

**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)

**WRIT PETITION NO 2288 (S/S) OF 2017  
[RECLASSIFIED AND RENUMBERED AS CLAIM PETITION NO. 24/NB/DB/2023]**

1. Balwant Singh S/o Shri Jeet Singh.
2. Rajendra Prasad S/o Shri Chanar Ram
3. Mahesh Lal S/o Shri Ani Ram,  
Petitioner no. 1 to 3 who are presently posted as Class IV employee in the office of Superintendent Government Horticulture Chaubatiya, Ranikhet, District Almora.
4. Khushal Singh Mehra S/o Late Sri Soban Singh Mehra,
5. Mahesh Chandra S/o Shri Tomas Singh,
6. Jawahar Singh S/o Shri Mohan Singh,
7. Kundan Singh S/o Late Sri Bheem Singh,  
Petitioner no. 4 to 7 are presently posted as Class IV employee in the office of Director, Horticulture and Food Processing, 'Udyyan Bhawan' Chaubatiya Ranikhet District Almora. Prakash

**.....Petitioners**

**Vs.**

1. State of Uttarakhand through its Secretary, Horticulture, Govt. of Uttarakhand, Civil Secretariat, Dehradun.
2. Secretary, Finance, Govt. of Uttarakhand, Civil Secretariat, Dehradun.
3. Director, Horticulture and Food Processing, Udyan Bhawan, Chaubatiya Ranikhet, District Almora.
4. District Horticulture Officer, Almora, District Almora.

**.....Respondents**

**WITH**

**WRIT PETITION NO 2266 (S/S) OF 2017  
[RECLASSIFIED AND RENUMBERED AS CLAIM PETITION NO. 07/NB/DB/2023]**

1. Prakash Chandra, s/o Sri Anni Ram,
2. Jagdish Lal, s/o Sri Gusain Ram,  
Presently posted as Class IV employees at Govt. Horticulture Mobile Team,  
Patlot/ Heera Nagar, Haldwani, District Nainital.

**Vs.**

1. State of Uttarakhand through its Secretary, Horticulture, Govt. of Uttarakhand, Civil Secretariat, Dehradun.
2. Secretary, Finance, Govt. of Uttarakhand, Civil Secretariat, Dehradun.
3. Director, Horticulture and Food Processing, Udyan Bhawan, Chaubatiya Ranikhet, District Almora.
4. District Horticulture Officer, Vikas Bhawan, Bhimtal, District Nainital.

**WITH**

**WRIT PETITION NO 2262 (S/S) OF 2017  
[RECLASSIFIED AND RENUMBERED AS CLAIM PETITION NO. 08/NB/DB/2023]**

1. Kaisash Chandra Bhatt, s/o Late Sri Chintamani Bhatt,
2. Manoj Kumar s/o Late Sri Prem Ram Arya,
3. Chandrapal, s/o Late Sri jai Lal,

All the petitioners, who are presently posted as Class IV employees at Govt. Beekeeping Centre, Jyolikote, District Nainital.

**.....Petitioners**

**Vs.**

1. State of Uttarakhand through its Secretary, Horticulture, Govt. of Uttarakhand, Civil Secretariat, Dehradun.
2. Secretary, Finance, Govt. of Uttarakhand, Civil Secretariat, Dehradun.
3. Director, Horticulture and Food Processing, Udyan Bhawan, Chaubatiya Ranikhet, District Almora.
4. District Horticulture Officer, Nainital, Udyan Bhawan, Bhimtal, District Nainital.

**.....Respondents**

**WITH**

**WRIT PETITION NO 2265 (S/S) OF 2017  
[RECLASSIFIED AND RENUMBERED AS CLAIM PETITION NO. 09/NB/DB/2023]**

1. Naveen Chandra, s/o Late Sri Pani Ram,
2. Dinesh Kumar, s/o Late Sita Ram,
3. Madan Lal Arya, s/o Sri Bachi Ram Arya  
Presently posted as Class IV employees in Govt. Beekeeping Centre, Jyolikote,  
District Nainital

.....Petitioners

**vs.**

1. State of Uttarakhand through its Secretary, Horticulture, Govt. of Uttarakhand,  
Civil Secretariat, Dehradun.
2. Secretary, Finance, Govt. of Uttarakhand, Civil Secretariat, Dehradun.
3. Director, Horticulture and Food Processing, Udyan Bhawan, Chaubatiya  
Ranikhet, District Almora.
4. District Horticulture Officer, Vikas Bhawan, Bhimtal, District Nainital.

