

**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. 13/DB/2017

1. Dr. R.P.Bahuguna S/o Late Dr. Srikant Bahuguna, Retd. Additional Director, Department of Animal Husbandry, Gopeshwar, Chamoli R/o 24/3, Circular Road, Dehradun.
2. Dr. V.P.Singh, S/o Late K.P.Singh, Retd. Additional Director, Department of Animal Husbandry, Gopeshwar Chamoli, R/o 56/24, Vijay Enclave, Canal Road, Jakhan, Dehradun.
3. Dr. D.N.Tyagi, Retd. Chief Veterinary Officer, Department of Animal Husbandry, District Haridwar.
4. Dr. Ramanand, Retd. Dy. Director, Department of Animal Husbandry, Pashulok, Rishikesh.
5. Dr. Virendra Pratap Singh, Retd. Deputy Director, Department of Animal Husbandry, Nainital.

.....Petitioner

VERSUS

1. State of Uttarakhand through Secretary, Animal Husbandry, Government of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Director, Department of Animal Husbandry, Uttarakhand, Banjarawala, Dehradun.
3. Government of Uttarakhand through Secretary, Finance, Secretariat, Uttarakhand, Subhash Road, Dehradun.

.....Respondents.

Present: Sri L.K.Maithani, Ld. Counsel
for the petitioner
Sarvasri U.C.Dhaundiyal &
V.P.Devrani, Ld. A.P.Os.
for the respondents

JUDGMENT

DATED: APRIL 04, 2018

Hon'ble Mr. Ram Singh, Vice Chairman (J)

1. The petitioners have filed this petition for the following reliefs:-

"i) To quash the impugned order dated 23.12.2016 of respondent No. 1 (Annexure No. A-1) and to issue an order or direction declaring that the petitioner is entitled for the benefit of Illrd 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 Illrd ACP to the petitioner w.e.f. 01.01.2006 which is admissible to the petitioner after the completion of 26 years satisfactory service under the provisions of G.O. dated 08.03.2011, with all consequential benefit 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. "

2. As per the facts, the petitioners were appointed as Veterinary Officers under the Animal Husbandry Department of the respondents between the years 1970 to 1972 and after completion of their service period, superannuated on different dates, between September, 2006 to December, 2009.

3. On 5.2.2010 and 15.10.2010, in place of old time pay scale, a new scheme of ACP was introduced and the said scheme was further substituted by another new scheme of ACP vide G.O. dated 08.03.2011.

4. As the petitioners completed 26 years of satisfactory services much before the cutoff date i.e. 01.01.2006 and they were fully eligible for getting the benefit of ACP, hence a proposal was sent by the department to respondent No. 1 in the year 2011-12. On the basis of said proposal, sent by the respondent No. 2, respondent No.1 constituted a Screening Committee which held its meeting on 27.04.2012 for granting the benefit of ACP to eligible persons, but due to discrepancy in the proposal, the Committee did not recommend any name. Thereafter, a fresh proposal was asked, in compliance of which, respondent No. 2 sent a fresh proposal to respondent No.1 on 30.04.2012, in which the petitioners' names were also included.

5. That due to delay on the part of respondents, the Screening Committee did not hold its meeting and benefit of IIIrd ACP was not given to the petitioners in time. In the mean time, Respondent No. 3 issued a fresh G.O. dated 30.10.2012, by which cutoff date for granting benefit of ACP scheme was arbitrarily changed from 01.01.2006 to 01.09.2008, due to which, petitioners were deprived from the benefit of ACP.

6. After the enforcement of new G.O. dated 30.10.2012, a fresh proposal was again sent to the respondents in which petitioners' name were not included for granting the benefit of ACP and in the mean time, they retired from the service before the cutoff date i.e. 01.09.2008. The petitioners have also submitted that in other department of the State i.e. Department of Anyurvedic and Unani Services vide order dated 11.7.2014, the benefit of ACP was granted w.e.f. 01.01.2006 on the basis of G.O. dated 08.03.2011, hence, petitioners are also entitled to get the similar benefit, but they have been denied for the same arbitrarily. The petitioners moved their representations to respondent No. 2 who sent the matter of the petitioners to respondent No. 1 for taking decision, but respondent no. 1 vide order dated 23.12.2016 denied to grant the benefit of 3rd ACP to the petitioners. Hence, this petition.

