

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

Present: Hon'ble Mr. Ram Singh

----- Vice Chairman (J)

Hon'ble Mr. D.K.Kotia

-----Vice Chairman (A)

CLAIM PETITION NO. 16/ DB/2015

Subhash Chand Garg, aged about 65 years S/o Shri Puran Mal, (Retd) Assistant Engineer, Department of Minor Irrigation Uttarakhand, R/o 49, Hem Kun Colony, Gali No.2, Ballupur, Dehradun.

.....Petitioner

Versus

1. State of Uttarakhand through its Secretary, Department of Mionr Irrigation, Uttarakhand, Subhash Road, Dehradun.
2. Chief Engineer & HOD, Minor Irrigation Department, Uttarakhand, Indraprastha Colony, Gali No.3, Jogiwala, Mussoorie Bye-Pass Road, Village Nathanpur, Dehradun.

.....Respondents.

Present: Sri J.P.Kansal, Ld. Counsel
for the petitioner.

Sri Umesh Dhaundiyal, Ld. A.P.O.,
Sri S.K.Gupta & Sri L.K.Maithani, Ld. Counsel
for the respondents.

JUDGMENT

DATED: SEPTEMBER 30, 2016

(Hon'ble Mr. D.K.Kotia, Vice Chairman (A))

1. Present claim petition has been filed for seeking following relief:

- (a) The Office Order dated 10.3.2015 be kindly held illegal, wrong, against law, rules and orders, principles of natural justice and quashed and set aside.
- (b) The petitioner be kindly held entitled to personal 2nd time Pay Scale w.e.f. 9.1.2008 and the respondents be kindly ordered and directed to allow to the petitioner the same and consequently pay him the difference of pay, D.A., retiral benefits including monthly pension and other benefits as would / are admissible in the 2nd Time Pay Scale together with interest thereon @ 12% per annum from the date of accrual to the date of actual payment to the petitioner.
- (c) Any other relief, in addition to or in modification of above, as the Hon'ble Tribunal deems fit and proper in the circumstances and facts of the case, be kindly granted to the petitioner against the respondents;
- (d) Rs.20,000/- as costs of this claim petition be kindly allowed to the petitioner against the respondents.

2.1 Relevant facts in brief are that the petitioner has been an employee of Minor Irrigation Department, Government of Uttarakhand. The petitioner was promoted to the post of Assistant Engineer on 9.1.1990.

2.2 The petitioner has contended in his claim petition that according to the Government Orders dated 20.4.1993 (Annexure:A-2), he was entitled to get next promotional pay scale after completion of 5 years of continuous and satisfactory service. Petitioner has further contended that after completion of 18 years of continuous and satisfactory service on the post of Assistant Engineer, he was also entitled to get another promotional pay scale. The petitioner has also stated that he was eligible and fulfilled all other conditions of the said Government Orders as he was a regular Assistant Engineer and had not got any promotion while serving as Assistant Engineer.

2.3 The Government order dated 20.4.1993 is reproduced as under:-

“ संख्या 6183/38-7-1399(5)/98

प्रेषक,

जनादन प्रसाद,
संयुक्त सचिव,
उत्तर प्रदेश शासन ।

सेवा में,

मुख्य अभियन्ता,
लघु सिंचाई विभाग,
उत्तर प्रदेश, लखनऊ,

ग्राम्य विकास अनुभाग-7

लखनऊ, दिनांक 20 अप्रैल, 1993

विषय:- समता समिति उ0प्र0 (1989) की संस्तुतियों पर लिये गये, निर्णयनुसार लघु सिंचाई विभाग उ0प्र0 में विभिन्न पदों पर पुनः रीक्षित वेतनमान की स्वीकृती।

