

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

Present: Hon'ble Mr. Rajendra Singh
..... Vice Chairman (J)

Hon'ble Mr. A. S. Rawat
..... Vice Chairman (A)

CLAIM PETITION NO. 07/NB/DB/2020

Sri Vinod Kumar Pande, aged about 64 years, s/o Late Sri Liladhar Pande,
r/o North View, Ratan Cottage Compound, Tallital, Nainital, District Nainital.

..... **Petitioner**

Vs

1. State of Uttarakhand, through Principal Secretary, Forest & Environment,
Dehradun.
2. Principal Secretary, Finance, Uttarakhand Shasan, Dehradun.
3. Principal Secretary, Forest & Environment, Uttarakhand Shasan,
Dehradun.
4. Managing Director, Uttarakhand Forest Development Corporation,
Aranya Bhawan, 73-A, Nehru Road, Dehradun.

..... **Respondents**

Present: Sri Vinod Kumar Pande, petitioner in person
Sri Kishore Kumar, A.P.O. for the respondents
Mrs. Seema Shah, Advocate for respondent no. 4

JUDGMENT

DATED: JANUARY 14, 2025

Present claim petition has been filed by the petitioner for the
following reliefs:

- I. To set aside the impugned order dated 20.05.2019 of respondent no.3 and 27.08.2019 of respondent no.4 where the pay scale of the petitioner was downwardly revised to grade pay Rs.6600 per month.*
- II. To direct the respondents to pay all arrears and dues with 12% interest per year from the due date.*
- III. Award the cost of the petition.*

2. Brief facts of the case are as follows:

2.1 The petitioner was appointed in U.P. Forest Corporation on 3 November 1981 as Assistant Logging Supervisor. The post was later on renamed as Assistant Logging Officer. On 23.02.2001 it was merged with its next hierarchical post Deputy Logging Officer. After creation of Uttarakhand Forest Development Corporation, the services of the Petitioner were allotted to Uttarakhand Forest Development Corporation (UFDC), as per the agreement between the U.P. and Uttarakhand Government. The pay scale of the Petitioner was fixed as per the provisions relevant to the merged post of Deputy Logging Officer in April 2001. When the 6th pay commission recommendations were implemented in UFDC the Petitioner's pay scale was fixed to grade pay Rs. 6600 per month in pay band 15600-39100. Simultaneously one pay grade enhancement, as recommended in ACP was granted to fix the salary in grade pay Rs. 7600 in pay band 15600-39100.

2.2 On dated 06 November 2013, the Government revised the provisions of ACP to provide promotional pay scale in lieu of next grade pay, to the personnel originally appointed up to the grade pay of Rs. 4800. Surprisingly, the UKFDC refused to implement the amended ACP order of 06.11.2013 in favour of the petitioner and similarly placed persons. This forced to the Junior Officers Association, UFDC, the petitioner's Association to file a writ petition no. WPSS 2659/ 2015 in Hon'ble High Court of Uttarakhand.

2.3 The petitioner was retired as DLO from service on 31st January 2016, after attaining the age of superannuation. On the date of retirement, the petitioner was in grade pay Rs.7600. After the retirement of the Petitioner, his retiral dues were duly paid to him by the UFDC. However, two important matters connected to his salary fixation were pending in Hon'ble High Court and with Government respectively. These were –

(a) The G.O. dated 6.11.2013 regarding the revision of ACP, in which the grade pay enhancement was to be replaced by promotional grade pay for the employees appointed originally below grade pay Rs.4800. The UFDC implemented the G.O. to all eligible cadres but declined to implement the G.O. to the cadre of Deputy Logging Officer. Annoyed by the attitude of the UFDC, Junior Officer's Association the official group of the Petitioner raised the issue in Hon'ble High Court.

(b) The 7th Pay Commission recommendations were due to be implemented from 01.01.2016.

2.4 The Writ petition No. WPSS 2679 of 2015 of Junior Officers' Association Uttarakhand Forest Development that 'the service conditions of the members of the Petitioner Association would be regulated vide annexure no.4 dated 23.02.2001, whereby the cadre of Assistant Logging Officer was merged with Deputy Logging Officer in the pay scale of Rs. 5000-8000'. In this regard the Hon'ble Court reiterated the Government Order dated 08.07.2011 by virtue of which the Petitioner received the Time scale pay scales and directed to implement the G.O. dated 6.11.2013.