.....Respondents.

**WITH**

**WRIT PETITION NO 2290 (S/S) OF 2017**  
**[RECLASSIFIED AND RENUMBERED AS CLAIM PETITION NO. 23/NB/DB/2023]**

1. Naveen Chandra Belwal s/o Late Sri Leeladhar Belwal,
2. Mahendra Singh Mehra, s/o late Sri Keshar Singh Mehra,
3. Dungar Singh Mehta, s/o Late Sri Mohan Singh,
4. Nandan Singh, s/o Late Sri Jeet Singh,
5. Govind Chandra Arya, s/o Late Sri Man Ram,

All the petitioner are presently posted as Class IV employee in the office of  
Director/ Deputy Director, Horticulture and Food Processing, Uddyan Bhawan,  
Chaubatiya, Ranikhet, District Almora.

.....Petitioners

**WITH**

**WRIT PETITION NO 2289 (S/S) OF 2017**  
**[RECLASSIFIED AND RENUMBERED AS CLAIM PETITION NO. 25/NB/DB/2023]**

1. Kishan Singh s/o Late Sri Dham Singh, presently posted as Class IV employee  
(Anusewak) in the office of District Horticulture Officer, Almora, District Almora.
2. Ravindra Singh Mehra, s/o Sri Anand Singh.
3. Bahadur Singh, s/o Late Sri Ranjeet Singh,
4. Narendra Kumar, s/o Sri Kishan Lal,
5. Kundan Ram, s/o Late Sri Dev Ram,

Petitioner no. 2 to 5 who are presently posted as Class IV employee in the office  
of Director/ Deputy Director, Horticulture and Food Processing, Uddyan Bhawan,  
Chaubatiya, Ranikhet, District Almora.

.....Petitioners

**WITH**  
**WRIT PETITION NO 2291 (S/S) OF 2017**  
**[RECLASSIFIED AND RENUMBERED AS CLAIM PETITION NO. 26/NB/DB/2023]**

1. Kheema Nand Joshi, s/o Late Sri Madhwa Nand Joshi, presently posted as Class IV employee in the office of Deputy Director, Horticulture, Training & Testing Centre Chaubatiya, Ranikhet, District Almora.
2. Pan Singh, s/o Sri Padam Singh.
3. Mahendra Singh, s/o Sri Harak Singh,
4. Jagdish Chandra, s/o Sri Pani Ram,  
Petitioner no. 2 to 4 are presently posted as Class IV employee in the office of Superintendent, Government Horticulture Park, Chaubatiya, Ranikhet, District Almora.
5. Kailash Ram, s/o late Sri Khadak Ram, presently posted as Class IV employee in the office of District Horticulture Officer, Almora, District Almora.

.....Petitioners

**Vs.**

1. State of Uttarakhand through its Secretary, Horticulture, Govt. of Uttarakhand, Civil Secretariat, Dehradun.
2. Secretary, Finance, Govt. of Uttarakhand, Civil Secretariat, Dehradun.
3. Director, Horticulture and Food Processing, Udyan Bhawan, Chaubatiya Ranikhet, District Almora.
4. District Horticulture Officer, Almora, District Almora.

.....Respondents

**WITH**  
**WRIT PETITION NO 2269 (S/S) OF 2017**  
**[RECLASSIFIED AND RENUMBERED AS CLAIM PETITION NO. 31/NB/DB/2023]**

Chandra Shekhar Pandey, s/o Late Sri Suresh Chandra Pandey, presently posted as Class IV employee in the office of District Horticulture Officer, Champawat, District Champawat.