महोदय,

उपर्युक्त विषयक शासनादेश सं0 4714/54-2-(1399) (5)/89 दिनांक 08.08.89 के साथ पठित शासनादेश सं0 5164/54-2-1399(5)/88 दिनांक 03.1.1991 में आंशिक संशोधन करते हुए मुझे यह कहने का निदेश हुआ है कि प्रदेश में विभिन्न वर्गों के कर्मचारियों हेतु गठित समता समिति (1989) की संस्तुतियों पर विचार करने के लिये गठित मुख्य सचिव समिति की संस्तुतियों के परिपेक्ष्य में लिये गये निर्णयों के अनुसार राज्यपाल महोदय उक्त शासनादेश दिनांक 3.1.91 के विवरण में अंकित अधिशासी अभियन्ता एवं वैयक्तिक सहायक, अधिशासी अभियन्ता तथा सहायक अभियन्ता के पदों के सम्मुख स्तम्भ 4 में अंकित अभियुक्ति के स्थान पर निम्न विवरण के स्तम्भ 4 में उल्लेखित अभियुक्ति प्रतिस्थापित किये जाने की सहर्ष स्वीकृती प्रदान करते हैं :-

क्रम सं०	पदनाम	वेतनमान (रू०)	अभियुक्ति
4-5	अधिशासी अभियन्ता
6 (पृष्ठ-2)	सहायक	2200-75-2800-द0रा10	(1) ऐसे सहायक अभियन्ता

	अभियन्ता	-100-4000	जो नियमित हों, को 5 वर्ष की निरन्तर संतोषजनक सेवा पूर्ण होने पर रू0 3000-100-3500-125-4500 का वेतनमान दिया जाये । (2) ऐसे सहायक अभियन्ता जो नियमित हों तथा जिन्होंने 18 वर्ष की अनवरत संतोषजनक सेवा पूर्ण कर ली है और प्रोन्नत न हुए हो उन्हें रू0 3700-125-4700-150- 5000 का व्यक्तिक वेतनमान दे दिया जाये ।
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2 उपर्युक्त प्रस्तर-1 में संदर्भित शासनादेश दिनांक 3.1.91 को इस सीमा तक संशोधित समझा जाये ।

3 यह आदेश वित्त (वेतन आयोग) अनुभाग-1 के अ0 श0 सं0 वे0 आ0-1-1057/दस-93, दिनांक 15 अप्रैल 1993 में प्राप्त उनकी सहमति से जारी किया जा रहा है ।

भवदीय
ह0/जनार्दन प्रसाद,
संयुक्त सचिव

2.4 The petitioner has also stated in his claim petition that according to the Government order dated 20.4.1993 above, after completion of 5 years of continuous and satisfactory service on the post of Assistant Engineer, he was granted the promotional pay scale vide order dated 8.9.1998 (Annexure:A-3). The said promotional pay scale was granted to the petitioner w.e.f. 9.1.1995.

2.5 For the sake of convenience, the Government Order issued on 8.9.1998, by which the promotional pay scale was granted to the petitioner on completion of 5 years of service on the post of Assistant Engineer is also reproduced below:-

“कार्यालय मुख्य अभियन्ता

लघु सिंचाई विभाग, उ०प्र०, लखनऊ।

संख्या-14580/स्था-1(180टी)/98

दिनांक लखनऊ सितम्बर 08,1998

कार्यालय आदेश

ग्राम्य विकास अनुभाग-7, उ०प्र शासन के शासनादेश संख्या 6183/38-7-1399(5)/98 दिनांक 20.4.93 में निहित निर्देशों के अनुसार लघु सिंचाई विभाग में कार्यरत सहायक अभियन्ताओं जो नियमित हों, को 5 वर्ष की निरन्तर संतोषजनक सेवा पर वेतनमान 3000-100-3500-125-4500 की स्वीकृति 1.1.86 से प्रदान किये जाने के फलस्वरूप श्री सुभाष चन्द्र गर्ग, सहायक अभियन्ता (लघु सिंचाई), देहरादून जो नियमित है को उनके 5 वर्ष की निरन्तर संतोषजनक सेवा पर वेतनमान 3000-100-3500-125-4500 की स्वीकृति 09-01-95 से एतद्द्वारा प्रदान की जाती है।

श्री सुभाष चन्द्र गर्ग, सहायक अभियन्ता का वेतन शासनादेश संख्या वे०आ०१७६३/दस-३९(एम)/८९ दिनांक ३१.५.९० में निहित निर्देशानुसार साधारण वेतनमान में प्राप्त वेतन स्तर के अगले उच्च प्रक्रम पर निर्धारित किया जायेगा।

