

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

CLAIM PETITION NO. 41/SB/2022

Ram Pal Singh Rawat, aged about 61, years, Retd. Naib Tehsildar, Department of Revenue SDM Office, District Tehri Garhwal, r/o Ward No. 6, Gali No. 2, Opp. Power House, Nursery Road, Srinagar, Pauri Garhwal, Uttarakhand.

.....Petitioner

vs.

1. State of Uttarakhand through Secretary, Revenue, Govt. of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Commissioner and Secretary, Revenue Board, Uttarakhand, Dehradun.
3. District Magistrate and Collector, District Pauri, Garhwal.
4. Sub Divisional Magistrate/Drawing Disbursing Officer, Barhsyun, District Pauri Garhwal.
5. Director, Treasury, Pension and Entitlement, Uttarakhand, Dehradun.

.....Respondents

Present: Sri L.K.Maithani. Advocate, for the Petitioner.
Sri V.P.Devrani, A.P.O., for the Respondents.

JUDGMENT

DATED: DECEMBER 27, 2023

Justice U.C.Dhyani (Oral)

The petitioner is retired Naib Tehsildar, who served the respondent department (revenue) till 31.07.2020. Although his retiral dues were paid, but there was delay in payment of the same. Also, a sum of Rs. 1,38,458/- was recovered from him after retirement. By means of present claim petition, the petitioner seeks (i) interest on

delayed payment of retiral dues till the date of actual payment and (ii) recovery of Rs. 1,38,458/- which was made from the petitioner after his retirement, with interest from the date of recovery, till such amount is actually paid to him.

2. It is the submission of learned Counsel for the petitioner that vide order dated 23.07.2021 (Annexure no. A1) such amount was recovered from the petitioner, which could not have been done in view of the decision rendered by the Hon'ble Apex Court in State of Punjab vs. Rafiq Masih, (2015) 4 SCC 334. In reply, learned A.P.O. submitted that it was not recovery but (it) was adjustment on account of over payment to the petitioner. According to learned A.P.O., over-payment made to the petitioner was adjusted by impugned order passed by the respondent department. Ld. A.P.O. also submitted that correct fixation of salary is permissible to the Govt. department in view of the decision rendered by Hon'ble High Court of Judicature at Allahabad on 17.12.2018 in Writ -A No. 26639/2018, Smt. Hasina Begum vs. Purvanchal Vidyut Vitran Nigam Ltd, Prayagraj and 02 others and in the decision rendered by Hon'ble Supreme Court in Civil Appeal No. 1985 of 2022, the State of Maharashtra and another vs. Madhukar Antu Patil and another, on 21.03.2022.

3. Thus, two issues are involved in the present claim petition-

- (i) Whether the petitioner is entitled to interest on delayed payment of retiral dues or not? Is so, what should be the rate of interest?
- (ii) Whether the recovery from the petitioner could not have been made under the garb of 'adjustment' after his retirement? If so, its effect?

4. Learned counsel for the petitioner submitted that retiral benefits were unnecessarily withheld by the respondent department and as per various decisions of the Hon'ble Supreme Court, the petitioner is entitled to interest on delayed payment of retiral dues. The Tribunal agrees with such submission of learned Counsel for the petitioner in

view of a few landmark decisions of Hon'ble Supreme Court, a reference of which is given, as below:

(i) Hon'ble Apex Court has held in the decision of **State of Kerala and others vs. M.Padmanabhan Nair, 1985 (1) SLR 750**, that:

"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 visited with the penalty of payment of interest at the current market rate till actual payment.

2. Usually the delay occurs by reason of non-production of the L.P.C. (Last Pay Certificate) and the N.L.C. (No Liability Certificate) from the concerned Departments but both these documents pertain to matters, records whereof would be with the concerned Government Departments. Since the date of retirement of every Government servant is very much known in advance we fail to appreciate why the process of collecting the requisite information and issuance of these two documents should not be completed atleast a week before the date of retirement so that the payment of gratuity amount could be made to the Government servant on the date he retires or on the following day and pension at the expiry of the following month. The necessity for prompt payment of the retirement dues to a Government servant immediately after his retirement cannot be over-emphasised and it would not be unreasonable to direct that the liability to pay penal interest on these dues at the current market rate should commence at the expiry of two months from the date of retirement.