2.5 Some employees of different cadres of Uttarakhand Forest Development Corporation tried to obstruct the benefits received by the Petitioner and members of his cadre. To frustrate the implementation of the benefits to the DLO cadre, these employees of UFDC filed a Special Appeal against the judgment of WPSS 2679/2015, in the Hon'ble High court as SPA 523/2017. This appeal was dismissed by the Hon'ble High court on 06.10.2017.

2.6 Complying the Court's order, the respondent no.4 fixed the pay scale of Petitioner to grade pay Rs.8700 and pay band Rs. 37400-67000. As the Petitioner retired on dated 31.01.2016, the Divisional Manager Nainital fixed his pay accordingly and sent the arrear sheet to M.D. for payment. Simultaneously the recommendations of 7th pay commission were implemented in Uttarakhand Forest Development

Corporation, the salary was once again revised by Uttarakhand Forest Development Corporation.

2.7 The revised retiral dues calculated on the basis of salary revised after ACP order dated 06.11.2013 and 7th Pay Commission recommendations, the following benefits became due as arrears of the petitioner to be paid by the UFDC-

(a) Gratuity- Rs. 10,00,000. (By virtue of the increase in the higher limit of gratuity in 7th pay commission report).

(b) Leave encashment-Rs. 4,33, 830.00 (by virtue of the revised salary)

(c) Salary Arrear- Rs. 6,46,954.00 (the difference of due and drawn salary)

(d) EPF contribution- Rs. 74,962.00 (the difference of EPF deposited on due and drawn salary) Total Rs.-21,55,746.00.

2.8 The Petitioner was retired on 31.01.2016 and the above-mentioned dues were pending for payment with UFDC. It is submitted that there was substantial increase in the salary of the Petitioner and similarly placed employees. The effect of the impugned order titled as "sakaran mukhar aadesh" is that the Pay of the Petitioner which was fixed to grade pay Rs. 8700 in pay band in 6th pay commission and after the implementation of 7th pay commission to Rs.1,26,800, now downwardly revised to grade pay Rs.6600 per month. Therefore, the various dues of the Petitioner which are amounting to Rs. 21,55,746 will be wiped out. The Petitioner receives only Rs.2160 as pension from EPFO, therefore, this amount of dues is very vital for sustenance of the Petitioner as well as his family. Therefore, the petitioner has challenged the impugned orders.

3. C.A./W.S. has been filed on behalf of the respondents. Petitioner has also filed Rejoinder Affidavit to the C.A/W.S. filed by the respondents.

4. On 30.09.2022, the arguments of the parties were heard and time was granted to file written arguments. Thereafter, the petitioner had filed his written arguments dated 07.11.2022.

5. This Tribunal, on the basis of the arguments and written submission of the petitioner, vide order dated 16.01.2023, passed the following order:

“In the written argument dated 07.11.2022 filed by the petitioner, it has been stated that the respondent no. 1 issued Govt. Order dated 27.08.2021 and subsequent order dated 02.09.2021 of the Managing Director of the respondent corporation (UFDC) issued direction to release the entire retiral dues of the petitioner after fixation of the Grade Pay of the petitioner at Rs. 87,00/-. The prayer no. 1 of the claim petitioner has become infructuous but the prayer no. 2 regarding payment of interest on the retiral dues is still alive and is being pressed by the petitioner in the claim petition. During pendency of the claim petition, the petitioner also filed a Criminal Misc. Application under Section 340 read with Section 195 of the CrPC and this application is also being pressed by the petitioner, which should be decided on its own merits. The petitioner has also demanded to be compensated for his mental harassment by the respondent corporation.

When the Counter Affidavits were filed by the respondents, the grade pay of Rs. 87,00/- was not sanctioned to the petitioner and the Counter Affidavits also state that the petitioner has been paid all the dues within time and he has been paid excess payment of money due to misinterpretation of the Govt. Orders which is to be recovered from the petitioner and the claim petition was demanded to be dismissed with costs.

