

**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. 04/NB/DB/2019

Bhovinder Singh Khati, s/o Sh. Chandan Singh Khati, Sub-Inspector
(Ministerial), 31st Battalion, P.A.C., Rudrapur, District U.S. Nagar.

.....**Petitioner**

Vs.

1. State of Uttarakhand through Secretary, Ministry of Home,
Government of Uttarakhand, Subhash Road, Dehradun.
2. Director General of Police, Uttarakhand, Dehradun.
3. Financial Controller, Uttarakhand Police Headquarters, Dehradun.
4. State of U.P. through its Secretary, Ministry of Home, Government
of U.P., Secretariat, Lucknow.

.....**Respondents**

Present: Sri Devesh Bishnoi, Advocate for the petitioner
Sri Kishore Kumar, A.P.O. for the respondents

JUDGMENT

DATED: JANUARY 29, 2025

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

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

“(i) To quash/amend the guidelines given in the minutes of the meeting dated 26.05.2016 (Annexure No.12) which denied the monitory benefits to be granted to the claimant/petitioner-applicant, from the date of his promotion to the post of ASI (M) and not from the date of initial appointment as Constable (M).

(ii) *To issue a direction to the respondent authorities to treat the petitioner substantively appointed as Assistant Sub Inspector (Ministerial), from the date of his initial appointment on the post of Constable (Ministerial).*

(iii) *To issue a direction to the respondent authorities to grant the benefit of Assured Career Progression Scheme (ACP Scheme) to the petitioner from calculating his services from the date of initial appointment as Constable (Ministerial), as has been granted by the State of U.P. vide Government orders dated 21.11.2013 & 31.12.2013, to similarly situated persons.*

(iv) *To issue a direction to the respondents to grant all consequential benefits to the petitioner.*

(v) *To allow the claim petition of the petitioner with costs.*

2. The facts of the case, in brief, are as follows:

2.1 The petitioner was appointed on the post of Constable (Ministerial), i.e. Constable (M), in the erstwhile State of Uttar Pradesh on compassionate grounds, which, he joined on 24.04.1995 on fixed salary of Rs. 950/-. The petitioner was promoted to the Post of A.S.I (M) in the pay scale of Rs.4000-6000, with effect from 15.01.1998, which is the next promotional post available to Constable(M).

2.2 In the year 2004, some similarly situated persons, approached this Hon'ble Court by filing Writ Petition No. 70 (S/S) of 2004 (Pawan Kumar Bora and Ors V/s State of Uttarakhand & Ors) claiming regular pay scale i.e. Rs. 3050-4590 w.e.f. the date of their initial appointment as Constable (M). However, the said writ petition was dismissed by the Hon'ble Single judge vide Judgment & order dated. 24.09.2012. The petitioners (in the aforesaid writ petition) challenged the aforesaid Judgment dated 24.09.2012 before the Hon'ble Division Bench by filing Special Appeal No. 432 of 2012 (Pawan Kumar Bora and Ors V/s State of Uttarakhand & Ors). The same was allowed vide Judgment & order dated 18.03.2013. The petitioners were granted the regular pay scale of Rs 3050-4590

w.e.f. from initial appointment on the post of Constable (M) instead of consolidated amount of Rs. 3050/- fixed.

2.3 The State of U.P. took a policy decision on the issue and communicated vide Government order dated 08.05.2006. On the basis of the policy decision, the post of Constable(M) was abolished and all persons were appointed / adjusted as ASI(M) from the date of their initial appointment as Constable(M) by creating supernumerary posts and it was further directed that the fresh recruitment in future will be made on the post of ASI(M) and no person will be appointed as Constable(M).

2.4 The persons, who were appointed with the petitioner in erstwhile State of U.P. were granted benefit of the same and they were adjusted/ appointed as ASI(M) in regular pay scale from the date of their initial appointment as Constable (M), i.e. 24.04.1995 in the case of the petitioner herein.

2.5 In view of Government order dated 08.05.2006 issued by the State of U.P., the State of Uttarakhand, also, directed the Respondent No. 2 to submit proposal for Cadre Structure of Ministerial Cadre as per aforesaid Government order, vide order dated 09.11.2009.