.....Petitioner

**vs.**

1. State of Uttarakhand through its Secretary, Horticulture, Government of Uttarakhand, Civil Secretariat Dehradun.
2. Secretary Finance, Government of Uttarakhand, Civil Secretariat Dehradun.
3. Director, Horticulture and Food Processing, 'Udyan Bhawan' Chaubatiya Ranikhet, District Almora.
4. District Horticulture Officer, Champawat, District Champawat.

.....Respondents

**In Petitions No. 23/NB/DB/2023, 24/NB/DB/2023,  
25/NB/DB/2023, 26/NB/DB/2023 & 31/NB/DB/2023**

Present: Sri Sri B.M.Pingal and Sri Amar Murti Shukla, Advocates,  
for Petitioners.  
Sri Kishore Kumar, A.P.O., for Respondents. (virtually)

**In Petitions No. 07/NB/DB/2023, 08/NB/DB/2023  
& 09/NB/DB/2023**

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

**JUDGMENT**

**DATED: MAY 18, 2023**

**Justice U.C.Dhyani, Chairman**  
**Sri Rajeev Gupta, Vice Chairman (A)**

WPSS No. 2288 of 2017, WPSS No. 2266 of 2017, WPSS No. 2262 of 2017, WPSS No. 2265 of 2017, WPSS No. 2290 of 2017, WPSS No. 2289 of 2017, WPSS No. 2291 of 2017 and WPSS No. 2269 of 2017 have been transferred to this Tribunal *vide* Hon'ble High Court's orders dated 12.12.2022, passed separately in all the writ petitions.

2. WPSS No. 2288 of 2017, WPSS No. 2266 of 2017, WPSS No. 2262 of 2017, WPSS No. 2265 of 2017, WPSS No. 2290 of 2017, WPSS No. 2289 of 2017, WPSS No. 2291 of 2017 and WPSS No. 2269 of 2017 are, accordingly, reclassified and renumbered as Claim Petitions No. 24/NB/DB/2023, 07/NB/DB/2023, 08/NB/DB/2023, 09/NB/DB/2023, 23/NB/DB/2023,

25/NB/DB/2023, 26/NB/DB/2023 and 31/NB/DB/2023, respectively. Since the reference in this Tribunal shall be of the writ petition filed before the Hon'ble High Court, but shall be dealt with as claim petition, therefore, the claim petition shall be referred to as 'petition' and petitioner shall be referred to as 'petitioner', in the body of the judgment.

3. Since the factual matrix of the above noted petitions along with law governing the field is the same, therefore, all the petitions are being decided together, by a common judgment, for the sake of brevity and convenience. Petition No. 24/NB/DB/2023, Balwant Singh and others vs. State and others shall be the leading case.

4. By means of petition number 24/NB/DB/2023, Balwant Singh and others vs. State of Uttarakhand and others, petitioners seek the following reliefs:

- i) Issue a writ, order or direction in the nature of mandamus commanding and directing the respondents to grant the benefit of Government order no. 770/xxvii (7) 40 (ix)/2011 dated 06-11-2013 by granting the Pay scale of Rs.5200- 20200 + Grade pay of Rs. 2800 of 2<sup>nd</sup> ACP/Promotional post forthwith from due date along with 18% interest.
- ii) Issue a writ, order or direction in the nature of mandamus commanding and directing the respondents to pay the arrear of the difference of pay scale of the Grade pay of Rs. 2800/- of 2<sup>nd</sup> ACP/promotional post which has not been paid by the respondents authority to the petitioner from due date with 18% interest.
- iii) Issue any other writ, order or direction, which this Hon'ble Court may deem fit and proper under the facts and circumstance of the case.
- iv) Award the cost of the petition to the petitioners. "

5. Facts giving rise to the petition are as follows:

5.1 The petitioner no. 1 has been appointed on 10.05.1991, petitioner no. 2 has been appointed on 13.11.1995, petitioner no. 3 has been appointed on 01.04.1997, petitioner no. 4 has been appointed on 12.08.1996, petitioner no. 5 has been appointed on 07.02.1995, petitioner no. 6 has been appointed on 03.10.1992 and petitioner no. 7 has been appointed on 01.04.1993 as class IV employee (Anusewak/Sweeper) in Horticulture

Department of the erstwhile State of U.P. now State of Uttarakhand by following due process of law.

