

**UTTARAKHAND PUBLIC SERVICES TRIBUNAL,
DEHRADUN**

Present: Sri V.K. Maheshwari

----- Vice Chairman (J)

&

Sri D.K. Kotia

----- Vice Chairman (A)

CLAIM PETITION NO. 71 OF 2012

Gajendra Singh Topal, S/o Late Sri D.S.Topal (Retired Finance and Accounts Officer) R/o 61, Sumanpuri Adhoiwala, Dehradun.

.....Petitioner

VERSUS

1. State of Uttarakhand through the Principal Secretary, Department of Finance, Subhash Road, Dehradun,
2. Secretary to the Govt. of Uttarakhand, Department of Finance, Subhash Road, Dehradun,
3. Director, Treasuries and Finance Services, Uttarakhand, 23, Laxmi Road, Dehradun.
4. Assistant Director, Directorate of Lekha & Haqdari, Uttarakhand, Dehradun.

.....Respondents

Present: Sri J.P.Kansal, Counsel
for the petitioner
Sri Umesh Dhaundiyal, A.P.O
for the respondents

JUDGMENT

DATE: FEBRUARY 08, 2016

DELIVERED BY SRI D.K.KOTIA, VICE CHAIRMAN (A)

1. The petitioner has filed this claim petition for seeking the following relief:

- (a) *the respondents be kindly ordered and directed to correctly fix pay of the petitioner in the Ordinary Scale with effect from the date of officiating of the petitioner i.e.03.11.2001 and allow him annual increments in the officiated post of Ordinary scale and based thereon revise his pay on the regular promoted post, retrial benefits and pension;*
- (b) *the respondents be kindly ordered to pay to the petitioner difference of his salary, retrial benefits and pension arising out of the above fixation/revision of pay and also to pay monthly pension at the revised rate of pension together with interest thereon @ 12% per annum from the date of accrual to the date of actual payment to the petitioner and modify the order of payment of pension Annexure: A2.*
- (c) *Any other relief in addition to or in modification of above, as the Hon'ble Tribunal deem fit and proper, be granted to the petitioner against the respondents; and*
- (d) *Rs. 20,000/- as costs of this Claim Petition be kindly awarded to the petitioner against the respondents.*

2. The relevant facts in brief are that the petitioner was promoted from the post of Accountant to the post of Assistant Treasury Officer in 1990. The State Government framed the Uttar Pradesh Assistant/Sub-Treasury Officers Service Rules, 1998. Assistant Treasury Officers and Sub-Treasury Officers both were treated equal and were both the members of the same cadre of Assistant Treasury/Sub-Treasury officer under the said Rules. The pay scale of Assistant Treasury Officer and Sub-Treasury Officer both was also the same that is Rs. 6500-200-10,500 under the Rules mentioned above. Thus, the member of

the service could be posted either as the Assistant Treasury Officer or as the Sub-Treasury Officer.

3. On 15.09.2001, the Director of Treasuries and Financial Services, Government of Uttarakhand issued an office order by which 3 Assistant Treasury Officers (including the petitioner) were transferred (Annexure: A3). The office order is reproduced below:

“निदेशालय कोषागार एवं वित्त सेवायें
उत्तरांचल, 23 लक्ष्मी रोड, डालनवाला
देहरादून।

पत्रांक: 3594 / 17(1)स्था0 / नि0को0वि0से0 / 2001 दिनांक 15 सितम्बर, 2001

कार्यालय ज्ञाप

उत्तरांचल उप/सहायक कोषाधिकारी सेवा के अधोलिखित अधिकारियों का उनके नाम के सम्मुख स्तम्भ-3 में अंकित पद व स्थान पर स्थानान्तरित कर तैनात किया जाता है। यह आदेश तात्कालिक प्रभाव से लागू होंगे।