3. The instant case is a glaring instance of such culpable delay in the settlement of pension and gratuity claims due to the respondent who retired on 19.5.1973. His pension and gratuity were ultimately paid to him on 14.8.1975, i e., more than two years and 3 months after his retirement and hence after serving lawyer's notice he filed a suit mainly to recover interest by way of liquidated damages for delayed payment. The appellants put the blame on the respondent for delayed payment on the ground that he had not produced the requisite L.P.C. (last pay certificate) from the Treasury Office under Rule 186 of the Treasury Code. But on a plain reading of Rule 186, the High Court held-and in our view rightly-that a duty was cast on the treasury Officer to grant to every retiring Government servant the last pay certificate which in this case had been delayed by the concerned officer for which neither any justification nor explanation had been given. The claim for interest was, therefore, rightly, decreed in respondent's favour.

4. Unfortunately such claim for interest that was allowed in respondent's favour by the District Court and confirmed by the High Court was at the rate of 6 per cent per annum though interest at 12 per cent had been claimed by the respondent in his suit. However, since the respondent acquiesced in his claim being decreed at 6 per cent by not preferring any cross objections in the High Court it could not be proper for us to enhance the rate to 12 per cent per annum which we were otherwise inclined to grant.

5. We are also of the view that the State Government is being rightly saddled with a liability for the culpable neglect in the discharge of his duty by the District Treasury Officer who delayed the issuance of the L.P.C. but since the concerned officer had not been impleaded as a party defendant to the suit the Court is unable to hold him liable for the decretal amount. It will, however, be for the State Government to consider whether the erring official should or should not be directed to compensate the Government the loss sustained by it by his culpable lapses. Such action if taken would help generate in the officials of the State Government a sense of duty towards the Government under whom they serve as also a sense of accountability to members of the public.”

[Emphasis supplied]

(ii) Hon’ble Apex Court, in the decision of **S.K. Dua vs. State of Haryana and Another, (2008)1 Supreme Court Cases (L&S) 563**, has observed as below:

“.....

2. This appeal is directed against an order passed by the High Court of Punjab & Haryana at Chandigarh on July 7, 2005 in Writ Petition (C) No. 10025 of 2005. By the impugned order, the High Court dismissed the petition in limine relegating the appellant writ petitioner to avail a remedy by approaching a Civil Court.

3. Facts in brief are that the appellant was working as an Engineer-in-Chief in the Department of Irrigation, Haryana. According to him, he joined the service in Irrigation Department of the erstwhile State of Punjab in August, 1961 and was allocated to the Department of Irrigation and Power in the State of Haryana. He was promoted as Engineer- in-Chief on May 31, 1996 and worked in that capacity till he attained the age of superannuation in June, 1998. The appellant had an unblemished record of service for 37 years. During the course of his duties as Head of the Department, he submitted reports in or about April-May, 1998 to the Government highlighting certain irregularities and mal- practices said to have been committed by Mr. S.Y. Quraishi, the then Secretary, Irrigation & Power and requested the Government to make enquiry through Central Bureau of Investigation (CBI). According to the appellant, in pursuance of the complaint made by him, the Government removed Mr. Quraishi as Secretary, Irrigation allowing him to work only as Secretary, Department of Power.

4. The appellant has alleged that, as a measure of vendetta, Mr. Quraishi organized to send the appellant on deputation on May 15, 1998 to a lower and unimportant specially created post of Engineer-in-Chief, Command Area Development Agency by upgrading it just few weeks before his retirement. In addition to the said action, the appellant was served with three charge-sheets/ show cause notices in June, 1998, few days before his retirement. The appellant, however, retired on June 30, 1998 on reaching the age of superannuation. The appellant was paid provisional pension, but other retiral benefits were not given to him which included Commuted Value of Pension, Leave Encashment, Gratuity, etc. totaling to about Rs. 12 lakhs. They were withheld till finalization of disciplinary proceedings. The appellant submitted replies to the charge- sheets/ show cause notices, inter alia,

denying allegations and asserting that they were uncalled for and were issued with mala fide intention and oblique motive. He further submitted that he had acted in public interest in salvaging damage likely to be caused to public exchequer. The replies submitted by the appellant were accepted by the authorities and the appellant was exonerated of all the charges. All retiral benefits were thereafter given to him between June 11 and July 18, 2002. **Thus, according to the appellant though he retired in June, 1998, retiral benefits to which he was otherwise entitled, were given to him after four years of his superannuation.**

