint Director, Computer have been created.

7. At the time of creation of State of Uttarakhand, information about allocation of the petitioner to State of Uttarakhand was provided by Special Secretary, U.P. Govt., Planning Department to Reorganization Commissioner, Uttarakhand but the petitioner *vide* his application dated 03.10.2000 requested to keep his option for the old State of U.P., in view of his inability to work in the hilly areas, due to his permanent disability. Afterwards, the petitioner *vide* his undated letter, addressed to the Chief Secretary, Uttarakhand Govt. (which was received in the concerned office on 01.02.2012) requested for posting in the Uttarakhand State on the basis of family and other grounds. Then *vide* letter dated 16.04.2015 of the Joint Secretary, U.P. Reorganization Coordination Department, the petitioner was again allocated to State of Uttarakhand. The anomalous situation in the pay of the petitioner has arisen because of the delay in giving his option by the petitioner.

8. The petitioner has filed reply affidavit to the above Supplementary C.A., mainly stating that the State Planning Commission and Economics and Statistics Department are two wings of the Planning Department of the Govt. of Uttarakhand. Both Sri Gauri Shankar Pandey and the petitioner were appointed on the post of Programmer in the pay

scale of Rs. 8550-275-14600 in the year 1997 and 1998 respectively. Sri Gauri Shankar Pandey has been given the 6th Pay Commission's pay scale of Rs. 15600-39100, grade pay Rs. 6600 and the 1st ACP in the pay scale of Rs. 15600-39100 grade pay Rs. 7600 and 2nd ACP in the pay scale of Rs. 37400-67000 grade pay Rs. 8700, while the petitioner is being treated as appointed in the pay scale of Rs. 15600-39100, grade pay Rs. 5400/-, after 1st ACP in the pay scale of Rs. 15600-39100, grade pay Rs. 6600 and after 2nd ACP in the pay scale of Rs. 15600-39100, grade pay Rs. 7600. The petitioner is entitled to get the same pay scales as have been given to Sri Gauri Shankar Pandey. The respondent has admitted the fact that after creation of State of Uttarakhand, Sri Gauri Shankar Pandey joined the State Services on pay scale of Rs. 8550-14600 on the post of Programmer from the date he joined the services, and as stated above in the present affidavit as well as in the claim petition, it is an admitted fact that the pay scale of Rs. 8550-14600/- has been revised in the State of Uttarakhand in pay band-3 of pay scale of Rs. 15600-39100, grade pay Rs. 6600/- and thereafter admittedly the respondent extended the benefit of 1st ACP to Sri Gauri Shankar Pandey in pay scale of Rs. 15600-39100, grade pay Rs. 7600 and 2nd ACP in pay scale of Rs. 37400-67000, grade pay Rs. 8700/-but the same benefits have not been given to the petitioner.

As per the admission of the respondent, on one hand, the respondent extended the benefit to Sri Gauri Shankar Pandey after the acceptance of recommendations of 6th Pay Commission and given the pay scale of Rs. 15600-39100, grade pay Rs. 6600 in view of his revised pay scale as earlier he was getting the pay scale of Rs. 8550-275-14600 and on the other hand, the respondent failed to extend the same benefit to the petitioner and has given the pay scale of Rs. 15600-39100, grade pay Rs. 5400/- to the petitioner in view of his earlier pay scale of Rs. 8550-14600. This discrimination on the part of the respondent is not only violation of G.O. no. 395/XVII(7)/2008 dated 17.10.2008, whereby the pay scale of Rs. 8550-275-14600 pay band-3 has been revised as Rs. 15600-39100, grade pay Rs. 6600, but also violation of Article 14 of Constitution of India as the

respondent is discriminating among the same set of 2 employees working in the same department (State Planning Department), one inducted in the services in the year 1997 and another in the year 1998 on same pay scale of Rs. 8550-275-14600, which was revised in the State of Uttarakhand after the acceptance of recommendation of 6th Pay Commission to Pay Band-3, Rs. 15600-39100, grade pay Rs. 6600/-

9. We have heard learned Counsel for the parties and perused the record. Our observations are as below:-

(i) The post of Senior Computer Programmer in the State Planning Commission of Uttarakhand was created in the 5th Pay Commission's pay scale of Rs. 10000-15200 which pay scale was revised to Rs. 15600-39100, grade pay Rs. 6600 in State of Uttarakhand. The 5th Pay Commission's pay scale of Rs. 8550-275-14600 which was the pay scale, in which, the petitioner and Sri Gauri Shankar Pandey were appointed was revised to 6th Pay Commission's pay scale of Rs. 15600-39100, grade pay Rs. 6600 in Uttarakhand and in U.P. it was revised to Rs. 15600-39100, grade pay Rs. 5400/-

(ii) Had the petitioner been allocated and joined the State of Uttarakhand in the time of 5th Pay Commission, a post of Programmer in the pay scale of Rs. 8550-275-14600 would have been created for him in the State Planning Commission of Uttarakhand, as was done in the case of Sri Gauri Shankar Pandey in Economics and Statistics Wing of the Planning Department. The petitioner having got this scale would automatically have got the corresponding revised 6th Pay Commission's pay scale of Rs. 15600-39100, grade pay Rs. 6600. He would have got next pay scale of Rs. 15600-39100, grade pay Rs 7600 as 1st ACP and Rs. 37400-67000, grade pay Rs. 8700 as the 2nd ACP like Sri Gauri Shankar Pandey.

