

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

Present: Hon'ble Mr. Justice U.C.Dhyani

----- Chairman

Hon'ble Mr. D.K.Kotia

-----Vice Chairman (A)

**CLAIM PETITION NO. 25/DB/2016**

Satish Kumar, aged about 50 years, s/o Shri Hari Singh, r/o 62/1, IRI Colony, Roorkee, presently working as Mistri, Administration Division, Irrigation Research Institute, Roorkee.

.....Petitioner

**vs.**

1. State of Uttarakhand through its Secretary Department of Irrigation, Civil Secretariat, Subhash Road, Dehradun.
2. Superintending Engineer, Research Circle, Irrigation Research Institute, Roorkee, District Haridwar.

.....Respondents.

**Present:** Sri L.K.Maithani, Ld. Counsel for the petitioner.

Sri U.C.Dhaundiyal, Ld. A.P.O., for the Respondents.

**JUDGMENT**

**DATED: JUNE 28, 2018**

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

Principal relief, sought for by the petitioner, in present claim petition, is as follows:

“ Quash the impugned order dated 13.11.2013 and issue an order or direction to the concerned respondents to grant/ sanction the pay and pay scale of the post of Junior Engineer (Mechanical) viz pay bond

Rs.9300-34800 with grade pay 4600 w.e.f. 01.09.2008 in place of pay scale 5200-20200 grade pay 2400 as a first ACP and further granted pay and pay scale of the next promotional post of A.E. viz pay band Rs.93-34800 grade pay 4800 since 19.09.2013 in place of pay scale Rs.5200-20200 grade pay 2800 as a benefit of IInd ACP and further accordingly pay the arrears of difference of salary to the petitioner together with interest @ 12% per annum for the date of accrual till the actual date of payment.”

2. Facts, which appear to be necessary for proper adjudication of present claim petition, are as follows:

Petitioner was initially appointed in respondent department as *Beldar* (Class-IV) on 17.11.1984. He was thereafter promoted to the post of Mechanic (Class-IV) on 18.10.1996. He was further promoted to the post of *Mistri* (Class-III) on 19.09.1997 (Annexure: A 2). At present he is working on the same post in Irrigation Research Institute, Roorkee. One Sri Ghanshyam Singh Jainer, who was also working as *Mistri* in Irrigation Research Institute, Roorkee, filed Civil Misc. Writ Petition No. 25611 of 1996, before Hon’ble High Court of Judicature at Allahabad, who, *vide* order dated 27.07.1999, directed as under:

“In case petitioner fulfills the prescribed qualification and comes within the scope and ambit of Sub-Rule (4) of Rule 5 in that event, in case of vacancy exists, the petitioner’s case shall be considered against 1% quota within the scope of and ambit of Sub-Rule (4) of Rule 5 or such consideration may also be made in future if there is no existing vacancy, as soon such vacancy is available against such 1% quota and in either case, having regard to all other similarly situated candidates in the Irrigation Department.”

Jainer’s case was considered by the respondent department, but he was not granted any relief. Unable to get the desired relief, Shri Jainer had to file another writ petition being No.(SS) 86/2001 before Hon’ble High court of Uttarakhand, who decided the writ petition in favour of the petitioner on 19.10.2011 and directed the respondents to

pay the petitioner the promotional pay scale as per G.O. dated 04.12.2000.

It has been averred in the pleadings that petitioner's case is covered by identically placed *Mistri* Sri Ghanshyam Singh Jainer's case, whose case was decided by by Hon'ble High Court of Allahabad on 27.07.1999 and who was finally granted relief by Hon'ble High Court of Uttarakhand on 19.10.2011.

