

**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. 23/DB/2018**

1. Chandra Prakash Sharma, S/o Late Thakur Dass Sharma, Currently working as Deputy Director, Watershed Directorate, Uttarakhand, Dehradun.
2. Sohan Lal, S/o Sh. Chandra Singh, Currently working as Divisional Forest Development Manager, Haridwar, Uttarakhand.
3. Subodh Kumar Kala, S/o Sh. H.D.Kala, Currently working as Sub-Divisional Officer, Chakrata Forest Division, Uttarakhand.
4. Mahipal Sirohi, S/o Lata Madan Pal Singh Sirohi, Currently working as Sub-Divisional Officer, Rudraprayag Forest Division, Uttarakhand.

.....Petitioners

**With**

**CLAIM PETITION NO. 21/DB/2018**

1. Bharat Singh (Retired), S/o Late Sohan Lal, R/o- 21-Chander Road, Dalanwala, Dehradun.
2. Satyendra Nath Tripathi, (Retired), S/o Late Kamleshwar Tripathi, R/o, B-303, Om Sarthak Apartment, Sewla Kalan, GMS Road, Dehradun.
3. Jagdish Singh Rawat (Retired), S/o Shri Gabar Singh Rawat, R/o-3 E/46, Shastri Nagar, Haridwar Road, Dehradun.
4. Narendra Singh Chaudhary (Retired), S/o Shri Indra Raj Singh, R/o 7, Sahastradhara Enclave, Sahastradhara Road, Dehradun.
5. Vijendra Kumar Singh (Retired), S/o Shri Iqbal Bhadur Singh, R/o 695/3, Kailash Puri Colony, Badhambari Gaddi, Allahpur, Allahabad.

.....Petitioners

**With**

**CLAIM PETITION NO. 22/DB/2018**

1. Surendra Kumar, S/o Late Shri Radhey Shyam, Currently working as Divisional Forest Officer, Kalsi Soil Conservation Forest Division, Kalsi.
2. Indresh Upadhyaya, S/o Late Shri Chetna Nand Upadhyaya, Currently working as Divisional Forest Officer, Lansdown Soil Conservation Forest Division, Lansdown.
3. Rajendra Singh Kahera, S/o Late Shri Bhanu Lal Kahera, Currently working as Divisional Logging Manager, Uttarakhand Forest Development Corporation, Curzon Road, Dehradun.
4. Kamta Prasad Verma, S/o Shri Ram Awtar Verma, Currently working as Sub-Divisional Forest Officer, Raipur, Mussoorie Forest Division, Mussoorie.
5. Surendra Pratap Singh, S/o Late Shri Dharam Veer Singh, Currently working as Divisional Forest Officer, Alaknanda Soil Conservation Forest Division, Gopeshwar.
6. Shyam Sunder Vaishya, S/o Late Shri Murlidhar Vaishya, Currently working as Divisional Logging Manager, Chakrata (Dehradun)
7. Ravindra Nath Srivastav, S/o Late Shri Kamla Prasad Srivastav, Currently working as Sub-Divisional Forest Officer, Tons Forest Division, Purola.
8. Inder Singh Negi, S/o Shri Mahendra Singh Negi, Currently working as Divisional Logging Manager, Uttarkashi.
9. Ravikant Mishra, S/o Late Sri Uma Shankar Mishra, Deputy Director, ILSP, Pauri Watershed, Pauri.
10. Sant Ram, S/o Late Shri Chhote Lal, Currently working as Divisional Forest Officer, Lansdown Forest Division, Lansdown.
11. Dheeraj Kumar Bachwan, S/o Late Shri Saagar Chandra, Currently working as Sub-Divisional Forest Officer, Lansdown Soil Conservation Forest Division, Lansdown.

.....**Petitioners**

**With**

**CLAIM PETITION NO. 30/DB/2018**

1. Gangeshwar Pandey (Retired) S/o Late Shri Bal Mukund Pandey, R/o 878, Indira Nagar Colony, P.O. New Forest, District-Dehradun.
2. Bhupendra Singh Jeena (Retired) S/o Shri Ram Singh Jeena, R/o ¾ Durga Nagar, Lohariasal Malla, Post-Kathgharia, Haldwani, District Nainital.
3. Pramod Kumar Bhatt (Retired) S/o Late Sri N.D.Bhatt, R/o H.No. 357, Gali No. 1, Lohariasal Malla (Unchapul), Post-Kathgharia, Haldwani, District Nainital.
4. Sher Singh Nagnyal (Retired) S/o Late Shri Sohan Singh Nagnyal, Pawan Vihar Colony, Jakahni, P.O. Bin, District Pithoragarh.
5. Banvasi Nishad (Retired) S/o Late Shri Ram Lakhan Nishad, R/o Dharma Niwas, New Friends Colony, Chorpani, Ramnagar, District Nainital.
6. Nand Ram Arya (Retired) S/o Late Shri Til Ram Arya, R/o Aishwarya Bhawan, Bhagwanpur Vichala, P.O. Haripur Naik, Haldwani, District Nainital.
7. Digambar Singh Rawat (Retired), S/o Late Shri Gulab Singh Rawat, R/o-D/20, Chandralok Colony, 101, Rajpur Road, District Dehradun-248001.
8. Brijmohan Dobriyal (Retired), S/o Late Shri Guna Nand Dobriyal, R/o Vill & P.O. Nehru Gram, Saheed Jaideep Bhandari Marg, Nehru Gram, District-Dehradun.
9. Smt. Prema Yadav, W/o Late Shri Pyare Lal Yadav (Retired), R/o Sharthi Vihar, P.O. Nehru Gram, District Dehradun.