नरेन्द्र कुमार जैन
मुख्य अभियन्ता “

- 2.6 The petitioner has further contended that after his promotion to the post of Assistant Engineer on 9.1.1990, he completed 18 years of continuous and satisfactory service on 9.1.2008. The petitioner also stated that he was a regular Assistant Engineer and till 9.1.2008 he had not got any promotion and in the absence of promotion, he continued on the post of Assistant Engineer. The petitioner has claimed the next promotional pay scale which was due to him on completion of 18 years of service as has been provided by the Government Order dated 20.04.1993, reproduced in Para 2.3.
- 2.7 When the petitioner was not granted next promotional pay scale on completion of 18 years of service on 9.1.2008, he made various representations to the concerned authorities from 14.05.2008 to 27.07.2009 (Annexure:A-7 to Annexure: A-11). The respondents did not decide these representations of the petitioner.

- 2.8 The petitioner retired from the post of Assistant Engineer on 31.07.2009.
- 2.9 After nearly 5 years of his retirement, the petitioner again made representations to the respondents in the year 2014 to grant him promotional pay scale for which he was entitled on completion of 18 years of service according to the Government Order dated 20.04.1993. The petitioner also sent notices to the respondents through his Advocate on 30.12.2014 and 7.1.2015. Thereafter, the respondents decided the representations of the petitioner vide order dated 10.3.2015 (Annexure:A-19) and the same were rejected.
- 2.10 The petitioner has mainly claimed the relief on the ground that in terms of Government Order dated 20.4.1993, he was entitled to be sanctioned the next promotional pay scale on completion of 18 years of continuous and satisfactory service working as a regular Assistant Engineer w.e.f. 9.1.2008 as he had not got any promotion while serving as Assistant Engineer.
3. Respondents have opposed the claim petition and it has been stated in their written statement that the petitioner is not entitled for the promotional pay scale according to the Government order dated 20.4.1993 on completion of 18 years of service as Assistant Engineer on the following grounds:-
- i. The petitioner was initially appointed as Inspector (Mechanical) in the Department of Minor Irrigation w.e.f. 14.04.1972. Subsequently, the petitioner has been promoted as Senior Junior Engineer w.e.f. 19.10.1984. After that, he was promoted as Assistant Engineer on 9.1.1990. The petitioner, thereafter, on completion of 5 years of service on the post of Assistant Engineer, was granted next promotional pay scale according to G.O. dated 20.04.1993. The contention of the respondents is that the petitioner had received three promotions/ promotional pay scales and therefore, he was not entitled for any 4th

promotional/ time scale revision as provided under the Government order dated 8.3.2011 (Annexure: CA-6). The respondents contended that the Government Order dated 8.3.2011 provides that a Government servant, who had availed three promotions/ promotional pay scales, was not entitled to any further benefits under the said G.O. of the Assured Career Progression (A.C.P.) dated 8.3.2011.

ii. Respondents have also contended that the G.O. dated 20.4.1993 is not applicable in case of the petitioner because the petitioner was not a directly appointed Assistant Engineer as he became Assistant Engineer by way of promotion only. Accordingly, the contention of the respondents is that the G.O. dated 20.4.1993 is applicable in respect of directly appointed Assistant Engineers only.

iii. Respondents have also stated that the claim petition is barred by limitation. Since the petitioner had retired on 31.7.2009 but the claim petition has been filed by him after about six years and therefore, the claim petition is not maintainable. Respondents have also contended that the case of the petitioner cannot be said to be a case of continuing cause of action.

