

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

Present: Hon'ble Mr. D.K.Kotia

-----Vice Chairman (A)

CLAIM PETITION NO. 05/ SB/2014

Niyamat Ali Khan S/o Sri Salamat Ali , Nursery Development Officer (Retd.) R/o-
Saharanpur Road, Hurbertpur, Distt. Dehradun, Uttarakhand.

.....Petitioner

Versus

1. Director, Horticulture & Food Processing Department, Udyan Bhawan, Chobatia, Ranikhet, Distt. Almora , Uttarakhand.
2. District Horticulture Officer, Dehradun, Survey Chowk, Vikas Bhawan, Dehradun.
3. The Director, Lekha & Haqdari, 23 Luxmi Road, Dalanwala, Dehradun.
4. State of Uttarakhand, through Secretary, Ministry of Horticulture, Uttarakhand.

.....Respondents.

Present: Sri L.D.Dobhal, Ld. Counsel
for the petitioner.

Sri Umesh Dhaundiyal, Ld. A.P.O.
for the respondents.

JUDGMENT

DATED: MARCH 02, 2017

1. The petitioner has filed the present claim petition for seeking the following relief:-

“A.That a declaration or any other order or directions be issued in favour of the applicant and against the respondents to the effect that they pay to the applicant the interest @ 12% on late payment of his retiral dues.

B. That appropriate directions be issued to the respondents to refund the amount of Rs.17,766/- to the applicant recovered from him on account of wrong fixation of his pay as they were not entitled to recover any amount from the retiral benefits payable to the

applicant on the ground of wrong fixation of pay or on any ground as is alleged in Annexure Nos. 8 & 9.

C. That any other order or direction, which the Hon'ble Tribunal thinks fit, be also awarded.

D. Cost of the petition be also awarded.”

2.1 The petitioner retired from the post of Nursery Development Officer, Department of Horticulture, Government of Uttarakhand on 31.01.2012.

2.2 The petitioner was paid his retiral benefits on the following dates:-

(i) Pension on 05.04.2013; (ii) Gratuity on 12.04.2013; and (iii) Leave Encashment on 30.05.2013.

2.3 The payment of retiral benefits was delayed due to following two reasons:-

(i) The petitioner was informed on 26.02.2013 (Annexure: A 9) by the respondent No.2 that due to wrong fixation of his salary w.e.f. 01.07.1986, he was paid an excess amount of Rs.17,766/- as salary and, therefore, the same is to be recovered from him. The petitioner was asked to deposit Rs.17,766/- so that papers of his retiral benefits can be processed. The petitioner deposited this amount on 21.03.2013 and after that action was taken to sanction retiral benefits to him.

(ii) The petitioner did not submit the “No Dues Certificate”. The NOC was ultimately received from the State Government on 03.10.2012 (Annexure: R- 9 to the written statement). After that, the papers of retiral benefits were processed by the respondents.

2.4 The petitioner has contended that the “recovery” issued against him was wrong but he deposited the amount of Rs. 17,766/- under the threat that his retiral benefits will be sanctioned by the respondents only after he deposits Rs.17,766/-.

2.5 The petitioner has also contended that there were “no dues” against the petitioner which was accepted by the respondents also on 03.10.2012 (Annexure: R- 9 to the W.S.) and, therefore, the

respondents unnecessarily delayed the sanction/ payment of his retiral benefits.

2.6 The petitioner has mainly sought two reliefs: (i) to refund the amount of Rs.17,766/- recovered from him and (ii) to pay interest at the rate of 12 percent for delay in payment of his retiral benefits i.e., pension, gratuity and leave encashment.

3. The main contentions on the basis of which the petitioner has claimed the reliefs are as under:

(i) His salary was fixed correctly and, therefore, no amount was recoverable from him. The respondents have wrongly recovered the amount of Rs.17,766/- under threat and pressure.

(ii) The respondents could not recover the amount due to so called wrong fixation of salary after the retirement of the petitioner. The respondents did not do any exercise in respect of wrong fixation of pay while the petitioner was in service.

(iii) There were no dues against the petitioner, a fact which was admitted by the respondents also but after a long period of time on 03.10.2012. Therefore, respondents are responsible for delay in payment of his retiral dues.

(iv) The petitioner was not paid his retiral dues on time without any fault of the petitioner and, therefore, he is entitled to get interest for delay in payment of his pension, gratuity and leave encashment.

