

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

Present : Hon'ble Mr. Ram Singh

----- Vice Chairman (J)

Hon'ble Mr. D. K. Kotia

-----Vice Chairman (A)

**CLAIM PETITION NO. 21/NB/DB/2016**

J.C.Belwal, S/o Late K.D.Belwal, R/o 203 Tara Place, Nainital Road,  
Haldwani, District Nainital.

.....Petitioner

**VERSUS**

1. State of Uttarakhand through its Secretary, Public Works Department, Government of Uttarakhand, Dehradun.
2. Engineer in Chief, Public Works Department, Uttarakhand, Yamuna Colony, Dehradun.
3. Accountant General (Accounts & Pension), Uttarakhand Oberoi Motors Building, Dehradun.
4. Finance Officer, Cyber Treasury, 23 Laxmi Road, Dalanwala, Dehradun.
5. Secretary, Finance, Government of Uttarakhand, Dehradun.
6. State of Uttar Pradesh through its Secretary, Public Works Department, Secretariat, Lucknow.

.....Respondents

Present: Ms. Rangoli Purohit, &  
Sri Rajendra Singh Negi Ld. Counsels  
for the petitioner.

Sri V.P. Devrani, Ld. A.P.O.  
for the Respondents

**JUDGMENT****DATE: FEBRUARY 22, 2018****(Hon'ble Mr. Ram Singh, Vice Chairman (J))**

1. The petitioner has filed this claim petition for the following reliefs:

*“i) To issue an order or direction directing the respondents to pay all arrears of pay and other monetary benefits to the petitioner on the post of Superintending Engineer from the date of notional promotion i.e. 01.10.2005 as given to Sri R.K.Goel.*

*ii) To issue an order or direction directing the respondents to sanction and pay the benefit of ACP from 01.01.2006 instead of 01.09.2008 as given to his junior Mr. V.K.Trehan.*

*ii(a) To issue an order or direction to set aside the impugned order dated 02.01.2016 along with consequential order dated 08.02.2016.*

*iii) To pass any other suitable order as this Hon'ble Tribunal may deem fit and proper under the facts and circumstances of the case.*

*vi) to award the cost of the petition in favour of the applicants.”*

2. As per contention of the petitioner, he was working as Executive Engineer in November, 2000 and opted for newly created State of Uttarakhand. Pending finalization of his option, he worked as General Manager (Construction Industries) in

Kumoun Mandal Vikas Nigam from 01.10.2005 and that post was equivalent to the post of Superintending Engineer. From April 2007 to December 2007, petitioner also worked as Incharge Superintending Engineer of National Highways. As the petitioner was not finally allocated to the State of Uttarakhand, hence on 15.7.2008, he was relieved to the State of Uttar Pradesh till 11.12.2008 when his representation for allocation was decided by the Government of India and on final allocation, he joined again in the State of Uttarakhand on 15.1.2009.

3. As per contention of petitioner, his juniors were promoted as Superintending Engineer in State of Uttarakhand, hence petitioner moved a representation upon which, he was promoted notionally on the post of Superintending Engineer from 01.10.2005 vide letter dated 13.05.2012, but the Government refused to pay the arrears of his promoted post, citing the reasons that he has actually not worked as Superintending Engineer. Whereas, according to the petitioner, he worked and discharged such duties and his representations in this respect have not been responded till date, hence this petition was filed.

4. In his petition, petitioner has also contended that as per Government Order no. 872 dated 8.3.2011, the Engineer-in-Chief allowed the benefit of Assured Career Progression (ACP) Scheme to his junior, Mr. V.K.Trehan, who ranked at Sl. No. 691 vis-à-vis the petitioner rank at sl. No. 688, hence, petitioner requested to the Engineer-in-Chief for granting him the same benefit w.e.f. 01.1.2006. On 15.1.2013, the case of the petitioner was sent to the Government, by the Engineer-in-Chief, for such sanction. The Government permitted for the same vide letter