7. The petition has been opposed on behalf of the respondents with the contention that vide G.O. dated 8.3.2011, the scheme of ACP was introduced, by which employees, getting grade pay of Rs. 4800 were entitled for the benefit w.e.f. 01.09.2008 whereas, the persons getting pay scale of Rs 15600-39100 with grade pay of Rs.5400, were entitled to get the benefit of the scheme w.e.f. 01.01.2006 Later on, the Finance Department of the State, amended the said G.O. to bring equality among all the employees, and effective date of enforcement of scheme, was shifted to 01.09.2008. As the petitioners No.1 to 4 had already retired from the services before that date i.e. 01.09.2008, they were not entitled to get the benefit of 3rd ACP whereas, the petitioner No.5, is not entitled for 3rd ACP because he was already granted 3 promotions and was not covered under

the scheme accordingly, their representations were rightly decided. Petitioners are not entitled for any relief. Hence, petition deserves to be dismissed.

8. The petitioners submitted their rejoinder affidavit and reiterated the facts of their petition and submitted that the proposal to grant the benefit of 3rd ACP to the petitioners was sent to the government on 7.05.2012 and before that date, the petitioners had already completed their required satisfactory service so they were entitled to get the benefit of G.O. dated 8.3.2011. The Screening Committee was also constituted, but on account of delay caused on the part of the respondents and their Screening Committee, the matter of the petitioners was kept pending till the new G.O. dated 30.10.2012 was issued, by which the cut-off date was changed from 1.1.2006 to 01.09.2008. Without any fault of the petitioners, and on account of delay in taking decision by the respondents, the petitioners were deprived from the benefit of ACP. The Pay Commission recommended the benefit of ACP w.e.f. 01.01.2006, but the respondents arbitrarily changed the cutoff date from 01.01.2006 to 01.09.2008, which is not proper and as the respondents have already allowed such benefit in some other department w.e.f. 01.01.2006, by an order issued in July 2014, hence, petitioners cannot be deprived for such benefit arbitrarily. The action of the respondents is not justified and is against the principles of natural justice, hence, petition deserves to be allowed.

9. We have heard both the parties and perused the record.

10. In their petition, the petitioners have challenged the respondent's order dated 23.12.2016 (Annexure: 1) by which

they were denied the benefit of 3rd ACP on the ground that ACP scheme was made effective w.e.f. 01.09.2008 and before that date, petitioners were retired and petitioner No. 5 was denied this benefit on ground that up to 25.07.2008, he had already got 3 promotions.

11. It is an admitted fact that the petitioners are the officers, who were getting the grade pay of Rs.5400 and had completed more than 26 years services before 01.01.2006. The benefit of ACP was allowed as per the G.O. No. 872 dated 08.3.2011 according to which, the petitioners were entitled for the benefit of 3rd ACP w.e.f. 01.01.2006. It is an admitted fact that a proposal from the Directorate/respondent No. 2 was also sent to the government on 07.05.2012 for grant of such benefit to the petitioners, but at government level, the decision was kept pending for a period of about 6 months and in the mean time, on 30.10.2012, new G.O. was issued, by which, the effective date of grant of the benefit of ACP was changed from 01.01.2006 to 01.09.2008.

12. Learned counsel for the petitioners has argued that as per G.O. dated 8.3.2011, the petitioners' right to get the benefit of 3rd pay scale did accrue as they had already completed 26 years of service on 1.01.2006. As per the concerned G.O., the proposal for grant of such benefit, was sent to the department and a meeting of the Screening Committee was required to evaluate the record of eligible candidates for the financial up-gradation/ACP and on the report of such Committee, the appointing authority was required to pass order to grant such benefit.

13. It is admitted to the respondents and also proved by the record that the proposal for grant of such benefit to the petitioners, was submitted to the government on 07.05.2012 and on that date, the G.O. dated 8.3.2011 was effective, according to which, they were entitled for such benefit, but decision to allow the same, was delayed on the part of the respondents. It is also an admitted fact that all the petitioners were in services on the relevant date for granting of such benefit i.e. 01.01.2006 and they retired later in time.