4. Respondent Nos. 1, 2 and 4 have filed a joint written statement and opposed the claim petition. It has been contended by the respondents that the petitioner did not submit "no dues certificate" timely and, therefore, the payment of retiral dues got delayed. It was found by the Government on 03.10.2012 that there were no dues against the petitioner and after that the papers of retiral benefits were processed. It has also been contended in the W.S. that as per the direction of the Director, Accounts and Entitlement, Government of Uttarakhand vide

letter dated 31.12.2012 (Annexure: R- 9/1 annexed to the W.S.), the respondents did the exercise to re-fix the salary of the petitioner w.e.f. 01.07.1986 and as a result, the petitioner was informed on 26.02.2013 (Annexure: A 9) to deposit excess payment of Rs.17,766/- made to him. The petitioner deposited this amount on 21.03.2013 and after that necessary action was taken to sanction retiral benefits to the petitioner. It has also been contended that by depositing Rs.17,766/-, the petitioner had accepted the amount of excess salary paid to him and, therefore, the recovery was rightly made. It has further been stated that the petitioner is responsible for delay in payment of retiral dues and the respondents have not delayed the payment. The respondents have also contended that the matter of retiral benefits of the petitioner has been disposed of in accordance with the “उत्तराखण्ड पेंशन के मामलों का (प्रस्तुतीकरण, निस्तारण और विलम्ब का परिवर्जन) नियमावली, 2003 (hereinafter referred to as the “Rules of 2003”).

5. The petitioner has filed the rejoinder affidavit and same averments have been made and elaborated in it which were stated in the claim petition.
6. I have heard learned counsel for the petitioner and learned A.P.O. on behalf of respondents and also perused the record.
7. Learned counsel for the petitioner as well as Learned A.P.O. have argued the same points which have been mentioned in paragraph 3 and paragraph 4 of this order.
8. **There are following two issues to be decided in the case at hand:-**
 - (A) Whether the petitioner is entitled to get refund of “recovery” or not?**
 - (B) Whether the petitioner is entitled to get interest on payment of retiral dues for the period of delay or not?**

**WHETHER THE PETITIONER IS ENTITLED TO GET REFUND OF
“RECOVERY” OR NOT ?**

- 9.1 The petitioner has challenged the recovery of Rs.17,766/- on the ground that the respondents re-fixed his salary w.e.f. 01.07.1986 after more than 25 years in 2013 and that too after his retirement in 2012. It has been contended on behalf of the petitioner that there was no malafide, mistake, fault or misrepresentation on the part of the petitioner and, therefore, respondents could not recover the alleged amount of Rs.17,766/- from him. Though the petitioner has contended that his salary was correctly fixed in the past in 1986 yet any amount paid to him in excess because of mistake/ error on the part of the respondents, it cannot be recovered from the petitioner after re-fixing his salary after a period of more than 25 years when he had retired.
- 9.2 The petitioner has also contended that while re-fixing his salary w.e.f. 01.07.1986 to his disadvantage, he was not provided any opportunity of hearing and, therefore, there is gross violation of the principles of natural justice.
- 9.3 The alleged mistake in fixation of salary of the petitioner in 1986 was pointed out by the Director, Accounts and Entitlements, Government of Uttarakhand on 31.12.2012 (Annexure: R- 9/1 to the W.S.) and direction was issued to the petitioner on 26.02.2013 (Annexure: A 9) to deposit the excess payment of Rs.17,766/-. The office memorandum dated 26.02.2013 is reproduced below:-

“कार्यालय जिला उद्यान अधिकारी देहरादून

पत्रांक /स्था0/व्य0प0/2012-13/दिनांक देहरादून 26.2.2013

कार्यालय ज्ञाप

निदेशक लेखा एवं हकदारी लक्ष्मी रोड देहरादून के पत्रांक 40489/एम0आई0/यू.सी.आई./074/23356/सी.आर. दिनांक 31.12.2012 के क्रम में कार्यालय पत्रांक 4446 /स्था0व्य0प0 /2012-13 दिनांक 18.2.2013 के द्वारा श्री नियामत अली खां सेवा निवृत्त पौधालय विकास अधिकारी के वेतन भत्तों से दिनांक 1.7.86 से अधिक हुए भुगतान रू0 17766.00(सत्रह हजार सात सौ छियासठ) मात्र की वसूली

एक मुश्त नगद की जाती है। श्री खां सेवा निवृत्त पौधशाला विकास अधिकारी को निर्देशित किया जाता है कि उक्त धनराशि विभागीय लेखाशीर्षक 0401-फसल कृषि कर्म 00- 800 अन्य प्राप्तियां, 13 उद्यान विभाग की अन्य प्राप्तियां 00- नामे जमा कर चालान की मूल प्रति इस कार्यालय में जमा करें। ताकि आपके पेंशन प्रकरण का निस्तारण किया जा सक।