After the change of the stance of the respondents by granting the Grade Pay of Rs. 87,00/- to the petitioner and subsequent payment of the retiral dues accordingly, the questions of payment of interest on delayed payment of retiral dues etc. have become relevant. In the interest of justice, the respondents should be given an opportunity to explain by way of filing additional Counter Affidavits, as to why the interest on delayed payments should not be granted as well as their final response to the Criminal Misc. Application under Section 340 read with Section 195 of CrPC and the demand for compensation for the mental harassment of the petitioner. A copy of the written argument dated 07.11.2022 filed by the petitioner may be provided to learned Counsel for the respondents for filing Additional Counter Affidavits/response as above by 22.02.2023.”

6. In compliance of the Tribunal's order dated 16.01.2023, the respondent no.4 has filed Additional Supplementary Counter Affidavit, para 5 to 22 of which read as under:

5- That the petitioners were appointed as per the UPFC Service Rules 1985 through direct recruitment on the post of Assistant Logging Supervisor (in the pay scale of 515-15-590-eb-2063eb-20-690-25-790-eb-25-865). At present the designation of Assistant Logging Supervisor has been renamed to the Assistant Logging Officer.

6-That the provisions of the Uttar Pradesh Forest Corporation Service Rules-1985 which are also applicable in the Uttarakhand Forest Development Corporation, by which 50 percent posts of Assistant Logging Supervisor will be filled up by the direct recruitment and 50 percent posts of Assistant Logging Supervisor will be filled up by way of promotion.

7-That the Uttarakhand Forest Development Corporation was constituted vide Government of Uttarakhand Notification No.1738/1 F.V.D./200-8(25)2001 dated 01-04-2001 of the Uttarakhand Government, Forest and Rural Development, Branch Forest and Environment, Section-1.

8. That vide letter No. 12204/Uttaranchal state dated 14.3.2001 of the office of the Managing Director, Uttar Pradesh Forest Corporation, Lucknow after the creation of the Uttarakhand Forest Development Corporation officers/employees were allotted to the Uttarakhand Forest Development Corporation along with their designations were allotted to the Uttarakhand Forest Development Corporation.

9-That In pursuance of the recommendation of the Fifth Pay Commission petitioner become eligible for the first promotional pay scale after competing 14 years of service on 14-05-1998 and for the second promotional pay scale after completion of 24 years service on 14-05-2008 under the benefit of time scale.

10) That In pursuance of the recommendation of the 6th Pay Commission under the Assured Career Promotion (ACP) arrangements on completion of continuous and satisfactory service of 26 years, third ACP grade pay is payable.

11) That on the basis of the GONo.872/xxvii(7)/naprati/2011 dated 8.3.2011 and 770/xxvii(7) 40(x)/2011 dated 6.11.2013 of the Finance Department Govt of Uttarakhand the petitioner like all other employees is also eligible to get 3 promotional pay scales in the service period. Thus from the date of coming into force of the Govt. order regarding ACP dated 1.9.2008 the petitioner is only entitled/eligible to get the third ACP grade pay after completion of continuous and satisfactory service of 26 years. A copy of the G.O dated 6.11.2013 is already annexed in the counter affidavit as Annexure no-8 of the counter affidavit.

12)That the Managing Director, Uttarakhand Forest Development Corporation, Dehradun vide his office order No. 2181/ACP dated 18.7.2017 passed the orders for granting grade pay of Rs.8700/ to the other employees like the petitioner w.e.f.1.11.2013. A true copy of office order No. 2181/ACP dated 18.7.2017 is already annexed in the claim petition as Annexure no-11.

13) That the then Managing Director, Uttarakhand Forest Development Corporation, Dehradun vide his office order no E-612/vetan dated 26.04.2018 cancelled the above office order dated 18.7.17 issued earlier, with immediate effect and issued orders for ensuring the recovery proceedings accordingly as per rules.

