

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

Present: Hon'ble Mr. Rajendra Singh

----- Vice Chairman (J)

Hon'ble Mr A.S.Rawat

-----Vice Chairman (A)

**CLAIM PETITION NO. 18/NB/DB/2020**

Naveen Chandra Lohani, aged about 63 years, S/o Sri C.S.Lohani,  
R/O Ranijaswa Kathghariya, P.O. Kathghariya Haldwani, District  
Nainital.

.....Petitioner

**With**

**CLAIM PETITION NO. 19/NB/DB/2020**

Pan Singh Bisht, aged about 63years, S/o Sri Bahadur Singh Bisht,  
R/o Banetha Banger, Narayan Puram P.O. Halduchaud Tehsil-  
Lalkuan, District Naintial.

.....Petitioner

**With**

**CLAIM PETITION NO. 20/NB/DB/2020**

Dan Singh Poona, aged about 59 years, S/o Sri Bachi Singh Poona ,  
R/O Phool Chaud, P.O. Anandpur, Haldwani, District Nainital.

.....Petitioner

**With**

**CLAIM PETITION NO. 21/NB/DB/2020**

Deewan Singh, aged about 63 years, S/o Sri Mohan Singh, R/O  
Surabhi Colony, Malli Bamori, P.O. Bhotiaparaw, Haldwani, District  
Nainital.

.....Petitioner

**VERSUS**

1. State of Uttarakhand through Secretary, Ministry of Forest,  
Dehradun, Uttarakhand, Dehradun.
2. Pramukh Chief Conservator of Forest, Dehradun, Uttarakhand,  
Dehradun.

3. Chief Conservator of Forest, Kumoun Region, Nainital, District Nainital, Uttarakhand.
4. Divisional Forest Officer, Tarai Central, Haldwani, Uttarakhand, District Nainital.

.....**Respondents**

(Virtual)

Present: Sri A.D.Tripathi, Ld. Counsel for the petitioners  
Sri Kishore Kumar, A.P.O. for the Respondents

### **JUDGMENT**

**DATED: DECEMBER 03, 2024**

**HON'BLE MR. A.S. RAWAT, VICE CHAIRMAN (A)**

Since the common question of law and facts involved in all these 4 Claim Petitions is the same, so these are being taken together and disposed of by this common judgment.

2. In claim petition no. 18/NB/DB/2020, the petitioner seeks the following reliefs:

*“(i)- issue a direction/ order to the respondents to count the past 20 years services rendered by him on the post of Export Moharir for the purpose of pension in accordance with the law laid down by Full Bench of Hon’ble Apex Court in Civil Appeal No.6798 of 2019 (Prem Singh Vs State of Uttar Pradesh and others) service rendered under work charge establishment shall be treated qualifying service under Rule 3(8) of the U.P Retirement Benefits Rules, 1961, for grant of pension, right from the day they entered the work charge establishment shall be counted as qualifying service for purpose of pension.*

*(ii)- To issue direction / order to the respondent to consider the claim of the petitioner for pension as they have completed 10 years continuous and satisfactory regular service, including the past 30 years uninterrupted service rendered as export moharir/ road zamadar/ plantaionzamadar in the department and be counted for pension benefits only.*

*(iv)- To pass any other or further order which this Hon’ble Court may deem fit and proper in facts and circumstances of the case.*

*(v)- Cost of the petition may be awarded in favor of the petitioner.*

*(VI)- to quash / set aside the non speaking rejection order dated 8-2-2019, passed by the respondent of the claim petition.”*

3. In claim petition no. 19/NB/DB/2020, the petitioner seeks the following reliefs:

*“(i)- issue a direction/ order to the respondents to count the past 18 years services rendered by him on the post of Export Moharir for the purpose of pension in accordance with the law laid down by Full Bench of Hon’ble Apex Court in Civil Appeal No.6798 of 2019 (Prem Singh Vs State of Uttar Pradesh and others) service rendered under work charge establishment shall be treated qualifying service under Rule 3(8) of the U.P Retirement Benefits Rules, 1961, for grant of pension, right from the day they entered the work charge establishment shall be counted as qualifying service for purpose of pension.*