.....**Petitioners**

**With**

**CLAIM PETITION NO. 31/DB/2018**

1. B.B. Martolia, S/o Late Shri Hayat Singh Martolia, Currently working as Sub Divisional Forest Officer, Rishikesh Sub Division, Dehradun Forest Division, 5, Tilak Road, Dehradun.

2. Khushhal Singh Rawat, S/o Late Shri Puran Singh Rawat, currently working as DLM (East Haldwani), Uttarakhand Forest Development Corporation, Haldwani, District Nainital.
3. Vinod Kumar Singh, S/o Shri Balkaram Singh, Currently working as DFO, Tehri Dam-II, Uttarkashi, District Uttarkashi.
4. Ramesh Chandra Kandpal, S/o Shri Keshav Dutt Kandpal, Currently working as ACF/Assistant Silviculturalist (Hill), Uttarakhand, Fairy Hall, Tallital, District Nainital.

.....Petitioners

**With**

**CLAIM PETITION NO. 32/DB/2018**

Vinod Kumar Singh S/o Late Adithya Prasad Singh aged about 54 years, presently posted as Sub Divisional Forest Officer, Tehri Forest Division, New Tehri.

.....Petitioner

**VERSUS**

1. State of Uttarakhand through Additional Chief Secretary/Principal Secretary (Forest), Civil Secretariat, Dehradun.
2. Secretary (Finance), Civil Secretariat, Dehradun.
3. Principal Chief Conservator of Forest, Uttarakhand, Dehradun.

.....Respondents

Present: Sri Shashank Pandey, Ld. Counsel  
for the petitioners  
Sri V.P.Devrani, Ld. A.P.O.  
for the Respondents No.1 &2  
Sri Aman Rab, Ld. Counsel  
for the Respondent No. 3

**JUDGMENT**

**DATED: AUGUST 20, 2018**

**HON'BLE MR. D.K.KOTIA, VICE CHAIRMAN (A)**

Since the facts and question of law involved in these 6 Claim Petitions are similar and the relief sought in all the claim petitions is also same, these connected claim petitions are being disposed of by a

common judgment. For the sake of convenience, Claim Petition No. 23/DB/2018 has been taken as the representative petition for the purpose of facts in all the cases. However, it may be mentioned that while all the petitioners in the Claim Petition No. 21/DB/2018 have already retired, in Claim Petition No. 30/DB/2018, 8 out of 9 petitioners have retired and the petitioner No. 9, Smt. Prema Yadav is wife of deceased Sri Pyare Lal Yadav (Retd.). The petitioners in Claim Petitions No. 22/DB/2018, 23/DB/2018, 31/DB/2018 and 32/DB/2018, are all serving officers.

1. The petitioners have filed the present claim petition for seeking the following reliefs:-

*A. To issue order or direction to call for records and to quash the impugned G.O. no. 132/XXVII (7)40/2018 dated 04.05.2018 passed by respondent no. 2, amending the previous G.O. dated 06.11.2013 (Annexure A2).*

*B. To issue order or direction to call for records and to quash the impugned order no. Ka. 2247/1-8(3) dated 08.05.2018 (Annexure A1).*

*C. To issue order or direction directing the respondent no. 3 to implement the order dated 11.04.2018 passed by the Respondent no. 1 and give the pay scale of 37,400-67,000 Grade Pay Rs. 8,900 to the petitioners as 3<sup>rd</sup> ACP from the date of entitlement.*

*D. To issue order or direction directing the respondents to give arrears of difference in salary along with an interest of 14% p.a. from the date of accrual to the date of actual payment.*

*E. To give any other relief that the Court may deem fit and proper in the circumstances of the case.*

*F. To give cost of petition to the petitioners."*

2. The facts, in brief as per the claim petition, are as under:-

2.1 The petitioners were appointed as Range Officers in the Forest Department of the State Government by the method of direct recruitment between the years 1980 and 1989.

2.2 According to the petitioners, the first promotional post for Range Officer is Assistant Conservator of Forest (hereinafter called 'ACF'). The second promotional post for Range Officer is Deputy Conservator of Forest (hereinafter call 'DCF'). The third promotional post for Range Officer is Conservator of Forest (hereinafter call 'CF'). While the post of ACF is filled up as per U.P. Forest Service Rules, 1993, the posts of DCF and CF are the posts of Indian Forest Service (hereinafter call IFS). It is stated in the claim petition that 50% posts of ACF are filled by promotion from Range Officers and as per Indian Forest Service (Recruitment) Rules, 1966, 33.33% posts of IFS are filled by promotion from ACF. According to the petitioners, Range Officers are also a feeding cadre of IFS having stake of 16.5% in ideal condition.

