

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

CLAIM PETITION NO. 102/SB/2023

Smt. Neelam Sharma, aged about 53 years, w/o Late Sri Shashi Kumar Sharma, r/o Mill Road, Near Sugar Mill, Doiwala, Dehradun, Uttarakhand.

.....Petitioner

vs.

1. State of Uttarakhand through Secretary, Finance, Govt. of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Commissioner/ Secretary, Revenue Board, Dehradun, Uttarakhand.
3. District Magistrate, Dehradun, Uttarakhand.
4. Procurement and Disbursement Officer/ Deputy District Magistrate, Dehradun, Uttarakhand.
5. Director, Directorate of Treasuries, Pension and Entitlement, Dalanwala, Dehradun, Uttarakhand.

.....Respondents

Present: Sri M.C.Pant & Sri Abhishek Chamoli, Advocates,
for the Petitioner
Sri V.P. Devrani, A.P.O. for the Respondents .

JUDGMENT

DATED: JANUARY 02, 2024.

Justice U.C. Dhyani (Oral)

Petitioner is wife of Sri Shashi Kumar Sharma, who was working on the post of Collection Amin in district Dehradun and passed away on 10.01.2021. She, *inter alia*, seeks to direct the respondents to grant family pension along with gratuity and 10 % remaining GPF along

with arrears and interest for delayed payment of such retiral dues, after the death of her husband.

2. Sri V.P. Devrani, Ld. A.P.O. is representing all the respondents. As per the endorsement made by the Registry of the Tribunal, registered notices were issued to Respondents No. 2 to 5. Notices issued *vide* order dated 07.06.2023 were returnable on or before 19.07.2023, which date was also fixed for filing C.A./W.S. Ld. A.P.O. sought and was granted four weeks' further time to file W.S. The next date fixed was 24.08.2023, on which date also Ld. A.P.O. was granted further four weeks' time to file C.A./W.S. The next date fixed was 03.10.2023, on which date, further 10 days' time was granted to Ld. A.P.O. to file C.A./W.S. 16.10.2023 was fixed for the same. On 16.10.2023 also, time up to 29.11.2023 was granted to the respondents to file C.A./W.S. When none of the respondents contacted Ld. A.P.O., which fact has been mentioned in the order dated 29.11.2023, petitioner was directed to take steps for service of notice upon District Magistrate, Dehradun, which he did, to enable District Magistrate, Dehradun to file C.A./W.S. Today also, no C.A. has been filed. Ld. A.P.O. submitted that none of the respondents has contacted him so far.

3. The Tribunal would have granted further time to the respondents to file C.A./W.S., but, on perusal of the documents enclosed with the claim petition, it transpires that the documents, which are necessary for disposal of the claim petition, have been brought on record by the petitioner herself. Copy of the succession certificate dated 29.01.2021, issued by the Sub-Divisional Officer, Doiwala, has been brought on record as Annexure: A-2. As per the report of Patwari/ Tehsildar/ Lekhwal, Doiwala, Sri Shashi Kumar Sharma passed away on 10.01.2021, leaving behind his wife and two sons. His wife Smt. Neelam Sharma is the petitioner in this claim petition. She wrote to District Magistrate, Dehradun on 24.08.2022 (Annexure: A-4) and on 09.09.2022 (Annexure: A-5) for releasing family pension after re-fixation of her husband's pay, as per Government Orders issued in this behalf. The Commissioner and Secretary, Board of Revenue, Uttarakhand wrote a letter to Drawing and Disbursing Officer/ Sub-Divisional Officer, Dehradun on

26.02.2021 (Copy: Annexure- A 3) for certain clarifications. Such letter was sent on 26.02.2021.

4. At this juncture, Ld. A.P.O. placed a copy of para-wise narratives, which has been sent to him, on behalf of the respondents. Such para-wise comments are taken on record.