*(ii)- To issue direction / order to the respondent to consider the claim of the petitioner for pension as they have completed 16 years continuous and satisfactory regular service, including the past 30 years uninterrupted service rendered as export moharir/ road zamadar/ plantaionzamadar in the department and be counted for pension benefits only.*

*(iv)- To pass any other or further order which this Hon’ble Court may deem fit and proper in facts and circumstances of the case.*

*(v)- Cost of the petition may be awarded in favour of the petitioner.*

*(VI)- to quash / set aside the non-speaking rejection order dated 16-8-2018, passed by the respondent of the claim petition.”*

4. In claim petition no. 20/NB/DB/2020, the petitioner seeks the following reliefs:

*“(i)- issue a direction/ order to the respondents to count the past 18 years services rendered by him on the post of Export Moharir for the purpose of pension in accordance with the law laid down by Full Bench of HonbleApex Court in Civil Appeal*

*No.6798 of 2019 (Prem Singh Vs State of Uttar Pradesh and others) service rendered under work charge establishment shall be treated qualifying service under Rule 3(8) of the U.P Retirement Benefits Rules, 1961, for grant of pension, right from the day they entered the work charge establishment shall be counted as qualifying service for purpose of pension.*

*(ii)- To issue direction / order to the respondent to consider the claim of the petitioner for pension as they have completed 16 years continuous and satisfactory regular service, including the past 16 years uninterrupted service rendered as export moharir/ road zamadar/ plantaionzamadar in the department and be counted for pension benefits only.*

*(iv)- To pass any other or further order which this Hon'ble Court may deem fit and proper in facts and circumstances of the case.*

*(v)- Cost of the petition may be awarded in favor of the petitioner.*

*(VI)- to quash / set aside the non speaking rejection order dated 27-8-2018, passed by the respondent of the claim petition."*

5. In claim petition no. 21/NB/DB/2020, the petitioner seeks the following reliefs:-

*"(i)- issue a direction/ order to the respondents to count the past 18 years services rendered by him on the post of Export Moharir for the purpose of pension in accordance with the law laid down by Full Bench of Hon'ble Apex Court in Civil Appeal No.6798 of 2019 (Prem Singh Vs State of Uttar Pradesh and others) service rendered under work charge establishment shall be treated qualifying service under Rule 3(8) of the U.P Retirement Benefits Rules, 1961, for grant of pension, right from the day they entered the work charge establishment shall be counted as qualifying service for purpose of pension.*

*(ii)- To issue direction / order to the respondent to consider the claim of the petitioner for pension as they have completed 10 years continuous and satisfactory regular service, including the past 30 years uninterrupted service rendered as export moharir/ road zamadar/ plantaion zamadar in the department and be counted for pension benefits only.*

*(iv)- To pass any other or further order which this Hon'ble Court may deem fit and proper in facts and circumstances of the case.*

*(v)- Cost of the petition may be awarded in favour of the petitioner.*

*(VI)- to quash / set aside the nonspeaking rejection order dated 27-8-2018, passed by the respondent of the claim petition."*

6. The petitioner in Claim Petition No. 18/NB/DB/2020 was initially appointed as Export Moharir in 1985 and he was regularized on 11.09.2003 on the post of Forest Guard in the pay scale of Rs. 2750-4400.

6.1 The petitioner in Claim Petition No. 19/NB/DB/2020 was also initially appointed as Export Moharir in 1985 but his services were regularized on 09.02.2009 on the post of Forest Guard in the pay scale of Rs. 2750-4400.

6.2 The petitioner in Claim Petition No. 20/NB/DB/2020 was initially appointed on the post of Export Moharir on 31/01/1987 but he was regularized on the post of Forest Guard on 10/12/2003 in the pay scale of Rs. 2750-4400.

6.3 The petitioner in Claim Petition No. 21/NB/DB/2020 was also initially appointed on the post of Export Moharir in 18/01/1985 but he was regularized on the post of Forest Guard on 18.02.2003 in the pay scale of Rs. 2750-4400.