2.6 The State of U.P. issued another Government order dated 21.11.2013 whereby direction was issued to calculate the service of the Constable (M), re-designated as ASI(M) from the date of their initial appointment, for the purpose of all service benefits. The petitioner and other similarly situated persons also claimed similar reliefs by making several representations to the respondents. However, no further action was taken. The State of U.P. issued another Government order dated 31.12.2013 clarifying that the benefit of past services as Constable (M) shall be admissible only for the purpose of ACP benefit.

2.7 Pursuant to the aforesaid Government order dated 31.12.2013, a consequential order dated 06.02.2014 was issued. On the basis of the aforesaid Government orders issued by the erstwhile State of U.P., the Respondent No. 2 also prepared the statement of benefits admissible to similarly situated persons serving in State of Uttarakhand and sent the same to the Respondent. No.1 vide letter dated 28.04.2014.

2.8 The petitioner's (similar) grievance was dealt by the Hon'ble High Court of Uttarakhand, in writ petitions nos. WPSS 338/2015, WPSS 169/2015 & WPSS 313/2015, which stood disposed of vide judgment dated 21.12.2015 by directing respondent authorities to decide the representations regarding counting of service from the date of their appointment for the purpose of ACP. In the backdrop of the aforesaid circumstances, the State Government issued Government Order dated 30.11.2015, whereby the petitioner and similarly situated persons were directed to be given the benefit of service from the date of their initial appointment for the purposes of A.C.P. & Time Scale.

2.9 As per the provisions of the aforesaid Government Order dated 30.11.2015, the petitioner's salary claims were calculated. The respondent no. 3 had a meeting and he decided certain points relating to the finance. With respect to the calculation of differential and other benefits of Pay, he issued certain instructions. On the basis of new guidelines (dated 26.05.2016) issued by the respondent no. 3, the petitioner's salary claims were calculated again.

2.10 The petitioner is aggrieved by the wrong interpretation of the Government Order dated 30.11.2015, as well as the Government's decision to grant him (and other similarly placed persons) the actual benefit of Time Scale & A.C.P. from the date of the Government Order dated 30.11.2015.

3. C.A./W.S. has been filed on behalf of respondents no. 1, 2 & 3, in which, it has been stated that-

3.1 In erstwhile State of Uttar Pradesh the feeding post in clerk cadre in police department is Constable (M)/ Paid Apprentice. The pay scale of the aforesaid post is (fixed pay) Rs. 3050 in which dearness allowances are applicable but benefit of increment etc. is not admissible. In the police department the recruitment against the vacant post of Constable(M) and A.S.I. (M) be filled from the Constable (M)/ Paid Apprentice (fixed pay scale). Thereafter they were given permanent appointment in regular pay scale. After the direct recruitment in the year of 1989 on the clerical post of constable (M)/ Paid Apprentice in the Police Department in the State of Uttar Pradesh due to the recruitment of dependents of deceased employees under dying in harness rules on the supernumerary posts of constable(M)/ Paid Apprentice, a number of times more employees were appointed on those posts in comparison to the sanctioned substantive posts. Due to non-availability of posts these employees had to remain on the fixed pay of Constable (M)/ Paid Apprentice in spite of excellent and satisfactory service, discharging all the clerical responsibilities similar to employees holding the posts of ASI(M) resulting the financial loss to these employees.

3.2 The U.P. Police Head Quarter in the predecessor state of Uttar Pradesh vide its government order no. 2046/Six-Pu-1-06-650/(59)/02 dated 08-05-2006 treating the work of Constable (M) similar to the nature to the work of ASI (M) has sanctioned supernumerary posts of ASI(M).

3.3 Since the post of Constable (M) is a fixed pay post in police department and the post of ASI (M) is a substantive post and there being no provisions of adding the services rendered on the post of Constable (M) in the fixed pay. Thus for giving the benefit of time scale/ ACP, the police headquarter of U.P. referred the matter to the government of U.P. vide letter dated 25.03.2013 and the Government of Uttar Pradesh vide order no. 1239/6/1-13-500(71)/2012 dated 21.11.2013 and dated 31.12.2013 has issued the order to make admissible the benefit of only Assured Career

Advancement (ACP) by calculating the services from the date of substantive appointment to the Constable (M), now new designation ASI(M).

