BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL AT DEHRADUN

CLAIM PETITION NO. 47/SB/2020

1. Badri Prasad Naudiyal, aged about 68 years, S/o Late Sri Mangla Nand, Review Officer (Retd.), R/o, 9-108, Nehru Colony, Dehradun.
2. Radha Krishan Semwal, aged about 67 years S/o Late Sri Shiv Dutt Semwal, Review Officer (Retd.), R/O 60/51, Dharampur, Dehradun.
3. Dinesh Kumar Gupta, aged About 67 years, S/o Late Sri M. P. Gupta, Review Officer (Retd.) R/o Shanti Vihar. Govind Garh, Dehradun.
4. Kishore Singh Negi, aged about 65 years S/o Sri Jai Singh Negi, Section Officer (Retd.), R/o E-17, Nehru Colony, Dehradun.
5. Smt. Rajbala, aged about 65 years W/o late Sri Dinesh Singh, Section Officer (Retd.), R/0 173, Saharanpur Road, Patel Nagar, Dehradun.
6. Harish Chandra Ghildiyal, aged about 63 years, S/o Late Sri R. N Ghildiyal, Section Officer (Retd.), R/o, Block- C, Lane No.2 Mandakini Vihar, Dehradun.
7. Bhagwati Prasad Joshi, aged about 63 years. S/o Late Shri Kula Nand Joshi, R/o Retd. from the post of Section Officer, Industrial Development Department, Secretariat, Dehradun.
8. Narayan Singh, aged about 62 years, S/o Late Sri Deena Singh, Section Officer (Retd), R/o Kalinka Vihar, Lane No2 Mazra Mafi Mohakampur, Dehradun.

……Petitioners

vs

1. State of Uttarakhand through Secretary, Secretariat Administration, Civil Secretariat, Dehradun.
2. Secretary/ Principal Secretary, Finance, State of Uttarakhand, Civil Secretariat, Dehradun

…….Respondents

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

JUDGMENT

DATED: AUGUST 13, 2024

Justice U.C.Dhyani (Oral)

By means of present claim petition, the petitioners seek following reliefs:

> *"(ii) To issue order or direction to quash the impugned order dated 21.08.2019 passed by the respondent No. 1 by which representations of the petitioners for granting of benefit of Assured Career Progression after completion of 26 years of Service has been rejected after calling the entire records from the respondents and further to declare the Clause 3(7) of the Government Order dated 08.3.2011 and 7. 4. 2011 by putting such embargo is unreasonable, illegal and void ab-initio and to quash the same, if the condition still exists in the Government Order and also to mould the relief keeping in view the facts highlighted in the body of the petition.*
>
> *(ii) To issue order or direction directing to the respondents to allow the benefit of stepping up of pay and financial up - gradation under ACP after completion of 26 years of service to the petitioners at par to their juniors along with all arrears and consequential benefits together with 18% interest its had it been the impugned order was never in existence.*
>
> *(iii) To issue any other order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case.*
>
> *(iv) Cost of the petition to be awarded to the petitioner."*

2. Learned Counsel for the petitioners submitted that present claim petition is squarely covered by the judgment dated 06.03.2024 passed by this Tribunal in Claim Petition No. 63/SB/2019, Mohan Prasad Khansali & others vs. State of Uttarakhand & others. Learned A.P.O. submitted that all the facts are similar to the above noted claim petition.

The submission of learned Counsel for the petitioners is that present claim petition may kindly be decided in the terms of judgement dated 06.03.2024 passed by this Tribunal in Claim Petition No. 63/SB/2019 and petitioners of present claim petition may also be considered for similar financial upgradation.