6.4 All the petitioners in the abovementioned Claim Petitions have already retired from the service.

6.5 Earlier, the petitioners filed claim petitions Nos, 04/NB/DB/2016, 11/NB/DB/2018, 09/NB/DB/2018 and 07/NB/DB/2016. The claim petitions no. 04/NB/DB/2016 and 07/NB/DB/2016 were disposed of by this Tribunal vide order dated 11.04.2018, with the following directions:

*“8. In view of the above, we are of the view that the petitioners may make a representation before the appropriate authority for their claim in respect of counting of their past services for the purpose of retiral benefits within a period of three weeks from today. The respondents will decide the representation given by the petitioners within a period of 10 weeks of presentation of the certified copy of this order along with a copy of representation, by a reasoned and speaking order in accordance with law. The decision so taken shall be communicated to the petitioners soon thereafter. All the Claim Petitions are disposed of accordingly.”*

6.6 Similarly, claim petitions no. 11/NB/DB/2018 & 09/NB/DB/2018 were also disposed of by this Tribunal vide order dated 20.06.2018 with the following directions.

*“6. In view of above, the petitioner is directed to file a representation afresh within a period of two weeks from today and the respondents are directed to decide the representation within eight weeks after receiving the representation.”*

7. In view of the directions of this Tribunal, the petitioners made detailed representations to the respondent authorities along with the copies of the order of the Court enclosing judgements of the Hon'ble Supreme Court and the Hon'ble High Court for the compliance.

8. When no action was taken by the respondent authorities on the representations, the petitioners filed the Execution Petitions no. 01/NB/DB/2019, 04/NB/DB/2019, 06/NB/DB/2019, and 03/NB/DB/2019. The execution petitions were disposed of by the Tribunal vide orders dated 09.04.2019 and 08.04.2019, as the compliance of the Tribunal's order was made by the respondent authorities. While disposing of the representations of the petitioners, the respondents rejected the claim of the petitioners.

9. The petitioners (Naveen Chandra Lohani, Dan Singh Poona and Deewan Singh respectively) were regularised in 2003 and petitioner, Pan Singh Bisht was regularized in 2009 by the respondents and now all the petitioners have already been retired from the services. The Hon'ble High Court in the writ petition bearing No. 1217 of 2018 and 722 of 2014 has ordered that petitioners had put in 10 years of qualifying service, so they are entitled for

pensionary benefit. The contention of the petitioners is that their services before the regularization should be counted for the purpose of pensionary benefits. In support of their contention, learned counsel for the petitioners has referred to a decision of Hon'ble Supreme Court passed in Prem Singh v. State of U.P., (2019) 10 SCC 516.

10. Learned Counsel for the petitioners submitted that the past services of the petitioners before regularisation should be counted as qualifying service for grant of pension on the basis of the Judgment of the Hon'ble Supreme Court passed in Prem Singh vs. State of Uttar Pradesh & others (supra). Learned A.P.O. on behalf of the respondents also submitted that the judgment of Hon'ble Supreme Court covers the claim of the petitioners. Both the parties agreed that these claim petitions may also be decided in terms of the aforesaid judgment of Hon'ble Supreme Court.

11. The relevant paragraphs of the judgment of Hon'ble Supreme Court passed in the case of Prem Singh v. State of U.P. (supra) are reproduced as under for convenience:

"33. The question arises whether the imposition of rider that such service to be counted has to be rendered in between two spells of temporary or temporary and permanent service is legal and proper. We find that once regularisation had been made on vacant posts, though the employee had not served prior to that on temporary basis, considering the nature of appointment, though it was not a regular appointment it was made on monthly salary and thereafter in the pay scale of work-charged establishment the efficiency bar was permitted to be crossed. It would be highly discriminatory and irrational because of the rider contained in the Note to Rule 3(8) of the 1961 Rules, not to count such service particularly, when it can be counted, in case such service is sandwiched between two temporary or in-between temporary and permanent services. There is no rhyme or reason not to count the service of work-charged period in case it has been rendered before regularisation. In our opinion, an impermissible classification has been made under Rule 3(8). It would be highly unjust, impermissible and irrational to deprive such employees benefit of the qualifying service. Service of work-charged period remains the same for all the employees, once it is to be counted for one class, it has to be counted for all to prevent discrimination. The classification cannot be done on the irrational basis and when respondents are themselves counting period spent in such service, it would be highly discriminatory not to count the service on the basis of flimsy classification. The rider put on that work-charged service should have preceded by temporary capacity is discriminatory and irrational and creates an impermissible classification.

