

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

Present: Hon'ble Mr. Ram Singh

----- Vice Chairman (J)

Hon'ble Mr. U.D.Chaube

-----Member (A)

CLAIM PETITION NO. 34/2012

Aftab Ali Siddiqui, S/o Late Sri Qazi Iqtidar Ali, R/o 69, T.B.Road,
Araghar, Dehradun.

.....Petitioner

VERSUS

1. State of Uttarakhand through its Secretary, Higher Education, Civil Secretariat, Subhash Road, Dehradun.
2. Vice Chancellor, Govind Ballabh Pant, Agriculture and Technology, University Pant Nagar, Udham Singh Nagar, Uttarakhand.
3. Finance Controller, Govind Ballabh Pant, Agriculture and Technology, University, Pant Nagar, Udham Singh Nagar, Uttarakhand.

.....Respondents

Present: Sri M.C.Pant, Ld. Counsel
for the petitioner.

Sri V.P. Devrani, Ld. A.P.O.
for the Respondent No. 1

Ms. Geeta Parihar, Ld. Counsel
for the respondents No. 2 & 3

JUDGMENT**DATED: DECEMBER 09, 2016****(Hon'ble Mr. Ram Singh, Vice Chairman (J))**

1. The petitioner has asked for the following relief:

"A. Issue order or direction to quash the impugned order dated 19.12.2011 along with its effect and operation also after calling entire records from the respondents declaring the same against the rules and law.

B. Issue order or direction to respondents to give benefits of pay scale of the petitioner w.e.f. 01.7.1991 after fixing the pay scale properly and also to refix his pension and gratuity along with all over with 18% interest, as indicated his representation dated 31.1.2012 along with all consequential benefit had it been the impugned order is not in existence.

C. Issue appropriate order or direction suitable in the nature to award damages and compensation to the petitioner for malicious and malafide act of the respondents, by which the petitioner is facing grave mental agony and financial hardship and the amount of the damages and compensation which may be quantified by this Hon'ble Tribunal and further be directed to the respondents the amount to be recovered from the salary of the erring officer.

D. Issue any other suitable direction or order as this Hon'ble Tribunal may deem fit in the circumstances of the case.

E. Award costs of the claim petition to the petitioner."

2. Briefly facts stated by the petitioner's pleadings are that the petitioner was initially appointed as Assistant Accountant in Government Service on 12.11.1965 and was absorbed in the Govind Ballabh Pant University of Agriculture and Technology,

Pant Nagar on 01.5.1973 where he remained in service till his retirement on 31.08.2000. The respondent no. 2 vide impugned order dated 19.12.2011 has sanctioned one additional increment to the petitioner after 10 years of continuous and satisfactory service w.e.f. 01.7.1985. He has also sanctioned selection grade of 16 years of service w.e.f. 15.12.1995 and one increment after completion of 19 years of service, has also been sanctioned by the same date i.e. 15.12.1995.

3. According to the petitioner, the impugned order has been passed under wrong interpretation of the rules i.e. G.O. no. वेआ-1-1763/दस-39(M)/89 dated 03.06.1989. It is also contended that the said G.O. provides for one additional increment after 10 years of service, first selection grade after 16 years of service in the next pay scale, thereafter a period of 3 years meaning thereby 19 years of service, one additional increment is payable and after completion of 24 years of service, second selection grade pay scale is to be granted to those employees who have not got any promotion in service. The petitioner's contention is that according to the said G.O., he is entitled to get selection grade as per the chart mentioned below:

A.	One increment after 10 years of service	w.e.f 01.07.1985
B.	1 st Selection Grade after 16 years of service	w.e.f. 01.07.1991
C.	One increment after 19 years of service	w.e.f. 01.3.1995
D.	2 nd Selection Grade after 24 years of service	w.e.f. 01.03.2000