3. The judgment dated 06.03.2024 passed by this Tribunal in claim petition no. 63/SB/2019, Mohan Prasad Khansali & others vs. State of Uttarakhand & others is reproduced herein below for convenience:

> "By means of present claim petition, the petitioners seek following reliefs:
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> *"i) To issue order or direction to the concerned respondent to refix/upgrade the pay of the petitioners to the pay scale 6500-10500 since the date of their merger i.e. 25.06.2002 as was given to the juniors and other similarly situated persons by the order dated 07.08.2014 of respondent No. 1.*
>
> *ii) To issue order or direction directing to the respondents to allow the benefit of IIIrd ACP after completion of 26 years of service to the petitioners at par to their juniors i.e. since 01.09.2008 with all arrears.*
>
> *issue an order or direction to the respondents to grant the 18% interest on the arrears of the above amounts/benefit.*
>
> *ii) To issue any other order or direction which this court may deem fit and proper in the circumstances of case in favour of the petitioner.*
>
> *iii) To award the cost of petition."*
>
> *[Emphasis supplied]*
>
> 2. The petitioners are retired Private Secretaries of the Secretariat, Govt. of Uttarakhand. Learned Counsel for the petitioners drew attention of the Bench towards the minutes of the Screening Committee held for giving financial upgradation to the Private Secretaries of Secretariate cadre, which (committee) *vide* report dated 14.07.2014 (Annexure-A5) recommended for the revision of promotional pay scale of 28 private secretaries since the date of merger *i.e.* 25.06.2002. Based on the recommendation of the Screening Committee, respondent no. 1 *vide* office order dated 07.08.2014 (Annexure-A6) amended the previous office orders dated 15.02.2013 and 27.08.2013 and upgraded the first promotional pay scale received by those private secretaries prior to merger under time scale-pay scale, since the date of merger i.e. since 25.06.2002 in the pay scale of Rs. 6500-10500 and accordingly granted the benefit of Second ACP Grade Pay of Rs. 6600 and third ACP, grade pay of Rs. 7600 on competition of 16 and 26 years of service. The submission of learned Counsel for the petitioner is that similar financial upgradation may kindly be directed to be given to the petitioners of present claim petition.
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> 3. Learned Counsel for the petitioners submitted that the beneficiaries of Office Order dated 07.08.2014 have been given financial upgradation of Rs. 6500-10500 since the date of their merger in SAD and consequential benefits regarding ACP *etc.* were given to them accordingly. Several documents have been filed on behalf of the petitioners in support of their pleadings.

4. Respondents have contested the claim petition by filing Written Statement. C.A. has been filed by Sri Bhupal Singh Manral, Secretary, In-charge, Administration Secretariat, Govt. of Uttarakhand. Learned A.P.O. submitted that the petition has no legs to stand on merits. The same is also barred by limitation. Hence, claim petition should be dismissed with costs.

5. Relevant documents have been filed in support of the W.S. Learned A.P.O. submitted that petitioners were appointed in the pay scale of Rs. 4000-6000 in Irrigation Department of erstwhile State of U.P. on 05.05.1973, 01.07.1971 and 02.03.1974 respectively. On completion of 10 years of service, they were given first promotional scale of Rs. 4500-7000/-. On completion of 16 years of service, they were given the benefit of second promotional scale of Rs. 5000-8000/-. Thereafter, after completion of 24 years of service, they were given pay scale of Rs. 5500-9000/- in the parent department. On creation of State of Uttarakhand, they were merged on the post of Private Secretary in pay scale of Rs. 5500-9000/- on 25.06.2002. Thereafter, on 10.12.2004, they were promoted on the post of P.S. Grade-I in the pay scale of Rs. 6500-10500/-. They have been given the benefit of First ACP in the pay scale Rs. 15600-39100 grade pay 5400/-. They were given the second ACP in the pay scale of Rs. 15600-39100 grade pay Rs. 6600/-. Learned A.P.O. further submitted that as per the provisions of Rule 6(1), 6(8) and 6(9) of the Uttarakhand Secretariat Merger Rules, 2002, those employees who were merged in Secretariat should be given benefit of pension and gratuity only on the basis of service rendered in their parent department. They were not entitled to ACP, Seniority *etc*. They were given second ACP, grade of Rs. 6600/-. Before the benefit of third ACP, petitioners retired on 31.12.2010, 31.03.2011 and 30.06.2011 respectively. He further submitted that petitioners had taken benefit of more than five higher promotional pay scales during entire length of service. Hence, petitioners are not entitled to benefit of IIIrd ACP in the grade pay of Rs. 7600/-.