14) That the audit team of the Directorate of Accounts Audit (Audit) conducted the special audit of the Uttarakhand Forest Development Corporation from the year 2014-15 to the year 2016-17. In the audit report of the Uttarakhand Forest Development Corporation matters of losses to the Government and irregular payments etc. emerged. According to the audit team, as per the Government Order No.872/xxvii(7)na.prati/2011 dated 8.3.2011 under the provisions of ACP for the post of direct recruitment on the basis of continuous and satisfactory service of 10,18 and 26 years from the date of

substantive appointment benefits of first, second and third up gradation were admissible, which were amended vide GO No. 589/xxvii(7)40(ix)/2011 dated 1.7.2013 and were made admissible after 10,16 and 26 years continuous and satisfactory service respectively. Thus the benefits were granted against the above Government Orders of the State Government and conditions stipulated in the Departmental Service Rules. The Audit team raised objection in connection with the granting of ACP facility after the recommendations of the Sixth Pay Commission to the employees of Corporation appointed in the Scaler cadre, Fourth Class cadre, Steno cadre, Deputy Logging Officer Cadre and Accounts cadre etc. Audit team submitted its audit report to the Finance Department of Government of Uttarakhand. This is clearly mentioned in the GO No. 343/xxvii(85)/2019 dated 5.2.2019 of the Secretary, Finance Department, Government of Uttarakhand which is addressed to the Principal Secretary, Forest and Environment, Government of Uttarakhand and endorsed to the Managing Director, Uttarakhand Forest Development Corporation, that According to the above objection no. 1 to 6 the liability of excess payment of salary to the employees along with calculations of other allowances recovery of excess paid amount is expected to be recovered under the objection no 1 to 6 directions has been issued along with direction of re-fixation of ACP benefit to the employees of the Scaler cadre, Fourth class cadre, Steno cadre, Assistant logging officers cadre and Accounts cadre of the Uttarakhand Forest Development Corporation. Copy of the GO No. 343/xxvii(85)/2019 dated 5.2.2019 of the Secretary, Finance Department, Government of Uttarakhand is already annexed as annexure no-11 in the counter affidavit.

15) That it is pertinent to mention here that Government of Uttarakhand, issued a GO no. 148/x-3-19-15(07)/2016 dated 20.5.2019 in which it is clearly directed mentioned that in case of admissibility of employees appointed through direct recruitment on the post of Assistant Logging Officer in the light of GO no. 872/xxvii(7) na. prati./2011 dated 8.3.2011 of the Finance Department read with GO no 770/xxvii (7)40(ix)/2011 dated 6.11.2013, the first ACP to the Deputy Logging Officer (Grade Pay Rs4200/-) as second ACP Logging Officer (Grade Pay Rs5400/-) and as third ACP Divisional /Circle Logging Manager (Grade Pay Rs6600/-) is admissible. 'In the above GO it has also been clearly mentioned that 'In connection with the adjustment/merger of the posts of Assistant Logging Officer and Deputy Logging Officer no GO has been issued. A Copy of the GO No. GO no. 148/x-3-19-15(07)/2016 dated 20.5.2019 is already annexed as annexure no-12 in the counter affidavit.

16) That in compliance of the directions given in GO no 343/xxvii(85)/2019 dated 5.2.2019 of the Secretary, Finance Department, Government of Uttarakhand and GO no 148/x-3-19-15(7)/2016 dated 20.5.2019 of the Principal Secretary, Forest and Environment, Government of Uttarakhand, ACP/Salary were re-fixation of the employees i.e. Scaler cadre, Fourth class cadre, Steno cadre, Deputy Logging Officer cadre and Accounts cadre etc. was done from the month of February 2019.

17) That against the GO no. 343/xxvii(85)/2019 dated 5.2.2019 of the Secretary, Finance Department, Government of Uttarakhand and GO no.148/x-3-19- 15(7)/2016 dated 20.5.2019 of the Principal Secretary, Forest and Environment, Government of Uttarakhand various employees of Assistant Logging Officers / Deputy Logging Officers cadre have filed several writ petitions before the Hon'ble High Court of Uttarakhand, Nainital.

18) That it is also necessary to mention here that Deputy Logging Officer's cadre through Junior Officer's Association Uttarakhand Forest Development Corporation have filed Writ Petition No 2679/SS/2015 Junior Officer's Association Uttarakhand Forest Development Corporation Vs State of Uttarakhand and others before the Hon'ble High Court of Uttarakhand Nainital, in connection with the granting of grade pay of Rs.8700/ on the pay scale of Rs.5000-8000 to the Deputy Logging Officers. The petitioners have prayed for the following relief in the above Writ Petition before the Hon'ble High Court of Uttarakhand, Nainital:-