4. The petitioner and respondents have also filed R.A./ Addl. R.A./ Addl. W.S. reiterating the same averments which were made in the claim petition / written statement.
5. We have heard Ld. Counsel for the parties and perused the record carefully.
6. Ld. Counsel for the petitioner has argued that the petitioner is entitled for the second promotional pay scale according to the G.O. dated 20.4.1993. Ld. Counsel for the respondents has refuted this argument and in his counter argument has stated that since the petitioner had

already received three promotions/ promotional pay scales, he is not entitled for any fourth promotional scale according to the G.O. dated 8.3.2011. We have carefully perused the Government order related to Assured Career Progression (A.C.P.) dated 8.3.2011 and also the amendments made in this Government order vide another G.O. dated 30.10.2012 (Annexure: SA-4 to the additional C.A. of the respondents). It is revealed that the G.O. dated 8.3.2011 as amended by the G.O. dated 30.10.2012 is applicable on Government servants w.e.f. 1.9.2008. The petitioner is claiming his promotional pay scale which according to the G.O. dated 20.04.1993 became due to him on 09.01.2008 and therefore, there is no relevance of the Government orders dated 8.3.2011 and 30.10.2012 for deciding the matter of the petitioner which pertains to the date (9.1.2008) prior to the date 01-09-2008 when the G.O. dated 8.3.2011 came into force. It is also pertinent to note that the G.Os. related to A.C.P. scheme issued by the Government on 8.3.2011 onwards very clearly provide that the cases of time scales/ promotional pay scales pertaining to the period prior to 01.09.2008 will be governed by the earlier rules. It is, therefore, clear that the issues related to time scales/ promotional pay scales up to 31.08.2008 will be decided according to old rules which were prevailing at that time.

7. The petitioner has claimed next promotional pay scale on completion of 18 years of service according to G.O. dated 20.4.1993. The G.O. dated 20.4.1993 does not mention any restriction regarding eligibility of the petitioner on the basis of the past promotions of the petitioner before his promotion as Assistant Engineer. Perusal of the G.O. dated 20.4.1993 also reveals that the said G.O. is applicable for the period of service on the post of Assistant Engineer. The said G.O. provides two promotional pay scales on completion of 5 years and 18 years of service and it does not provide any condition to take into account any past promotion made before the petitioner became the Assistant Engineer. The conditions for promotional pay scales on completion of

5 years and 18 years of service, which are mentioned in the said G.O. are fulfilled by the petitioner. The G.O. dated 20.4.1993 is issued as an amendment in the main Government order dated 8.8.1989 as mentioned in the G.O. dated 20.04.1993 itself. On our insistence, Ld. A.P.O. has provided a copy of this G.O. which contains the pay scales of the staff of the Minor Irrigation Department as a result of the report of the Samta Samiti, Uttar Pradesh after the implementation of the Report of the Pay Commission. The G.O. dated 8.8.1989 also does not impose any condition regarding past promotion or any other restriction and it is, therefore, clear that the case of the petitioner is fully covered under the Government orders dated 8.8.1989 and 20.4.1993 for granting promotional pay scales of 5 years and 18 years of service.

8. Ld. Counsel for the respondents has also argued that the petitioner has not been directly recruited as Assistant Engineer and he was promoted on the post of Assistant Engineer and therefore, the G.O. dated 20.4.1993 does not apply to the petitioner. The contention of the Ld. Counsel for the respondents is that the G.O. dated 20.4.1993 applies only to the Assistant Engineers who were directly recruited. Perusal of Government orders dated 8.8.1989 and 20.4.1993 very clearly reveals that there is no condition in the said G.Os. that in order to get promotional pay scales on completion of 5 years and 18 years of service, it is required to be an Assistant Engineer appointed by the method of direct recruitment. Ld. Counsel for the respondents could not demonstrate any other G.O. or document to show that the G.O. dated 20.4.1993 is applicable in respect of directly appointed Assistant Engineers only and not applicable on the promoted Assistant Engineers. On the contrary, respondents themselves granted promotional pay scale to the petitioner on completion of 5 years of service according to the G.O. dated 20.04.1993 in spite of the fact that the petitioner was a promoted Assistant Engineer.