2.3 It has further been stated in the claim petition that the petitioners were given the benefit of the First and Second Time Scale as per the pay scales of ACF and DCF as under:-

Name of the petitioner	Date of Joining as Range officer	Date of getting benefit of 1 <sup>st</sup> time scale	Date of getting benefit of 2 <sup>nd</sup> Time Scale
Chandra Prakash Sharma	04-05-1980	04.05.1996	01-05-04
Sohan Lal	01-11-1987	01-11-2001	01-11-07
Subodh Kumar Kala	01-01-1988	02-01-02	01-09-08
Mahipal Sirohi	01-05-89	10-09-03	01-09-08

2.4 **After 6<sup>th</sup> Pay Commission, the scheme of Time Scale benefit was replaced by new scheme of Assured Career Progression (ACP) vide G.O. of the Finance Department, Government of Uttarakhand dated 08.03.2011 (Annexure: A5). According to the scheme of ACP, three financial upgradations were allowed after completion of continuous and satisfactory service of 10, 18 and 26 years. Later on, by amendment vide G.O. dated 01.07.2013, three financial upgradations were allowed after completion of 10, 16 and 26 years of service. The scheme of ACP provided benefit of next higher Grade Pay along with its**

**Pay Band in accordance with the Pay Matrix Table as per the Sixth Pay Commission pay scales issued by the G.O. dated 17.10.2008 (Annexure: A7). The G.O. of ACP dated 08.03.2011 made it clear that the benefits of next higher Grade Pay along with its Pay Band for the purpose of First, Second and Third ACP may be the Grade Pay (with its Pay Band) of the next promotion post or it may be less than the Grade Pay (with its Pay Band) of promotion post. Thus, the ACP scheme provided benefit of only next higher Grade Pay along with its Pay Band in the Pay Matrix Table and it was made clear in the scheme that the Grade Pay with its Pay Band of the promotion post (when higher than the next higher Grade Pay in the Pay Matrix Table) will be permissible only when the person is actually promoted on the post of promotion.**

2.5 The scheme of ACP was amended in respect of those substantively appointed employees whose Grade Pay was Rs. 4800 or less vide G.O. dated 06.11.2013 (Annexure: A6). Paragraph 2 of the G.O. dated 6.11.2013 reads as under:-

“2- शासन द्वारा विचारोपरान्त लिये गये निर्णय के क्रम में मुझे यह कहने का निदेश हुआ है कि राज्य कर्मचारियों के लिये ए0सी0पी0 की लागू पूर्व व्यवस्था के स्थान पर रू0 4800 ग्रेड वेतन या उससे न्यून पाने वाले मौलिक रूप से नियुक्त राज्य कर्मचारियों के लिए जहां पदोन्नति का पद उपलब्ध है, वहां पदोन्नति के पद का ग्रेड वेतन एवं सुसंगत वेतन बैंड वैयक्तिक रूप से प्रोन्नतीय वेतनमान के रूप में तथा जहां पदोन्नति का पद उपलब्ध नहीं है, वहां शासनादेश संख्या- 395/xxvii(7)/2006 दिनांक 17 अक्टूबर, 2008 के संलग्नक-1 में उपलब्ध तालिका के अनुसार अगला ग्रेड वेतन एवं सुसंगत वेतन बैंड वैयक्तिक रूप अगले वेतनमान के रूप में दिनांक 01 नवम्बर 2013 से संशोधित व्यवस्था के अर्न्तगत तत्काल प्रभाव से अनुमन्य किये जाने की श्री राज्यपाल सहर्ष स्वीकृति प्रदान करते हैं।”

Thus, the G.O. dated 06.11.2013 provided that the State Government employees who were substantively appointed with Grade Pay of Rs. 4800 or less will get the benefit of Grade Pay with corresponding Pay

Band of promotion post, if the post for promotion is available and in case, post of promotion is not available, they will be entitled to the next higher Grade Pay (with its Pay Band) as per the Pay Matrix Table enclosed with the Sixth Pay Commission G.O. dated 17.10.2008.

2.6 The Principal Chief Conservator of Forest (PCCF) taking cognizance of the G.O. dated 06.11.2013, amended the 3<sup>rd</sup> ACP of 52 officers vide order dated 30.1.2014 (Annexure: A9) and sanctioned Grade Pay Rs. 8700 in place of Grade Pay Rs. 7600 granted earlier in the year 2011 and 2012. Thereafter, 19 more officers were also granted Grade Pay Rs. 8700 as 3<sup>rd</sup> ACP in 2015 (Annexure: A11) relying on the order of the PCCF dated 30.1.2014.

2.7 Simultaneously, the PCCF, on 30.1.2014 (Annexure: A10), referred the matter of an anomaly in granting 3<sup>rd</sup> ACP to Range Officers *vis-à-vis* ACF to the Government. According to this letter of PCCF, the posts of promotion in respect of Range Officers are as under:-

<u>Posts</u>	<u>Grade pay</u> <u>(Rs.)</u>
1. ACF(State Forest Service)	5400
2. DCF(Indian Forest Service)	6600
3. CF (Indian Forest Service )	8900

The PCCF has also mentioned in his reference to the Government that the G.O. dated 06.11.2013 is applicable only to those employees who were directly appointed on the post having Grade Pay of Rs. 4800 or less and, therefore, the directly recruited ACF whose Grade Pay is Rs. 5400, are entitled to get the benefit of First, Second and Third ACP only in the form of next higher Grade Pay as per Pay Matrix Table enclosed with the G.O. dated 17.10.2008 and accordingly, their financial upgradations are as under:-



<u>ACP</u>	<u>Grade Pay(next higher)</u>
First	Rs. 6600
Second	Rs.7600
Third	Rs.8700

The anomaly which was referred by the PCCF to the Government is this that the Range Officers whose Grade Pay is 4800 at the time of their direct recruitment (and who are covered under the G.O. dated 6.11.2013) are entitled to get Rs. 8900 (Grade Pay of the 3<sup>rd</sup> promotional post of CF) which becomes more than the next higher Grade Pay (Rs. 8700) payable to the directly appointed ACF as the 3<sup>rd</sup> ACP and, therefore, Range Officers have been granted Grade Pay of Rs. 8700 only in place of Grade Pay of Rs. 8900 as 3<sup>rd</sup> ACP to avoid the anomaly. The PCCF vide its letter dated 30.1.2014 (Annexure: A10) sought the direction of the Government for resolving the anomaly.