क्रमांक	अधिकारी का नाम, पदनाम व तैनात का स्थान	वह पद व स्थान जहां पर स्थानान्तरण कर तैनात किया गया।	अभियुक्ति
1	2	3	4
1.	सर्वश्री गजेन्द्र सिंह तोपाल सहायक कोषाधिकारी, पौड़ी।	उप कोषाधिकारी/प्रभारी कोषाधिकारी, नरेन्द्रनगर-टिहरी कोषाकार	—
2.	श्री प्यारे लाल, उप कोषाधिकारी, देवप्रयाग(टिहरी) (मंडलीय स्थानीय व्यवस्था के अंतर्गत तैनात)	सहायक कोषाधिकारी, देहरादून।	—
3.	महिपाल सिंह, सहायक कोषाधिकारी, देहरादून। (मंडलीय स्थानीय व्यवस्था के अंतर्गत तैनात)	उप कोषाधिकारी, देव प्रयाग, टिहरी।	—

2— उपर्युक्त स्थानान्तरण किये गये अधिकारियों को एतद द्वारा निर्देशित किया जाता है कि वह अपने प्रतिस्थानों की प्रतीक्षा किए बिना एवं तात्कालिक प्रभाव से स्वतः कार्यमुक्त होकर अपने नवीन तैनाती के पद स स्थान का कार्यभार ग्रहण करके कार्यभार ग्रहण करने की सूचना सीधे निदेशालय को उपलब्ध करायेंगे।

टी०एन० सिंह
निदेशक ।”

4. By the office order above, the petitioner was transferred from Assistant Treasury Officer, Pauri to the post of Sub-Treasury Officer/Incharge Treasury Officer, Narendra Nagar, Tehri. Pursuant to the office order dated 15.09.2001, the petitioner took over the charge on 03.11.2001.
5. On completion of 14 years of continuous satisfactory service, the petitioner, according to the time scale promotion scheme of the Government, was given promotional pay scale (on personal basis) w.e.f. 06.02.2004. The pay scale of the petitioner from 06.02.2004, therefore, increased from Rs. 6500-200-10,500 to Rs. 8000-275-13500. This pay scale of Rs. 8000-275-13500 is given to the Treasury officer in the ordinary scale and on the post of Treasury Officer, the promotion is made from Assistant/Sub-Treasury Officer (as one of the feeding cadres) as per the Uttarakhand Finance Service Rules, 2002.
6. The petitioner got his regular promotion in the ordinary scale (Rs. 8000-275-13500 revised to Rs. 15,600-39,100 with Grade Pay of Rs. 5400) under the Uttarakhand Finance Service Rules, 2002 on 26.02.2010.
7. The petitioner, on attaining the age of superannuation, has retired from the service on 31.01.2011.
8. After the retirement, the petitioner gave a representation dated 27.06.2011 to the Principal Secretary, Finance, Government of Uttarakhand (and a reminder dated 11.11.2011 and a notice under Section 4(6) of the Public Services Tribunal

Act, 1976 on 17.04.2012) to allow him the pay scale of the Treasury Officer in ordinary scale (Rs. 8000-13500) under Fundamental Rule 49(1) (Financial Hand Book, Volume II Part II to Part IV) from 03.11.2001, the date since he worked as incharge Treasury Officer.

9. The petitioner has enclosed the Fundamental Rule 49 with his representation dated 27.06.2011 (Annexure: A6). The relevant part of the Rule is reproduced below:

“ अध्याय 6

नियुक्तियों का संयोजन

(Combination of Appointment)

49. सरकार किसी सरकारी सेवक को, जो मौलिक या स्थानापन्न रूप से कोई पद धारण किये हुए हैं, राज्य सरकार क अधीन किसी एक समय में एक या उससे अधिक अन्य अलग-अलग पदों पर अस्थायी रूप से नियुक्त कर सकती है। ऐसे मामलों में उसका वेतन निम्नलिखित प्रकार से विनियमित (Regulate) किया जायेगा:

(एक) यदि किसी सरकारी सेवक को उसके ही कार्यकाल में और उसी संवर्ग/पदोन्नति कम मं उसके साधारण कर्तव्यों के अतिरिक्त उच्चतर पद के कर्तव्यों को धृत करने के लिए औपचारिक रूप से नियुक्त किया जाय तो उसे वही वेतन मिलेगा जो तब अनुमन्य होता जब उसकी नियुक्ति उच्चतर पद पर स्थानापन्न रूप से की गई हो, जब तक कि उसका स्थानापन्न वेतन नियम 35 के अधीन कम न किया गया हो, किन्तु निम्न पद के कर्तव्यों का पालन करने के लिए कोई अतिरिक्त वेतन नहीं दिया जायेगा।