4. The petitioner has also contended that the respondents wrongly interpreted the provisions of the Government Order and

has sanctioned the first selection grade after 16 years of service and one additional increment after 19 years of service w.e.f. 15.12.1995. The respondents have wrongly sanctioned first selection grade in the pay scale of Rs.1400-2600/- w.e.f. 15.12.1995 instead of 01.7.1991 and due to fixation of wrong date, the petitioner is suffering from great loss. The second selection grade after 24 years of service has not been granted properly and wrong date and wrong scale has been given. The petitioner was entitled to second selection grade pay scale of Rs. 8000-13500 w.e.f. 01.03.2000 and as per 5th Pay Commission, his revised pay scale should have been fixed as 6500-10500 w.e.f. 01.01.1996. The respondent no. 2 deliberately and with malafide intention, wrongly fixed the pay of the petitioner. The petitioner has written several letters to the respondents to correct the mistake so as to enable him to get the benefit of pay and other dues after retirement, but all in vain.

5. The representation of the petitioner dated 31.01.2012 is still pending with the respondents no. 1 & 2 and the impugned order has been passed in violation of Article 14, 16 and provisions of Article 311 of the Constitution of India in a mechanical manner, without application of mind and the said order is arbitrary and illegal. Hence this petition was filed for the relief sought as above.

6. The petition has been opposed on behalf of the respondents, particularly by the respondents no. 2 & 3 and it has been stated that the cadre formation was revised by the Board of Management in its 161st meeting dated 15.12.1995 and in the light of the revision of cadre, time scale of the petitioner was revised vide order dated 15.12.1995. It has also been contended that the post of Assistant Accountant (HOD) in the pay scale of

1400-2300 revised to 4500-7000 has been abolished and redesignated as Assistant Accountant w.e.f. 15.12.1995 and according to the cadre revision, the petitioner was entitled for the time scale on the basis of his date of absorption. Respondent University has accepted the date of absorption in cadre as 01.5.1973 in the Counter Affidavit and the Increment after 10 years of service w.e.f. 01.07.1985. The respondents in their counter affidavit has also admitted that before cadre revision, 16 years were completed on 01.07.1991, 19 years on 01.03.1995 and 24 years on 01.03.2000, but in accordance with cadre revision w.e.f. 15.12.1995 by the Board of Management, the pay scale of Rs. 1400-2300 (4500-7000) was abolished and revised time scale was allowed to the petitioner vide order dated 19.12.2011 and the scale after 16 years and 19 years of service were granted w.e.f. the same date i.e.15.12.1995, to which the petitioner has alleged that 16 and 19 years pay scales w.e.f. 15.12.1995 has been given by wrong interpretation of G.O.. It has also been stated in the Supplementary C.A. that the petitioner was promoted vide order no. 1/397 dated 21.7.1995 as Senior Accounts Clerk w.e.f. 28.12.1979 and he did not complete 16 years of service on the post of Accounts Clerk, so the 1st selection grade after 16 years was not admitted to him w.e.f. 01.07.1991. Accordingly, 19 years increment w.e.f. 01.3.1995 was not made available to him.

7. The petitioner by way of rejoinder affidavit has controverted the contention raised in the Counter Affidavit and Supplementary Counter Affidavit and has stated that the respondents are misleading the court by stating that promotion was given to the petitioner vide order dated 21.7.1995 because the said order no. 397 dated 21.7.1995 was cancelled by the then