3.4 Employees of this cadre allotted to the state of Uttarakhand from the predecessor state of U.P. remained appointed in the fixed pay of Rs. 3050/- for around 8-9 years and they did not get increments of any kind and due to not calculating the period of the services rendered on the post of constable (M) in the arrangement of Time pay Scale/ ACP. Those employees submitted representations to the head quarter by saying that they should also be given the service benefit by adding the services rendered on the post of Constable (M) with the services of the post of ASI (M) similar to the State of U.P. The representations of the employees were sent to the Uttar Pradesh Police Head Quarter for necessary action and the U.P. Police Head Quarter vide its letter no. 18-16-2013 dated 06-02-2014 for compliance sent the copy to the Inspector General of Police Head Quarter.

3.5 The appointment on the post of ASI(M) from Constable (M) is neither a promotion nor it is appointment but only a change of post name by giving substantive appointment with regular pay scale. The service rendered by a Constable (M)/ Paid Apprentice is counted as training period till his substantive appointment as ASI (M). It is pertinent to mention here that in this situation the service rendered by an employee as Constable (M)/ Paid Apprentice of 8-9 years and 1 or 2 years is treated to be equal when they were substantively appointed as ASI (M) and they will get all similar benefits.

3.6 The employees who do not get promotion they are granted the benefit as per the earlier time pay scale on completing 14 years' of service, first ACP and after completing 24 years of regular service the benefit of second ACP but at present as per the financial advancement scheme the employees who do not get the promotion post they are granted the benefit of grade pay of next promotion post

after 10, 16 and 26 years of service. Thus, the Constable (M) post holders are deprived from the same due to fixed pay scale.

3.7 In pursuance to the proposal of the Head Quarter the government vide Order no. 1311/XX-7/2015-1(25)/2014 dated 30-11-2015 provided that as per Rule 2(A) of Dying in Harness Rules, 1972, the Constable (M)/ New Post Name ASI(M) appointed on compassionate ground under dying in harness will get the benefit of Time Scale/ ACP from the date of their appointment and no other financial benefit are available to them. In pursuance to the government order all the districts/units were informed by the Head Quarter vide letter no. DG-Seven-78(4)2013 dated 01.03.2016 and thereafter the all employees appointed under dying in harness were given the benefit of Time Scale and ACP.

3.8 In erstwhile state of U.P. the feeding cadre of clerical grade is Constable (M)/ Paid Apprentice (fixed pay) of Rs. 3050/- and they were allowed the D.A but no increment is allowed to them. In the police department the recruitment in Clerical cadre has been done against the vacant post of Constable (M)/ Paid apprentice on fixed pay and against the vacant post of ASI (M). Thereafter the substantive appointment was given on the post of ASI (M).

3.9 The petitioner was promoted on the post of ASI (M) in year of 2004 along with other similarly situated persons because in police department there is provision to promote the constable (M) in District wise vacancy and the petitioner being allocated to State of Uttarakhand in the year of 2004 has been granted the benefit of promotion.

4. C.A./W.S has also been filed on behalf of respondent no. 4, in which it has been stated that-

4.1 याची भोविन्दर सिंह खाती ए०एस०आई० (एम) उत्तराखण्ड राज्य द्वारा प्रश्नगत निर्देश याचिका में मुख्य रूप से यह मॉग की गयी है कि कान्स० (एम) वैतनिक शिक्षु सम्प्रति नवीन पदनाम ए०एस०आई० (एम) को