2.8 In addition to 71 Range Officers who were granted 3<sup>rd</sup> ACP of Grade Pay Rs. 8700 in 2014 and 2015, 10 more Range Officers were also entitled to the 3<sup>rd</sup> ACP but their cases could not be finalized because the matter had been referred to the Government for clarification. The Government issued a clarification G.O. in respect of various issues relating to the scheme of ACP on 28.11.2017 (Annexure: A15) and advised the Forest Department to grant the ACPs as per the G.O. dated 28.11.2017. On the basis of the G.O. dated 28.11.2017, the PCCF issued orders on 20.12.1017 (Annexure: A16) and 22.12.2017 (Annexure: A17) and made an amendment in the 3<sup>rd</sup> ACP granted to the Range Officers in 2014 and 2015 reducing the Grade Pay from Rs. 8700 to Rs. 7600. Reduction in the ACP by the PCCF and recovery of excess payment was stayed by the Additional Chief Secretary, Forest & Environment, Government of Uttarakhand on 08.01.2018 (Annexure: A18) and thereafter, the Additional Chief Secretary issued a G.O. on 11.4.2018 (Annexure: A19) by which the PCCF was directed to grant

First, Second and Third ACP to the Range Officers in accordance with the G.O. dated 6.11.2013 as under:-

क्रमांक	नियमावली का नाम	पदोन्नति के पद	ग्रेड वेतन
1.	उत्तर प्रदेश वन सेवा नियमावली, 1993	सहायक वन संरक्षक (50 प्रतिशत)	रु0 5400/-
2.	आई0एफ0एस0 भर्ती नियमावली, 1966	उप वन संरक्षक / प्रभागीय वनाधिकारी	रु0 6600/-
3.	-तदैव-	वन संरक्षक	रु0 8900/-

2.9 After the G.O. of the Additional Chief Secretary, Environment and Forest, Government of Uttarakhand dated 11.04.2018, the PCCF again referred the matter to the Government with a copy to the Finance Department. The Finance Department of the Government of Uttarakhand issued a G.O. dated 04.05.2018 (Annexure: A2) and by this G.O., it was clarified that for the purpose of G.O. dated 06.11.2013, the posts of promotions which are included in the cadre structure of the State employees under the relevant Service Rules can only be considered for the First, Second and Third ACP. It was also made clear in the G.O. that where the posts of promotion are not available in the cadre structure of the State employees, only the next higher Grade Pay with its Pay Band in the Pay Matrix Table will be permissible for the purpose of First, Second and Third ACP. It was further made clear that for the purpose of the G.O. dated 06.11.2013, the posts of promotion under All India Services are not included.

2.10 On the basis of the G.O. of the Finance Department dated 04.05.2018, the PCCF (respondent no. 3) issued an order dated 08.05.2018 (Annexure: A1) for re-fixation of pay and for recovery of extra amount paid to the officers as a result of higher amount of 3<sup>rd</sup> ACP granted to them in 2014 and 2015.

3. The petitioners in their claim petition have challenged the orders dated 04.05.2018 (Annexure: A2) and 08.05.2018 (Annexure: A1)

and prayed for restoration of G.O. dated 11.04.2018 (Annexure: A10) mainly on the basis of the following grounds:-

- (i) The order dated 04.05.2018 is a substantive order in the garb of clarification order and cannot operate retrospectively.
- (ii) The petitioners have not been given any opportunity of hearing before passing order of re-fixation of pay and recovery.
- (iii) The order dated 04.05.2018 has been passed without having the authority to do so as the order dated 06.11.2013 was issued after the approval of the Cabinet and any change in that order could only be made after the prior approval of the Cabinet.
- (iv) Before the issue of G.O. dated 04.05.2018, the petitioners were getting ACP of the promotional posts irrespective of fact whether these posts are in the All India Services or not and, therefore, the petitioners are also entitled for the benefit of ACP scheme for the pay scale of promotional posts available in the Indian Forest Service cadre.
- (v) Assuming that 3<sup>rd</sup> ACP was wrongly given in 2014 and 2015, there was no fraud or misrepresentation committed by the petitioners and hence, the money paid to the petitioners cannot be recovered.

