

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

**CLAIM PETITION NO. 29/SB/2023**

Smt. Pushpa Tyagi, W/o Late Sri Kailash Chand Tyagi, 2/48 Rahapuram Estate,  
NH-2, Mathura, UP-281004.

.....Petitioner.

**vs.**

1. State of Uttarakhand through Secretary, Public Works Department, Secretariat, Subhash Road, Dehradun.
2. Engineer-in-Chief, Public Works Department, Yamuna Colony, Dehradun.
3. Executive Engineer, PWD, Provincial Division, Uttarkashi.
4. The Director, Directorate of Pension, Treasury & Entitlement, 23- Laxmi Road, Dalanwala, Dehradun, Uttarakhand.
5. The Senior Treasury Officer, Uttarkashi, Uttarakhand.

.....Respondents.

Present: Sri L.D.Dobhal, Advocate, for the petitioner.  
Sri V.P.Devrani, A.P.O., for Respondents.(online)

**JUDGMENT**

**DATED: JUNE 04, 2024**

**Justice U.C.Dhyani (Oral)**

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

“i. Direct the Respondents no.3 to send revised pension proposal to the Respondent no.4 for co-authorization, in column 3 of Pension order, in the name of petitioner and her disabled son Deepak Tyagi as well as correcting names of petitioner's husband & his father and mobile no. of the petitioner at the earliest and also direct the Respondent No. 4 to issue revised PPO accordingly.

ii. Direct the respondent No. 3 to pay the amount of encashment of earned leave for 45 days along with interest on the total amount of leave encashment @8% i.e. rate of interest on GPF at the time of retirement.

iii. Direct the Respondent no.3 to pay interest on arrears of salary of Rs11,20,185/- @8% from the due date to the actual date of payment and direct the respondent no.2 to withdraw his directions for recovery of interest already paid on arrears of Rs3,02,760/-.

iv. Direct the Respondent no.3 to pay interest for remaining period on the amount of Gratuity @8% w.e.f. the date of retirement till the date of payment.

v. Direct the respondents for payment of compensation of Rs 1,00,000/- for physical harassment & mental agony caused by way of delaying tactics in payment of due retiral benefits. As well as legal expenses incurred by the petitioner as.

vi. Direct the respondent for any other relief as the Hon'ble Tribunal deemed fit, just and proper in the facts & circumstances of the case to meet the end of justice.”

2. In the first round of litigation between the parties, through claim petition no. 23/SB/2019, which was decided on 16.07.2019, the Tribunal, *inter alia*, observed as under:

“By means of present claim petition, petitioner seeks to direct the respondents to release all retiral dues of the husband of the petitioner, including gratuity, pension, leave encashment, GIS., 10% of GPF, and after the demise of her husband, family pension with all arrears together with 18% interest within such time limit as this Tribunal deems fit; hold that non-payment of subsistence allowance is *per-se* illegal; quash the departmental proceedings held against petitioner’s husband; direct the respondents to pay Rs.60,000/- as insurance risk with GPF amount, 90% of which has already been paid to the petitioner after the death of her husband and pay insurance amount and award damages/ compensation to the tune of Rs.25 lacs.

3. Counter Affidavit of Sri Tribhuwan Rawat, Assistant Engineer, PMGSY, Irrigation Division, Uttarkashi has been filed on behalf of Respondent No.5. Counter Affidavit of Sri Virendra Singh Pundir, Executive Engineer, Provincial Division, PWD, Uttarkashi has been filed on behalf of Respondents No. 1, 2 & 4. It is averred, in Para 9 of the C.A. filed on behalf of Respondent Nos. 1, 2 & 4, that the following retiral dues/ family pension etc. have been paid to the petitioner:

- “i) General Provident Fund 90%, Rs.2066121/- on 06.11.2018.
- ii) General Provident Fund 10%, Rs.362638/- on 22-01-2019
- iii) Arrears of 7<sup>th</sup> pay Commission Rs.302760/- on 11.10.2018.
- iv) Balance of salary Jan. 2017 to Jan. 2018 Rs.1120168/- on 26.12.2018.
- v) Travelling allowance Rs.216 on 18.12.2018.
- vi) Dues towards transfer posting Rs.23001/- on 29.01.2019.
- vii) Provisional Pension for March, 18 to June 2018 Rs.187036/- on 17.01.2019.
- viii) Provisional Pension July, 18 to Jan. 19 Rs.333431/- on 02.03.2019.