5. **The inference deducible from such correspondence is that no departmental proceedings were pending against Sri Shashi Kumar Sharma (since deceased). Nothing disabled him to earn retiral benefits. Since he passed away, therefore, his legal representatives are entitled to his retiral dues.**

6. A copy of the U.P. Pension Cases (Submission, Disposal and Avoidance of Delay) Rules, 1995 has been filed by the petitioner as Annexure: A-6. The same applies to the State of Uttarakhand as well. A time schedule has been specified in Column 3, in respect of a work specified in Column 2 of the Schedule. At Serial No. 5, it has been mentioned that in case of completion of forms in death case, the formalities should be completed within one month after the death.

7. When facts are not in dispute, which are relevant for deciding the claim petition, the Bench is of the view that the claim petition should be decided even if no W.S./C.A. has been filed on behalf of the respondents, for which sufficient opportunity has already been given to them and in the notices, issued by the Tribunal, it has clearly been mentioned that C.A./W.S. should be received in the Tribunal, even by registered post. It has been mentioned that C.A./W.S. may even be sent to the Tribunal by registered post, under intimation to the petitioner. The same has not been done in the instant case, but as has been noted above, the facts, which are necessary for disposal of the claim petition, are available on record and has been filed by the petitioner, therefore, the Tribunal does not see any impediment in deciding the claim petition.

8. In para 8 of the para-wise narratives, which have been submitted by Ld. A.P.O., it has been mentioned that decision in the matter of the petitioner shall be taken at the earliest in the light of *Uttarakhand Sangrah Rajaswa Nirikshak Evam Sangrah Nayab Tehsildar Sewa (Sanshodhan)*

Niyamawali, 2023. It may be noted here that the Tribunal is not deciding the matter of fixation of the salary of the petitioner. The respondents are entitled to do the same as per rules. The Tribunal, in this claim petition, is concerned with the release of family pension and pending retiral dues of the deceased Shashi Kumar Sharma to the petitioner, in the light of Government's own Rules and Orders.

9. It has been noted above that nothing disabled Sri Shashi Kumar Sharma to earn retiral benefits. Succession certificate has already been filed. In intra-departmental correspondence (Annexure: A-3), it has nowhere been mentioned that Sri Shashi Kumar Sharma was not entitled to pension and other retiral benefits. In the absence of such facts, the petitioner, who is wife of deceased Shashi Kumar Sharma, is entitled to family pension along with gratuity and 10% remaining GPF along with arrears and interest on delayed payment of retiral dues.

10. Hon'ble Apex Court, in catena of decisions, has dealt with this issue, from time to time.

(i) In the decision of **State of Kerala and others vs. M.Padmanabhan Nair, 1985 (1) SLR 750, Hon'ble Supreme Court** has observed 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 .

(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:

“.....

12..... **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.”

13.”

[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:

“3..... 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.**

4..... 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.

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.”

[*Emphasis supplied*]

11. Petitioner is, therefore, entitled to family pension and interest on delayed payment of retiral dues of her husband (since deceased).

12. The next question which arises for consideration of this Tribunal is, what should be the interest payable on delayed payment of gratuity and other retiral dues.

13. In this connection, it will 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*]

14. The petitioner is, therefore, entitled to interest on delayed payment of family pension and other retiral dues, as per Government Order dated 10.08.2004, which should be simple rate of interest, payable on G.P.F., till the date of actual payment. Such entitlement should be paid to her at the earliest, without unreasonable delay.

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

- (i) Family pension from the date of death of her husband i.e. 10.01.2021 and interest on delayed payment of family pension as per prevalent GPF rate till the date of actual payment.
- (ii) Interest, as per prevalent GPF rate, on delayed payment of gratuity, 10% remaining GPF along with arrears, till the date of actual payment.

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

17. Order accordingly.

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

19. Opportunity is granted to the respondents to file application for correcting the facts, if the same are found otherwise.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: JANUARY 02, 2024
DEHRADUN