

**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. 31/DB/2015

&

CLAIM PETITION NO. 32/DB/2015

1. Dr. Prabhu Dutt Sharma S/o Sh. B.D.Sharma aged about 68 years, Retd. Dy. Director, Ayurvedic and Unani Services, Uttarakhand, Dehradun R/o E-373, Subhashnagar, Roorkee, District Haridwar, Uttarakhand.
2. Dr. Ishwari Prasad Sharma, S/o Rudra Pratap Sharma aged about 68 years, Retd. Dy. Director, Ayurvedic and Unani Services, Uttarakhand, Dehradun R/o Lane No. 2, Pushpkunj Colony, Mothrowala Road, Dehradun, Uttarakhand.

.....Petitioners

Versus

1. State of Uttarakhand through Principal Secretary, (Medical and Medical Education), Government of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Director General Ayurvedic and Unani Services, Uttarakhand, Dehradun.

.....Respondents.

Present: Sri L.K.Maithani, 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. Claim petition No. 31/DB/2015 and 32/DB/2015 connected with each other. The petitions have arisen out of same cause of action

and the facts of each case are similar to each other and there is a common point of law involved and, therefore, these petitions are being disposed of by a common judgment.

2. The petitioners have sought the following (common) relief:-
 - “(i) To issue an order or direction declaring that the petitioner is entitled for the benefits of 3rd financial up gradation under the Assured Career Progression Scheme.
 - (ii) To issue an order or direction to the concerned respondent to grant the benefit of 3rd ACP to the petitioner w.e.f. 01.01.2006 which is admissible to the petitioner after completion of 26 years satisfactory service under the provision of G.O. dated 08.03.2011, with all consequential benefits and further grant interest @ 12% on the amount to be paid to the petitioner from the date of entitlement of benefit.
 - (iii) To issue any other order or direction which this Hon’ble Tribunal may deem fit and proper in the circumstances of the case.
 - (iv) To award the cost of the case”.
3. The petitioners have worked as Medical Officers in the Department of Ayurvedic and Unani Services, Government of Uttarakhand. The petitioners, Dr. Ishwari Prasad Sharma (Claim Petition NO. 31 (DB) 2015) and Dr. Prabhu Dutt Sharma (Claim Petition No. 32 (DB) 2015) retired from the post of officiating Deputy Director on 28.02.2006 and 31.07.2007 respectively.
4. The State Government vide G.O. dated 08.03.2011 (Annexure: A 2) introduced a scheme of “Assured Career Progression” (ACP) which allowed three promotional pay scales after completion of 10, 18 and 26 years of service w.e.f. 01.01.2006.
5. The paragraph 5 on page No. 9 of the G.O. dated 08.03.2011, which prescribes the procedure to sanction the promotional pay scale, reads as under:-

“5—(1) वित्तीय स्तरानुयन की अनुमन्यता के प्रकरणों पर विचार किये जाने हेतु प्रत्येक विभाग में एक स्क्रीनिंग कमेटी का गठन किया जायेगा। उक्त स्क्रीनिंग कमेटी में अध्यक्ष एवं दो सदस्य होंगे ।.....

(2) स्क्रीनिंग कमेटी की केस-टू केस प्राप्त होने वाले प्रस्तावों पर बैठक आयोजित कर विचार किया जायेगा।

(3) उक्त व्यवस्था के अन्तर्गत वित्तीय स्तरान्णयन का लाभ संबंधित नियुक्ति प्राधिकारी / स्वीकर्ता अधिकारी द्वारा विभाग की स्क्रीनिंग कमेटी की संस्तुतियों के आधार पर स्वीकृत किया जायेगा।”