Para-wise replies have also been given on behalf of respondents.

4. To sum up, according to respondents, most of the claims of the husband of the petitioner have been paid. So far as payment of gratuity and pension is concerned, the same is to be finalized by Directorate of Pension & Entitlement, which is under process. Therefore, the petitioner is not entitled to Relief 8(a) to 8(g) of the claim petition. It has also been averred in the C.A. that the sum of Rs.43,95,401/- has already been paid to the petitioner and gratuity along with final pension is under the process of finalization.

5 Rejoinder Affidavit against the C.A. of Respondents No. 1, 2 & 4 has been filed on behalf of petitioner. In Para 7 of R.A. (*undated*), payment of certain retiral dues has been admitted. Respondents have paid the following:

Sl. No.	Item	Amount in Rupees	Due Date of payment	Date of payment	Remarks
1.	GPF 90%	20,66,121.00	31.01.2018	06.11.2018	
2.	GPF 10%	3,62,666.00	31.01.2018	22.01.2019	Till date interest not paid
3.	Gratuity	7,80,000.00 Approx	31.01.2018	Not paid	-
4.	GPF Insurance	60,000.00	31.01.2018	Not paid	-
5.	Leave Encashment	8,01,138.00	31.01.2018	25.03.2019	Interest for delay not paid
6.	Arrears of pay as per 7 <sup>th</sup> CPC	3,02,760.00	Jan. 2016 to Dec. 2016	12.10.2018	Interest for delay not paid
7.	Arrears of pay	11,20,168.00	Jan. 2017 to Jan 2018.	27.12.2018	Interest for delay not paid
8.	Provisional/ Family Pension	1,87,036.00	March 2018 to June 2018	17.01.2019	
9.	-do-	3,33,431.00	July 2018 to Jan 2019	02.03.2019	
10.	Gr. Insurance Saving A/C	80,570.00	Feb 2018	Not paid	
11.	Gr. Insurance Saving A/C	5,00,000.00	Feb 2018	Not paid	
12.	Transfer TA on retirement	23,001.00	June 2018	30.01.2019	
13.	Transfer TA before retirement	216.00	June 2018	18.12.2018	Inadequate amount against rules allowed
14.	Transfer TA on suspension			Not paid Denied	-do-.

6 The above chart would indicated that final pension of the husband of the petitioner, from 01.02.2018 to 20.02.2018 is to be paid by the respondent department to the petitioner. From 21.02.2018 onwards, family pension is to be given to the petitioner, as per Rules.

7 It is admitted that gratuity has not been paid to the petitioner, which ought to have been paid on time.

11. Respondents are directed to release (i) pension / family pension (ii) gratuity, as admissible, in favour of the petitioner (iii) other retiral dues, if any, shall also be paid by the respondents to the petitioner within a period of twelve weeks of presentation of certified copy of this order. The rate of interest on delayed payment of pension/ family pension, gratuity shall be simple rate of interest, payable on GPF, till the date of actual payment.

12. Appointing authority, respondent no.1, is directed to pass a specific order whether or not to treat the suspension period as duty in terms of Rule 54-B of the U.P. Fundamental Rules [F.H.B. Vol. 2 to 4].”

3. Second round of litigation, which commenced through claim petition no. 85/SB/2020, was decided on 18.11.2021. Relevant paragraphs of the judgment dated 18.11.2021 are reproduced herein below for convenience:

“3. From the Counter Affidavits filed by the respondents, the following position emerges:

In 2016, petitioner’s husband was assigned the work acquisition of land for construction of Gramin Motor Marg. On the allegation of embezzlement of Govt. money amounting to Rs. 1,63,94,077/- levelled against him, vigilance enquiry was conducted against him. Charge sheet was issued to him on 11.08.2016. Ultimately, admitting the levelled charge, he submitted the papers of Rs. 1,41,15,996/- distributed as compensation money to the land owners on 26.12.2017 and remaining balance amount of Rs. 22,78,081/- was deposited by him in the Govt. Account on 28.01.2018. Hence, he was exonerated from the enquiry on 23.07.2018 on sympathetic ground that there are no Govt. dues pending against him and he has expired in February 2018 and would have retired on 31.01.2018. Therefore, he was reinstated w.e.f. 31.01.2018 and the disciplinary departmental enquiry as conducted against him was closed by the Govt. Further, *vide* order dated 23.07.2018, it was ordered to pay the final post retiral dues of the petitioner.