5.2 On the recommendation of 6<sup>th</sup> Pay Commission, the Govt. of Uttarakhand has introduced a scheme known as Assured Career Progression Scheme (hereinafter referred to as ACP) for granting the benefit to the State Govt. employees by virtue of Govt. order dated 08.03.2011, whereby the State Govt. has categorized the service of the Govt. employees in three segment *i.e.*, 10 years, 18 years and 26 years respectively, for granting the Grade pay and promotional pay scale along with the ACP to the State Govt. employees. (Copy of G.O. dated 08.03.2011: Annexure no. I ). Thereafter the State Govt., from time to time, issued various Govt. orders, *i.e.* Govt. orders no. 10/xxvii (7) 40 (ix)/2011 dated 07.04.2011, 65/xxvii(7) 40 (ix)/2011 dated 04.08.2011, 216/xxvii (7) 40 (x)/2011 dated 14.10.2011, 313/xxvii (7)40 (ix)/2011 dated 30.10.2012, 314/xxvii(7) 40 (ix)/2011 dated 30.10.2012 and 589/xxvii(7) 40 (ix)/2011 dated 01.07.2013 in order to remove the difficulties arrived in granting the benefit of ACP to the State Govt. employees irrespective of the Grade and Class.

5.3 The State Govt. issued a G.O. dated 06.11.2013 whereby it has been decided by the State Govt. that those employees who are below the Grade pay of Rs. 4800/- for granting the ACP, will be extended the benefit of the Grade pay of the promotional post; in case if there is no promotional post, then the benefit of ACP and Grade pay etc. shall be extended in compliance of G.O. no. 395/xxvii (7)/2008 dated 17.10.2008 and appendix 1 to the said Government order. (Copy of G.O. dated 06.11.2013: Annexure No. 2).

5.4 Since the benefit of aforesaid G.O. dated 06.11.2013 has not been extended to the Class IV employees of the Horticulture Department, therefore, the Director *vide* letter dated 30.06.2014 has directed all the Office Superintendents of the concerned Districts to ensure the effective compliance of G.O. dated 06.11.2013 in order to resolve the pay anomalies of the employees, and if any dereliction in complying the aforesaid direction is found the concerned Officer shall be solely responsible. (Copy of Letter dated 30.06.2014: Annexure – 3). The Director, Horticulture and Food Processing,

Horticulture Department (respondent no.3) in compliance of G.Os. dated 31.01.2015 & 27.02.2015, *vide* letter no. 824/Two-34 (4)/2014-15 dated 28.02.2015 recommended the claim of all the class IV employee of the Horticulture Department for granting the benefit of ACP to the State Government on completion of 10,16 & 26 years of service in the Department. (Copy of letter dated 28.02.2015: Annexure-4). A bare perusal of letter dated 28.02.2015 makes it amply clear that on completion of 10 years of regular service in the Department, the first promotional post of the class IV employees (Anusewak) is Junior Assistant in the pay scale of Rs. 5200-20200 + Grade pay Rs. 2000/-. Similarly, on completion of 16 years of service, the second promotional post is Senior Assistant in the Pay scale of Rs. 5200-20200 + Grade pay Rs. 2800/- and third promotional post on completion of 26 years of service is Head Assistant in the pay scale of Rs. 9300-34800+ Grade pay of Rs. 4200/-. Similarly, the counterparts of the petitioners, who are also class IV employees of the same Department and whose post designation is Mali (Gardner), their first promotional post on completion of 10 years of service is Supervisor class III, Pay Scale of Rs. 5200-20200 + Grade pay of Rs. 2000, second promotional post is Horticulture Inspector Class II, pay scale of Rs. 5200-20200 + Grade pay Rs. 2800 on completion of 16 years and third promotional post is Senior Horticulture Inspector Pay scale of Rs. 9300-34800 + Grade pay of Rs. 4600/- on completion of 26 years of service.