'Issue writ order or direction in the nature of mandamus directing the responders no 2 to 6 to implement the GO dated 6-11-2013 to grant the Grade Pay of Rs.8700/- and the respective pay bend i.e. Rs 37400-67000/ w.e.f. 1.11.2013 to the members of the petitioners Association i.e. Dy. Logging Officer's post holders' And in the above writ petition the Hon'ble High Court of Uttarakhand Nainital passed the following order in the above Writ Petition vide their order dated 7-4-2017;-

'In view of above this the Writ Petition is allowed. The respondents are directed to implement Annexure no 17 dated 6-11-2013 to grant the benefit to the petitioners as per letter dated 23.02.01 read in conjunction with letter dated 08.07.2004 Annexure no 11 within a period of ten weeks from today'

19) That against the order dated 7.4.2017 passed by Hon'ble High Court of Uttarakhand, Nainital in Writ Petition no 2679/SS/2015 Junior Officer's Association Uttarakhand, Forest Development Corporation, The Uttarakhand Forest Development Corporation filed Special Appeal before the Hon'ble Court which was registered as Special Appeal No. 354/2019 State of Uttarakhand and others Vs Junior Officers Association Uttarakhand Forest Development Corporation.

20) That in the mean while on 27/08/2021 the Secretary, State Government of Uttarakhand has issued a letter no. 1100/x-1-2021-14(64)/2020 addressed to the Managing Director, Uttarakhand Forest Development Corporation, by which he was directed that a personnel who were merged on the post of Deputy Logging Officer in compliance with the letter dated 23/02/2001 of the Government of Uttar Pradesh and were allotted to the restructured Uttarakhand Forest Development Corporation before 05/08/2007, should be given their third financial up gradation in accordance with the Office memo no. 13/X-3-19-15(07)2016 dated 24/01/2019.

21) That in pursuance of the letter no. 1100/x-1-2021-14(64)/2020 dated 27/08/2021 the Managing Director vide Office Order dated 02/09/2021 gave instructions that such personnel who were merged on the post of Deputy Logging Officer and were allotted to the restructured Uttarakhand Forest Development Corporation before 05/08/2007, should be given third financial upgradation in accordance with decision taken in the Office memo no. 13/X-3-19-15(07)2016 dated 24/01/2019. Thereafter all the revised dues had been given to the petitioner without any delay.

22- That in view of the facts and circumstances the petitioner has already received all the dues. It is necessary to mention here that after receiving the letter dated 27/08/2021 issued by the Secretary, State Government of Uttarakhand the department paid all the revised dues to the petitioner. Hence there is no delay in the part of the Uttarakhand Forest Development Corporation regarding the payment

of the dues therefore there is no question to pay any interest to the petitioner.

Hence the claim petition has become infructuous and is liable to be dismissed.

7. In view of the above, it is clear that the respondent no. 1 issued Govt. Order dated 27.08.2021 and subsequent order dated 02.09.2021 of the Managing Director of the respondent corporation (UFDC) issued direction to release the entire retiral dues of the petitioner after fixation of the Grade Pay of the petitioner at Rs. 87,00/- , which is also admitted from the supplementary rejoinder affidavit filed by the petitioner. Accordingly, the prayer no. 1 of the claim petitioner has become infructuous.

8. During pendency of the claim petition, the petitioner also filed a Criminal Misc. Application under Section 340 read with Section 195 of the CrPC and this application is also being pressed by the petitioner. The Tribunal vide order dated 23.09.2020 has already ordered that this application be registered as Misc. Application attached with the petition, but by mistake of the Registry, it could not be registered so far. Registry is directed to register it separately for final disposal.

9. Now, the prayer no. 2 regarding payment of interest on the delayed payment of the retiral dues is still alive and is being pressed by the petitioner in the claim petition.

10. Learned counsel for the petitioner submitted that retiral benefits were unnecessarily withheld by the respondent department and as per various decisions of the Hon'ble Supreme Court, the petitioner is entitled to interest on delayed payment of retiral dues. The Tribunal agrees with such submission of learned Counsel for the petitioner in view of a few landmark decisions of Hon'ble Supreme Court, a reference of which is given, as below:

(i) Hon'ble Apex Court has held in the decision of State of Kerala and others vs. M.Padmanabhan Nair, 1985 (1) SLR 750, 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.