5. **The appellant has stated that, in the aforesaid circumstances, he was entitled to interest on the amount which had been withheld by the respondents and paid to him after considerable delay. He, therefore, made several representations.** He also issued legal notice on June 3, 2005 claiming interest at the rate of 18% per annum for delayed payment. **He had invited the attention of the Government to Administrative Instructions issued by the Government under which an employee is entitled to claim interest. Even otherwise, the action of non-payment of interest was arbitrary, unreasonable and violative of Articles 14 and 21 of the Constitution.** There was, however, no reply whatsoever from the Government. The appellant as a senior citizen of 65 years of age then approached the High Court of Punjab & Haryana by filing a writ petition under Article 226 of the Constitution. But the High Court summarily dismissed the writ petition without even issuing notice to the respondents. The appellant has challenged the said order in the present appeal.

6. On October 28, 2005, notice was issued by this Court. Affidavits and further affidavits were filed thereafter and the Registry was directed to place the matter for final hearing. Accordingly, the matter has been placed before us for final disposal.

7.

8. The learned counsel for the appellant contended that the High Court was totally unjustified in dismissing the writ petition in limine and the said order is liable to be set aside. He submitted that no questions of fact, much less, disputed questions of fact were involved in the petition and the High Court was wrong in summarily dismissing it. **It is well settled law, submitted the counsel, that retiral benefits are not in the nature of bounty and an employee is entitled as of right to get those benefits immediately after superannuation unless they are withdrawn or withheld as a matter of punishment.** According to the appellant, he had always acted in the interest of the Government and saved public exchequer by inviting the attention to mal- practices committed by high ranking officers. As a measure of revenge against the appellant, charge-sheets were issued, **but after considering the explanation submitted by the appellant, all proceedings against him were dropped. In view of exoneration of the appellant, the Government ought to have paid interest on retiral benefits which were given to him after long time. As per the Guidelines and Administrative Instructions issued by the Government, the appellant was entitled to such benefit with interest.** The High Court ought to have allowed the writ petition of the appellant and ought to have awarded those benefits. **It was, therefore, submitted that the appeal deserves to be allowed by directing the respondents to pay interest on the retiral dues payable to the appellant which were actually paid to him after considerable delay.**

9. An affidavit in reply is filed by Special Secretary, Government of Haryana, Irrigation Department. In the counter affidavit which was filed in January, 2005, the deponent has stated that the appellant was paid all his retiral dues as soon as he was exonerated of the charges levelled against him. The deponent referred to the Haryana Civil Service (Punishment and Appeal) Rules, 1987 relating to benefits to which an employee is entitled and contended that after the charge-sheets were finally dropped, the appellant was paid all retiral benefits within three months from the date of dropping of the charge-sheets. But it was further stated that certain vigilance enquiries are "still pending" against the appellant. In the circumstances, **according to the deponent, the appellant was not entitled to interest and the action taken by the Government could not be said to be illegal or otherwise unreasonable. A prayer was, therefore, made to dismiss the appeal.**

10. In rejoinder affidavit, the appellant reiterated what he had pleaded in the petition for leave to appeal and submitted that the stand taken by the Government in counter- affidavit is misconceived and he is entitled to the relief prayed in the petition before the High Court and in the present appeal.

11. Having heard the learned counsel for the parties, in our opinion, the appeal deserves to be partly allowed. **It is not in dispute by and between the parties that the appellant retired from service on June 30, 1998. It is also un-disputed that at the time of retirement from service, the appellant had completed more than three decades in Government Service. Obviously, therefore, he was entitled to retiral benefits in accordance with law.** True it is that certain charge- sheets/ show cause notices were issued against him and the appellant was called upon to show cause why disciplinary proceedings should not be initiated against him. It is, however, the case of the appellant that all those actions had been taken at the instance of Mr. Quraishi against whom serious allegations of mal-practices and mis-conduct had been levelled by the appellant which resulted in removal of Mr. Quraishi from the post of Secretary, Irrigation. The said Mr. Quraishi then became Principal Secretary to the Chief Minister. Immediately thereafter charge-sheets were issued to the appellant and proceedings were initiated against him. **The fact remains that proceedings were finally dropped and all retiral benefits were extended to the appellant. But it also cannot be denied that those benefits were given to the appellant after four years. In the circumstances, prima facie, we are of the view that the grievance voiced by the appellant appears to be well- founded that he would be entitled to interest on such benefits. 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 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.** In that view of the matter, in our considered opinion, the High Court was not right in dismissing the petition in limine even without issuing notice to the respondents.