dated 15.1.2013 but the Engineer-in-Chief kept the matter pending for more than six months for granting him the benefit of ACP and the petitioner was deprived for the same without any of his fault. Later on, Government revised the date of entitlement of ACP from 01.01.2006 to 01.09.2008 by another G.O. dated 01.07.2013 with the saving clause that the persons who have got this facility under the G.O. dated 08.03.2011, will continue to retain the same. The petitioner filed his representation to the Engineer-in-Chief and the Government, but he was not allowed the benefit of ACP from 01.1.2006, only for the reason that his service book was not available with the department. Whereas, it is not a good cause for such denial. Hence, by way of his petition, this relief has also been sought.

5. The respondents have replied to the petition with the contention that the petitioner's joining in the State of Uttarakhand was accepted on 15.1.2009 and he was not a member of hill-sub-cadre. On the ground of promotion of his junior i.e. Mr. A.K.Chug, he was allowed notional promotion to the post of Superintending Engineer w.e.f. 01.10.2005 vide order dated 13.7.2012 with the following words:-

“ अतः दिनांक 30.04.2012 को आहूत चयन समिति की संस्तुति तथा उपरोक्त तथ्यों के दृष्टिगत.....उक्त नोशनल पदोन्नति के फलस्वरूप यह लाभ केवल वेतन निर्धारण हेतु प्रदान किया जा रहा है, जिसका कोई एरियर श्री बेलवाल को देय नहीं होगा।”

6. The petitioner attained the age of superannuation on 30.06.2009; his promotion order was self-explanatory, hence, he was not entitled for any arrears of salary from 01.10.2005 to 30.06.2009 as he has actually not worked on that post. According to the respondents, petitioner is not entitled for any such relief.

Respondents have also contended that the second relief claimed by the petitioner for granting the benefit of ACP after completion 26 years of service, was granted as per amended Govt. Order issued on 1.07.2013 and he was not allowed this benefit from 01.1.2006 because his service book was not available at the time when his junior Mr. V.K.Trehan was allowed the same benefit and when his case was taken up, the Government Order was amended. According to the respondents, contentions of the petitioner are misconceived and he is not entitled for any such relief.

7. The petitioner in his Rejoinder Affidavit has reiterated the same facts as stated in the petition and has submitted that the actual monetary benefit of notional promotion to his companion Mr. R.K.Goel and grant of ACP w.e.f. 01.01.2006 to his junior Mr. Trehan was allowed and the petitioner was treated discriminately and he is entitled for all the reliefs, as his final allocation order although made on 01.12.2008 will relate back to the date of creation of the State of Uttarakhand and at the date of his joining, his juniors were promoted. Accepting the claim of the petitioner, he was allowed promotion, but was not allowed the benefit of salary and other benefit, without any justification. Non-granting of ACP w.e.f. 01.01.2006 even after sanction of the Government, was against the principles of natural justice and provisions of Article 14 and 16 of the Constitution of India.

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

9. It is an admitted fact that on the ground of promotion of his junior i.e. Mr. A.K.Chug, petitioner was granted promotion to the post of Superintending Engineer w.e.f. 01.10.2005. The court is of the view that when the allocation of cadre was finalized by

the Govt. of India, it will relate back to the date of creation of State of Uttarakhand. The petitioner was promoted w.e.f. 01.10.2005; he worked on deputation as General Manager in Kumoun Mandal Vikas Nigam, a post equivalent to the post of Superintending Engineer. The petitioner also worked as Incharge Superintending Engineer in National Highways from April 2007 to December, 2007. Accepting the claim of the petitioner for promotion, he was granted promotion w.e.f. 01.10.2005. It has been argued that he was denied the monetary benefits of that post, without any justified reason and by that time, the petitioner was not retired and he was working for the government and similarly situated person, Mr. R.K.Goel has already been granted the said benefit by the Government. The court is of the view that denial of arrears of such post and treating the petitioner discriminately vis-à-vis other officers, is not justified, particularly when the petitioner was in regular service. The petitioner's case was not of that category, when was granted promotion without rendering any service to the Government. According to the petitioner, he has discharged the function of the post of the Superintending Engineer in the mean time. It was not denied by the respondents in their contention and denial of arrears to the petitioner is without any justification and granting of promotion has no meaning, if such benefits are not granted to the petitioner and it will amount to withdraw the benefits of promotion which were allowed by the respondents themselves. Such action cannot be justified and the petitioner's claim in this respect, deserves to be allowed.