Thereafter, payment of the retiral dues has been made on various dates. Provisional pension was sanctioned to the petitioner *vide* order dated 19.09.2018 and upto 02.07.2019, an amount of Rs. 6,67,299/- had been provided to her as provisional family pension. As per PPO dated 08.08.2019, final pension was to be paid to her after deducting the amount of the provisional family pension already paid. However, due to technical fault of the inter-net server, this amount could not be deducted from the amount of Rs. 41,72,965/-. Only Rs. 1,90,000/- was deducted which has been adjusted towards the excess payment of provisional family pension. Remaining amount of Rs. 4,77,299/- of the excess provisional family pension is now being recovered in monthly installments. Further arrears of 7<sup>th</sup> Pay Commission of Rs. 91,491/- and interest on pension amounting to Rs. 21,236 (total amount of Rs. 1, 12,727/-) has also been found due to the petitioner and the same has also been deducted in the amount being recovered from the petitioner.

4. An application dated 30.03.2021 was filed on behalf of the petitioner that on her representation dated 09.08.2020 (Annexure: 12 to the claim petition), sent to the respondent no. 2 according to which, the full amount of interest along with other dues amounting to Rs. 5,25,214/- were to be paid to her, the respondents have adjusted only Rs. 1,12,727/- leaving a balance amount of Rs. 4,12,687/-. This representation has not been decided as per the directions given by this Tribunal *vide* its judgment and order dated 16.07.2019 in Claim Petition No. 23/SB/2019. Respondent No. 1 passed the

order treating the suspension period as duty in terms of Para 54B of the Fundamental Rules, but the respondents did not pay the salary/Encashment of Earned Leave of the period of 45 days amounting to Rs. 1,42,197/-. With this letter, the petitioner has filed a table as Annexure No. 15 showing the amount of her pending claims and the payments made by the respondents against her claim and the balance amount, which she is entitled to receive. This table includes the Leave Encashment for 45 days amounting to Rs. 1,42,197/- and interest on various items.

5 Through Supplementary C.A. dated 18.07.2021, the respondents have stated that all the retiral dues admissible as per the rules have duly been paid. The objections to the Supplementary C.A. have again been filed on behalf of the petitioner on 27.08.2021.

6. In the hearing on 21.10.2021, the petitioner has produced a detailed chart showing how the various amounts are still due to her which needs examination by the respondent department. Arguments, of both the sides have also been heard on this date, wherein, learned A.P.O. has stated that the Earned Leave for 45 days had already been applied by the petitioner's husband during suspension period as he had failed to mark attendance in the office where he was attached. Subsequently, when the Earned Leave for this 45 days was sanctioned, the same was reduced from the Earned Leave due to the petitioner and thus could not be encashed under the Rules. Interest on various retiral dues as admissible under the Rules, have already been paid. Regarding the inclusion of name of the petitioner's son in the pension papers with disability note, the respondent department has taken action and the same is under process.

7. Learned Counsel for the petitioner has stressed in the arguments that dues amounting to Rs. 4,12,687 are still payable to the petitioner as per Annexure No. 15 and that recovery from pension cannot be made in view of the various rulings of Hon'ble Courts. He has filed judgment of (i) Hon'ble Madras High Court in W.P. No. 41076 of 2016 and WMP Nos. 35064 & 35065 of 2016, M/s Rukmani Ramanujam vs. The Secretary to Govt. of India, Ministry of Personnel, Public Grievances & Pensions, Department of Personnel and Training, New Delhi and others, decided on 20.06.2018 (ii) judgment of Hon'ble U.P. High Court in Smt. Hasina Begum vs. Purvanchal Vidyut Vitran Nigam Ltd., Prayagraj and 2 others (iii) judgment of Hon'ble Bombay High Court in WP No. 4610 of 2016, Babruwan vs. State of Maharashtra and others and (iv) judgment of Hon'ble Bombay High Court in LD-VC-CW 665 of 2020, Shri Naini Gopal vs. Union of India & others, decided on 20.08.2020.

