

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

**CLAIM PETITION NO. 31/DB/2016**

Satish Chandra Mamgain aged about 64 years S/o Late Sri D.N.Mamgain R/o  
317/195. Old Dalanwala, Dehradun.

.....Petitioner

**vs.**

1. State of Uttarakhand through its Secretary, Department of Tourism, Secretariat,  
Subhash Road, Dehradun.
2. Accountant General, Uttarakhand, Oberai Bhawan, Saharanpur Road, Dehradun.
3. Jt. Director Tourism Uttarakhand, Pt. Deendayal Upadhyay, Paryatan Bhawan,  
Near ONGC Halipad, Garhi Cantt., Dehradun.

.....Respondents.

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

Sri U.C.Dhaundiyal, A.P.O.  
for the Respondents No. 1 & 2.  
Sri Rajeshwar Singh, Counsel  
for Respondent No.3.

**JUDGMENT**

**DATED: MARCH 08, 2018**

**Justice U.C.Dhyani(Oral)**

Present claim petition has been filed by the petitioner for  
following reliefs:

“ (a) The petitioner be kindly held entitled to get from the  
respondents the aforesaid sum of Rs.1,48,800/- and the  
respondents be ordered to pay the said amount to the petitioner  
together with cumulative interest thereon from 01.04.2016 till the

actual date of payment to the petitioner at the rates as is/ may be applicable from time to time on deposits in GPF;

(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. Brief facts, giving rise to the present claim petition, are as follows:

Petitioner was working as Junior Assistant in the Government Hotel Management & Catering Institute, Dehradun. On proved charge of embezzlement of Government money, the petitioner was dismissed from service *vide* order dated 21.10.2010 passed by Director, Tourism, Uttarakhand. Aggrieved against the same, petitioner preferred claim petition before this Tribunal. In the claim petition, an order was passed by the Tribunal on 28.05.2014 which reads as follows:

"The petition is partly allowed. The impugned order of punishment is set aside to the extent of non payment of salary for the period of suspension. The petitioner is entitled for full salary for the period of suspension, which should be paid to him within a period of four months from today. For rest of the reliefs, the petition is dismissed without any order to the costs."

Grievance of the petitioner is that respondents have unnecessarily withheld the amount of GPF/ Group Insurance Scheme contribution. He has been contributing regularly to his GPF Account No. Plan-U 2815 with respondents. Petitioner was also a member of Group Insurance Scheme (GIS) through his monthly salary. By way of present claim petition, petitioner has prayed for directing respondents to release his contribution along with interest made in GPF as well as GIS.

It is the submission of Ld. Counsel for the petitioner that the petitioner has been requesting respondents to pay him the amount lying at his credit under GPF and GIS contribution, but *vide* impugned

letter dated 07.11.2015, respondents have wrongly refused to pay the same to the petitioner. Hence, present claim petition.

3. This fact is under no dispute that the petitioner was working as Junior Assistant in Government Hotel Management Institute, Dehradun when his services were dismissed, *vide* order dated 21.10.2010 (Copy Annexure-2) of disciplinary authority. This Tribunal has also dismissed the claim petition of the petitioner which was directed against his dismissal order. Partial relief, which was granted to the petitioner by order dated 28.05.2014 by this Tribunal was only to the effect that the petitioner would be given full salary for his period of suspension.

4. In Counter Affidavit filed on behalf of Respondent No.2, following has been mentioned:

“With reference to Para-4 (11) of this petition it is submitted that payment of group insurance is to be paid by concerned department and not by respondent No.2.

As far as payment of GPF is concerned, Respondent No.2 is responsible for the payment of 10% GPF only (Final Payment) provided the case is forwarded to answering respondent by the parent department of subscriber, which has never been forwarded to answering respondent. It is also worthy to mention that 90% of GPF is to be paid by the department concerned i.e. respondent No.3.

Para-4(12)- In this reference it is submitted that payment of insurance is the responsibility of respondent No.3. In no way answering respondent is concerned to Insurance and its payment.

However answering respondent is concerned about payment of 10% of GPF as per rules, if the case is forwarded by the DDO of petitioner for payment, but the case had never been forwarded to answering respondents. Therefore, the allegation of refusal of payment is baseless hence not accepted.

It is therefore requested to discard the name of Accountant General (A&E)Uttarakhand as a party to this dispute, because no action is possible at the end of Respondent No.2 unless the case is received in the office of respondent No.2.”