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नियम 49 से संबंधित राज्यपाल के आदेश

1- यह नियम ऐसे लिपिकवर्ग, अधीनस्थ या निम्नवर्ग के पदों पर लागू नहीं होता है जिनके संबंध में कर्तव्यों को कर्मचारी वर्ग के अन्य सदस्यों में वितरित किया जाएगा। यह नियम उस दशा में भी लागू नहीं होता है जब किसी सरकारी सेवक को अतिरिक्त पद/पदों पर औपचारिक रूप से नियुक्त न किया जाए और न ऐसे मामलों में लागू होता है जहां पर औपचारिक नियुक्ति प्रबन्ध समाप्त हो जाने के पश्चात की जाए। राजपत्रित सरकारी सेवक की स्थिति में नियुक्ति की औपचारिक अधिसूचना भी अपेक्षित है जिसे यथाशीघ्र

जारी किया जाना चाहिये ताकि अधिकारी को यह मालूम हो जाए कि उसे अतिरिक्त पद या पदों के पूरे कर्तव्यों और उत्तरदायित्वों का पालन करना है।

.....”

10. The State Government did not decide the representation of the petitioner. Hence, the petition.

11. The main contention of the petitioner in the claim petition is that as he held the post of incharge Treasury officer w.e.f. 03.11.2001, he is entitled to get the salary of the Treasury Officer in the ordinary scale (Rs. 8000-275-13500) in place of the salary of the Sub-Treasury Officer (Rs. 6500-200-13500).As mentioned in para 8 above, the petitioner has based his claim as per Rule 49(1) reproduced in para 9 above.

12. Respondents No.1 to 3 have opposed the claim petition and in their joint written statement have contended that the petitioner was transferred from the post of Assistant Treasury Officer, Pauri to Sub-Treasury Officer/Incharge Treasury Officer, Narendra Nagar, Tehri on 15.09.2001. Nowhere in this transfer order, payment of higher salary of the Treasury officer Rs. 8000-275-13500 in the ordinary scale has been mentioned. The petitioner was not entitled for the higher salary during his period of officiating the post of Incharge Treasury Officer. He has been rightly paid the salary of Assistant/Sub-Treasury Officer Rs. 6500-200-13500, which was his substantive post and he held the post of Incharge Treasury officer as an additional charge. It was also contended by the respondents that the post of Treasury Officer in ordinary scale is a post of promotion. The promotion on this post is made according to Rule 16 of the Uttarakhand Finance Service Rules, 2002 in consultation with Uttarakhand

Public service Commission as per the criterion of merit (Annexure:R3). The petitioner could not have been paid the higher salary of Treasury Officer in ordinary scale without his promotion according to the said Rules. The petitioner in pursuant of the transfer order dated 15.09.2001 has worked as incharge Treasury Officer in the local arrangement and he has drawn his salary of his substantive post of Assistant/Sub-Treasury Officer during this period. The respondents, therefore, have stated in their written statement that the petition is devoid of merit and liable to be dismissed.

13. The petitioner has also filed a rejoinder affidavit and the same averments which were stated in the claim petition have been reiterated in it.

14. We have heard learned counsel for the petitioner as well as learned APO on behalf of respondents and also gone through the record carefully.

15. Learned counsel for the petitioner has mainly argued that since the petitioner has worked as Treasury Officer from 03.11.2001 till 26.02.2010, he is entitled to get the higher salary with all consequential benefits. Learned APO has opposed and contended that the petitioner cannot be given higher salary for the post for which promotion is made according to the criterion of merit in consultation with the Public Service Commission as per Uttarakhand Finance Service Rules, 2002.

16. The issue before us is to examine when an employee is posted on more than one post (one of which is carrying the higher pay), whether he is entitled to get the higher salary or not.