6. In pursuance to the G.O. dated 08.03.2011, the respondent No.2 sent a proposal to the respondent NO.1 for granting the benefit of the ACP scheme to various officers on 25.10.2011 (Annexure: A 1). In this proposal names of both the petitioners were also included for granting 3rd Promotional pay scale w.e.f. 01.01.2006 as they had completed 26 years of service.
7. Thereafter, a screening committee was constituted in accordance with Para 5 of the G.O. dated 08.03.2011 which submitted its report to respondent No.1 on 18.07.2012 (Annexure: A 4). The screening committee in its report found both the petitioners eligible for the benefit of ACP but referred the matter to the Government for decision. The screening committee in paragraphs 41 and 42 of its report recorded the following in respect of the petitioners:-

“41. डॉ ईश्वरी दत्त शर्मा को 01.01.2006 को तृतीय वित्तीय स्तरान्णयन अनुमन्य का प्रस्ताव चयन समिति के सम्मुख रखा गया। चयन समिति द्वारा 10 वर्षों की वार्षिक प्रविष्टियां वर्ष 1996-97 से 2005-06 को अवलोकित किया गया। अधिकांश वार्षिक चरित्र पंजिकायें प्रतिवेदक स्तर (एकल) से प्रदत्त की गयी है एवं छायाप्रति प्रमाणित है। वर्ष 1996-97 से 2002-03 तक की वार्षिक चरित्र प्रविष्टियां संयुक्त रूप से अंकित की गई है। चयन समिति द्वारा यह विचार किया गया कि डा0 शर्मा के तृतीय वित्तीय स्तरान्णयन के संबंध में समिति द्वारा विचार किया जाना संभव नहीं है। चरित्र-प्रविष्टियां संयुक्त एवं एकल रूप से लिखी गई है। यद्यपि अभिलेखों में कोई प्रतिकूल तथ्य नहीं है। डा0 शर्मा तृतीय वित्तीय स्तरान्णयन के लिए पात्र तो है किन्तु प्रकरण पर विचार हेतु शासन को संदर्भित किये जाने की संस्तुति की जाती है।

42- डा0 पी0डी0शर्मा को 01.01.2006 को तृतीय वित्तीय स्तरान्णयन अनुमन्य का प्रस्ताव चयन समिति के सम्मुख रखा गया। चयन समिति द्वारा 10 वर्षों की वार्षिक प्रविष्टियां वर्ष 1996-97 से 2005-06 को अवलोकित किया गया। अधिकांश वार्षिक चरित्र पंजिकायें प्रतिवेदन स्तर (एकल) से प्रदत्त की गयी

है एवं छायाप्रति प्रमाणित है। वर्ष 1997-98 से 2001-02 तक की वार्षिक चरित्र प्रविष्टियां संयुक्त रूप से अंकित की गई हैं। चयन समिति द्वारा यह विचार किया गया कि डा0 शर्मा के तृतीय वित्तीय स्तरोनयन के संबंध में समिति द्वारा विचार किया जाना संभव नहीं है। चरित्र –प्रविष्टियां संयुक्त एवं एकल रूप से लिखी गई है। यद्यपि अभिलेखां में कोई प्रतिकूल तथ्य नहीं है। डा0 शर्मा तृतीय वित्तीय स्तरोनयन के लिए पात्र तो है किन्तु प्रकरण पर विचार हेतु शासन को संदर्भित किये जाने की संस्तुति की जाती है।”