4. Respondent No.1 (Department of Forest & Environment, Government of Uttarakhand) has filed a written statement and it has been stated in it that the PCCF vide his letters dated 27.06.2017, 04.12.2017 and 26.02.2018 had sought the direction of the Forest and Environment Department for granting 3<sup>rd</sup> ACP to the directly appointed Range Officers after completion of 26 years of service in the light of the G.O. of the Finance Department dated 06.11.2013. The Department of

Forest & Environment referred the matter for advice to the Department of Finance, Government of Uttarakhand and the Finance Department advised the Department of Forest & Environment to take action in accordance with the G.O. of the Finance Department dated 28.11.2017 (Annexure: A15). The Department of Forest & Environment held that the said G.O. is not relevant in the matter and issued a G.O. dated 11.04.2018 (Annexure: A19) by which the PCCF was directed to grant First, Second and Third ACP to the Range Officers according to the Grade Pay of ACF Rs. 5400, Grade Pay of DCF under Indian Forest Service (IFS) Rs. 6600 and Grade Pay of C.F. under Indian Forest Service (IFS) Rs. 8900 respectively. It has further been stated in the written statement filed by the respondent no. 1 that when the G.O. dated 11.04.2018 was issued, the G.O. of the Finance Department, Government of Uttarakhand dated 04.05.2018 (Annexure: A2) was not in existence and after the G.O. of the Finance Department dated 04.05.2018, a G.O. dated 28.05.2018 (Annexure: 11 to the W.S.) was issued by the Department of Forest & Environment, Government of Uttarakhand by which the G.O. of the Department of Forest & Environment dated 11.04.2018 was superseded and the PCCF was directed to grant ACP to the Range Officers in accordance with the G.O. of the Finance Department, Government of Uttarakhand dated 04.05.2018. The G.O. of the Department of Forest & Environment dated 28.05.2018 by which its G.O. dated 11.04.2018 was superseded, is reproduced below for convenience:-

“संख्या-1532/X-1-2018-14(14)/2015

प्रेषक,

सुभाष चन्द्र,  
अपर सचिव,  
उत्तराखण्ड शासन।

सेवा में,

प्रमुख वन संरक्षक,  
उत्तराखण्ड, देहरादून।

वन एवं पर्यावरण अनुभाग-1

देहरादून: दिनांक: 28 मई, 2018

विषय:- सीधी भर्ती के माध्यम से वन क्षेत्राधिकारी के पद पर मौलिस रूप से नियुक्त वन क्षेत्राधिकारियों को 26 वर्ष की संतोषजनक सेवा पूर्ण करने पर तृतीय वित्तीय स्तरान्णयन (ए0सी0पी0) अनुमन्य किये जाने के संबंध में।

महोदय,

उपर्युक्त विषयक सचिव, वित्त विभाग, उत्तराखण्ड शासन के पत्र सं0-132/XXVII(7)40/2018, दिनांक 04.05.2018 एवं संख्या- 136/xxvii(7)40/2018, दिनांक 04.05.2018 का संदर्भ ग्रहण करने का कष्ट करें, जिसके माध्यम से ग्रेड वेतन 4800 अथवा उससे न्यून ग्रेड वेतन के पदों पर सीधी भर्ती के माध्यम से मौलिक रूप से नियुक्त कार्मिकों को ए0सी0पी0 के रूप में प्रोन्नति वेतनमान की अनुमन्यता के संबंध में विस्तृत दिशा-निर्देश निर्गत किये गये हैं।

2. अतः इस संबंध में वन विभाग द्वारा निर्गत शासनादेश सं0-950/x-1-2018-14(14)/2015, दिनांक: 11.04.2018 को अतिक्रमित करते हुए मुझे यह कहने का निदेश हुआ है कि कृपया वित्त विभाग के उक्त शासनादेश दिनांक 04.05.2018 के क्रम में अग्रेतर आवश्यक कार्यवाही सुनिश्चित करने का कष्ट करें।

भवदीय,  
ह0  
(सुभाष चन्द्र)  
अपर सचिव।”

5.1 The Department of Finance, Government of Uttarakhand (Respondent no. 2) has also filed the written statement and opposed the claim petition. It has been stated in the written statement that the petitioners are directly recruited Forest Range Officers and their services are governed by the Uttarakhand Forest Range Officers Service Rules, 2011. In the Service Rules of 2011, there is only one cadre of Forest Range Officers and there is no promotional post available for the Forest Range Officers. Accordingly, as per G.O. dated 06.11.2013 (Annexure: A6) when promotional post is not available, the benefit of ACP will be granted as next higher Grade Pay with corresponding Pay Band as given in Pay Matrix Table enclosed with the G.O. dated 17.10.2008 (Annexure: A7) and the Forest Range Officers are entitled only to the Grade Pay (with corresponding Pay Band) Rs. 5400, 6600 and 7600 as First, Second and Third ACP.

5.2 It has also been submitted by the Department of Finance, Government of Uttarakhand that as certain departments had applied the G.Os. of ACP by not interpreting the provisions correctly for the purpose of granting the ACP under the G.O. dated 06.11.2013, the Finance Department issued a clarification vide G.O. dated 28.11.2017.

5.3 The relevant paragraphs no. 2 and 3 of the G.O. dated 28.11.2017 are reproduced below for convenience:-

“2. शासनादेश सं०-1014/01 वित्त/2001 दिनांक 12 मार्च, 2001 सपठित शासनादेश दिनांक 02 दिसम्बर, 2000 में वैयक्तिक प्रोन्नति वेतनमान की अनुमन्यता हेतु किसी पदधारक के लिए प्रोन्नति के पद का आशय उस पद से है जिस पर सेवा नियमावली अथवा कार्यकारी आदेशों के आधार पर सम्बन्धित पदधारक द्वारा धारित पद से वरिष्ठता के आधार पर प्रोन्नति का प्राविधान हो।.....