5.5 The Govt. of Uttarakhand, by exercising the power under Article 309 of Constitution of India, has framed the Rules on 14.06.2004, for governing the services of the Group D employees. These Rules are known as Group D Employees Service Rules, 2004 (as amended in the year 2013). (Copy of the Rules of 2004: Annexure - 5). Rule 6 of the Rules of 2004 governs the source of recruitment of Group D employee at serial no. 1, the post of petitioners *i.e.* Anusewak, Messenger, Peon, Sweeper etc. find place along with Mali in the aforesaid category. The State Govt. on the one hand extended the benefit of G.O. dated 06.11.2013 by granting the Assured Career Progression to the similarly situated employees of the selfsame Department *i.e.* Mali in Horticulture Department by granting the Grade pay of Rs. 2800/- on completion of their 16 years of service in the Department whereas the



petitioners who have also successfully completed their more than 16 years service in the Department, they have been granted the Grade pay of Rs. 2400/- instead of Rs. 2800/- which they are legally entitled in pursuance of letter dated 28.02.2015, issued by the Director, Horticulture and Food Processing (respondent no. 3) addressed to the State Govt. coupled with G.O. dated 06.11.2013. The respondent authorities *vide* G.O dated 07.10.2015 has extended the benefit of G.O. dated 06.11.2013 to the class IV employees of the Horticulture Department *i.e.* Mali, whereas the petitioners who are similarly situated persons, their claim has been denied by the respondent authorities. When the aforesaid G.O. dated 07.10.2015 was not implemented by the Treasury of the concerned District, again another G.O. dated 04.11.2016 was issued by the Additional Secretary, Govt. of Uttarakhand, directing the Director, Horticulture and Food Processing to ensure effective compliance and grant of benefit of G.O. dated 06.11.2013.

5.6 The claim of the petitioners, seeking the benefit of ACP, are at par with the benefit of ACP which has been extended by the State Govt. to the class IV employee of Mali category whereas the claim of the petitioners has been withheld by the respondent authorities by unwarranted reason though the petitioners are legally entitled to get the Grade pay of promotional post, as has been directed by the State Govt. in its G.O. dated 06.11.2013.

5.7 The petitioners kept on representing themselves for redressal of their grievances/claims from time to time before the competent authority seeking the indulgence to grant the benefit of G.O. dated 06.11.2013 whereby it has specifically been provided to accord the Grade pay of promotional post to which petitioners are entitled. In respect of such grievances, respondent no. 3, *vide* office letter dated 12.01.2017 again requested the Secretary, Horticulture Govt. of Uttarakhand to issue necessary direction to grant the benefit of Grade pay of promotional post. (Copy of letter dated 12.01.2017: Annexure-8).

6. Respondent No.1 has filed C.A., which has been sworn and verified by Sri G.N.Upreti, Deputy Secretary, Horticulture Govt. of Uttarakhand, Dehradun. Separate C.A. has been filed on behalf of

Respondents No. 3 & 4, which has been sworn and verified by Sri Hitpal Singh, Chief Horticulture Officer, Almora. Each and every material averment in the petition has been denied, save and except as specifically admitted. Rejoinder Affidavit thereto has been filed by the petitioners.

