

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

Present: Hon'ble Mr. Ram Singh

----- Vice Chairman (J)

Hon'ble Mr. D.K.Kotia

-----Vice Chairman (A)

**CLAIM PETITION NO. 38/DB/2016**

Vinod Kumar, S/o Sri Inder Pal, Attendant, Department of Trade Tax  
Uttarakhand, Dehradun Region, Dehradun, R/o 99, Sarthi Vihar, Haridwar Road,  
Dehradun.

.....Petitioner

**VERSUS**

1. State of Uttarakhand through its Principal Secretary, Department of Finance,  
Subhash Road, Dehradun.
2. Joint Commissioner (Executive) Trade Tax, Dehradun Region, 23 Luxmi Road,  
Dehradun.
3. Deputy Commissioner (Tax Assessment)-1, Commercial Tax & Drawing &  
Disbursing Officer, Haridwar.

.....Respondents.

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

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

**JUDGMENT**

**DATED: AUGUST 16, 2017**

**(HON'BLE MR. D.K.KOTIA, VICE CHAIRMAN (A))**

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

*“(a) The respondents be kindly ordered and directed to stop one increment of the petitioner due one 01.03.2005 instead of 01-01-2006 and suitably modify the impugned order dated 24.02.2010, refix his pay in the appropriate Pay Band and Grade Pay allowed pursuant to the 6<sup>th</sup> Pay Commission and consequently pay the difference of salary paid and payment together with interest @ 12% per annum from the date of accrual till the actual date of payment to the petitioner;*

*(b) Any other relief, in addition to or in modification of above, as this Hon’ble Tribunal deems fit and proper, be kindly granted to the petitioner against the respondents; and*

*(c) Rs. 15,000/- as costs of this claim petition be kindly awarded to the petitioner against the respondents.”*

2. The petitioner is a Class IV employee in the department of Trade Tax, Government of Uttarakhand. A departmental inquiry was conducted against the petitioner and in this disciplinary proceedings, the punishments of censure entry and withholding of two increments with cumulative effect were imposed upon him on 30.07.2004 (Annexure: A2). The petitioner filed an Appeal against the punishment order and the Appellate Authority modified the punishment and instead of withholding of two increments with cumulative effect, withholding of only one increment with cumulative effect was imposed upon him vide order dated 20.12.2004 (Annexure: A3). The punishment imposed upon the petitioner was, therefore, reduced by the Appellate Authority. The petitioner also filed Revision as he was not satisfied even by reduction in the punishment as a result of decision in his Appeal. The Revisional Authority in his order confirmed the decision of the Appellate Authority and disposed of the Revision accordingly (Annexure: A4). Therefore, withholding of one increment with cumulative effect as a punishment (in addition to the censure

entry) attained the finality. The petitioner had also accepted the punishment.

3. The contention of the petitioner in the claim petition is that the respondents should have withheld his one increment which fell due on 01.03.2005 immediately after the order of the Appellate Authority dated 20.12.2004 (which was confirmed by the Revisional Authority) but while fixing the pay of the petitioner on 24.02.2010 (Annexure- R1 to the written statement), the petitioner has been granted increment on 01.03.2005 and his next increment which became due on 01.01.2006 has been withheld by the respondents. The petitioner has submitted that as a result of withholding of one increment on 01.01.2006 in place of withholding of the increment on 01.03.2005, he has been put to disadvantage when his pay was fixed after the implementation of the 6<sup>th</sup> Pay Commission w.e.f. 01.01.2006. Prayer of the petitioner in the claim petition is that as a result of punishment, his one increment which became due (immediately after the punishment) on 01.03.2005 should have been withheld and withholding of next increment which became due on 01.01.2006 is wrong, unfair and unjust on the part of the respondents and, therefore, his pay should be refixed by correcting the date of withholding of one increment.

4. Respondents No. 1 & 2 opposed the claim petition and have stated in their very brief and cryptic joint written statement that only one increment of the petitioner has been withheld and, therefore, he is not entitled for the relief sought by him.

5. The petitioner has also filed rejoinder affidavit and the same averments have been made and elaborated in it which were stated in the claim petition.

6. We have heard learned counsel for the petitioner and learned A.P.O. for the respondents and have also perused the record.