3. शासनादेश सं०-327/XXVII(3)/सं०वे०/2005 दिनांक 23 अगस्त, 2005 में समयमान वेतनमान व्यवस्था के अंतर्गत वैयक्तिक प्रोन्नतीय वेतनमान की अनुमन्यता हेतु किसी पदधारक के लिए प्रोन्नतीय पद का आशय उस पद से है जिस पर सेवानियमावली अथवा कार्यकारी आदेशों के आधार पर सम्बन्धित कर्मचारी की प्रोन्नति वरिष्ठता-कम-उपयुक्तता के आधार पर की जाती हो, परन्तु जिन पदों पर पदोन्नति की व्यवस्था वरिष्ठता-कम-उपयुक्तता के साथ-साथ योग्यता/उच्च अर्हता/मेरिट के आधार पर हो, वे पद समयमान वेतनमान की अनुमन्यता हेतु पदोन्नतीय पद नहीं माने जायेंगे। ऐसे मामलों में अन्य शर्तों की पूर्ति की दशा में अगला उच्चतर वेतनमान/वेतन मैट्रिक्स में अगला उच्च स्तर जैसा कि उपरोक्त प्रस्तर-2 एवं 3 में स्पष्ट किया गया है, देय होगा।”

5.4 The contention of the Department of Finance, Government of Uttarakhand is that in order to grant Grade Pay (with its Pay Band) of promotional post in accordance with the G.O. dated 06.11.2013, it is essential that the post of promotion must be available in the relevant Service Rules or in the Executive Orders of the Government. Since, Uttarakhand Forest Range Officers Service

Rules, 2011 do not provide any post of promotion, the Range Officers are entitled only to the next higher Grade Pay (with its Pay Band) as per Pay Matrix Table enclosed with the G.O. dated 17.10.2008 and accordingly, the Grade Pay (with its Pay Band) payable to the Forest Range Officers for their First, Second and Third ACP after completion of 10, 16 and 26 years of service are Rs. 5400, 6600 and 7600 respectively.

5.5 It has further been contended by the respondent no. 2 that even after clarification issued vide G.O. dated 28.11.2017, some departments wrongly interpreted the contents of the said G.O. and were granting the ACP at a higher rate and also with reference to other queries received from different departments, the position regarding entitlement of ACP to the officers getting Grade Pay Rs. 4800 or less was again clarified vide G.O. of the Finance Department dated 04.05.2018 (Annexure: A2) for the purpose of granting ACP benefit under the G.O. dated 06.11.2013.

5.6 Respondent no. 2 has emphasized the contents of paragraph 2 of the G.O. dated 04.05.2018 which reads as under:-

“2- शासन के संज्ञान में यह आया है कि शासनादेश संख्या- 161/XXVII(7)40(IX)/2011 दिनांक 28 नवम्बर, 2017 द्वारा निर्गत स्पष्टीकरण के बाद भी कतिपय विभागों द्वारा उक्त शासनादेश की गलत व्याख्या कर प्रोन्नत वेतनमान के रूप में अनुमन्यता से उच्च वेतनमान/ग्रेड पे का लाभ ए0सी0पी0 के अन्तर्गत दिया जा रहा है। विभिन्न विभागों से प्राप्त सन्दर्भों एवं पृच्छाओं के क्रम में ग्रेड वेतन 4800 अथवा उससे न्यून ग्रेड वेतन के पदों पर सीधी भर्ती के माध्यम से मौलिक रूप से नियुक्त कार्मिकों को ए0सी0पी0 के अन्तर्गत अनुमन्य प्रोन्नत वेतनमान के सम्बन्ध में निम्नवत् स्थिति स्पष्ट की जाती है:-

(1) ऐसे कार्मिकों के लिए पदोन्नत वेतनमान का तात्पर्य केवल उनके संवर्गीय ढांचे एवं उनकी संगत सेवा नियमावली में उल्लिखित पदोन्नति के पदों के वेतनमान से है। जहाँ संवर्गीय ढांचे में पदोन्नति के पद उपलब्ध नहीं है वहाँ धारित वेतनमान से अगला वेतनमान ए0सी0पी0 के रूप में देय होगा।

- (2) ए.सी.पी. की व्यवस्था विषयक शासनादेश दिनांक 06.11.2013 के अन्तर्गत अपेक्षित पदोन्नति के पद के रूप में अखिल भारतीय सेवा संवर्ग के पद शामिल नहीं है क्योंकि समयमान वेतनमान, ए.सी.पी. एवं एम.ए.सी.पी. सम्बन्धी व्यवस्था मात्र राज्य सेवा संवर्ग में नियुक्त कार्मिकों के लिए लागू किया गया है।
- (3) जहां राज्याधीन सेवाओं से अखिल भारतीय सेवाओं में इन्डक्शन की व्यवस्था के फलस्वरूप राज्य सेवा संवर्ग से अखिल भारतीय सेवा संवर्ग में पदोन्नति द्वारा नियुक्तियां होती है वहाँ अखिल भारतीय सेवा संवर्ग के पद को राज्य सेवा संवर्ग के कार्मिकों के लिए ए0सी0पी0 की व्यवस्था के अन्तर्गत देय वेतनमान हेतु पदोन्नति का पद नहीं समझा जायेगा क्योंकि अखिल भारतीय सेवा संवर्ग के पदों की सेवा शर्तें राज्य सरकार के नियमों से नहीं अपितु भारत सरकार के नियमों से विनियमित होती है जबकि ए0सी0पी0 की व्यवस्था राज्य सरकार के नियमों के अन्तर्गत प्रदत्त है। ऐसी स्थिति में किसी राज्य सेवा संवर्ग के कार्मिक को उक्त शासनादेश दिनांक 06 नवम्बर, 2013 के अधीन अखिल भारतीय सेवा संवर्ग के पदों का वेतनमान अनुमन्य नहीं होगा अपितु उन्हें वित्तीय स्तरान्तरण के रूप में तत्समय धारित वेतनमान का अगला वेतनमान अनुमन्य होगा।”

5.7 Respondent No. 2 has further submitted that the G.O. dated 04.05.2018 is merely a clarification and no new condition has been imposed in this G.O. and it is wrong to say that the G.O. dated 04.05.2018 is a substantive order.