7. In the Counter Affidavits filed on behalf of Respondents, it has been stated that *vide* Government order no. 770/XXVII(7)/40/IXL/2011 dated 06.11.2013 (clause II) it has been mentioned that where the promotional post is provided for the Government employees then the employee would be entitled for grade pay and the pay scale of the promotional post and where no promotional post is available then the employee would be entitled for the grade pay and pay scale provided in Government Order no. 395/XXVII(7)/2008 dated 17.08.2008 from 01.11.2013. The petitioners are working in Group D posts and are entitled for promotions on the Ministerial Cadre according to the provisions of Uttarakhand Subordinate Office Ministerial Cadre (Direct Recruitment) Rules 2004. The promotions are to be made from amongst High School pass candidates up to the limit of 15% and 10% from the Intermediate pass candidates, according to the provisions of the Uttarakhand Subordinate Office Ministerial Cadre (Direct Recruitment) amendment Rules 2013 on the basis of merit. (Copies of the Rules of 2004 and Amendment Rules of 2013: Annexure No. CA 1 & 2). It is also submitted that the G.O. dated 23.11.2012 provided that the Class IV employees who have completed the minimum satisfactory services as a Group D employee and after qualifying the departmental examination, would be entitled for the benefits of G.O. dated 08.03.2011 (Clause 2(e)(5)) and 3<sup>rd</sup> financial upgradation would be admissible to them. It is also submitted that the petitioners are promoted on the post of *Daftari* on the basis of the seniority according to the Departmental Services Rules 1986 (Copy of the Rules of 1986: Annexure- CA 3).

7.1 Therefore, the petitioners could not be promoted on the post of Junior Assistant on the basis of the seniority and accordingly, the petitioners were granted the next grade pay according to the G.O. dated 17.11.2008. It is also submitted that the Group D employees of the Mali Cadre or the Lab Attendant cadre have been granted the grade pay of the promotional post

according to the provisions of the G.O. No. 760/XVI(1)/15/5(03)/2012 TC dated 07.10.2015 and G.O. No. 2046/ XVI-1/16/5(03) /2012 TC dated 04.11.2016 and Order No. 3589/-34(4)/2016-17 dated 28.11.2016 and G.O. was issued by the Finance department on 06.11.2013. From this it is evident that the promotional avenues of the Mali Cadre and Lab Attendant Cadre and that of the Peon Cadre, (although all Group D employee) are different. (Copies of G.O. dated 07.10.2015, G.O. dated 04.11.2016, Order dated 28.11.2016 and G.O. dated 06.11.2013: Annexure No. CA 4, 5, 6 & 7).

7.2 It is further submitted that according to the Rule 5 and Rule 17 of the Uttar Pradesh Horticulture and Food Processing Subordinate Services Rules 1993 for Mali cadre, the provisions regarding promotions are as under:-

Rule 5 i) 20% posts are to be filled from such Group D employees by way of promotion who have passed high school or equivalent examination from the recognized Board or equivalent thereof and have completed 5 years of services on the first day of the recruitment year.

ii) 80% posts are to be filled by direct recruitment on the basis of the written examination and interview conducted by the Board.

Rule 17-i) Seniority subject to the rejection of unfit by the duly constituted committee.

7.3 Accordingly, the grade pay of Rs. 2000(amended 2400, 2800 and 4600) have been made applicable after completing 10, 16 and 26 years of service in respect of the Malis. The criteria of promotion for the post of Mali cadre and that of the peon cadre is seniority subject to rejection of Unfit and merit, respectively and therefore, the grade pay has been granted accordingly. It is submitted by the respondent department that no directions have been given by the State Govt. therefore, the petitioners are being paid grade pay applicable to them. Therefore, the petition is devoid of merit and liable to be dismissed.

7.4 R.A. has been filed on behalf of the petitioners, to which Supplementary C.A. has been filed on behalf of the respondents no. 3 & 4. Paras 9 and 14 of this Suppl. C.A. are reproduced herein below for convenience:

“9. That in reply to the contents of para 8 of the rejoinder affidavit it is submitted that as far as the case of the employees of Anusevak cadre are concerned it is submitted that the Directorate vide its letter no. 704/Do-34(4)/2016-17 dated 12.1.2017 has made a proposal for granting all benefit of ACP (in the pay scale of promotional post) to the employees of the promotional post of Anusevak cadre. According to government order no. 161/XXVII(7)/40(IX)/2011 dated 28.11.2017 the admissibility of grade pay of Rs. 1900, 2400 & 2800 is admissible as first, second and third ACP. It is submitted that in compliance to the order dated 9.7.2018 passed by the Hon'ble Court with respect to the Mali/Parichar cadre the directions have been given to the authorities concerned to grant the benefit of ACP to the petitioners of this writ petition according to the provisions of the Government Order no. 760/XVI(1)/15/5(03)/2012T-C dated 7.10.2015. It is further submitted that the government order dated 7.10.2015 was issued with respect to only Malis/Parichar cadre and there was no such provisions in the aforesaid government order with regard to the Anusevak cadre. For Anusevak cadre employees proposal has been sent to the State Government. 14. That in reply to the contents of para 15 of the rejoinder affidavit it is submitted that the rules for promotion for the Mali/Parichar cadre and Anusevak cadre are different. It is also submitted that for the Mali/Parichar cadre the provisions of Government Order dated 7.10.2015 have been made applicable in compliance to the order passed by this Hon'ble Court on 9.7.2018 and the concerned authorities have been directed accordingly, however, for the Anusevak cadre the proposal has already been sent to the State Government. However at present they are entitled for grade pay of Rs. 1900, 2400 & 2800 after completing 10, 16 & 26 years of service respectively.”

8. During hearing, learned Counsel for the petitioners pointed out that in the letter dated 12.01.2017 of the Director of Horticulture to the Secretary, Horticulture (page no. 63 and 64 of the paper book), it has been clearly mentioned that according to the approval for the reorganization of the organizational structure of the Horticulture Department vide G.O. dated 03.11.2016, the posts of Peon/Chowkidar and Daftari have been integrated and kept in one list with Grade Pay of Rs. 1800/-. Therefore, 4<sup>th</sup> Class employees can be promoted upto the limit of 25% of the clerical posts with grade pay of Rs. 2000/- after fulfilling the prescribed educational qualifications and, therefore, these employees should be given grade pays of Rs. 2000 (of Junior Assistant), Rs. 2800 (for Senior Assistant) and Rs. 4200/- (for *Pradhan Sahayak*) after completion of 10,16 and 26 years of service respectively, keeping in view the departmental reorganization and fundamental rights of equality. This letter seeks the guidance of the government in this regard. According to learned Counsel for the petitioners, this letter clarifies that only promotional avenue from the post of Peon/ Chowkidar is to the post of Junior

Assistant, as the post of Daftari has been clubbed with the posts of Peon/Chowkidar in the reorganization of the departmental structure. He further submits that the Govt. has not yet taken any decision on this letter of the Director, Horticulture as has been mentioned in paras 9 and 14 of the Supplementary C.A. to the R.A. (which have been reproduced above).

8.1 Learned Counsel for the petitioners further produced the Uttarakhand Horticulture and Food Processing Subordinate (Group III) Service Rules, 2009 before the Tribunal, which govern the promotion to the posts of Horticulture Supervisor from Mali etc. and these Rules also provide for promotion on 20% of the posts from such substantively appointed Group-D employees, who have passed High School examination from Board of Secondary Education, Uttarakhand/Uttar Pradesh or any other examination recognized by the Government equivalent there to and have completed five years of service on their respective posts on the first day of the year of recruitment on the basis of objective type written examination through selection by Departmental Selection Committee. Such selection/promotion of the Malis is similar to the selection/promotion of Peon/Chowkidars on the posts of Junior Assistants and, therefore, similar treatment should be given to the Peon/Chowkidars in the matter of ACP as has been given to the Malis.

9. The point for consideration before this Tribunal is, whether petitioners are entitled to get the benefit of G.O. No. 770/XXVII(7)/40/IXL/2011, dated 06.11.2013 for extending the benefit of ACP as has been granted to the similarly situated class IV employee of the same Department in which petitioners are working or not?.

10. It is the submission of Ld. Counsel for the petitioners that on the one hand the respondents authorities have granted the benefit of Grade pay of promotional post to the Mali category on completion of 10,16 & 26 years of service whereas the claim of the petitioners, who are on the similar footing and serving on the same Department under the same category *i.e.* Group D category, has yet not been considered by the respondents authorities, which amounts to hostile discrimination on the part of respondent authorities.