2. Usually the delay occurs by reason of non-production of the L.P.C. (Last Pay Certificate) and the N.L.C. (No Liability Certificate) from the concerned Departments but both these documents pertain to matters, records whereof would be with the concerned Government Departments. Since the date of retirement of every Government servant is very much known in advance we fail to appreciate why the process of collecting the requisite information and issuance of these two documents should not be completed at least a week before the date of retirement so that the payment of gratuity amount could be made to the Government servant on the date he retires or on the following day and pension at the expiry of the following month. The necessity for prompt payment of the retirement dues to a Government servant immediately after his retirement cannot be over-emphasised and it would not be unreasonable to direct that the liability to pay penal interest on these dues at the current market rate should commence at the expiry of two months from the date of retirement.

3. The instant case is a glaring instance of such culpable delay in the settlement of pension and gratuity claims due to the respondent who retired on 19.5.1973. His pension and gratuity were ultimately paid to him on 14.8.1975, i e., more than two years and 3 months after his retirement and hence after serving lawyer's notice he filed a suit mainly to recover interest by way of liquidated damages for delayed payment. The appellants put the blame on the respondent for delayed payment on the ground that he had not produced the requisite L.P.C. (last pay certificate) from the Treasury Office under Rule 186 of the Treasury Code. But on a plain reading of Rule 186, the High Court held-and in our view rightly-that a duty was cast on the treasury Officer to grant to every retiring Government servant the last pay certificate which in this case had been delayed by the concerned officer for which neither any justification nor explanation had been given. The claim for interest was, therefore, rightly, decreed in respondent's favour.

4. Unfortunately such claim for interest that was allowed in respondent's favour by the District Court and confirmed by the High Court was at the rate of 6 per cent per annum though interest at 12 per cent had been claimed by the respondent in his suit. However, since the respondent acquiesced in his claim being decreed at 6 per cent by not preferring any cross objections in the High Court it could not be proper for us to enhance the rate to 12 per cent per annum which we were otherwise inclined to grant.

5. We are also of the view that the State Government is being rightly saddled with a liability for the culpable neglect in the discharge of his duty by the District Treasury Officer who delayed the issuance of the L.P.C. but since the concerned officer had not been impleaded as a party defendant to the suit the Court is unable to hold him liable for the decretal amount. It will, however, be for the State Government to consider whether the erring official should or should not be directed to compensate the Government the loss sustained by it by his culpable lapses. Such action if taken would help generate in the officials of the State Government a sense of duty towards the Government under whom they serve as also a sense of accountability to members of the public.”

(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:

“.....

2. This appeal is directed against an order passed by the High Court of Punjab & Haryana at Chandigarh on July 7, 2005 in Writ Petition (C) No. 10025 of 2005. By the impugned order, the High Court dismissed the petition in limine relegating the appellant writ petitioner to avail a remedy by approaching a Civil Court.

3. Facts in brief are that the appellant was working as an Engineer-in-Chief in the Department of Irrigation, Haryana. According to him, he joined the service in Irrigation Department of the erstwhile State of Punjab in August, 1961 and was allocated to the Department of Irrigation and Power in the State of Haryana. He was promoted as Engineer- in-Chief on May 31, 1996 and worked in that capacity till he attained the age of superannuation in June, 1998. The appellant had an unblemished record of service for 37 years. During the course of his duties as Head of the Department, he submitted reports in or about April-May, 1998 to the Government highlighting certain irregularities and mal- practices said to have been committed by Mr. S.Y. Quraishi, the then Secretary, Irrigation & Power and requested the Government to make enquiry through Central Bureau of Investigation (CBI). According to the appellant, in pursuance of the complaint made by him, the Government removed Mr. Quraishi as Secretary, Irrigation allowing him to work only as Secretary, Department of Power.