11. In the petitioner's case, we observe that there was no wrong or higher fixation of pension/family pension and that due to technical mistake, the earlier paid provisional family pension was not adjusted in the payment made to the petitioner. The petitioner herself says that it is the mistake of the respondents. The letter No. 1289/2E dated 16.06.2020 written by the Executive Engineer, PWD, Provincial Division, Uttarkashi, respondent no. 3 to the petitioner is annexed as Annexure No. CA2 to the Counter Affidavit filed on 22.12.2020. This letter states that *vide* letter No. 2576/2E dated 08.07.2019, pension matter of the Late Sri Kailash Chand Tyagi (petitioner's husband) was sent for sanction to Director/Additional Director, Account and Entitlement in which it was clearly written that the petitioner has been paid provisional pension of Rs. 6,67,299/- from March 2018 to April 2019. While generating pension papers, no option was appearing to subtract the provisional pension and this amount could not be adjusted. Therefore, for deduction of the above provisional pension, letter was sent to the Director/Additional Director, Data Centre whose copy was also endorsed to the petitioner. Thereafter, Director, Treasury *vide* his letter dated 08.08.2019 gave approval of the pension, gratuity and Leave

Encashment in which the above provisional pension amount was not recovered, after which *vide* letter no. 3135/2E dated 13.08.2019, the petitioner was asked to be present in the office of Senior Treasury Officer, Uttarkashi. In this letter, Senior Treasury Officer, Uttarkashi, was asked to adjust the amount of provisional pension paid from March 2018 to April 2019 but at the time of payment of final pension, the Treasury Officer could not adjust the above amount. Against the total due pension of Rs. 9,11,145/- the petitioner was to be paid net amount of Rs. 2, 43,846/- after adjustment of Rs. 6,67,299/, while the entire amount of Rs. 9, 11,145 has been paid to her. The petitioner was again requested *vide* the above letter dated 16.06.2020 to deposit the amount of Rs. 6,67,29/- paid to her as provisional pension through Challan in the corresponding Accounts Head at an early date. This letter shows that the petitioner was aware that the amount of provisional pension paid to her had to be deducted from the payment of final pension to be made to her and she was informed immediately when the wrong payment was made to her. Despite request of the department, she did not deposit this amount in the corresponding Accounts Head and thereafter, recovery proceedings have been started against her.

12. We observe that the petitioner's husband before retirement was an Assistant Engineer who is a Class-II officer. It is not a case of wrong or higher fixation of the pension/family pension or recovery of old dues but a case of wrong disbursement of extra amount on account of non-adjustment of the provisional pension paid earlier due to technical error. The petitioner was immediately informed about the same but she did not return this extra amount which she could have easily done without facing any financial hardship. It would have been only tantamount to receipt of the actual amount which was due to her on the basis of the fixation of pension/family pension. She is not entitled to the shelter of non-recovery from the pension as her case does not fall in the circumstances mentioned in the judgment of Hon'ble Supreme Court in State of Punjab vs. Rafiq Masih, cited above. On the other hand, non-recovery from the petitioner would amount to her unjust enrichment at the cost of public money. Petitioner's case is also not covered under the other rulings cited by learned Counsel for the petitioner.

13. In view of the above, we hold that the petitioner should have immediately returned the excess payment made to her by depositing the same through Challan under the relevant Accounts head, which would have caused no hardship to her and on her not doing the same, the respondents are entitled to recover the same in monthly installments from her family pension. She is still gaining some extra income by way of interest generated on the extra amount paid to her.

14. As far as the petitioner's claim for interest on delayed payments is concerned, Annexure: CAR3 to the Counter Affidavit dated 22.12.2020 is the Office Order dated 17.12.2020 of the Respondent no. 3 which states in its point no. 3 that the petitioner produced her documents in April 2018 and the interest on gratuity has been paid from April 2018 to August 2019 on 09.12.2019 and her demand for interest of additional five months is on wrong facts and baseless. But this office order does not explain how the facts are wrong and baseless. Similarly this order does not properly explain the delay in other payments and non-entitlement of the Encashment of Earned Leave of 45 days. This order also states that for recording the name of the petitioner's son Sri Deepak Tyagi in the pension papers, the Respondent no. 2 has sent letter dated 28.08.2020 to the Director/Additional Director of Directorates of Treasury, Pension, Accounts and Entitlement and respondent no. 3 has also written to them *vide* his letter dated 19.11.2020.