14. The petitioners also submitted their representations, citing the example of grant of such benefit to the other officers in the medical department vide order dated 11.07.2014 and learned counsel for the petitioners also argued that they are being arbitrarily denied from such benefit on the basis of the G.O. dated 30.10.2012. This court is of the view that a right had already accrued to them on 01.01.2006 on the basis of the G.O. dated 08.3.2011 and learned A.P.O. could not demonstrate that if a right had accrued during the period of the first G.O. dated 08.03.2011 to other G.O. dated 30.10.2012, as to what would be the fate of pending matters between the period of these two G.Os. It was also a question to be decided by the Screening Committee/competent authority whether in the intervening period, the benefit should be granted to the petitioners or not. Learned A.P.O. could not demonstrate any G.O. so as to show that 3rd promotional pay scale for which the petitioners were eligible and their matter was also forwarded by the department before issuance of second G.O., whether their claim was considered by any committee on its merit or not. It appears that the claim of the petitioners was not considered, about a right

accrued to them on 01.01.2006 in view of the G.O. dated 08.3.2011. The matter was brought before the committee/competent authority on 7.5.2012 and on that date, the relevant effective law was the G.O. dated 08.03.2011 and not the G.O. dated 30.10.2012.

15. The G.O. dated 30.10.2012 has not amended G.O. dated 8.3.2011 for placing the matter of the eligible persons before the Screening Committee and thus, Screening Committee exists even after G.O. dated 30.10.2012 and the petitioners' claim should have been considered accordingly. Without considering the petitioners' claim on the basis of the accrued right to them at the time of placing their proposal before the government i.e. 7.5.2012, the benefit cannot be denied to them arbitrarily. A right, which has already accrued to them, cannot be denied on the basis of any laches by the government and if the government kept their matter pending for decision till the issuance of another G.O., this action cannot be justified in law because there may be circumstances when other persons eligible and considered by the committee between the period from 1.1.2006 to 30.10.2012, might have got this benefit. Learned A.P.O. could not demonstrate any example that, if any persons were granted the benefit on the basis of G.O. dated 8.3.2011 and after issuance of another G.O. dated 30.10.2012, the benefit granted to them, was taken away. Learned counsel for the petitioner has argued that petitioners cannot be put on loss, on account of inaction of the respondents.

16. In view of the court, granting the benefit to some persons on the basis of G.O. dated 8.3.2011 and not allowing such benefit to the petitioners later, on the basis of G.O. dated

30.10.2012, is discriminatory and the petitioners cannot be denied such benefit in such arbitrary manner.

17. The learned counsel for the petitioners also cited some examples where government has allowed the accrued benefit to some other officers of the medical department on the basis of the earlier G.O. dated 8.3.2011 by an order issued on 11.7.2014 for the similarly situated persons. Vide Annexure No. 5, other department of the government, allowed the benefit of G.O. dated 8.3.2011 even after issuance of another G.O. dated 30.10.2012, to those persons whose right was ripe before the issuance of second G.O. Similar is the case of petitioners and they cannot be treated differently. Respondents have argued that the petitioner No. 5 was already granted 3rd promotion, hence he is not entitled for such benefit under the scheme. This court is of the view that the persons, who had already received 3 promotions, are not entitled for the benefit of such scheme, hence, to this extent, we agree with the contention of the respondents No.1 to 4.

18. This court is of the view that only on the basis of another G.O. dated 30.10.2012, the benefit was wrongly denied to the petitioners and the petitioner's case should be considered by the Screening Committee on its merit with respect to the effective date i.e. 01.01.2006, on which, the petitioners' right had already accrued. It appears that Annexure: 1 was issued without considering the case of petitioners by the Screening Committee and they were denied such benefit simply on account of the fact that the benefit of earlier G.O. was later on shifted to 01.09.2008 and by that date, petitioners retired.

19. The impugned order suffers from the defect that it was not issued after placing the matter of the petitioners before the Screening Committee hence, setting aside this order (Annexure: 1), it would be appropriate to direct the respondents to consider the representation of the petitioners in accordance with law and G.O. dated 08.03.2011.

ORDER

The petition is partly allowed and the impugned order dated 23.12.2016 is hereby quashed. Respondents are directed to consider the claim of the petitioners No. 1 to 4 for granting the benefit of 3rd ACP w.e.f. 01.01.2006 on the basis of their accrued right, after their evaluation by the Screening Committee in accordance with the provisions of law and G.O. dated 08.03.2011, within a period of four month from today. Claim of petitioner No. 5 is disallowed. The parties shall bear their own costs.

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

(RAM SINGH)
VICE CHAIRMAN (J)

DATE: APRIL 04, 2018
DEHRADUN

KNP