Government of Uttarakhand issued an order on 06.11.2013 (Annexure: A 16) for revising the scheme of Accelerated Career Progression (for short, ACP). The petitioner desired that his case should be considered in the light of aforesaid G.O. dated 06.11.2013 (Annexure: A 16). He moved a representation to the respondent department, in compliance of Hon'ble Court's order, in WP(SS) 1128/2013, in which following order was passed:

“All the same, since the representation of the petitioner to this effect is already pending with Superintending Engineer/ respondent No.3, the writ petition is disposed of with a direction that the same be decided by respondent No.3 in accordance with law and he shall pass speaking order within a period of six weeks from the date of production of a certified copy of this order.”

The representation of the petitioner was dismissed by Sri R.K. Gupta, Superintending Engineer, Irrigation Research Institute, Roorkee, *vide* Office Memorandum dated 13.11.2013 (Annexure: A 21). Aggrieved against the same, present claim petition has been filed.

3. In para 3 of the Counter Affidavit filed on behalf of respondents, it has been indicated that the petitioner was appointed on the post of *Beldar* on 17.11.1984. He was thereafter promoted to the post of Mechanic on 18.10.1996, and on the post of *Mistri* on 19.09.1997. It has also been averred in the C.A. that the petitioner was given grade pay of

Rs.2400/- w.e.f. 01.09.2008, after completing 10 years of service. Second ACP was granted to him after completion of 16 years of service on 19.09.2013. Grade pay of Rs.2800/- was granted. Since the petitioner has not yet completed 26 years of service, therefore, he is not entitled to the benefit of third ACP.

4. This Tribunal has noticed that while issuing the O.M. dated 13.11.2013, no cognizance of G.O. dated 06.11.2013 was taken by the Superintending Engineer ( S.E.). There is no reference of the said G.O. in the O.M. dated 13.11.2013. In other words, the department has not applied its mind on the applicability or non applicability of Annexure: A 16 to the facts of petitioner's case. It appears that there was no occasion for the Superintending Engineer to have applied Annexure: A 16 to the facts of the case of the petitioner, inasmuch as the G.O. was issued, on 06.11.2013 and the O.M. was issued on 13.11.2013. It appears that there was hardly any time for the G.O. to reach the S.E. within a span of one week. It is possible that the same was neither in the knowledge of the petitioner, nor the respondent/S.E. It, somehow, remained unnoticed. Petitioner, thereafter moved another representation on 19.02.2016, which has been brought on record as Annexure: A 18, for giving him benefit of G.O. dated 06.11.2013. That representation is still pending and has not been decided in letter and spirit, although it is the submission of Ld. Counsel for the petitioner that said representation has been decided on 25.04.2016, *vide* Annexure: A 1, by the S.E. On a perusal of Annexure: A 1, it transpires that contents of the representation have not been considered by the S.E., for, Annexure: A-1 simply says that the grant of III ACP to the petitioner shall be considered only after completion of 26 years of service.

5. On perusal of documents on record, it transpires that while deciding the representations of the petitioner and issuing the O.M. on 13.11.2013, (Annexure: A-21) and letter dated 25.04.2016 (Annexure: A 1), the department has not decided petitioner's case in the light of G.O. dated 06.11.2013 (Annexure: A -16). Petitioner's representation

(Annexure: A 18), as has been noticed above, is also pending in this respect. Therefore, this Tribunal considers it fit to direct the appointing authority (S.E., Irrigation Research Institute, Roorkee) to decide the case of the petitioner in the light of G.O. dated 06.11.2013 (Annexure: A-16).

6. No other point is raised, nor pressed, by the petitioner before this Tribunal.
7. Petitioner is, accordingly, directed to move fresh representation indicating therein that he is entitled to the benefit of G.O. dated 06.11.2013 (Annexure: A 16), before Respondent No.2, within two weeks. Respondent No.2, thereafter, is directed to decide such representation of the petitioner, strictly in the light of G.O. dated 06.11.2013, by a reasoned and speaking order, at an earliest possible, but not later than eight weeks of presentation of certified copy of this order, along with copy of representation, enclosing a copy of G.O. dated 06.11.2013.
8. The claim petition is, accordingly, disposed of. No order as to costs.

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

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

*DATE: JUNE 28, 2018*  
*DEHRADUN*

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