15. We observe that there are Govt. Orders, which specify time schedule for preparation of various papers for retiral benefits. We also observe that the disciplinary

proceedings against the petitioner's husband for embezzlement of Govt. money were going on which were concluded on 23.07.2018 after his retirement and death which would have delayed finalization of his retiral dues. The minute examination of the record is required to ascertain the exact amount of delay, over and above the normal procedural time taken in processing of the retiral benefits, on which interest is payable to the petitioner. Respondents have already paid some interest to the petitioner. It will be in the fitness of things that Respondent no. 2 may examine the issue of delay in various payments thoroughly and also examine the demand for encashment of 45 days Earned Leave after giving opportunity of personal hearing to the petitioner and pass reasoned and speaking orders at an early date accepting/partly accepting/rejecting her demands of payment of interest on various delayed payments and encashment of Earned Leave of 45 days. If any amount is found payable to the petitioner, the same may be accounted for in the recovery proceedings. The respondents may also ensure that the name of the petitioner's son with disability clause is included in the pension papers by way of co-authorization under the relevant rules, relating to grant of family pension."

*(Emphasis supplied)*

4. In the instant claim petition, separate Counter Affidavits have been filed on behalf of Respondents No. 1,2 & 3 (by respondent no.3), Respondent No.4 and Respondent No.5. Rejoinder Affidavit thereto has been filed on behalf of the petitioner.

5. During hearing of present claim petition [Claim Petition No. 29/SB/2023], Sri L.D.Dobhal, Ld. Counsel for the petitioner submitted that petitioner seeks to withdraw Reliefs No. 8- ii, iii, iv, v & vi, with liberty to file fresh petition in respect of such reliefs, as and when so required, as per law. Ld. A.P.O. has no objection to the withdrawal of such reliefs. The petitioner is permitted to withdraw Reliefs No. 88- ii, iii, iv, v & vi and file fresh petition in respect of such reliefs in due course, but as per law, as prayed.

6. Ld. Counsel for the petitioner pressed Relief No. 8-i, which is reproduced herein below, at the cost of repetition, as below:

"i. Direct the Respondents no.3 to send revised pension proposal to the Respondent no.4 for co-authorization, in column 3 of Pension order, in the name of petitioner and her disabled son Deepak Tyagi as well as correcting names of petitioner's husband & his father and mobile no. of the petitioner at the earliest and also direct the Respondent No. 4 to issue revised PPO accordingly."

7. Let us see what is the version of respondents in respect of such relief and what is the law on the point.

8. Before the Bench proceeds further, it may be noted here that while deciding the claim petition no. 85/SB/2020, the Tribunal had observed in its order dated 18.11.2021, as follows:

“The Respondent may also ensure that the name of the petitioner’s son with disability clause is included in the pension papers by way of co-authorization under the relevant rules, relating to grant of family pension.”

9. In the C.A., which has been filed by Sri Himanshu Naudiyal, Assistant Engineer, PWD, Uttarkashi, on behalf of Respondents No. 1, 2 & 3, detailed reply has been given in so far as relief no. 8-i of the petitioner is concerned. In para 2 of such C.A., it has been mentioned that Smt. Pushpa Tyagi w/o Late Sri Kailash Chand Tyagi is receiving family pension of late Sri Kailash Chand Tyagi. It has been submitted by Ld. A.P.O. that the names of two nominees cannot be mentioned in the pension papers. If the name of one nominee has been mentioned in the pension papers, the name of second nominee cannot be mentioned in the same.

10. Ld. A.P.O. further submitted, on the strength of C.A. thus filed on behalf of Respondents No. 1, 2 & 3, that the name and spelling of Late Sri Kailash Chand Tyagi s/o Late Sri Shreechand Tyagi and mobile number have been corrected by the Executive Engineer, Provincial Division, PWD Uttarkashi. Differently abled son Sri Deepak Tyagi has been nominated as 100% nominee.