12.

13. The order passed by the High Court, therefore, must be quashed and set aside.

.....

Order accordingly.”

[Emphasis supplied]

(iii) In the decision of Civil Appeal No. 7113 of 2014, **D.D. Tiwari (D) vs. Uttar Haryana Bijli Vitran Nigam Ltd. & Others, 2014 (5) SLR 721**, Hon'ble Supreme Court has held as under:-

“2. Heard learned counsel on behalf of the parties. The appellant (since deceased) is aggrieved by the impugned order dated 14.03.2011 passed by the High Court of Punjab and Haryana at Chandigarh in LPA No. 1818 of 2010 in affirming the judgment of the learned single Judge passed in C.W.P. No. 1048 of 2010 **wherein he was not awarded interest for the delayed payment of pension and gratuity amount, for which he was legally entitled to. Therefore, the appellant approached this Court for grant of interest on the delayed payment on the retiral benefits of pension and gratuity payable to him by the respondents.**

3. The appellant was appointed to the post of Line Superintendent on 30.08.1968 with the Uttar Haryana Bijli Vitran Nigam Ltd. In the year 1990, he was promoted to the post of Junior Engineer-I. During his service, the appellant remained in charge of number of transformers after getting issued them from the stores and deposited a number of damaged transformers in the stores. While depositing the damaged transformers in the stores, some shortage in transformers oil and breakages of the parts of damaged transformers were erroneously debited to the account of the appellant and later on it was held that for the shortages and breakages there is no negligence on the part of the appellant. On attaining the age of superannuation, he retired from service on 31.10.2006. **The retiral benefits of the appellant were withheld by the respondents on the alleged ground that some amount was due to the employer. The disciplinary proceedings were not pending against the appellant on the date of his retirement. Therefore, the appellant approached the High Court seeking for issuance of a direction to the respondents regarding payment of pension and release of the gratuity amount which are retiral benefits with an interest at the rate of 18% on the delayed payments.** The learned single Judge has allowed the Writ Petition vide order dated 25.08.2010, after setting aside the action of the respondents in withholding the amount of gratuity and directing the respondents to release the withheld amount of gratuity within three months without awarding interest as claimed by the appellant. The High Court has adverted to the judgments of this Court particularly, in the case of State of Kerala & Ors. Vs. M. Padmanabhan Nair, 1985 91) SLR 750, 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. This aspect of the matter was adverted to in the judgment of the learned single Judge without assigning any reason for not awarding the interest as claimed by the appellant. That is why that portion of the judgment of the learned single Judge was aggrieved of by the appellant and he had filed L.P.A. before Division Bench of the High Court. The Division Bench of the High Court has passed a cryptic order which is impugned in this appeal. **It has adverted to the fact that there is no order passed by the learned single Judge with regard to the payment of interest and the appellant has not raised any plea which was rejected by him, therefore, the Division Bench did not find fault with the judgment of the learned single Judge in the appeal and the Letters Patent Appeal was dismissed. The correctness of the order is under challenge in this appeal before this Court urging various legal grounds.**

4. It is an undisputed fact that the appellant retired from service on attaining the age of superannuation on 31.10.2006 and the order of the learned single Judge after adverting to the relevant facts and the legal position has given a direction to the employer-respondent to pay the erroneously withheld pensionary benefits and the gratuity amount to the legal representatives of the deceased employee without awarding interest for which the appellant is legally entitled, **therefore, this Court has to exercise its appellate jurisdiction as there is a miscarriage of justice in denying the interest to be paid or payable by the employer from the date of the entitlement of the deceased employee till the date of payment as per the aforesaid legal principle laid down by this Court in the judgment referred to supra.** We have to award interest at the rate of 9% per annum both on the amount of pension due and the gratuity amount which are to be paid by the respondent.

5. **It is needless to mention that the respondents have erroneously withheld payment of gratuity amount for which the appellants herein are entitled in law for payment of penal amount on the delayed payment of gratuity under the provisions of the Payment of Gratuity Act, 1972.** Having regard to the facts and circumstances of the case, we do not propose to do that in the case in hand.