जिला उद्यान अधिकारी
देहरादून”

- 9.4 It has been contended on behalf of respondents that by depositing Rs.17,766/- on 21.03.2013, the petitioner had accepted the excess amount paid to him and, therefore, the recovery was rightly made.
- 9.5 The petitioner has contended that he had no alternative and, therefore, under compulsion, he had to deposit Rs.17,766/- in order to get his retiral benefits processed/ released. The petitioner’s plea is that he deposited the amount under pressure, duress and coercion though his pay was correctly fixed in 1986.
- 9.6 The petitioner had made representations through his Advocate to the authorities concerned for refund of the aforesaid amount recovered from him but the authorities did not take any action on his representations/ notices.
10. In the case of **State of Uttarakhand through Secretary, Revenue Department, Dehradun and Others Versus State Public Services Tribunal and Another, the Hon’ble High Court of Uttarakhand at Nainital in Writ Petition No. 82 of 2009 (S/B)**, in which the facts are similar with the facts in case at hand has held as under:-

“3. The facts leading to the filing of the writ petition is, that the respondent no.2 Ram Nath Sharma was promoted as a Registrar Kanoongo on 26th March, 1990 and, thereafter, promoted as an Assistant Record Officer on 26th September, 2001. The said respondent, eventually, retired from service on 31st July, 2005. During the course of his service, the said respondent was granted a second promotional pay scale in the pay scale of Rs.8000-13,500 w.e.f. 14th August, 2000 by an order of the Collector and, based on

the said order, the said respondent was receiving the promotional pay scale. On 28th March, 2003, the Additional Commissioner (Revenue) submitted a report indicating therein that the said respondent was wrongly fixed and that a sum of Rs.1,43,498/- had been paid in excess and was liable to be recovered from the said respondent. When the respondent 2 employee came to know about it, he made a representation which remained pending in the State Government and, eventually, the petitioner retired on 31st July, 2005. Since the post retiral benefits were not being released, the respondent employee gave an affidavit indicating that the excess amount may be recovered from his provident fund, gratuity, etc. It has come on record that the excess amount was recovered from his post retiral dues and the balance amount was paid to the respondent employee.

7. Having heard the learned counsel for the parties and having perused the affidavits filed in the writ petition, the court is of the opinion that the order of the Tribunal does not require any interference. We find that the second promotional pay scale was fixed by the Collector and that there was no misrepresentation or fraud played on the part of the employee. Consequently, we are of the opinion that since there was no fault on the part of the employee, the excess amount so paid to the employee could not be recovered.

11. The contention of the learned Additional Chief Standing Counsel for the petitioners that the respondent employee himself admitted and gave an affidavit that the excess amount may be recovered and, consequently, the petitioners were justified in recovering the amount is patently erroneous. The Tribunal has considered this aspect of the matter and found that the affidavit given by the employee was under coercion and had been given so that the employee could receive his post retiral dues. On the other hand, we find that the employee had also made a representation, which remained pending and the recovery of the amount has been made without giving any notice and without giving any opportunity of hearing to the employee. In view of the aforesaid, this court does not find any

error in the order passed by the Tribunal. The writ petition fails and is dismissed accordingly.”

11. **Hon’ble Supreme Court in State of Punjab and Others Vs. Rafiq Masih (White Washer) etc. 2014(2) UD, 576 has laid down the law in respect of situations where “recovery” is not permissible. It would be appropriate to reproduce the following paragraphs of this landmark judgment:-**

“1. Leave granted.

2. All the private respondents in the present bunch of cases, were given monetary benefits, which were in excess of their entitlement. These benefits flowed to them, consequent upon a mistake committed by the concerned competent authority, in determining the emoluments payable to them. The mistake could have occurred on account of a variety of reasons; including the grant of a status, which the concerned employee was not entitled to; or payment of salary in a higher scale, than in consonance of the right of the concerned employee; or because of a wrongful fixation of salary of the employee, consequent upon the upward revision of pay scales; or for having been granted allowances, for which the concerned employee was not authorized. The long and short of the matter is, that all the private respondents were beneficiaries of a mistake committed by the employer, and on account of the said unintentional mistake, employees were in receipt of monetary benefits, beyond their due.

3. Another essential factual component in this bunch of cases is, that the respondent-employees were not guilty of furnishing any incorrect information, which had led the concerned competent authority, to commit the mistake of making the higher payment to the employees. The payment of higher dues to the private respondents, in all these cases, was not on account of any misrepresentation made by them, nor was it on account of any fraud committed by them. Any participation of the private respondents, in the mistake committed by the employer, in extending the undeserved monetary benefits to the respondent-employees, is

totally ruled out. It would therefore not be incorrect to record, that the private respondents, were as innocent as their employers, in the wrongful determination of their inflated emoluments.