Vice Chancellor through its order dated 21.11.1997 and as a consequence of cancellation of the promotion and in view of that, the petitioner w.e.f. 01.5.1973 to 01.7.1985 was continuously working on the same post and the scale of 10 years of service was completed on 01.7.1985 and accordingly, he was entitled for selection grade and it was granted w.e.f. 01.7.1985 and after cancellation of the promotion order, the effect of order dated 21.7.1995 stood abolished and in terms of Government Order dated 17.10.1985, the petitioner was entitled for promotional scale after 16 years of service w.e.f. 01.7.1991, but deliberately, the same was given on later date w.e.f. 15.12.1995, which is not correct and is illegal. Similarly, in terms of the G.O. dated 22.10.2001, after completion of 19 years of service, the deemed date should be 01.3.1995 for the purpose of grant of another scale, but the same has been granted w.e.f. 15.12.1995. Second promotional pay scale should be allowed to him after completion of 24 years of service and for which actual and deemed date is 01.3.2000, but vide impugned order, the scale of Rs. 5500-9000 was sanctioned mentioning wrong date 15.12.1995 instead of 01.3.1995 which resulted to financial loss to the petitioner. The actual and correct date has not been mentioned and due to their own mistake, the respondents have deprived the petitioner from receiving increments in time. Hence, the petitioner has prayed for the impugned order be set aside.

8. It is also contended that the first selection grade after 16 years of service should be allowed to the petitioner w.e.f. 1.7.1991 with all consequential relief. The second additional increment and second promotion should be given to him after 19

and 24 years of service accordingly as the petitioner was not granted any promotion during his service period.

9. We have heard both the sides and perused the record.

10. It is admitted fact that the petitioner who initially joined the services in the U.P. Government, was absorbed in the cadre of respondent university on 01.05.1973 and the record reveals that although absorption in the university was shifted by the respondent to the date 30.6.1978, but the said date of absorption of employees was set aside in a writ petition no. 845 of 2001 (S/B) filed by some other employee, S.K. Tomar and it was declared that date of absorption will not be changed. The respondents also accepted this fact that the petitioner was absorbed into the service of the university w.e.f. 01.05.1973. It is also admitted that the petitioner has retired from the services of the respondent on 31.08.2000. In the counter affidavit filed on behalf of the respondents, it is also admitted that the cadre revision/redesignation of various posts was made w.e.f. 15.12.1995 and Accounts Clerk, Assistant Accountant, Junior Accountant of the scale of 1200-2040 were redesignated as Assistant Accountant and Senior Accounts Clerk, Cashier of the scale of Rs. 1400-2040 were put with name of Assistant Accountant (HOD) in the pay scale 1400-2300. The respondents in para 3 of the their counter affidavit has accepted that the petitioner was entitled for the following time scale benefits:

1.	01.05.1973	Date of Absorption of A.A. Siddiqui in the University	Pay scale of Rs. 230-385 (revised Rs. 1200-2440/4000-6000)
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2.	01.7.1985	On completion of 10 years of services or w.e.f. 01.7.1985 whichever is later i.e. 01.7.1985	Selection Grade of Rs. 450-720 (revised Rs. 1200-2040/4000-6000)
3.	01.07.1991	On completion of 16 years service or after 06 years from the date of allowing Selection Grade whichever is later i.e. 01.7.1991	1 st Promotional Scale of Rs. 1400-2300(revised Rs. 1400-2300/4500-7000)
4.	01.03.1995	On completion of 19 years service or after 03 years from the date of allowing 1 st promotional scale whichever is later i.e. 01.03.1995	One increment in the Scale of Rs. 1400-2300 (revised Rs. 4500-7000)
5.	01.03.2000	On completion of 24 years of service or after 05 years from the date of allowing one increment whichever is later i.e. 01.03.2000	2 nd Promotional scale of Rs. 1400-2600 (revised Rs. 5000-8000)

11. The respondents have contended that the Board of Management after cadre formation w.e.f. 15.12.1995, abolished the pay scale of 1400-2300 and in the light of the above revised time scale, the petitioner was allowed the benefit vide order dated 11.12.2011 in the following manner:

1.	01.05.1973	Date of Absorption of A.A. Siddiqui in the University	Pay scale of Rs. 230-385 (revised Rs. 1200-2440/4000-6000)
2.	01.7.1985	On completion of 10 years of services or w.e.f. 01.7.1985 whichever is	Selection Grade of Rs. 450-720 (revised Rs. 1200-

		later i.e. 01.7.1985	2040/4000-6000)
3.	15.12.1995	From the date of cadre formation after counting the 16 years services rendered in the pay scales of Rs. 1200-2040 and 1400-2300	1 st Promotional Scale of Rs. 1400-2600(revised Rs. 5000-8000)
4.	15.12.1995	From the date of cadre formation after counting 19 years services rendered in the pay scale of Rs. 1200-2040 and 1400-2300/1400-2600	One increment in the Scale of Rs. 1400-2600 (revised Rs. 5000-8000)
5.	01.03.2000	From the date of cadre formation after counting the 24 years of services rendered in the pay scales of Rs. 1200-2040 and 1400-2300/1400-2600 (revised 4500-700/5000-8000)	2 nd Promotional scale of Rs. 5500-9000

12. Hence as per para 3 of the counter affidavit, the respondents have accepted that he was absorbed in the cadre of University w.e.f. 01.5.1973, he was entitled for first increment after 01.7.1985, he was also entitled for the first selection grade in the next scale after 16 years of service on 01.7.1991. He was also entitled for second additional increment after 19 years of service w.e.f. 01.3.1995 and second selection scale after 24 years of service w.e.f. 01.3.2000, but the respondents have not granted the first selection scale in case of pay scale after 16 years of service w.e.f. 01.7.1991 neither additional increment after 19 years of service was granted with correct date which was due on 01.3.1995. The only reason for this has been shown that the cadre

formation was revised by the Board of Management w.e.f. 15.12.1995. This court is of the view that simply by cadre revision, the effect of the Government Order, which allowed the certain benefits of time scale and selection scales after 10, 16, 19 and 24 years of service, that accrued benefit cannot be disturbed and denied unilaterally in violation of G.O. When the respondents accepted this fact that the selection grade after 16 years of service was due on 01.7.1991, why it was delayed and granted w.e.f. 15.12.1995. By invoking the exercise of cadre revision, certain posts were merged and they were redesignated.

13. Learned counsel for the respondents has argued before the court that the petitioner was not granted the first selection scale after 16 years of service because of the reasons that he did not complete the required service after he got his promotion as Senior Accounts Clerk w.e.f. 28.12.1979. The respondents have submitted that the petitioner was promoted vide order no. 397 dated 21.7.1995 as Senior Accounts Clerk in the pay scale of Rs. 515-860 w.e.f. 28.12.1979 after the creation of promotional post for the absorbed employees and the selection grade was admissible to the employees who have completed 16 years of service on that original post. According to respondents, the petitioner was promoted as Senior Accounts Clerk and as he did not complete required length of years of service, so selection scale was not admissible to him w.e.f. 01.07.1991. This contention of the respondents has been refuted by Supplementary RA of the petitioner. In para 5 the affidavit, he has specifically stated that the so called promotion given to the petitioner vide order no. 397 dated 21.7.1995 was cancelled by the then Vice Chancellor through its order dated 27.11.1997 and this fact was deliberately

suppressed by the respondents from the court. The copy of the order dated 27.11.1997 (Annexure A1 to the Supplementary R.A) filed by the petitioner clarifies that the office order no. 397 dated 21.7.1995 shall be deemed to have been cancelled by order dated 27.11.1997, hence, the order dated 21.7.1995 was never given effect to. The petitioner has pointed out that he was never granted any promotion and the so called promotion order dated 21.7.1995 which was set aside by the then Vice Chancellor on 27.11.1997 was never made effective. We agree with this argument. The reorganization of cadre was made effective w.e.f. 15.12.1995 and the Accounts Clerk was redesignated as Assistant Accountant. Hence, contention of the respondents cannot be accepted that the petitioner was given promotion vide order dated 21.7.1995 because the said order was cancelled and being Accounts Clerk, he shall be deemed to be redesignated as Assistant Accountant i.e. (सहायक लेखाकार) and the petitioner remained on the same post of Assistant Accountant till his retirement as written in the impugned order dated 19.12.2011. The cadre reorganization is a different matter while granting promotion to the higher post to a particular employee is a different matter. In this case, the respondents have failed to prove that the petitioner was granted any promotion in his service career and under these circumstances, the contention of the petitioner will be accepted that he will be entitled for first increment after 10 years or on 01.7.1985 first and next selection pay scale after further 06 years of service, additional increment after further 03 years of service and second selection grade after 05 years of service. Simply by cadre reorganization w.e.f.