34. As it would be unjust, illegal and impermissible to make aforesaid classification to make Rule 3(8) valid and non-discriminatory, we have to read down the provisions of Rule 3(8) and hold that services rendered even prior to regularisation in the capacity of work-charged employees, contingency paid fund employees or non-pensionable establishment shall also be counted towards the qualifying service even if such service is not preceded by temporary or regular appointment in a pensionable establishment.

35. In view of the Note appended to Rule 3(8), which we have read down, the provision contained in Regulation 370 of the Civil Services Regulations has to be struck down as also the instructions contained in Para 669 of the Financial Handbook.

36. There are some of the employees who have not been regularised in spite of having rendered the services for 30-40 or more years whereas they have been superannuated. As they have worked in the work-charged establishment, not against any particular project, their services ought to have been regularised under the Government instructions and even as per the decision of this Court in State of Karnataka v. Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] . This Court in the said decision has laid down that in case services have been rendered for more than ten years without the cover of the Court's order, as one-time measure, the services be regularised of such employees. In the facts of the case, those employees who have worked for ten years or more should have been regularised. It would not be proper to regulate them for consideration of regularisation as others have been regularised, we direct that their services be treated as a regular one. However, it is made clear that they shall not be entitled to claiming any dues of difference in wages had they been continued in service regularly before attaining the age of superannuation. They shall be entitled to receive the pension as if they have retired from the regular establishment and the services rendered by them right from the day they entered the work-charged establishment shall be counted as qualifying service for purpose of pension.

37. In view of reading down Rule 3(8) of the U.P. Retirement Benefits Rules, 1961, we hold that services rendered in the work-charged establishment shall be treated as qualifying service under the aforesaid rule for grant of pension. The arrears of pension shall be confined to three years only before the date of the order. Let the admissible benefits be paid accordingly within three months. Resultantly, the appeals filed by the employees are allowed and filed by the State are dismissed.”

12. Hon'ble High Court of Uttarakhand in Writ Petition No. 441 of 2022(S/S), Suresh Chandra Kandwal vs. State of Uttarakhand & others has also passed a judgement dated 20.08.2024 for counting the past service for the pensionary benefits in view of the Judgement of the Hon'ble Supreme Court.

13. In the light of the aforesaid decision of the Hon'ble Supreme Court, this Tribunal has also delivered the judgement dated 08/10/2024 in the Claim Petition No. 60/NB/DB/2019, Kunwar Singh



vs State of Uttarakhand, for counting of past services for the grant of the pensionary benefits.

14. On the basis of the above, it is clear that the department has regularized petitioners and paid pensionary benefits for the service rendered after their regularization in the department as Forest Guards. But they have served the department continuously as Export Moharir for more than thirty years and they are entitled to get the benefit of the past services rendered by them for pensionary benefits.

15. In view of the above, the impugned orders dated 08.02.2019, 16.08.2019, 27.08.2019, by which the representations of the petitioners for claiming the pensionary benefits were rejected by the respondents, are hereby set aside and the claim petitions are hereby disposed of in terms of the judgment of Hon'ble Supreme Court in the case of Prem Singh v. State of U.P., (2019) 10 SCC 516 by directing the respondents to calculate the service rendered by the petitioners as temporary employee (Export Moharir) and recalculate the pensionary benefits only and give necessary benefits to the petitioners within a period of two months on presentation of certified copy of this judgment/order. No order as to costs.

16. Let copies of this order be kept on the files of Claim Petition nos. 19/NB/DB/2020, 20/NB/DB/2020 and 21/NB/DB/2020.

**(RAJENDRA SINGH)**  
VICE CHAIRMAN (J)

**(A.S. RAWAT)**  
VICE CHAIRMAN (A)

*DATE: DECEMBER 03, 2024*  
*DEHRADUN*  
*KNP*