4. The appellant has alleged that, as a measure of vendetta, Mr. Quraishi organized to send the appellant on deputation on May 15, 1998 to a lower and unimportant specially created post of Engineer-in-Chief, Command Area Development Agency by upgrading it just few weeks before his retirement. In addition to the said action, the appellant was served with three charge-sheets/ show cause notices in June, 1998, few days before his retirement. The appellant, however, retired on June 30, 1998 on reaching the age of superannuation. The appellant was paid provisional pension, but other retiral benefits were not given to him which included Commuted Value of Pension, Leave Encashment, Gratuity, etc. totaling to about Rs. 12 lakhs. They were withheld till finalization of disciplinary proceedings. The appellant submitted replies to the charge- sheets/ show cause notices, inter alia, denying allegations and asserting that they were uncalled for and were issued with mala fide intention and oblique motive. He further submitted that he had acted in public interest in salvaging damage likely to be caused to public exchequer. The replies submitted by the appellant were accepted by the authorities and the appellant was exonerated of all the charges. All retiral benefits were thereafter given to him between June 11 and July 18, 2002. Thus, according to the appellant though he retired in June, 1998, retiral benefits to which he was otherwise entitled, were given to him after four years of his superannuation.

5. The appellant has stated that, in the aforesaid circumstances, he was entitled to interest on the amount which had been withheld by the respondents and paid to him after considerable delay. He, therefore, made several representations. He also issued legal notice on June 3, 2005 claiming interest at the rate of 18% per annum for delayed payment. He had invited the attention of the Government to Administrative Instructions issued by the Government under which an employee is entitled to claim interest. Even otherwise, the action of non-payment of interest was arbitrary, unreasonable and violative of Articles 14 and 21 of the Constitution. There was, however, no reply whatsoever from the Government. The appellant as a senior citizen of 65 years of age then approached the High Court of Punjab & Haryana by

filing a writ petition under Article 226 of the Constitution. But the High Court summarily dismissed the writ petition without even issuing notice to the respondents. The appellant has challenged the said order in the present appeal.

6. On October 28, 2005, notice was issued by this Court. Affidavits and further affidavits were filed thereafter and the Registry was directed to place the matter for final hearing. Accordingly, the matter has been placed before us for final disposal.

7.

8. The learned counsel for the appellant contended that the High Court was totally unjustified in dismissing the writ petition in limine and the said order is liable to be set aside. He submitted that no questions of fact, much less, disputed questions of fact were involved in the petition and the High Court was wrong in summarily dismissing it. It is well settled law, submitted the counsel, that retiral benefits are not in the nature of bounty and an employee is entitled as of right to get those benefits immediately after superannuation unless they are withdrawn or withheld as a matter of punishment. According to the appellant, he had always acted in the interest of the Government and saved public exchequer by inviting the attention to mal- practices committed by high ranking officers. As a measure of revenge against the appellant, charge-sheets were issued, but after considering the explanation submitted by the appellant, all proceedings against him were dropped. In view of exoneration of the appellant, the Government ought to have paid interest on retiral benefits which were given to him after long time. As per the Guidelines and Administrative Instructions issued by the Government, the appellant was entitled to such benefit with interest. The High Court ought to have allowed the writ petition of the appellant and ought to have awarded those benefits. It was, therefore, submitted that the appeal deserves to be allowed by directing the respondents to pay interest on the retiral dues payable to the appellant which were actually paid to him after considerable delay.

9. An affidavit in reply is filed by Special Secretary, Government of Haryana, Irrigation Department. In the counter affidavit which was filed in January, 2005, the deponent has stated that the appellant was paid all his retiral dues as soon as he was exonerated of the charges levelled against him. The deponent referred to the Haryana Civil Service (Punishment and Appeal) Rules, 1987 relating to benefits to which an employee is entitled and contended that after the charge-sheets were finally dropped, the appellant was paid all retiral benefits within three months from the date of dropping of the charge-sheets. But it was further stated that certain vigilance enquiries are "still pending" against the appellant. In the circumstances, according to the deponent, the appellant was not entitled to interest and the action taken by the Government could not be said to be illegal or otherwise unreasonable. A prayer was, therefore, made to dismiss the appeal.

10. In rejoinder affidavit, the appellant reiterated what he had pleaded in the petition for leave to appeal and submitted that the stand taken by the Government in counter- affidavit is misconceived and he is entitled to the relief prayed in the petition before the High Court and in the present appeal.