उनकी नियुक्ति की तिथि से सेवा आगणित करके सुनिश्चित कैरियर प्रोन्नयन का लाभ प्रदान किये जाने हेतु उत्तराखण्ड राज्य द्वारा जारी शासनादेश संख्या-1311/xx-7/2015-01(25)2014 दिनांक 30.11.15 के अनुसार उसे ए०सी०पी० का लाभ प्रदान किया गया था। कालान्तर में वित्त नियंत्रक उत्तराखण्ड राज्य द्वारा अपने आदेश संख्या-146/2009 दिनांक 26.05.2016 द्वारा उक्त शासनादेश के अनुसार मृतक आश्रित के कार्मिकों को भर्ती की तिथि से एएसआई (एम) के पद का नियमित वेतनमान दिया जाना गलत होना अंकित करते हुये उक्त शासनादेश के आधार पर मात्र भर्ती की तिथि से सेवा आगणित करते हुये समयमान वेतनमान एवं सुनिश्चित कैरियर प्रोन्नयन ए०सी०पी० का लाभ देते हुये काल्पनिक रूप से वेतन निर्धारण किये जाने तथा शासनादेश निर्गत होने की तिथि 30.11.15 से वास्तविक लाभ अनुमन्य कराये जाने का आदेश पारित किये जाने के फलस्वरूप उसके वेतन से उत्तराखण्ड राज्य द्वारा की जा रही कटौती के विरुद्ध मा० अधिकरण उत्तराखण्ड राज्य में योजित की गयी है, जिसमें उ०प्र० शासन द्वारा जारी शासनादेश संख्या-1239/6-पु-13-500(71)/2013 दिनांक 21.11.13 एवं शासनादेश संख्या-3885/6-पु-1-2013-500 (71)/2012 दिनांक 31.12.13 का उल्लेख करते हुये उ०प्र० राज्य को नया पक्षकार बनाया गया है। यह उल्लेखनीय है कि उ०प्र० राज्य द्वारा निर्गत शासनादेश संख्या-1239/6-पु-13-500 (71)/2013 दिनांक 21.11.13 द्वारा मृतक आश्रित के रूप में समायोजित कान्स० (एम) सम्प्रति नवीन पदनाम ए०एस०आई० (एम) को उनकी नियुक्ति की तिथि से उनकी सेवा आगणित किये जाने का निर्णय लिये जाने का शासनादेश निर्गत किया गया, जिसे बाद में शासनादेश संख्या-3885/6-पु-1-2013-500 (71)/2012 दिनांक 31.12.13 निर्गत करते हुये मृतक आश्रित के रूप में समायोजित कान्स० (एम) सम्प्रति नवीन पदनाम ए०एस०आई० (एम) को उनकी नियुक्ति की तिथि से उनकी सेवा आगणित किये जाने का निर्देश निर्गत किया गया।

4.2 उ०प्र० शासन द्वारा उक्त दोनों शासनादेशों को शासनादेश संख्या-डब्लू-1007/6-पु-1-17-500 (71) 2012 दिनांक 28.04.17 द्वारा संशोधित करते हुये निर्देशित किया गया कि कान्स० (एम)/ वैतनिक शिशुक्षु का पद नियत वेतन का है, और संबंधित पदधारक ए०एस०आई० (एम) के पद पर समायोजन के उपरान्त नियमित वेतनमान में आता है। अतः ए०एस०आई० (एम) के पद पर ए०सी०पी० की व्यवस्था में वित्तीय स्तरोन्नयन दिये जाने हेतु सेवा की अवधि की

गणना ए०एस०आई० (एम) के पद पर समायोजन के दिनांक से किये जाने का निर्णय लेते हुये उक्त दोनों शासनादेशों दिनांक 21.11.13 एवं 31.12.13 को संशोधित किया गया तथा शासनादेश संख्या-1245/6-पु-1-19-500 (71)/2012 दिनांक 02.12.19 द्वारा कान्स० (एम)/वैतनिक शिशुक्षु को उनकी नियुक्ति की तिथि से सेवा आगणित करते हुये सुनिश्चित कैरियर प्रोन्नयन (ए०सी०पी०) अनुमन्य किये जाने का कोई औचित्य नहीं पाये जाने का निर्देश निर्गत किया गया, जिसके अनुसार उ०प्र० पुलिस विसो में लिपिक संवर्ग के कार्मिकों के ए०सी०पी० के संबंध में कार्यवाही की जा रही है। उ०प्र० राज्य में लागू शासनादेश संख्या: वे०आ०-2-773/10-62 (एम)/2008, दिनांक 05.11.2014 में वित्तीय स्तरोन्यन की अनुमान्यता हेतु नियमित नियुक्ति की तिथि से सेवा अवधि की गणना किये जाने का प्रावधान है। उ०प्र० राज्य में लागू सेवा नियमों/शासनादेशों की व्यवस्था उत्तराखण्ड राज्य के लिए लागू नहीं है।