6.1 The Principal Chief Conservator of Forest (PCCF), Uttarakhand, Dehradun who is respondent no. 3, has also filed a written statement and opposed the claim petition. It has been stated in the written statement that the G.O. of the Finance Department dated 04.05.2018 is not substantive in nature but only a clarification which has been issued in response to various references of the PCCF sent to the Government from 2014 to 2018.

6.2 It has also been stated by the respondent no. 3 that the petitioners were never given the pay scale of DCF (as the benefit of Second ACP) which is included in the cadre of Indian Forest Service



officers but they were given only the pay scale of the Deputy Director which is a post included in State Forest Service. The benefits of pay scales of Indian Forest Service are not applicable to the members of the State Forest Service for the purpose of ACP.

6.3 For the purpose of ACP scheme, the Finance Department of Government of Uttarakhand is the competent department which has formulated Time Scales/ACP schemes from time to time and the Finance Department is responsible for the proper implementation of the scheme.

6.4 The Finance Department vide G.O. dated 04.05.2018 has clarified with reference to the G.O. dated 06.11.2013 that the pay scales of Indian Forest Service posts will not be applicable in the matter of granting benefits under the ACP to the employees of the State Government. Since, the G.O. dated 04.05.2018 is in the nature of clarification, it is, therefore, applicable with retrospective effect.

6.5 It has also been contended by the respondent no. 3 that in pursuance to the G.O. of the Finance Department dated 04.05.2018, PCCF has issued the departmental order dated 08.05.2018 to comply with the G.O. of the Finance Department dated 04.05.2018 for re-fixation of pay/pension of the officers (and for recovery of excess money paid) who were granted 3<sup>rd</sup> ACP at a higher rate than the rate permissible by the G.O. dated 06.11.2013.

6.6 It has also been pointed out in the written statement that when the ACP was granted to 52 officers on 30.01.2014 and 19 other officers in 2015, it was made clear in the order itself that the sanction of Grade Pay of Rs. 8700 in place of Rs. 7600 is conditional and if any otherwise instructions are received from the Government, the higher amount paid to the persons will be recovered from the concerned officers.

6.7 Respondent no. 3 has also pointed out the last paragraph of the order of PCCF dated 30.01.2014 and other orders issued in 2015 which reads as under:-

“उक्त संशोधन इस प्रतिबन्ध के साथ किये जाते हैं कि यदि भविष्य में शासन अथवा अन्य किसी स्तर से कोई विपरीत निर्देश प्राप्त होते हैं अथवा किसी प्रकार की विसंगति/आपत्ति प्राप्त होती है तो तदनुसार भुगतान की गयी धनराशि का समायोजन सम्बन्धित अधिकारियों से सुनिश्चित कर लिया जाय।”

6.8 It has been contended by the respondent no. 3 that mentioning of above paragraph in the orders of PCCF clearly indicates that the sanctioning authority was in doubt and not certain of its action for granting the ACP at enhanced rate as per the pay scales of posts under the Indian Forest Service cadre. The officers who were sanctioned the 3<sup>rd</sup> ACP at enhanced rate vide order dated 30.1.2014 and further orders in 2015, did not challenge the above condition mentioned in the orders of the PCCF and impliedly accepted the condition laid down in the said orders and, therefore, the petitioners have waived their right to challenge the same.

6.9 It has also been stated by the respondent No. 3 that the petitioners were initially appointed under the Subordinate Forests (Rangers, Deputy Rangers & Foresters) Service Rules, 1951 as a ‘Ranger’ and there was no promotional post available under the erstwhile Service Rules applicable to the petitioners. The petitioners were later promoted to the post of Assistant Conservator of Forest (ACF), a post defined under the Uttar Pradesh Forest Service Rules, 1993. The Service Rules of 1993 contained no provision for a post of promotion from the post of ACF. However, vide an Executive Order dated 30.06.1998 (Annexure: R-2 to the W.S.), the State Government created the post of Deputy Director as the next promotional post for Assistant Conservator of Forest (ACF). So, it is clear that for the petitioners, the first post of promotion under the ACP scheme is the ACF, the second post is of Deputy Director and there was no further

promotional post available neither in the Service Rules/cadre structure nor in any Executive Order for the third stage of the ACP. It has also been stated that in the absence of a promotional post under the applicable service rules/cadre structure/executive orders, the petitioners, at the third stage of the ACP were entitled to only a pay scale as per the general provisions of the the Government Order dated 06.11.2013 read with the Government Order dated 17.10.2008(which provides Pay Matrix Table for the higher Grade Pay).