8. Thereafter, vide G.O. dated 30.10.2012 (Annexure: A 3), the G.O. dated 08.03.2011 was amended and the cut-off date to allow the benefit under the ACP scheme was changed from 01.01.2006 (under the G.O. of 08.03.2011) to 01.09.2008. The implication of this amendment is that the persons who retired before 01.09.2008 were no longer remained eligible for the benefit of the ACP scheme and only those who are in service on/ after 01.09.2008, are eligible to get the benefit from 01.09.2008.
9. The contention of the petitioners is that vide office order dated 11.07.2014 (Annexure: A 5), many persons who retired between 01.01.006 and 01.09.2008 were granted the benefit of the ACP scheme with effect from 01.01.2006 on the basis of the report of the Screening Committee dated 18.07.2012 and the petitioners were left out. The petitioners have mentioned the names of Dr. Yatendra Singh Malik, Dr. Ramesh Chandra Dimri, Dr. Girish Chandra Maithani and Dr. Kamal Singh Rawat, who had retired between 2006-2008, but they were granted the benefit of the ACP scheme vide office order dated 11.07.2014 w.e.f. 01.01.2006 in spite of amendment in the G.O. dated 08.03.2011 on 30.10.2012. The grievance of the petitioners is that the benefit of the ACP scheme has been granted to other similarly situated persons and, therefore, it is a discriminatory act on the part of the respondents which is against the law and the principles of natural justice.
10. The petitioners also submitted their representations on 20.04.2015 (Annexure: A 7) in which they had mainly raised the issue of granting of the ACP benefit w.e.f. 01.01.2006 to persons who retired between 2006-2008 and who are similarly situated. When

petitioners' representation remained undisposed of, they filed the present claim petitions. However, during the pendency of the claim petitions, a letter was sent by the Joint Secretary of the Department to the Director, Ayurvedic and Unani Services on 18.09.2015 (Annexure: A 8) that according to the G.O. dated 30.10.2012 (Annexure: A 3), the benefit of the ACP cannot be given to the petitioners from the date prior to 01.09.2008. The aforesaid letter is reproduced below:-

“संख्या-2271 /XXXX/2015-108/2011 T.C.-1

प्रेषक,

राजेन्द्र सिंह,
संयुक्त सचिव,
उत्तराखण्ड शासन।

सेवा में,

निदेशक,
आयुर्वेदिक एवं यूनानी सेवायें,
उत्तराखण्ड, देहरादून।

आयुष एवं आयुष शिक्षा अनुभाग
2015

देहरादून: दिनांक 18 सितम्बर,

विषय- डा० प्रभुदत्त शर्मा एवं डा० ईश्वरी प्रसाद शर्मा, सेवानिवृत्त उपनिदेशक, आयुर्वेदिक एवं यूनानी सेवायें, निदेशालय, उत्तराखण्ड देहरादून को तृतीय वित्तीय स्तरान्णयन अनुमन्य कराये जाने के सम्बन्ध में।

महोदय,

उपर्युक्त विषयक अपने पत्र संख्या -8519/3ए-38/2015-16/अधि० दिनांक 26.08.2015 एवं पत्र संख्या-8520/3ए-38/2015-16/अधि० दिनांक 26.08.2015 का सन्दर्भ ग्रहण करने का कष्ट करें।

2- उक्त के सम्बन्ध में स्पष्ट किया जाता है कि शासनादेश संख्या-313/XXVII(7)40(IX)/2011 दिनांक 30.10.2012 के पश्चात दिनांक 01.09.2008 से पूर्व की तिथि से ए०सी०पी० का लाभ अनुमन्य नहीं किया जायेगा। अतः इस सम्बन्ध में मुझे यह कहने का निदेश हुआ है कि डा० प्रभुदत्त शर्मा एवं डा० ईश्वरी प्रसाद शर्मा को दिनांक 01.01.2006 से तृतीय वित्तीय स्तरान्णयन का लाभ नहीं दिया जा सकता है।

भवदीय

(राजेन्द्र सिंह)
संयुक्त सचिव”