5. We have heard learned Counsel for the parties and perused the record.

6. The learned Counsel on behalf of the petitioner has pleaded that respondents have issued the order for the benefit of ACP/ time Scale of pay from the date of appointment on the post of Head Constable/ASI (M). The name of Head Constable has been abolished by the Uttarakhand Government and replaced by ASI (M). The respondents have misinterpreted the order of the Govt., which the Finance Officer has quoted in the minutes of the meeting held on 27.04.2016. While doing the calculation for monetary benefits, the aforesaid order dated 30.11.2015 of the Govt. has been misinterpreted which has led to recovery of the excess amount from the petitioner. He further pleaded that the petitioner was already promoted to the post of the ASI (M) in 1998 and if the aforesaid order of the Government is not implemented, he will get the benefit of ACP from the date, he has been promoted to the post of ASI. The calculation for the amount due to the petitioner is based on the facts that the petitioner is getting the scale from the date of his joining the post of the Constable, but the monetary benefit is being given to him from 30.11.2015. In view of the fact, the claim petition may be allowed. Learned Counsel for the petitioner further pleaded that

compassionate appointment as per Rule 2(a) (2) of the Compassionate Appointment Rules, 1974 provides for the appointment of the dependent of the deceased employee on the permanent post and the petitioner has the legitimate right to the permanent post. The police department vide G.O. dated 08.05.2006 has done away with the difference between the post of ASI, SI, ASI(M) & SI(M) and their pay scales should be the same. Rule 3(1) of the Clerical Cadre provides for one year's probation after appointment in the lowest post of the clerical cadre, the period spent on probation counts for the purpose of time scale.

7. Learned A.P.O. has pleaded that the benefit of the order of the Govt. dated 30.11.2015, which has been mentioned by the Finance Officer in the Minutes of the Meeting held on 27.04.2016, has been given to the petitioner as he has been given the benefit of ACP by notionally including the period spent on the post of Constable (M). The representative of the Finance Officer has explained in detail how the salary of the petitioner has been fixed and pointed out that the benefit of the period spent on the post of Constable has been included while granting the 1st ACP but the monitory benefits of the period has been given from the date of appointment on the post of ASI (M) in 1998. So, the calculation for the pay fixation is correct.

8. Learned Counsel for the petitioner could not produce any rule or ruling of the Hon'ble Court to justify his argument that the guidelines dated 26.05.2016 are wrong and required to be quashed, as these guidelines, which stipulate that the monitory benefit of merger of Constable (M) with ASI (M) from the date of appointment on the post of Constable is admissible from the date of order of the merger. The rules mentioned by the learned Counsel for the petitioner in support of his claim for granting monitory benefit of pay scale of ASI(M) from the date of initial appointment cannot be considered, as the petitioner would have challenged the order for his appointment on the post of Constable (M) earlier. The order for

uniformity in the emoluments of ASI(M) Constable (M) vs. ASI and Constable cannot be given as it does not mention such uniformity. The Rule 313 of the Appointment in the lowest post in clerical cadre cannot be made applicable in the case of the petitioner, as the respondents have merged the post of Constable & ASI (M) and the lowest post in the cadre is ASI(M) now.

9. Based on the arguments of learned Counsel for the parties, we hold that the prayer no. iii sought by the petitioner for grant of ACP by including his services from the date of initial appointment of Constable (M) has been given to the petitioner. So, this relief has become infructuous.

10. Hence, in these circumstances, the claim petition is liable to be dismissed.

ORDER

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

(RAJENDRA SINGH)
VICE CHAIRMAN (J)

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

DATE: JANUARY 29, 2025
DEHRADUN
KNP