6. For the reasons stated above, we award interest at the rate of 9% on the **delayed payment of pension and gratuity amount from the date of entitlement till the date of the actual payment.** If this amount is not paid within six weeks from the date of receipt of a copy of this order, the same shall carry interest at the rate of 18% per annum from the date of amount falls due to the deceased employee. With the above directions, this appeal is allowed.”

[Emphasis supplied]

5. It will also be useful to reproduce the relevant part of the judgment rendered by this Tribunal in **Ramnarayan Singh vs. State of Uttarakhand, 2019(1) UD 698**, herein below for convenience:

“22. In the backdrop of the above noted facts, the only other question, which is left for determination of this Tribunal now is— how much interest should be awarded to the petitioner for delayed payment of gratuity?”

23. In the decision of *D.D.Tiwari (D) Thr. Lrs. vs. Uttar Haryana Bijli Vitran Nigam Ltd. and Others*, 2014 (5) SLR 721 (S.C.), it was held by Hon'ble Supreme Court that retiral benefit is a valuable right of employee and culpable delay in settlement/ disbursement must be dealt with penalty of payment of interest. Regard may also be had to the decision of Hon'ble Apex Court in *S.K.Dua vs. State of Haryana and Another*, (2008) 1 Supreme Court Cases (L&S) 563, in this context.

24. The aforesaid decisions have been followed by this Tribunal in claim petition No.30/DB/2013 *Dwarika Prasad Bhatt vs. State and others*, decided on 22.09.2016. The direction given in claim petition No. 30/DB/2013 has also been carried out.

25. It is pointed out that Government Order No.979/XXVII(3)Pay/2004 dated 10.08.2004 has been issued by Government of Uttarakhand to regulate interest on delayed payment of gratuity etc. Respondents are, therefore, directed to pay the difference of gratuity, as admissible, and the amount of gratuity which has already been paid, to the petitioner, as per G.O. dated 10.08.2004. The rate of interest of gratuity shall be simple rate of interest payable on General Provident Fund till the date of actual payment.

26. Respondents are directed to pay the difference in the amount of gratuity along with admissible interest, as per G.O. dated 10.08.2004, on or before 30.06.2019."

[Emphasis supplied]

6. Petitioner is, therefore, entitled to interest on delayed payment of monthly pension and amount of gratuity as per prevalent G.P.F. rates as per G.O. dated 10.08.2004 issued by the Govt. of Uttarakhand, a reference of which has been given above.

* * *

7. The recovery of Rs.1,38,458/- from the gratuity of the petitioner after his retirement is also under challenge in present claim petition. Whether the same could have been done? Petitioner is retired Naib Tehsildar of the Revenue Department.

8. Hon'ble Apex Court, in the decision rendered in *State of Punjab vs. Rafiq Masih*, (2015) 4 SCC 334, has settled the controversy, while observing as under:

"18. It is not possible to postulate all 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. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarize the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.”

[Emphasis supplied]

9. It is the submission of Ld. Counsel for the petitioner that after retirement of the petitioner, excess payment from the gratuity was recovered, which requires to be refunded to him along with interest as per prevalent GPF rate, since 01.12.2021 till the date of actual payment.

10. Ld. A.P.O. submitted that, out of the admissible gratuity, Rs.1,38,458/- was deducted as over payment, and the balance was paid to the petitioner.

11. In reply, Ld. Counsel for the petitioner submitted that the petitioner is entitled to interest on Rs. 1,38,458/- from 01.12.2021 till the date of actual payment.

12. This fact is undisputed that the petitioner is a retired Naib Tehsildar from Revenue Department. The recovery from the retiral dues of a Govt. servant cannot be made as per the above noted decision of the Hon'ble Supreme Court. His matter is covered by situation no. (ii). A sum of Rs. 1,38,458/-, which has been recovered from the gratuity of the petitioner, should, therefore, be refunded to the petitioner along with admissible interest, as per law.

13. There is, however, no embargo on the respondent department against correct fixation of pay even after retirement, as per the decision rendered by Hon'ble High Court of Judicature at Allahabad on 17.12.2018 in Writ -A No. 26639/2018, Smt. Hasina Begum vs. Purvanchal Vidyut Vitran Nigam Ltd, Prayagraj and 02 others [Citation- 2018:AHC:204373].