11. According to Ld. A.P.O., the definition of ‘family’, for the purpose of receiving family pension, has been given in the Uttarakhand Retiral Benefits Act, 2018. According to him, as per Section 9(4) of the Act of 2018, there will be no age bar for the differently abled sons or daughters of the pensioners.

12. Detailed reply has been given in paras 2 & 3 of the C.A. filed on behalf of Respondent No.4, by Sri Pankaj Tiwari, Director Treasuries, Pension and Entitlement, Uttarakhand, in so far as relief no. 8-i of the claim petition is concerned.

13. In such paragraph, it has been stated that a differently abled son or daughter is entitled to family pension as per Govt. Order No. 1155/das-2/81 dated 06.08.1981. The difficulty in nominating differently abled son of Late Sri

Kailash Chand Tyagi has been mentioned in Para 3 of the C.A. filed on behalf of Respondent No.4, to say that the amendment in pension papers can only be done through 'online pension process'. In other words, as has been projected by Ld. A.P.O., that the amendment in pension papers can only be done through online process, it cannot be done manually.

14. Nothing has been stated in the C.A. in respect of relief no. 8-i, which has been filed by Sri Ganga Ram, Assistant Treasury Officer, Uttarkashi, on behalf of Respondent No.5. It may be clarified that many facts have been mentioned in the C.A. of Sri Ganga Ram, but no comment has been offered as regard relief no. 8-i in his C.A.

15. In a nutshell, according to respondents, if the pension has been processed online, any amendment in the same should also be done only online (and not offline). The same is also written in the letter dated 16.05.2023 issued by Sri Vikaram Singh Jantwal, Additional Director, Treasuries, Directorate of Pension and Entitlement, Dehradun. Such letter has been written to Executive Engineer, Provincial Division, PWD, Uttarkashi.

16. As has been mentioned above, R.A. has been filed on behalf of the petitioner in the Tribunal on 07.11.2023. The points relating to relief no.8-i in the R.A. are important, therefore, the same are reproduced herein below for convenience:

"5) In the present petition the only issue which relates to the respondent no.4 is co-authorization of petitioner's disabled child in PPO. In spite of repeated letters from respondent no.3 & 2 to incorporate the name of Deepak Tyagi with the petitioner no action was taken. Now on receiving all relevant documents he is asking revised proposal online but the software for online submission of pension papers is showing error. Such error is not being corrected since 2019 nor any guidance to incorporate the name of disabled child is being provided by the resp. no.4.

Under such circumstances the respondent no. deserves to be directed to guide the respondent no. 3 in this matter or to make necessary correction in the software. In the meantime he may be directed to issue offline co-authorization to settle the long pending grievance of co-authorization.

19) The respondent no 4 has written a letter on 16<sup>th</sup> May 2023 to the respondent no.3 to send the revise proposal online for co-authorization but the respondent no.3 is still sleeping on this letter & no action taken by now. (Reference Annexure-2 of affidavit of respondent no. 4) ."

*[Emphasis supplied]*

17. There appears to be no G.O. issued by Govt. of Uttarakhand for removing the difficulties in family pension cases where co-authorization of disabled child is required, but, the Tribunal has been able to lay its hands, with the assistance of Ld. Counsel for the petitioner, on Office Memorandum No.I-95/4/2020-ITD-CGA(E 2554 dated 07.12.2021, issued by Govt. of India. The O.M. issued by Govt. of India reads as under:

“Sub: Important instructions with regard to issues in Pension Module as well as DSC of ePPOs for PAOs.

2. In continuation to this office O.M. No. MF CGA/ITD-IMS/Pension/Misc./2019/107-146 dated 14.01.2020 (copy enclosed) on the subject cited above, the following instructions are hereby communicated:

....  
.....

g. Reference is also invited to Point number 7 of aforesaid OM wherein it was directed to "**verify all the contents of ePPO after taking print at any level with manual case before digitally signing by PAO**" and as per Point number 8 of above OM, it was also desired that "If there is any problem due to technical issues, the same may be forwarded to pension helpdesk for rectification prior to DSC". Despite these above instructions, it has been observed that PAOs are not following the same scrupulously, resulting in return of cases by CPAO to PAO for rectification of errors causing undue delay in finalization of pension cases. Reasons for DSC reversion are also attached herewith (Annexure I) for ready reference.”