(iii) The petitioner remained in U.P. where the pay scale of his substantive appointment was revised to Rs. 15600-39100, grade pay Rs.

5400 and he got the next higher pay scale Rs. 15600-39100 grade pay Rs. 6600 as 1st ACP and Rs. 15600-39100, grade pay Rs. 7600 as 2nd ACP.

(iv) When the petitioner joined Uttarakhand, initially the pay and allowances admissible to him were drawn against the post of Senior Computer Programmer which was created in the State Planning Commission in the 6th Pay Commission's pay scale of Rs. 15600-39100, grade pay Rs. 6600. Subsequently, a post of Programmer was created for him in the State Planning Institute in the 6th Pay Commission's pay scale of Rs. 15600-39100, grade pay Rs. 5400 on which he has been absorbed.

(v) The Tribunal holds that the petitioner cannot claim to be absorbed on the post of Senior Computer Programmer which was created in the 5th Pay Commission pay scale of Rs. 10000-15200 (which got revised to Rs. 15600-39100, grade pay Rs. 6600 in the 6th Pay Commission) as this 5th Pay Commission pay scale of Rs. 10000-15200 was higher than the pay scale of his substantive appointment which was Rs. 8550-275-14600. This Tribunal simultaneously observes that the new post of Programmer created for him should not have been in the 6th Pay Commission's pay scale of Rs. 15600-39100, grade pay Rs. 5400 but in the revised pay scale of his substantive appointment's pay scale of Rs. 8550-275-14600 which again is the 6th Pay Commission's pay scale of Rs. 15600-39100, grade pay Rs. 6600, for the following reasons:

- (a) This would have not led to any disparity in the pay scales and the 1st ACP and the 2nd ACP of the petitioner and Sri Gauri Shankar Pandey, who are similarly placed and working in two different Wings of the same Govt. Department.
- (b) The petitioner cannot be put to a loss merely because of his late allocation and late joining in the State of Uttarakhand. In this regard, reference is made to the meeting of the State Advisory Committee held on 18.07.2014 as mentioned in para 2.5 of this judgment, which states that 'the Committee was informed that Shri Naresh Chandra

had given option for Uttarakhand, however he could not be allotted to Uttarakhand as only two posts were available in the cadre and both the posts were allocated to Uttar Pradesh as only 16% (approx.) posts were to be allocated to Uttarakhand. The representative of Uttarakhand Govt. informed that at present no post of programmer is available in Uttarakhand, however, he agreed that if the Central Govt. allocates Shri Naresh Chandra to Uttarakhand, a post would be created to accommodate him'.

(c) The ACPs are financial upgradations of the pay scale of the substantive appointment after certain length of service. If substantive appointment was made in the period of 5th Pay Commission, then the corresponding revised scales of the 6th Pay Commission should be taken as the pay scale of substantive post for granting ACPs which in the petitioner's case should be treated to be Rs. 15600-39100 grade pay Rs. 6600 by the Uttarakhand Govt.

(vi) The Govt. of Uttarakhand should have created the post of Programmer in the State Planning Commission in the 6th Pay Commission pay scale of Rs. 15600-39100, grade pay Rs. 6600 and absorbed the petitioner against the same. This would not have led to any anomaly between the case of the petitioner and Sri Gauri Shankar Pandey and also would not have created a situation where the petitioner was being absorbed on a higher post of Senior Computer Programmer, having higher pay scale of Rs. 10000-15200 in the 5th Pay Commission, as compared to the pay scale of Rs. 8550-275-14600 of the post of Programmer. It would only have been incidental that after revision, the 6th Pay Commission's scales for both these posts were the same. In all other departments of the Govt. as well, these pay scales in the 5th Pay Commission would also have been revised in the same manner.

(vii) In short, while creating a post for absorption of the petitioner, the Uttarakhand Govt. should not have treated his substantive post to be in the pay scale of Rs. 15600-39100, grade pay Rs. 5400 (which was

revised 6th Pay Commission pay scale for Rs. 8550-275-14600 in U.P.) but should have treated his substantive appointment to be in the 5th Pay Commission pay scale of Rs. 8550-275-14600 which was revised to Rs. 15600-39100, grade pay Rs. 6600 in the 6th Pay Commission in Uttarakhand and accordingly, created the post of Programmer in the State Planning Commission in this pay scale.

10. In view of the above, the respondents are directed to create the post of Programmer, for absorption of the petitioner, in the 6th Pay Commission pay scale of Rs. 15600-39100, grade pay Rs. 6600, w.e.f. from the date of his joining the State of Uttarakhand instead of the pay scale of Rs. 15600-39100, grade pay Rs. 5400 and work out his 1st ACP and 2nd ACP with grade pays of Rs. 7600 and Rs. 8700 respectively as has been done in the case of Sri Gauri Shankar Pandey and pay him the salary and arrears accordingly after joining the State of Uttarakhand.

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

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATED: JANUARY 25, 2023
DEHRADUN.
KNP