11. Having heard the learned counsel for the parties, in our opinion, the appeal deserves to be partly allowed. It is not in dispute by and between the parties that the appellant retired from service on June 30, 1998. It is also undisputed that at the time of retirement from service, the appellant had completed more than three decades in Government Service. Obviously, therefore, he was entitled to retiral benefits in accordance with law. True it is that certain charge- sheets/ show cause notices were issued against him and the appellant was called upon to show cause why disciplinary proceedings should not be initiated against him. It is, however, the case of the appellant that all those actions had been taken at the instance of Mr. Quraishi against

whom serious allegations of malpractices and mis-conduct had been levelled by the appellant which resulted in removal of Mr. Quraishi from the post of Secretary, Irrigation. The said Mr. Quraishi then became Principal Secretary to the Chief Minister. Immediately thereafter charge-sheets were issued to the appellant and proceedings were initiated against him. The fact remains that proceedings were finally dropped and all retiral benefits were extended to the appellant. But it also cannot be denied that those benefits were given to the appellant after four years. 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 of 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.

12.

13. The order passed by the High Court, therefore, must be quashed and set aside.

..... Order accordingly."

(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:-

"2. Heard learned counsel on behalf of the parties. The appellant (since deceased) is aggrieved by the impugned order dated 14.03.2011 passed by the High Court of Punjab and Haryana at Chandigarh in LPA No. 1818 of 2010 in affirming the judgment of the learned single Judge passed in C.W.P. No. 1048 of 2010 wherein he was not awarded interest for the delayed payment of pension and gratuity amount, for which he was legally entitled to. Therefore, the appellant approached this Court for grant of interest on the delayed payment on the retiral benefits of pension and gratuity payable to him by the respondents.

3. The appellant was appointed to the post of Line Superintendent on 30.08.1968 with the Uttar Haryana Bijli Vitran Nigam Ltd. In the year 1990, he was promoted to the post of Junior Engineer-I. During his service, the appellant remained in charge of number of transformers after getting issued them from the stores and deposited a number of damaged transformers in the stores. While depositing the damaged transformers in the stores, some shortage in transformers oil and breakages of the parts of damaged transformers were erroneously debited to the account of the appellant and later on it was held that for the shortages and breakages there is no negligence on the part of the appellant. On attaining the age of superannuation, he retired from service on 31.10.2006. 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. This aspect of the matter was adverted to in the judgment of the learned single Judge without assigning any reason for not awarding the interest as claimed by the appellant. That is why that portion of the judgment of the learned single Judge was aggrieved of by the appellant and he had filed L.P.A. before Division Bench of the High Court. The Division Bench of the High Court has passed a cryptic order which is impugned in this appeal. It has adverted to the fact that there is no order passed by the learned single Judge with regard to the payment of interest and the appellant has not raised any plea which was rejected by him, therefore, the Division Bench did not find fault with the judgment of the learned single Judge in the appeal and the Letters Patent Appeal was dismissed. The correctness of the order is under challenge in this appeal before this Court urging various legal grounds.

4. It is an undisputed fact that the appellant retired from service on attaining the age of superannuation on 31.10.2006 and the order of the learned single Judge after adverting to the relevant facts and the legal position has given a direction to the employer-respondent to pay the erroneously withheld pensionary benefits and the gratuity amount to the legal representatives of the deceased employee without awarding interest for which the appellant is legally entitled, 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. We have to award interest at the rate of 9% per annum both on the amount of pension due and the gratuity amount which are to be paid by the respondent.

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. For the reasons stated above, we award interest at the rate of 9% on the delayed payment of pension and gratuity amount from the date of entitlement till the date of the actual payment. If this amount is not paid within six weeks from the date of receipt of a copy of this order, the same shall carry interest at the rate of 18% per annum from the date of amount falls due to the deceased employee. With the above directions, this appeal is allowed.”

11. It will also 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."

12. In view of the abovesaid decisions of the Hon'ble Apex Court and the facts mentioned leading to the delayed payment of retiral dues to the petitioner, the petitioner is entitled to interest on delayed payment of monthly pension and amount of gratuity as per prevalent G.P.F. rates as per G.O. dated 10.08.2004 issued by the Govt. of Uttarakhand, a reference of which has been given above.

13. The claim petition is disposed of, by directing the Respondent Department to release admissible interest as per G.O. dated 10.08.2004 on delayed payment of retiral dues to the petitioner, within two months from the date of presentation of certified copy of this order. No order as to costs.

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

(RAJENDRA SINGH)
VICE CHAIRMAN (J)

DATED: JANUARY 14, 2025
DEHRADUN.
KNP