*[Emphasis supplied]*

Annexure-1 appended to O.M. dated 08.12.2021 reads as follows:

“ Examples of reasons for DSC reversion

Sl. No.	Reasons	Action to be taken by PAO users
8.	Processing of family pension case where child/children are eligible for family pension and enhanced family pension is to be granted for 10 years whereas child/children age reaches 25 years prior to completion of 10 years of enhanced family pension rates.	Facility not available in Pension Module at present, so please <u>process case manually</u> .
10	Non-availability of co-authorization for disabled child in ePPO	

18. It may not be automatically applicable to the Govt. of Uttarakhand, but the same, at least, provides guidance on what should be done if there is difficulty in processing the pension papers *online*.

19. It may be stated, at the cost of repetition, that in Para 2 (g) of the O.M. dated 08.12.2021, the following has been observed:

**“.....verify all the contents of ePPO after taking print at any level with manual case before digitally signing by PAO....”**

20. Similarly, in para 6 of the O.M. dated 06.06.2023, which contains important instructions in pension module for PAOs in PEMS portal, the following has been observed:

**“6. It may please be noted that following types of pension cases may not be processed through Pension Module: -**

- a) Arrears of pension required to be paid by PAO/paid by PAO
- b) Provisional Pension/provisional gratuity paid by PAO
- c) Category II pension cases
- d) Dual family pension cases
- c) Family pension cases where spouse is not alive and have eligible son/daughter
- 1) NPS superannuation/VRS/compulsory pension cases where pension is required to be paid by fund manager i.e. NSDL
- e) **Family pension cases where co-authorization for disabled child is required**
- h) EOP/EoFP cases.

7. User Manuals for aforementioned developments are attached for information and strict adherence please.”

*[Emphasis supplied]*

21. There is difference between ‘technical justice’ and ‘substantial justice’. The primary function of the Court is to adjudicate dispute between the parties and to advance substantial justice. When substantial justice and technical consideration are pitted against each other, cause of substantial justice deserves to be preferred. It has been observed by Hon’ble Apex Court in *Collector Land Acquisition Anant Naag & another vs. MST Katiji & others, AIR 1987 SCC 107*, although in different context, that “it must be grasped that judiciary is respected not on account of its’ power to legalize injustice on technical grounds, but because it is capable of removing injustice and is expected to do so.” Again, in *State of Nagaland vs. Lipok Ao and others, (2005)*

3 SCC 752, albeit in a different backdrop, the Hon'ble Apex Court was pleased to observe that "a pragmatic approach has to be adopted and when substantial justice and technical approach are pitted against each other, the former has to be preferred.

22. While deciding claim petition no. 85/SB/2020 on 18.11.2021, the Tribunal had already observed that:

**"The Respondent may also ensure that the name of the petitioner's son with disability clause is included in the pension papers by way of co-authorization under the relevant rules, relating to grant of family pension."**

23. It may be noted here that by way of circular issued to all the Drawing and Disbursing Officers on 15.03.2021, Director, Treasury, Pension & Entitlement, Uttarakhand, has himself issued direction that the pensioners/ family pensioners during their lifetime can apply for nomination of differently abled son or daughter, as per requirement. There is no illegality in it.

24. Time is now ripe for directing the respondents to do it manually (*offline*), if cannot be fed digitally (*online*).

25. In the backdrop of peculiar facts and circumstances, as narrated above, Respondent No.3 should be directed to send revised pension proposal to Respondent no.4 for co-authorization, in column 3 of Pension order, in the name of petitioner and her differently abled son Deepak Tyagi manually and also to correct the names of petitioner's husband & his father and mobile number of the petitioner at the earliest. Respondent No. 4 should be directed to issue revised PPO accordingly.

26. Ld. A.P.O. apprised the Bench that names of petitioner's husband and his father & mobile number of the petitioner have been corrected. This has been mentioned in the C.A. also.

27. Other reliefs (Reliefs No. 8- ii, iii, iv, v & vi) have been withdrawn by the petitioner with permission to file fresh petition in respect of such reliefs in due course, as per law.

28. Ld. Counsel for the parties submitted that order, as per para 25, may be passed by Single Bench of the Tribunal.

29. Order accordingly.

30. The claim petition is disposed of. No order as to costs.

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

*DATE: JUNE 04,2024*  
*DEHRADUN*

*VM*