4. The issue that we have been required to adjudicate is, whether all the private respondents, against whom an order of recovery (of the excess amount) has been made, should be exempted in law, from the reimbursement of the same to the employer. For the applicability of the instant order, and the conclusions recorded by us hereinafter, the ingredients depicted in the foregoing two paragraphs are essentially indispensable.

.....

12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

12. After hearing both the parties; careful perusal of record; and legal position stated in preceding paragraphs, I reach the following conclusion:-

(i) Admittedly, there was no misrepresentation or fraud played on the part of the petitioner; the petitioner was not guilty of furnishing any incorrect information which led to excess payment; there was no fault of the petitioner for alleged wrong fixation of his salary; and participation of the petitioner in the mistake committed by the respondents in extending the undeserved monetary benefit to the petitioner is totally ruled out.

(ii) Admittedly, the respondents have re-fixed the salary of the petitioner w.e.f. 01.07.1986 in 2013 which is after more than 25 years and found out excess payment of Rs.17,766/-. This cannot sustain legally in view of the law laid down by the Apex Court that the recovery is impermissible when the excess payment has been made for a period in excess of five years, before the order of recovery is issued (Paragraph 12(iii) of the judgment of the Hon'ble Supreme Court quoted in paragraph 11 of this order).

(iii) Admittedly, the respondents have issued the recovery for their mistake regarding fixation of salary of the petitioner in 1986 on 26.02.2013 after the retirement of the petitioner on 31.01.2012. This is also not sustainable in view of the law laid down by the Apex Court that the recovery is impermissible from the retired employee (paragraph 12(ii) of the judgment of the Hon'ble Supreme Court quoted in paragraph 11 of this order).

(iv) The contention on behalf of respondents that by depositing Rs.17,766/-, the petitioner had accepted the amount of excess payment to him and, consequently, the respondents were justified in recovering the amount is patently erroneous. The perusal of record reveals that the petitioner had no alternative and under compulsion he deposited Rs.17,766/- so that he could receive his retiral dues. On the

other hand, the petitioner made representations to refund the amount and the recovery has been made without giving any notice and without giving any opportunity of hearing to the petitioner.

(v) It is clear from the facts of the case in hand that the respondents made it clear to the petitioner that unless the petitioner deposits the amount of "recovery", his retiral dues will not be processed/ sanctioned. The stand of the respondents was not at all justified.

(vi) In view of above, the recovery of Rs.17,766/- is not sustainable in the eye of law and the petitioner is entitled to get refund of the same.

WHETHER THE PETITIONER IS ENTITLED TO GET INTEREST ON PAYMENT OF RETIRAL DUES FOR THE PERIOD OF DELAY OR NOT?

- 13.1 The petitioner had retired on 31.01.2012. He was paid pension on 05.04.2013, Gratuity on 12.04.2013 and Leave Encashment on 30.05.2013. Thus, the petitioner was paid his retiral dues after 14-15 months of his retirement. The petitioner has contended that he had completed all the formalities on time to get his retiral dues. He also gave several representations (Annexure: A3, A4, A5, A6, A7, A10 and A11) to expedite payment of his retiral dues. The petitioner has claimed interest at the rate of 12 percent per annum for the period of delay in payment of retiral dues.
- 13.2 It has been contended on behalf of the respondents that the petitioner did not submit the "No Dues Certificate". The NOC was received by the State Government on 03.10.2012. After that, the papers of retiral benefits of the petitioner were processed by the respondents. It has also been contended by the respondents that due to wrong fixation of salary w.e.f. 01.07.1986, the petitioner was paid an excess amount of Rs.17,766/- and the petitioner was informed on 26.02.2013 to deposit this amount which he deposited on 21.03.2013 and after that the retiral benefits of the petitioner have been sanctioned/ released. The retiral benefits have been processed/ sanctioned in accordance with the

“Rules of 2003” and the petitioner is responsible for the delay for disposal of the matter of his retiral benefits.