11. Respondent Nos. 1 and 2 have opposed the claim petitions and it has been stated in their joint written statements that after the amendment vide G.O. dated 30.10.2012, the scheme of ACP is effective from 01.09.2008 and since the petitioners had retired prior to 01.09.2008, they cannot be covered under the ACP scheme. It has further been contended that other similarly situated persons, who have been mentioned by the petitioners in the claim petitions, have been sanctioned the benefit of the ACP scheme on 11.07.2014 in continuation of the G.O. dated 01.07.2013 (Annexure: A 3). The representations of the petitioners dated 20.04.2015 (Annexure: A 7) have been decided by the letter of the Government dated 18.09.2015 (Annexure: A 8).
12. The petitioners have also filed the rejoinder affidavits and same averments have been made and elaborated in rejoinder affidavits which were stated in the claim petitions.
13. We have heard learned counsel for the petitioners as well as learned A.P.O. on behalf of the respondents and also perused the record.
14. Learned Counsel for the petitioners and learned A.P.O. in their arguments have raised the same points which have been stated in claim petitions and written statements.
15. After hearing both the parties and perusing the record, we find that it would be appropriate to send back the matter to the respondent No. 1 due to following reasons:-
 - (i) The Screening Committee had referred the matters of the petitioners to respondent No. 1 on 18.07.2012 (Annexure: A 4) for a decision. Learned A.P.O. could not bring on record whether respondent No.1 decided the issue referred by the Screening Committee in respect of the petitioners and any order was passed by the respondent No.1 in this regard.
 - (ii) Vide letter dated 18.09.2015 (Annexure: A 8), it has been communicated by the Government to the Director, Ayurvedic and Unani Services that the petitioners could not

be granted the benefit of the ACP because after the amendment in the scheme, the ACP came into force from 01.09.2008 and the petitioners had retired prior to 01.09.2008. In the cases in hand, the proposal for granting the benefit of the ACP (including petitioners) was sent by the Directorate to the Government on 25.10.11, the Screening Committee was constituted and its report was submitted to respondent No. 1 on 18.07.2012. Learned A.P.O. could not explain that whether a right has accrued during the intervening period from the date of G.O. dated 08.03.2011 to the date of amended G.O. dated 30.10.2012 and what would be the fate of pending matters between the period of these two G.O.s.

- (iii) Respondents could not show that out of the same list in the report of the Screening Committee (dated 18.07.2012), why some persons were granted benefit of the ACP by the office order dated 11.07.2014 w.e.f. 01.01.2006 in spite of the amendment in the ACP scheme on 30.10.2012 by which the benefit could be given w.e.f. 01.09.2008 only.
- (iv) Ld. A.P.O. could also not explain why vide office order dated 11.07.2014, the benefit of the ACP scheme was also granted to those persons who retired before 01.09.2008 in spite of amendment in the ACP scheme on 30.10.2012.
- (v) The G.O. dated 01.07.2013 (Annexure: 3) provides that “यदि किसी कार्मिक के संबंध में यह तथ्य संज्ञान में आता है कि उक्त तिथि 30 अक्टूबर, 2012 तक उक्त शासनादेश दिनांक 8 मार्च, 2011 के कम में पूर्व की स्थिति के आधार पर ए0सी0पी0 का लाभ स्वीकृत किया जा चुका है तो ऐसे प्रकरणों को पुनराद्घाटित नहीं किया जायेगा ।” Respondents have not explained that how the benefit of the ACP can be given w.e.f. 01.01.2006 on the basis of the aforesaid clause of the G.O. dated 01.07.2013 on 11.07.2014.
- (vi) Neither the written statement submitted by the respondents nor Learned A.P.O. at the time of arguments

explained as to how the similarly situated persons can be given the ACP benefits w.e.f. 01.01.2006 leaving aside the petitioners.

16. In view of above, the matter is sent back to respondent NO.1 to decide the matter afresh in accordance with the Rules and also on the basis of the observations made in this order.

ORDER

The matter is sent back to the Appointing/ Sanctioning Authority i.e. respondent No.1 to consider the representations of the petitioners in claim petition No. 31/ DB/2015 and No. 32/DB/2015 dated 20.04.2015 (Annexure: A 7) afresh in accordance with Rules, Government Orders and also the observations made in this order and pass a reasoned order within a period of three months from the date of presentation of the copy of this order before respondent No.1. No order as to costs.

The copy of the order may be placed on files of both the claim petitions.

(RAM SINGH)
VICE CHAIRMAN (J)

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

DATE: AUGUST 16, 2017
DEHRADUN

VM