14. Hon'ble Supreme Court in the decision rendered in Civil Appeal No.1985 of 2022, the State of Maharashtra and another vs. Madhukar Antu Patil and another, on 21.03.2022, has observed as below:

"2. That respondent no.1 herein was initially appointed on 11.05.1982 as a Technical Assistant on work charge basis and continued on the said post till absorption. By G.R. dated 26.09.1989, 25 posts of Civil Engineering Assistants were created and respondent no.1 herein was absorbed on one of the said posts. Respondent no.1 was granted the benefit of first Time Bound Promotion (for short, 'TBP') considering his initial period of appointment of 1982 on completion of twelve years of service and thereafter he was also granted the benefit of second TBP on completion of twenty four years of service. Respondent No.1 retired from service on 31.05.2013. After his retirement, pension proposal was forwarded to the Office of the Accountant General for grant of pension on the basis of the last pay drawn at the time of retirement.

2.1 The Office of the Accountant General raised an objection for grant of benefit of first TBP to respondent no.1 considering his date of initial appointment dated 11.05.1982, on the basis of the letter issued by Water Resources Department, Government of Maharashtra on 19.05.2004. It was found that respondent no.1 was wrongly granted the first TBP considering his initial period of appointment of 1982 and it was found that he was entitled to the benefit from the date of his absorption in the year 1989 only. Vide orders dated 06.10.2015 and 21.11.2015, his pay scale was down-graded and consequently his pension was also re-fixed.

2.2 Feeling aggrieved and dissatisfied with orders dated 06.10.2015 and 21.11.2015 down-grading his pay scale and pension, respondent no.1 approached the Tribunal by way of Original Application No. 238/2016. By judgment and order dated 25.06.2019, the Tribunal allowed the said original application and set aside orders dated 06.10.2015 and 21.11.2015 and directed the appellants herein to release the pension of respondent no.1 as per his pay scale on the date of his retirement. While passing the aforesaid order, the Tribunal observed and held that respondent no.1 was granted the first TBP considering his initial period of appointment of 1982 pursuant to the approval granted by the Government vide order dated 18.03.1998 and the subsequent approval of the

Finance Department, and therefore, it cannot be said that the benefit of the first TBP was granted mistakenly. The Tribunal also observed that the services rendered by respondent no.1 on the post of Technical Assistant (for the period 11.05.1982 to 26.09.1989) cannot be wiped out from consideration while granting the benefit of first TBP.

2.3 Feeling aggrieved and dissatisfied with the judgment and order passed by the Tribunal, quashing and setting aside orders dated 06.10.2015 and 21.11.2015, re-fixing the pay scale and pension of respondent no.1, the appellants herein preferred writ petition before the High Court. By the impugned judgment and order, the High Court has dismissed the said writ petition. Hence, the present appeal.

3.

3.1 At the outset, it is required to be noted and it is not in dispute that respondent no.1 was initially appointed on 11.05.1982 as a Technical Assistant on work charge basis. It is also not in dispute that thereafter he was absorbed in the year 1989 on the newly created post of Civil Engineering Assistant, which carried a different pay scale. Therefore, when the contesting respondent was absorbed in the year 1989 on the newly created post of Civil Engineering Assistant which carried a different pay scale, he shall be entitled to the first TBP on completion of twelve years of service from the date of his absorption in the post of Civil Engineering Assistant. The services rendered by the contesting respondent as Technical Assistant on work charge basis from 11.05.1982 could not have been considered for the grant of benefit of first TBP. If the contesting respondent would have been absorbed on the same post of Technical Assistant on which he was serving on work charge basis, the position may have been different. The benefit of TBP scheme shall be applicable when an employee has worked for twelve years in the same post and in the same pay scale.

4. In the present case, as observed hereinabove, his initial appointment in the year 1982 was in the post of Technical Assistant on work charge basis, which was altogether a different post than the newly created post of Civil Engineering Assistant in which he was absorbed in the year 1989, which carried a different pay scale. Therefore, the department was right in holding that the contesting respondent was entitled to the first TBP on completion of twelve years from the date of his absorption in the year 1989 in the post of Civil Engineering Assistant. Therefore both, the High Court as well as the Tribunal have erred in observing that as the first TBP was granted on the approval of the Government and the Finance Department, subsequently the same cannot be modified and/or withdrawn. Merely because the benefit of the first TBP was granted after the approval of the Department cannot be a ground to continue the same, if ultimately it is found that the contesting respondent was entitled to the first TBP on completion of twelve years of service only from the year 1989. Therefore both, the High Court as well as the Tribunal have committed a grave error in quashing and setting aside the

revision of pay scale and the revision in pension, which were on re-fixing the date of grant of first TBP from the date of his absorption in the year 1989 as Civil Engineering Assistant.