14. In so far as matter related to recovery of Rs.17.766/- due to wrong fixation of salary of the petitioner w.e.f. 01.07.1986 is concerned, it has already been dealt with at length in paragraphs 9 to 12 of this order and it has been concluded that the “recovery” was illegal and the petitioner is entitled to get refund of the same. In view of this, the issue of so called wrong fixation of salary and recovery of excess payment cannot be accepted as the reason for delay in payment of retiral dues.
15. The respondents have contended that the matter of retiral benefits of the petitioner has been disposed of in accordance with the “Rules of 2003”. It would be appropriate at this stage to look at the relevant provisions of the “Rules of 2003” which are extracted below:-

“उत्तरांचल शासन
वित्त अनुभाग- 4
संख्या 1033/वित्त अनु0-4 / 2003
देहरादून, 10नवम्बर, 2003
अधिसूचना

संविधान के अनुच्छेद 309 के परन्तुक द्वारा प्रदत्त शक्ति का प्रयोग करके राज्यपाल निम्नलिखित नियमावली बनाते हैं, अर्थात्-

उत्तरांचल पेंशन के मामलों का (प्रस्तुतीकरण, निस्तारण और विलम्ब का परिवर्जन)नियमावली, 2003

1. (1).....
(2).....
2. जब तक कि विषय या संदर्भ में कोई बात प्रतिकूल न हो, इस नियमावली में:-
(क).....
(ख) “विलम्ब” का तात्पर्य समय- अनुसूची से अधिक अवधि से है
.....
(ट) “समय अनुसूची” का तात्पर्य अनुसूची के स्तम्भ -2 में विनिर्दिष्ट किसी कार्य के सम्बन्ध में स्तम्भ -3 में विनिर्दिष्ट समय से है ।
3. किन्हीं अन्य नियमों या आदेशों में अन्तर्दिष्ट किसी बात के प्रतिकूल होते हुए भी, यह नियमावली प्रभावी होगी ।
4. (1).....
(2).....
(3).....
(4) सम्यक रूप से पूर्ण पेंशन के कागज-पत्रों को सभी सुसंगत दस्तावेजों के साथ उसके संबंध में अनुसूची में विनिर्दिष्ट समय अनुसूची के भीतर पेंशन स्वीकृतकर्ता प्राधिकारी को भेजा जायेगा ।
(5) मुख्य नोडल अधिकारी/ नोडल अधिकारी और पेंशन स्वीकृतकर्ता प्राधिकारी पेंशन के मामलों का समय अनुसूची के भीतर निस्तारण सुनिश्चित करेगा ।

(6) पेंशन स्वीकृतकर्ता प्राधिकारी ऐसे अधिकारियों/ पदधारियों की नियमित मासिक बैठक आयोजित करेगा या आयोजित होने देगा, जो ऐसे मामलों में व्यवहार करते हों और ऐसे मामलों के परीक्षण और निस्तारण के लिए सभी समुचित कदम उठायेगा।

(7) सरकार में सम्बन्धित विभाग के यथास्थिति, प्रमुख सचिव या सचिव सभी पेंशन सम्बन्धी मामलों के संबंध में विभागाध्यक्ष / कार्यालयाध्यक्ष के कार्य का पर्यवेक्षण करेगा और समय- अनुसूची के भीतर ऐसे मामलों का परीक्षण और निस्तारण सुनिश्चित करायेगा।

अनुसूची

[नियम 2 (ख) और (ट) देखिये]

समय -अनुसूची

क्र० सं०	कार्य का विवरण	समय जिसके भीतर कार्य किया जाना है	कार्य के लिये उत्तरदायी व्यक्ति
1	2	3	4
1		
2.	सेवा पुस्तिका का पुनर्विलोकन और कमी यदि कोई हो, का पूरा किया जाना	सेवानिवृत्ति के आठ मास पूर्व	1- संबंधित अधिष्ठान लिपिक 2- कार्यालय का अधीक्षक 3- कार्यालयाध्यक्ष
3.	अदेयता प्रमाण- पत्र का(सेवा अवधि में) जारी किया जाना	सेवानिवृत्ति के दो मास पूर्व	कार्यालयाध्यक्ष
4.		
5.		
6.		
7.		
8.	पेंशन प्रपत्रों का अग्रसारण: क-सेवा पेंशन	सेवानिवृत्ति के पाँच मास पूर्व	कार्यालयाध्यक्ष/ विभागाध्यक्ष
9.		
10.		
11.		
12.		
13.	(पेंशन/ उपादान/ पेंशन के सारांशीकरण) के भुगतान आदेश का जारी किया जाना	सेवानिवृत्ति की संख्या तक या पर	1- लेखाकार 2-सहायक लेखाधिकारी 3-पेंशन भुगतान आदेश जारी करने वाला अधिकारी

आज्ञा से

इन्दु कुमार पाण्डे,

प्रमुख सचिव, वित्त ।”

16. “Rules of 2003” have been framed under proviso to Article 309 of the Constitution of India. Perusal of “Rules of 2003” reveals that “time period” within which various actions are to be taken for disposing of the pension matter has been fixed along with the person responsible to do that work in the “Schedule” of the Rules. According to the prescribed period in the schedule, any deficiency in the Service Book is

to be completed eight months before the retirement. "No Dues Certificate" is to be issued by the "Head of the Office" two months before the retirement. All other necessary actions to process the papers of the pension are to be taken by various authorities of the department and the pension, gratuity etc. are to be paid to the employee on the date of his retirement.