11. Ld. Counsel for the petitioners submitted that respondents cannot be permitted to create class within the class, that too amongst the Group D employee of the same Department by granting the benefit of G.O. dated 06.11.2013 to one set of employees and denying such benefit to another set of employees; this cannot be a reasonable cause in denying the benefit of G.O. dated 06.11.2013 which has been made applicable by the State Govt.

12. All the Group D employees are having the similar qualifications, similar source of recruitment, similar rules governing the service conditions of Group D employees. More so, the appointing authority of Anusewak, Messenger, Sweeper, Peon, Mali etc. is same and the drawing and disbursing authority is also common, then under which authority of law the respondents can make classification of one class in the homogeneous category of employees while extending the benefit of ACP according to promotional posts of one class and denying the same benefit of ACP to another class. This act of the respondents is arbitrary and unreasonable. Till date, neither petitioners have been promoted by the respondent authorities nor Grade pays of the promotional posts have been accorded to the petitioners in pursuance to the G.O. dated 06.11.2013, hence the petitioners are legally entitled to get the benefit of aforesaid Govt. order.

13. Submission of Ld. Counsel for the petitioners is that the respondents are guilty of Doctrine of Legitimate inaction and Doctrine of *Genralia specialibus non- derogant* and in view of the facts and circumstances narrated above, it is expedient in the interest of justice that this Tribunal may be pleased to direct the respondent authorities to grant the benefit of Government order dated 06.11.2013 and to pay the Grade pays of promotional posts *i.e.* Rs. 2000/-, Rs. 2800/- and Rs.4200/- as 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> ACP to the petitioners after completion of 10, 16 and 26 years of service respectively.

14. The Tribunal observes that the claim for ACP on the basis of promotional posts is being denied to the petitioners on two grounds (i) their promotional post is Daftari and (ii) the criteria for promotion to the post of

Junior Assistant is by way of selection through examination and is based on merit and not on seniority subject to rejection of unfit, while the promotions from the post of Malis to Horticulture Supervisors are based on seniority subject to rejection of unfit.

15. On the above first point, it has been clarified in the proposal dated 12.01.2017 sent by the Director, Horticulture to Secretary, Horticulture that in the departmental reorganization, the post of Daftari has been clubbed with the posts of Peon/Chowkidar in the same grade pay. As regards the second point, as per the Uttarakhand Horticulture and Food Processing Subordinate (Group III) Service Rules, 2009, the promotion from the posts of Malis to Horticulture Supervisors has also been provided on the basis of written examination through selection by departmental selection committee which is similar to the process of promotion from the post of Peon/Chowkidar to the post of Junior Assistant. Therefore, on the basis of similarity, the ACPs, according to the scales of the promotional posts of Junior Assistant, Senior Assistant and Pradhan Sahayak should be given to the petitioners.

16. In view of the above, the Tribunal holds that the petitioners are entitled to the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> ACPs of Grade Pays Rs. 2000/-, Rs. 2800/- and Rs. 4200/-, after competition of 10, 16 and 26 years of service respectively, subject to their fulfilling other norms to be adjudged by the Screening Committee. Accordingly, the petitioners will get their arrears of the difference of the pay scales from due dates and if some of the petitioners have retired, their pension shall be refixed accordingly.

16. Respondents are directed as above.

17. The petition is disposed of. No order as to costs.

18. Let a copy of this judgment be placed on the files of Petitions No. 07/NB/DB/2023 Prakash Chandra & others vs. State and others, 08/NB/DB/2023 Kailash Chandra Bhatt & others vs. State and others, 09/NB/DB/2023 Naveen Chandra & others vs. State and others, 23/NB/DB/2023 Naveen Chandra Belwal & others vs. State and others, 25/NB/DB/2023 Kishan Singh & others vs. State and others, 26/NB/DB/2023

Kheema Nand Joshi & others vs. State and others and 31/NB/DB/2023  
Chandra Shekhar Pandey vs. State and others .

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

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

*DATE: MAY 18, 2023*  
*DEHRADUN*

*VM*  
*KNP*