15.12.1995, the petitioner cannot be denied the time scale permitted by the G.O.

14. It is admitted fact that the petitioner was absorbed in the service on 01.5.1973 and he was rightly granted first increment after 10 years of service on 1.7.1985. The court is of the view that he was also entitled to first selection scale after 16 years of continuous service which shall be counted from the date of absorption and accordingly, after granting first increment on 1.7.1985, after 10 years of service, first selection scale in next cadre after 16 years of service must be granted to him w.e.f. 1.7.1991. Consequently, the petitioner is also entitled for additional increment after 19 years of service w.e.f. 01.3.1995 and second selection scale to the next pay scale after 24 years of service w.e.f. 01.3.2000. The respondents has granted 16 and 19 years of benefit to the petitioner w.e.f. the same date 15.12.1995, which is not correct. The cadre revision by which redesignation of the post was made w.e.f. 15.12.1995 cannot take away the rights of the petitioner. Granting of 16 and 19 years benefit to the petitioner w.e.f. the same date 15.12.1995, is not justified. The second scale after 16 years of service was deferred due to the reasons that after getting promotion, the petitioner did not complete the required service, but when the said promotion was cancelled by then Vice Chancellor vide order dated 27.11.1997 then this analogy cannot be applied in the case of the petitioner. His 16 years' service benefit should be granted to him w.e.f. 01.7.1991, 19 years' service benefit w.e.f. 01.3.1995 and 24 years benefit w.e.f. 01.3.2000.

15. The petitioner has also argued that the respondents have also deferred dates and months of the benefit without any reason.

We agree with this argument and there was nothing adverse on the record to justify the stand of respondents. The petitioner is entitled for the benefit as and when he completed the required period of service.

16. The petitioner has also contended that the correct scale admissible to him according to the 5th Pay Commission, was also not granted. The court is of the view that the correct pay scale granted by the 5th Pay Commission, which was made effective w.e.f. 01.1.1996, should be granted to the petitioner and if any amendment/correction in the pay scale of 5th pay commission, was later on made by the government, the benefit of the same should also be given to the petitioner. Accordingly, the petitioner is entitled to refix his pension, gratuity and other retiral benefits and a direction to the respondents is required to be issued in this respect.

17. The petition succeeds and the following order is hereby passed.

ORDER

The claim petition is allowed. The impugned order dated 19.12.2011 passed by the respondent no. 3 is hereby set aside along with its effect and operation. The respondents no. 2 & 3 are directed to give the benefit of selection scale in the next pay scale of 16 years to the petitioner w.e.f. 01.7.1991 instead of 15.12.1995' and after fixation of pay scale properly, one additional increment w.e.f.01.3.1995 for 19 years of service and second selection grade after 24 years of service w.e.f. 1.3.2000 should be granted to him. The respondents are directed to refix the pension, gratuity and all other consequential retiral benefits to the

petitioner keeping in view the correct and amended pay scale, if any, granted by the 5th Pay Commission, within a period of three months from the date of this order and to pay Rupees Ten Thousand as cost of the petition.

(U.D.CHAUBE)
MEMBER (A)

(RAM SINGH)
VICE CHAIRMAN (J)

DATE: DECEMBER 09, 2016
NAINITAL

KNP