17. Respondents have contended that the delay in sanction of retiral benefits has taken place because the petitioner did not submit the "No Dues Certificate". The reason given by the respondents cannot be accepted in view of the "Rules of 2003". Perusal of the 'Schedule' of the said Rules reveals that issue of NOC two months before the retirement of the petitioner, was the responsibility of the "Head of the Office". "Rules of 2003" do not provide that the NOC was to be submitted by the petitioner. Perusal of record also reveals that the respondents wrote letters to various "Heads of the Offices" where the petitioner was posted from 1974 to 2009 to find out whether there are any dues against the petitioner. Ultimately, the Department found that there are no dues against the petitioner and the Director, Horticulture referred the matter to the Government on 07.07.2012/ 04.09.2012 to issue the NOC. The Government issued the NOC on 03.10.2012 (Annexure: R-9 to the written statement). It is surprising to note that the work related to issue of NOC was to be done by the "Head of the Office" according to the "Rules of 2003" but the matter was referred to the Head of the Department and to the Government unnecessarily which caused substantial delay. Admittedly, there were "no dues" against the petitioner and the NOC which was mandatory to be issued by the Department two months before the retirement of the petitioner was in fact issued after more than 8 months after the retirement of the petitioner by adopting a strange procedure. It is crystal clear that the respondents have processed the matter of retiral benefits of the petitioner in a careless manner and they have not at all followed the "Rules of 2003". It is also undoubtedly clear that the petitioner is not at all responsible for delay in the issue of the NOC. The respondent

department is fully responsible for the delay in getting information from the “Heads of the Offices” and issuing the NOC.

18. In view of analysis in preceding paragraphs of this order, I am of the view that in the interest of justice, the petitioner is entitled to get interest on retiral benefits for the period of delay.
19. Learned A.P.O. was asked whether there are any rules/administrative orders in respect of situations where “interest” is payable for delay in payment of retiral benefits, etc. Learned A.P.O. stated that the Government of Uttarakhand has issued a Government Order (G.O.) on 10.08.2004 dealing with “सेवानैवृत्तिक लाभ का समय से भुगतान, न्यायिक/विभागीय कार्यवाही की समाप्ति पर ग्रेच्युटी के विलम्ब से अदायगी के भुगतान पर ब्याज का भुगतान।” The said G.O. is reproduced below:

“संख्या-979/XXVII(3)पे/2004

प्रेषक,

इन्दु कुमार पाण्डे
प्रमुख सचिव
उत्तरांचल शासन।

सेवा में,

समस्त विभागाध्यक्ष एवं
प्रमुख कार्यालयध्यक्ष
उत्तरांचल।

वित्त अनुभाग-3

देहरादून: दिनांक 10 अगस्त, 2004

विषय: सेवानैवृत्तिक लाभ का समय से भुगतान, न्यायिक/विभागीय कार्यवाही की समाप्ति पर ग्रेच्युटी के विलम्ब से अदायगी के भुगतान पर ब्याज का भुगतान।

महोदय,

आप अवगत है कि राज्य सरकार द्वारा पेन्शनरो/पारिवारिक पेन्शनरों को अनुमन्य देयों का भुगतान समय से करने के सम्बन्ध में समय-समय पर विस्तृत आदेश निर्गत किए गये हैं। प्रशासनिक कारणों से “ग्रेच्युटी” की अनुमन्य धनराशि के समय से भुगतान न होने पर भुगतान अनुमन्य होने की तिथि से तीन माह की अवधि के बाद ब्याज दिये जाने की व्यवस्था की गई है। इस सन्दर्भ में शासनादेश संख्या-सा-3-684/दस-971/80 दिनांक 29.04.1983, शासनादेश संख्या- सा-3-1776/दस-971/80 दिनांक 30.11.1984 शासनादेश संख्या -सा-3-2112/दस-971/80 दिनांक 06.12.1994 एवं अर्दशासकीय पत्र संख्या- सा-3-902/दस-99-303/99 दिनांक 28-09-1999 द्वारा निर्देश निर्गत किए गये हैं।