9. Ld. Counsel for the respondents has also argued that the claim petition is barred by limitation. The petitioner had retired on 31.7.2009 but the claim petition has been filed after about 6 years. Ld. Counsel for the petitioner has argued that the petitioner had given representations from time to time and legal notices were also given by the petitioner to the respondents for deciding his representation but the Government decided it only on 15.3.2015 and therefore, the claim petition cannot be said to be barred by limitation. It has also been argued by the Ld. Counsel for the petitioner that granting of promotional pay scale to the petitioner w.e.f. 9.1.2008 and thereafter, his retirement on 31.7.2009, is a case of continuing cause of action in respect of salary/ pension/ other retiral benefits. We are in agreement with the contention of the Ld. Counsel for the petitioner that in case of salary and pension, it gives right to a recurring cause of action and it continues from month to month. The counsel for the petitioner referred a case in which the **Hon'ble Supreme Court in Paragraphs 4, 5 & 6 in the case of Union of India and Others Vs. Tarsem Singh Civil Appeal No. 5151-5152 of 2008[(2008) 8SCC, 648] decided on 13.08.2008 has held as under:-**

“4. The principles underlying continuing wrongs and recurring/ successive wrongs have been applied to service law disputes. A `continuing wrong' refers to a single wrongful act which causes a continuing injury. `Recurring/successive wrongs' are those which occur periodically, each wrong giving rise to a distinct and separate cause of action.....

In M. R. Gupta vs. Union of India [1995 (5) SCC 628], the appellant approached the High Court in 1989 with a grievance in regard to his initial pay fixation with effect from 1.8.1978. The claim was rejected as it was raised after 11 years. This Court applied the principles of continuing wrong and recurring wrongs and reversed the decision. This Court held :

"The appellant's grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. So long as the appellant is in service, a fresh cause of action

arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that if the appellant's claim is found correct on merits, he would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant's claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong if on merits his claim is justified. Similarly, any other consequential relief claimed by him, such as, promotion etc., would also be subject to the defence of laches etc. to disentitle him to those reliefs. The pay fixation can be made only on the basis of the situation existing on 1.8.1978 without taking into account any other consequential relief which may be barred by his laches and the bar of limitation. It is to this limited extent of proper pay fixation, the application cannot be treated as time barred....."

In **Shiv Dass vs. Union of India - 2007 (9) SCC 274**, this Court held:

".....In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition..... If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years."

5. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing

source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.

6. In this case, the delay of 16 years would affect the consequential claim for arrears. The High Court was not justified in directing payment of arrears relating to 16 years, and that too with interest. It ought to have restricted the relief relating to arrears to only three years before the date of writ petition, or from the date of demand to date of writ petition, whichever was lesser. It ought not to have granted interest on arrears in such circumstances.

10. In the light of the discussion in para 6 to 8 and the decision of Hon'ble Apex Court in para 9 above, we are of the view that the petitioner is entitled to be granted the promotional pay scale on completion of 18 years of service according to the G.O. dated 20.4.1993 and re-fixation of salary on 9.1.2008 notionally when this promotional pay scale became due to him and consequently, re-fixation of the amount of pension. However, the payment of arrears relating to salary/retiral benefits is not justified and that too with interest. We restrict the relief relating to arrears of pension to only three years prior to the date of filing of the claim petition without any interest.

11. For the reasons stated in paragraph 6 to 10 above, the petition deserves to be partly allowed.

ORDER

The claim petition is hereby partly allowed. The impugned order dated 10.03.2015 (Annexure: A19) is hereby set aside. The petitioner is entitled to the promotional pay scale on completion of 18 years of service w.e.f. 09.01.2008 according to the G.O. dated 20.04.1993 (Annexure: A2). The salary (including allowances) will be re-fixed on 09.01.2008. The Pension of the petitioner will be re-fixed as on 31.07.2009 (the date of retirement of the petitioner) taking into account the notional effect of promotional pay scale w.e.f 09.01.2008. The petitioner will be paid re-fixed amount of monthly pension with effect from 01.08.2009 but the arrears of difference in the amount of pension will be paid only for three years prior to the date of filing of the claim petition. No order as to costs.

(RAM SINGH)
VICE CHAIRMAN (J)

(D.K.KOTIA)
VICE CHAIRMAN (A)

DATE: SEPTEMBER 30, 2016
DEHRADUN

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