5. However, at the same time, as the grant of first TBP considering his initial period of appointment of 1982 was not due to any misrepresentation by the contesting respondent and on the contrary, the same was granted on the approval of the Government and the Finance Department and since the downward revision of the pay scale was after the retirement of the respondent, we are of the opinion that there shall not be any recovery on re-fixation of the pay scale. However, the respondent shall be entitled to the pension on the basis of the re-fixation of the pay scale on grant of first TBP from the year 1989, i.e., from the date of his absorption as Civil Engineering Assistant.

6. In view of the above and for the reasons stated above, the present appeal succeeds in part. The impugned judgment and order passed by the High Court as well as that of the Tribunal quashing and setting aside orders dated 6.10.2015 and 21.11.2015 downgrading the pay scale and pension of the contesting respondent are hereby quashed and set aside. It is observed and held that the contesting respondent shall be entitled to the first TBP on completion of twelve years from the year 1989, i.e., from the date on which he was absorbed on the post of Civil Engineering Assistant and his pay scale and pension are to be revised accordingly. However, it is observed and directed that on re-fixation of his pay scale and pension, as observed hereinabove, there shall not be any recovery of the amount already paid to the contesting respondent, while granting the first TBP considering his initial appointment from the year 1982.”

15. It is clear from the documents brought on record that the petitioner retired on 31.07.2020, but lesser amount of gratuity was paid to him with delay.

16. Annexure: A-1 should be set aside to the extent of recovery of over payment from the retiral dues of the petitioner.

17. Although the petitioner has prayed for interest from 01.08.2020 till the date of actual payment, but, Ld. A.P.O. pointed out, after having conversation with Senior Treasury Officer, Directorate Treasury, Pension and Entitlement, Uttarakhand, Dehradun, that gratuity was released to him on 20.09.2020, therefore, he will be entitled to interest only from 01.08.2020 till 19.09.2020.

18. Learned A.P.O., on seeking instructions from the Senior Treasury Officer, Directorate Treasury, Pension and Entitlement, Uttarakhand, Dehradun, submitted that a retired employee gets interest on the delayed payment of GPF and GIS from the due date till the date of actual payment.

19. There is no other contentious issue in this claim petition.

20. The respondents are, accordingly, directed to refund Rs.1,38,458/- to the petitioner along with interest at the prevalent GPF rate from 01.08.2020 till the date of actual payment.

21. The petitioner is also entitled to interest as per prevalent GPF rate on delayed payment of gratuity from 01.08.2020 till the date of actual payment. The respondents are, accordingly, directed to pay the same.

22. This rate of interest is as per Govt. Order dated 10.08.2004 of the Government of Uttarakhand.

23. To sum up, the petitioner is entitled to the following:

- (i) Refund of Rs.1,38,458/- along with interest, as per the prevalent GPF rate, on delayed payment of gratuity from 01.08.2020 till the date of actual payment.
- (ii) Interest, as per prevalent GPF rate, on delayed payment of gratuity from 01.08.2020 till the date of actual payment.

24. Ld. Counsel for the parties submitted that such an order can be passed by the Single Bench of the Tribunal.

25. Order accordingly.

26. Learned Counsel for the petitioner also prayed that medical reimbursement has not been paid to the petitioner. Learned A.P.O. objected to the same, *inter-alia*, on the ground that it is not a consequential relief and the claim petition in respect of plural reliefs cannot entertained by the Tribunal. Besides that, it is also time barred. Learned Counsel for the petitioner apprised the Bench that the

medical reimbursement claim of the petitioner was already sanctioned by the respondent department on 28.01.2020, only the payment is to be made to him.

27. Learned Counsel for the petitioner submitted that the petitioner will make a representation to respondent no. 2, regarding medical reimbursement claim, which may kindly be directed to be decided by such respondent within reasonable time. Innocuous prayer of learned Counsel for the petitioner, in the given circumstances, is worth accepting. Accordingly, respondent no. 2 is requested to pass appropriate orders on the representation of the petitioner, on his medical claim, as per rules. The same may be done without unreasonable delay.

28. The claim petition thus stands disposed of. No order as to costs.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: DECEMBER 27, 2023.

DEHRADUN

KNP