2. शासन के संज्ञान में यह बात आई है कि प्रायः कर्मचारियों द्वारा ग्रैच्युटी के भुगतान में विलम्ब होने पर चक्रवृद्धि ब्याज दिये जाने की मांग की जाती है। उक्त के परिप्रेक्ष्य में स्थिति को स्पष्ट करते हुए मुझे यह कहने का निदेश हुआ है कि ग्रैच्युटी पर ब्याज के भुगतान की दर वही रखी गई है जो संगत अवधि में सामान्य भविष्य निधि खाते में जमा धनराशि पर ब्याज की हो, किन्तु चक्रवृद्धि ब्याज दिए जाने का कोई प्राविधान नहीं है। अतः ग्रैच्युटी पर तीन माह से अधिक विलम्ब पर भुगतान की अवधि में नियमानुसार साधारण ब्याज का ही भुगतान अनुमन्य होगा और उसकी दर संगत अवधि में सामान्य भविष्य निधि खाते में जमा धनराशि पर अनुमन्य ब्याज की दर के समान होगी।

3. (1)

(2)

(3) सेवानिवृत्त कर्मचारी के सेवानैवृत्तिक लाभों के भुगतानादेश सेवानिवृत्ति की तिथि को ही निर्गत किए जाने के प्राविधान है तथा इस सम्बन्ध में समय-समय पर शासनादेश भी निर्गत किए गये हैं। सेवानैवृत्तिक लाभों को समय से भुगतान करने के सन्दर्भ में भारतीय संविधान के अनुच्छेद 309 के अधीन उत्तरांचल पेन्शन के मामलों का (प्रस्तुतीकरण, निस्तारण और विलम्ब का परिवर्जन) उत्तरांचल नियमावली, 2003 अधिसूचना संख्या-1033/वित्त अनु0-4/2003, दिनांक 10 नवम्बर, 2003 को निर्गत की जा चुकी है। उक्त नियमावली में पेनशन प्रकरणों के निस्तारण हेतु समय सारणी भी निर्धारित है तथा विलम्ब के लिए दोषी कार्मिकों को विरुद्ध दण्ड दिए जाने की भी व्यवस्था है। यह पुनः स्पष्ट किया जाता है कि उपर्युक्त नियमावली का कड़ाई से अनुपालन सुनिश्चित करें तथा कर्मचारी को सेवानिवृत्ति की तिथि को सेवानैवृत्तिक लाभों के भुगतानादेश निर्गत किए जाय तथा यदि पेन्शन निर्धारण में विलम्ब की सम्भावना हो तो उक्त स्थिति में अनन्तिम पेन्शन का भुगतान किया जाय। यदि सेवानैवृत्तिक लाभों के भुगतानादेश सम्बन्धित कार्मिक की सेवानिवृत्ति की तिथि को नहीं हो सके तो उसकी जानकारी भुगतानादेश निर्गत न होने के कारणों सहित उच्चतर अधिकारी को दिया जाना अपेक्षित होगा, जो पेन्शन प्रकरण का सीधे निस्तारण सुनिश्चित करेंगे।

4. यदि प्रशासनिक कारणों से ग्रैच्युटी का भुगतान निर्धारित तिथि से तीन माह बाद किया जाता है तो भुगतान अनुमन्य होने की तिथि से तीन माह से अवधि के बाद से निर्धारित दर पर ब्याज दिया जायेगा। यदि यह निर्णीत हो जाता है कि ग्रैच्युटी का भुगतान किया जाना है तो इसका भुगतान तुरन्त कर दिया जाय और ब्याज की मद पर शीघ्र निर्णय लेकर कार्यवाही की जाय। ऐसा करने से ब्याज की मद में दी जाने वाली धनराशि में बचत की जा सकेगी। परन्तु यह ब्याज केवल उन्हीं परिस्थितियों में दिया जायेगा जहाँ यह स्पष्ट रूप से सिद्ध हो कि ग्रैच्युटी के भुगतान में विलम्ब प्रशासनिक त्रुटि के कारण अथवा उन कारणों से हुआ है जो सम्बन्धित सरकारी कर्मचारी के नियंत्रण के बाहर हो। ब्याज के भुगतान के प्रत्येक मामले में शासन के प्रशासनिक विभाग द्वारा विचार किया जायेगा और ब्याज का भुगतान शासन द्वारा ही प्राधिकृत किया जायेगा। जिन मामलों में ब्याज का भुगतान किया जाना होगा उन सभी मामलों में विलम्ब के लिए दोषी अधिकारी/कर्मचारी के विरुद्ध अनुशासनिक कार्यवाही भी की जायेगी तथा ब्याज के रूप में भुगतान की गई धनराशि की वसूली दोषी व्यक्तियों से उनके वेतन के अनुपात में की जाये।

5.