17. Fundamental Rule 49 deals with the issue, the relevant part of which has been reproduced in paragraph 9 of this order. A careful perusal of FR 49 reveals that a Government employee can be appointed on more than one post by the 'Government'. In the case in hand, the petitioner, in pursuant to the transfer order dated 15.09.2001, has been posted on more than one post by the Director, Treasury and Financial Services, Government of Uttarakhand. The posting of the petitioner on more than one post has not been made by the 'Government.'

18. FR 49(1) also makes it clear that the salary of the higher post is payable only when the Government employee is 'formally appointed' to do the additional work of the higher post. In the case in hand, the posting of the petitioner as 'Incharge Treasury Officer' has been mentioned in the transfer order (dated 15.09.2001) only. No "formal appointment" order has been issued in respect of the petitioner to do the work of the higher post of the 'Treasury Officer' in addition to his ordinary duties.

19. FR 49 deals with the combination of appointment. This Rule is applicable when a Government employee is appointed on more than one post. In the case in hand, the petitioner has been posted on the post of (i) Sub-Treasury officer and (ii) Incharge Treasury officer vide transfer order dated 15.09.2001. While there is a cadre post of Sub-Treasury Officer, there is no post in the cadre to be known as "Incharge Treasury Officer". The FR 49(1) provides holding of the higher post in the same cadre/line of promotion of a Government employee. The petitioner has been additionally posted as "Incharge Treasury Officer" which is neither a cadre post nor a post in line of the promotion. The in line promotion post is Treasury Officer/Finance Officer in

ordinary scale under Uttarakhand Finance Service Rules, 2002 and not the post of “Incharge Treasury Officer”.

20. The order of the Governor in respect of FR 49 also prescribes that in case of a ‘gazetted officer’, the ‘formal notification’ of the appointment is also required to be made. Admittedly, the post of ‘Treasury Officer’ is a gazetted post. In the case in hand, the record reveals that there is no such notification. There is merely a transfer order which shows posting of the petitioner as “Incharge Treasury Officer”.

21. In view of paragraph 17 to 20 of this order, we are of the view that the case of petitioner is not covered under the Fundamental Rule 49 (Financial Hand Book Volume II Part II to IV).

22. Learned A.P.O. has also raised the issue of limitation. It has been argued by him that the claim petition is hopelessly time barred. The petitioner was transferred on the post of Sub Treasury Officer/Incharge Treasury Officer on 15.09.2001. The petitioner gave his first representation for salary of the higher post on 27.06.2011 and that too after his retirement on 31.01.2011. Learned counsel for the petitioner has refuted this and contended that the petitioner has recurring cause of action which arises on 1st day of each month on receipt of salary/pension at the rate less than his entitlement.

23. In the case in hand, we find that pursuant to the transfer order dated 15.09.2001, the petitioner was posted as Sub-Treasury Officer/Incharge Treasury Officer. On completion of 14 years of continuous service on 06.02.2004, he was given the Time Scale Promotion (on personal basis) in the pay scale of Rs.

8000-275-13500(pre-revised) which is the pay scale of the promotional post of the Treasury Officer in ordinary scale. The petitioner did not agitate in respect of higher pay of the post of Treasury Officer from 03.11.2001 to 05.02.2004. After that, he was regularly promoted under the Uttarakhand Finance Service Rules, 2002 on 26.02.2010 on the post of Treasury Officer in ordinary scale. At that time also, he remained silent .The petitioner retired on 31.01.2011 but at that time also he did not raise any objection. Only on 27.06.2011, he claimed his higher salary from 03.11.2001. The petitioner has not explained as to why did he not raise the issue of his claim at the appropriate time. Merely, the argument of recurring cause of action is not convincing. In the facts and circumstances of the case in hand, if such claims are maintained long after the original cause of action had arisen, it would open a Pandora's box for similar claims to be made by many others.

24. In view of the foregoing discussion, we are of the opinion that both on non-applicability of the Fundamental rule 49 and also on account of the delay on the part of the petitioner, the claim petition is liable to be dismissed.

ORDER

The petition is, hereby, dismissed. No order as to costs.

V.K.MAHESHWARI
VICE CHAIRMAN (J)

D.K.KOTIA
VICE CHAIRMAN(A)

DATE: FEBRUARY 08, 2016
DEHRADUN.

KNP