6. In reply, learned Counsel for the petitioners submitted that the same was the case with beneficiaries of office order dated 07.08.2014 (Annexure-A6).

7. It is cardinal principle of law that similarly situated person should not be treated differently. When 28 employees of P.S. cadre, out of which 3 juniors (namely Roop Chand Gupta, Prakash Chandra Bhatt and Rajbala Tomar) to the petitioners, were given some service benefit, how can the petitioners be treated differently?

8. A case of consideration for granting financial upgradation to the petitioners by SAD, on the basis of parity is made out.

9. At this juncture, learned A.P.O. submitted that Special Audit Unit was constituted to find out whether benefit of second and third ACP to 28 beneficiaries of Office Order dated 07.08.2014 (Annexure-A6) was rightly given or not. The Committee found that the benefit was wrongly given to such 28 employees *vide* order dated 26.02.2019. Recovery of excess and over payment due to grant of wrong benefit of ACP was calculated *vide* order dated 04.08.2020 in respect of Roop Chand Gupta, Prakash Chandra Bhatt and Rajbala Tomar. Although, it has not been recovered from the beneficiaries of Office Order dated 07.08.2014 as yet, but the same is under process, as the parity of pay scales can only be claimed as against rightful/valid/legal order and not against wrongful/invalid/illegal order. Hence, there is no discrimination with the petitioners.

10. Learned Counsel for the petitioners submitted that the benefit of upgradation of pay scale Rs. 6500-10500 given since the date of merger on the basis of G.O. dated 23.08.2005, has not been taken away from the

beneficiaries of Office Order dated 07.08.2014. The recovery is from ACP and that is why the amount (of recovery) is very less.

11. Learned Counsel for the petitioners submitted that the same is the case of the petitioners of present claim petition. The case of the petitioners and 28 beneficiaries of Office Order dated 07.08.2014 (Annexure-A6) is identical.

12. Article 14 of the Constitution of India provides that 'the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India'. Equal protection means the right to equal treatment in similar circumstances [AIR 1955 SC 795, AIR 1952 SC 75]. There should be no discrimination between one person or another, if their position is same [AIR 1951 SC 41]. Action must not be arbitrary, but must be based on some valid principle which itself must not be irrational or discriminatory [AIR 1979 SC 1628, AIR 1980 SC 1992]. The principle does not take away from the State the power of classifying persons for legitimate purposes [AIR 1951 SC 318]. The State is very much competent to exercise its discretion and make classification [(1997) 6 SCC1]. It amounts to denial of equal protection when there is no reasonable basis for the differentiation [AIR 1953 SC 1991, AIR 1957 SC 877, AIR 1959 SC 609].

13. The claim petition is disposed of by directing respondent no. 1, Secretary, SAD, to consider the case of the petitioners in parity with the case of beneficiaries of Office Order dated 07.08.2014 (Annexure-A6), in accordance with law.

14. Learned Counsel for the parties submitted that such order may be passed by Single Bench of the Tribunal.

15. Claim petition thus stands disposed of. No order as to costs."

4. **The claim petition is accordingly disposed of by directing respondent no. 1, Secretary, SAD, to consider the case of the petitioners in parity with the case of beneficiaries of Office Order dated 07.08.2014, in accordance with law.**

5. Learned Counsel for the parties submitted that such order may be passed by Single Bench of the Tribunal.

6. Claim petition thus stands disposed of. No order as to costs.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATED: AUGUST 13, 2024
DEHRADUN.
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