10. The second claim of the petitioner for granting the benefit of ACP after completion of 26 years of service alike his

juniors, is also justified. According to the Govt. Order No. 872 dated 8.3.2011, the persons who have completed 26 years of service were allowed the benefit of ACP w.e.f. 01.01.2006 and Mr. V.K.Trehan, junior officer to the petitioner, was allowed this benefit, but the name of the petitioner was not included in the list because of the reasons that his service book was not available with the department and it was filed in a case in the Court. We are of the view that the Government was having every opportunity to put his request for getting the service book back from the court, for granting the benefit to the petitioner. Petitioner cannot be denied the benefit of his legal right simply on the ground that his service book was filed in some case before the court, particularly when his HOD, Engineer-in-Chief was satisfied with the claim of the petitioner and the proposal was also approved by the Government for granting him that benefit. Nothing was adverse in the record against the petitioner to deprive him the benefit of ACP w.e.f. 01.01.2006 and issuance of necessary orders were kept pending for more than 6 months by the Engineer-in-Chief, without any fault of the petitioner. In the mean time, Govt. Order was amended, by which the date of granting benefit of ACP was shifted from 01.1.2006 to 01.09.2008. By the same Govt. Order, it was provided that persons already getting, will continue to receive the benefits granted earlier. The case of the petitioner is of such nature that he was found fully entitled for the benefit by the HOD and Government with earlier date. His case was justified by the Engineer-in-Chief; he was allowed to grant such benefit by the Government and the exercise of granting the benefit was discriminately delayed by the office of the Engineer-in-Chief. The Engineer-in-Chief did not try to get his service book from the

Court for passing the order which could be completed in couple of days, but his inaction for about 6 months, discriminated the petitioner for the benefit to which he was legally entitled. Later on, the Government has dismissed his representation on the ground that the Government Order was amended in the mean time whereas, Government itself earlier allowed the claim of the petitioner for granting ACP w.e.f. 01.01.2006. The reason for delaying this benefit is not justified and a public authority cannot be permitted to act in this discriminately manner, by which his junior was granted this benefit w.e.f. 01.1.2006 and he was denied indiscriminately and such action is against the provisions of Article 14 and 16 of the Constitution of India.

11. The court is of the view that the petitioner was entitled for such benefit w.e.f. 01.01.2006 like his junior. He fulfilled all the requirements and specifically when the government permitted his HOD to grant him the benefit, then the office of the HOD, Engineer-in-Chief cannot be given such in-discriminatory powers to create such situation for denial of such facility to the petitioner. The authority cannot be allowed to interpret and enforce the provisions of law and Government Order differently for similarly situated persons. The court is of the view that the petitioner is entitled for the benefit of such ACP w.e.f. 01.1.2006 instead of 01.09.2008 and he is also entitled for other monetary benefits and arrears of pay and accordingly, the petition deserves to be allowed.

### **ORDER**

The claim petition is hereby allowed and the impugned order dated 2.1.2016 and consequential order dated 08.02.2016 (Annexure: 14 & 15) are hereby set aside.

The respondents are directed to pay all the arrears of pay and other monetary benefits of the post of Superintending Engineer to the petitioner from the date of his notional promotion i.e. 01.10.2005 and to grant the benefit of ACP from 01.1.2006 instead of 01.09.2008, within a period of four months from today. No order as to costs.

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

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

*DATE: FEBRUARY 22, 2018*  
*NAINITAL.*

*KNP*