5. In Counter Affidavit filed on behalf of Respondent No.3, it has been averred, in Para 4 of the affidavit, that the petitioner was found involved and charged for embezzlement of account which resulted in loss of above Rs.2,40,622/- to the department.
6. It has been averred, in the same vein, in Para 12 of the C.A., that since the petitioner is liable to compensate the loss to the department, therefore, the competent authority has rightly directed that the petitioner is not entitled to any other payment.
7. In Para 8 of the C.A. filed on behalf of Respondent No.3, it has been stated that only full salary of the suspension and nothing else is to be released in favour of the petitioner.
8. On a perusal of dismissal order (Annexure-2), it is found that the disciplinary authority has, while passing the order of dismissal of service of the petitioner, directed that the petitioner is not entitled to anything except the subsistence allowance, which was given to the petitioner during the period of suspension. As has been indicted above, the said order has been interfered by this Tribunal *vide* order dated 28.05.2014, whereby full salary for the period of suspension has been directed to be paid to the petitioner.
9. The words 'nothing is to be paid to the petitioner', in the order of dismissal, mean that during suspension period, whatever has been paid to the petitioner as subsistence allowance, the petitioner is not entitled to anything else. Such an order of the disciplinary authority cannot be construed to mean that even GPF and GIS contribution should not be released in favour of the petitioner. This Tribunal has not said anything in its order dated 28.04.2014 regarding release or non release of GPF/GIS contribution .

10. The question which now arises for consideration of this Tribunal is- whether the respondents are entitled to withhold GPF/GIS contribution of the petitioner ?
11. Rule 24 of Uttarakhand General Provident Fund Rules, 2006 prescribes the manner in which GPF contribution is to be released in favour of subscriber.
12. Section 3 of Provident Fund Act, 1925 provides for protection of compulsory deposit. It says, among other things, that a compulsory deposit in any Government Provident Fund shall not in any way be capable of being assigned or charged and shall not be liable to attachment under any decree or order of any Civil, Revenue or Criminal Court in respect of any debt or liability incurred by the subscriber or depositor, and neither the Official Assignee nor any receiver appointed under the Provincial Insolvency Act, 1920, shall be entitled to , or have any claim on any such compulsory deposit. Sub section (2) of Section 3 of the aforesaid Act however uses the word ‘subject to any deduction authorized by this Act’, although in different context.
13. Section 4 of the Provident Fund Act, 1925 prescribes the provision regarding repayment. Sub section (1) of Section 4 of the aforesaid Act is reproduced herein below for convenience:-
- “4(1)** When under the rules of any Government or Railway Provident Fund the sum standing to the credit of any subscriber or depositor, or the balance thereof after making of any deduction authorized by this Act, has become payable, the officer whose duty it is to make the payment shall pay the sum or balance, as the case may be, to the subscriber or depositor, or, if he is dead, shall
- ..... .”
14. Thus, the law has been laid down as to how compulsory deposits are to be repaid to the subscriber or depositor. Any deviation from such mode, as prescribed under the law, is not permissible

15. The words used in Section-3 (above) reminds this Tribunal of Section 60(k) of the Code of Civil Procedure 908, according to which, all compulsory deposits and other sums in or derived from any fund to which the Provident Fund Act, 1925, for the time being applies, in so far as they are declared by the said Act, not to be liable to attachment. Thus, it may safely be concluded that Respondents No. 2 and 3 cannot withhold GPF/GIS contribution of the petitioner. They are duty bound to release such contribution along with admissible interest to the petitioner. Disciplinary authority could have passed an order for recovery of money for loss caused to the Government, which has not been done in the instant case, although, Ld. A.P.O. projected a case that the department is *inclined* to realize the loss caused by the petitioner to the Government and he has said so, on the basis of Paras 4 and 12 of C.A. of Respondent No.3.
16. Be that as it may, the fact remains that Respondents No.2 and 3 cannot withhold the G.P.F./G.I.S. contribution of the petitioner. It has already been indicated hereinabove that they are duty bound to release the same, in favour of the petitioner, along with admissible interest.
17. The claim petition is, therefore, allowed. Respondent No.3 is directed to forward the case of petitioner to Respondent No.2 within two weeks of production of certified copy of this order, whereafter, Respondent No.2 is directed to release GPF contribution within a further period of four weeks, as per law, along with interest.
18. So far as the contribution made in GIS is concerned, Respondent No. 3 is directed to forward the case of the petitioner to Director Pension, Uttarakhand within two weeks of production of certified copy of this order. Upon receipt of such case of the petitioner, Director Pension, Uttarakhand (*although not arrayed as party respondent*) is directed to release GIS contribution, along with admissible interest, to the petitioner, within a period of four weeks, as per law.

19. At this stage of dictation, Ld. A.P.O. submitted that the department is entitled to recover the loss caused to the Government by petitioner and liberty may be granted to Respondent No.3 to recover such loss, after GPF/GIS contribution, along with interest, is released by Respondent No.2 and Director Pension. Since this question is not the subject matter of present claim petition, therefore, this Tribunal does not think it appropriate to pass any verdict on such prayer. No permission of any Court is required to be taken on future contingency, if something can be done by any authority, as per law, on such future cause of action.

**(JUSTICE U.C.DHYANI)**  
**CHAIRMAN**

*DATE: MARCH 08, 2018*  
*DEHRADUN*

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