7. Learned counsel for the petitioner has argued that a punishment of withholding of one increment was imposed upon the petitioner by the Appellate Authority and the Revisional Authority in his order confirmed the order of the Appellate Authority and decided not to interfere in the order of the Appellate Authority. Thus, the punishment imposed upon the petitioner for withholding of one increment vide order dated 20.12.2004 attained the finality. Learned counsel for the petitioner has further contended that instead of withholding the increment which became due on 01.01.2006, increment which became due on 01.03.2005 should have been withheld by the respondents. By this wrong withholding of the increment, the petitioner has been put to loss at the time of fixation of his pay while implementing the report of the 6<sup>th</sup> Pay Commission. Learned A.P.O. in his reply has mentioned that only one increment which became due on 01.01.2006 has been withheld and the punishment was also admittedly for withholding of one increment. Therefore, there is no grievance of the petitioner and he is not entitled for any relief.

8. It is admitted to both the parties that the punishment of withholding of one increment was imposed upon the petitioner. It is revealed from the record that this punishment of withholding of one increment was given on 20.12.2004 and, therefore, the next increment which became due on 01.03.2005 should have been withheld. The respondents did not withhold the increment which became due on 01.03.2005 and, in fact, this increment was allowed to the petitioner. The respondents, thereafter, withheld

the increment which became due on 01.01.2006. Neither in the written statement nor at the time of argument, the respondents have explained as to why the increment which became due on 01.03.2005 immediately after the punishment was allowed and why it was not withheld. It has also not been explained by the respondents that why the increment which became due on 01.01.2006 was withheld in place of increment which became due on 01.03.2005. Respondents have filed Annexure: R-1 to the written statement which is an order in respect of fixation of pay of the petitioner as a result of the implementation of the 6<sup>th</sup> Pay Commission. This pay fixation order shows that the petitioner was allowed increment on 01.03.2005 and his increment which became due on 01.01.2006 was withheld. In this pay fixation order, there is a note at the end of the order which reads as under:

“नोट:- ज्वाइण्ट कमिश्नर (कार्य0) वा0क0 देहरादून द्वारा पत्रांक 1498/30.07.04 से दो वार्षिक वेतन वृद्धि स्थायी रूप से रोकी गयी थी। इसके पश्चात एडिशनल कमिश्नर ग्रेड-1 व्यापार कर जोन मु0दे0दून के आदेश संख्या- 136/दिनांक 29.12.2004 द्वारा दो वेतन वृद्धियों में से उक्त आदेश की तिथि से एक वेतन वृद्धि को रोकने का निर्णय शिथिल किया गया है, चूंकि 01.03.05 को वार्षिक वेतन वृद्धि दे दी गयी थी इसलिये दिनांक 01.01.06 को दी जाने वाली वेतनवृद्धि नहीं लगायी गयी है।”

It is, therefore, clear that the only explanation of the respondents is that since the petitioner was given increment on 01.03.2005, the next increment which became due on 01.01.2006 was withheld.

9. In the light of above discussion, we are of the view that as an effect of the punishment order dated 20.12.2004, the increment which became due on 01.03.2005 should have been withheld and it is quite unfair and unjust to withhold the next

increment which became due on 01.01.2006 as a result of which the fixation of pay under 6<sup>th</sup> Pay Commission was adversely affected. Learned A.P.O. has not been able to demonstrate the reason behind withholding the increment which became due on 01.01.2006 in place of increment which became due on 01.03.2005. We, therefore, in the interest of justice, find it appropriate to direct the respondents to refix the pay of the petitioner withholding the increment which became due on 01.03.2005 instead of withholding the increment which became due on 01.01.2006.

10. For the reasons stated above, the petition deserves to be allowed.

**ORDER**

The petition is hereby allowed. The respondents are directed to withhold the increment which became due on 01.03.2005 and allow the increment which became due on 01.01.2006 and refix the pay of the petitioner in accordance with rules and government orders within a period of three months from the date of this order. As a result of refixation of pay, the amount of arrears, if any, which becomes due to the petitioner will also be paid within this period of three months. No order as to costs.

**(RAM SINGH)**  
VICE CHAIRMAN (J)

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

*DATE: AUGUST 16, 2017*  
*DEHRADUN*