कृपया उपरोक्त प्रस्तारों में स्पष्ट की गयी स्थिति का कड़ाई से अनुपालन सुनिश्चित किया जाय।

भवदीय

इन्दु कुमार पाण्डे
प्रमुख सचिव, वित्त”

The perusal of above G.O. reveals the following:-

- (i) If the payment of gratuity is delayed due to administrative reasons or reasons beyond the control of the employee, he will be paid interest on delayed payment of the gratuity for the delay beyond three months from the date of his retirement.
 - (ii) The interest for delay in payment of gratuity (for the delay beyond three months from the date of retirement) will be paid at the same rate at which the interest is payable on General Provident Fund during that period.
 - (iii) The interest for delay when permissible is payable automatically irrespective of claiming it by the employee.
20. In the present case, the amount of gratuity was paid to the petitioner (who retired on 31.01.2012) on 12.04.2013. The gratuity could not be paid on time due to administrative fault and the petitioner is not responsible for the same. Thus, the delay in payment of gratuity is not attributable to the petitioner. The case of the petitioner is squarely covered by G.O. dated 10.08.2004 reproduced in paragraph 19 of this order and, therefore, the petitioner is entitled for simple interest from 01.05.2012 (three months after the retirement) to 12.04.2013 at the rate at which interest is payable on General Provident Fund during that period on the amount of gratuity paid to the petitioner on 12.04.2013.
21. In so far as delay in payment of arrears of pension and the amount of leave encashment is concerned, learned A.P.O. has argued that unlike gratuity, there is no Rule or Government Order for payment of interest on arrears of pension and on the amount of leave encashment. In the case **S.K.Dua vs. State of Haryana and Another (2008)1 Supreme Court Cases (L&S) 563**, the Hon'ble Supreme Court has held that even in the absence of specific Rule or order for providing interest, an employee can claim interest on the basis of Articles 14,19 and 21 of the

Constitution of India as retirement benefits are not a bounty. The relevant paragraphs 13 and 14 of the judgment are reproduced below:

“13. It is not in dispute by and between the parties that the appellant retired from service on 30.06.1998. 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. 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.**”*

- 22 In the case of **D.D. Tiwari (D) Versus Uttar Haryana Bijli Vitran Nigam Ltd. & Others Civil Appeal No. 7113 of 2014 (arising out of SLP (C) no.**

25015 of 2011), Hon'ble Supreme Court has held in paragraph 3 and 4 as under:-

*“3. 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, 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.....”*

“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. ”

- 23 In the present case, the pension, gratuity and leave encashment which all are retiral benefits, were due to be paid to the petitioner at the time of his retirement on 31.01.2012. As has been mentioned in detail in preceding paragraphs of this order, the delay in payment of retiral benefits is not attributable to the petitioner. There is no fault of the petitioner for delay. Thus, it is fair and just to pay interest for the delay in payment of retiral benefits related to leave encashment and pension also to the petitioner. Therefore, in the circumstances of the case in hand, it is fully justified to give interest to the petitioner on equitable grounds as respondents unjustifiably withheld the leave encashment and pension of the petitioner without any fault of the petitioner. In so far as rate of interest on period of delay for payment, the scheme of G.O. dated 10.08.2004 (reproduced in paragraph 19 of this order) with regard to gratuity can be applied in respect of pension and leave encashment also. Thus, I am of the opinion that the petitioner should be paid simple interest on monthly pension and on the amount of leave encashment from 01.05.2012 (three months after the retirement) till the date of payment at the rate at which interest is payable on General Provident Fund during that period.
24. For the reasons stated in preceding paragraphs, the claim petition deserves to be allowed.

ORDER

The claim petition is hereby allowed. Respondents are directed to refund the amount of Rs.17,766/- recovered from the petitioner. Respondents are also directed to pay to the petitioner (i) interest on monthly pension from 01.05.2012 till the date of actual payment; (ii) interest on gratuity from 01.05.2012 till the date of actual payment; and (iii) interest on the amount of leave encashment from 01.05.2012 till the date of actual payment. The rate of interest shall be the simple rate of interest payable on General Provident Fund during the relevant period. The petitioner will be paid recovered amount of Rs.17,766/- and the amount of interest as above within a period of three months from the date of copy of this order is received by the respondents. No order as to costs.

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

DATE: MARCH 02, 2017
DEHRADUN.

VM