6.10. The contention of Respondent no. 3 is that erroneously the third promotional scale given after 26 years of service under the scheme of Assured Career Progression (ACP) to the petitioners is of the post of Conservator of Forests which is a post under the Indian Forest Service (an All India Service) vide order dated 30.1.2014 and further orders in 2015. This has been done in utter violation of Service Rules/Executive Orders. Being a post defined under an All India Service, the scale/Grade Pay of Conservator of Forest is not applicable to the petitioners because they are not members of the Indian Forest Service but members of a service under the State Government.

6.11 It is, therefore, the submission of Respondent no. 3 that the order for amendment in the rate of 3<sup>rd</sup> ACP granted to 52 officers vide order of the PCCF dated 30.1.2014 and further orders of the PCCF in respect of 19 other officers in 2015 are contrary to the Government Orders issued by the Finance Department and, therefore, these orders are *non-est* in the eye of law.

7. The petitioners have also filed rejoinder affidavits against the written statements filed by respondents No. 2 and 3 and the same averments have been reiterated and elaborated in it which are stated in the claim petition. The petitioners have also filed a supplementary affidavit by which certain documents have been filed.

8. We have heard learned counsel for the petitioners, learned A.P.O. on behalf of respondents No. 1 and 2 and learned counsel for the respondent No. 3. We have also perused the record carefully.

9. Before the rival submissions of the parties are discussed, it would be appropriate to recapitulate the basic facts of the case for convenience:-

9.1 The petitioner No. 1 and some others were given the benefit of 3<sup>rd</sup> ACP of Grade Pay Rs. 7600 in Pay Band Rs. 15,600-39,100 according to the G.O. dated 08.03.2011 (Annexure: A5) on various dates in the years 2011, 2012 and 2013.

9.2 It is pertinent to mention here that the G.O. dated 08.03.2011 provides that the financial upgradation under the ACP will be the next higher grade (Grade Pay with the corresponding Pay Band) as per the Pay Matrix Table of the Sixth Pay Commission shown as Enclosure-1 (Annexure: A7) to the G.O. dated 17.10.2008 which is reproduced below for convenience:-

शासनादेश संख्या-395/xxvi(7)/2008 का संलग्नक-1

वर्तमान वेतनमान		दिनांक 01-01-2006 से संशोधित वेतन संरचना/ढाँचा		
क्र० सं०	वर्तमान वेतनमान (दिनांक 01-01-2006 के पूर्व)	वेतन बैंड/वेतनमान का नाम	सादृश्य वेतन बैंड/वेतनमान	सादृश्य ग्रेड वेतन
(1)	(2)	(3)	(4)	(5)
1	2550-55-2660-60-3200	-1एस	4440-7440	1300
2	.....			
3	.....			
4	2750-70-3800-75-4400	वेतन बैंड-1	5200-20200	1800
5	3050-75-3950-80-4590	वेतन बैंड-1	5200-20200	1900
6 से	.....			
12	.....			
13	7450-225-11500	वेतन बैंड-2	9300-34800	4600
14	7500-250-12000	वेतन बैंड-2	9300-34800	4800

15	8000-275-13500	वेतन बैंड-3	15600-39100	5400
16	8550-275-14600	वेतन बैंड-3	15600-39100	6600
17	10000-325-15200	वेतन बैंड-3	15600-39100	6600
18	10650-325-15850	वेतन बैंड-3	15600-39100	6600
19	12000-375-16500	वेतन बैंड-3	15600-39100	7600
20	14300-400-18300	वेतन बैंड-4	37400-67000	8700
21	16400-450-20000	वेतन बैंड-4	37400-67000	8900
22	18400-500-22400	वेतन बैंड-4	37400-67000	10000
23	.....			
24				

9.3 As per the above Pay Matrix Table, the petitioners who were initially (directly) appointed as Range Officers have the following pay scales as a result of Sixth Pay Commission:-

**At the time of Appointment**- S. No. 14 in the Table

Pay Band: Rs. 9300-34800

Grade Pay: Rs. 4800

**First Higher Grade Pay**- S. No. 15 in the Table

Pay Band: Rs. 15,600-39,100

Grade Pay: Rs. 5400

**Second Higher Grade Pay**- S. No. 16 in the Table

Pay Band: Rs. 15,600-39,100

Grade Pay: Rs. 6,600

**Third Higher Grade Pay**- S. No. 19 in the Table

Pay Band: Rs. 15,600-39,100

Grade Pay: Rs. 7600

9.4 Vide G.O. dated 06.11.2013 (Annexure: A6), the employees who were directly appointed with Grade Pay Rs. 4800 or below, the benefit under ACP was allowed equivalent to Grade Pay of

the next promotion post if the promotion post is available and when the post of promotion is not available, the employees were allowed only the next higher Grade Pay (as per the Pay Matrix Table enclosed to the G.O. dated 17.10.2008).

9.5 The PCCF (respondent No. 3) amended the earlier granted 3<sup>rd</sup> ACP to the petitioner No. 1 (and some others) from Grade Pay Rs. 7600 to 8700 vide order dated 30.01.2014 (Annexure: A9) w.e.f. 01.11.2013 as per the G.O. dated 06.11.2013 deciding that for the Range Officers, the posts of promotion are available as ACF (Grade Pay Rs. 5400), DCF (Grade Pay Rs. 6600) and CF (Grade Pay Rs. 8900). However, PCCF in his order dated 30.01.2014 allowed only Rs. 8700 as the third ACP to the petitioner No. 1 (and some others) in order to avoid the anomaly between the Range Officers and directly recruited ACF.

9.6 In pursuant to the order of the PCCF dated 30.01.2014, the petitioners No. 2, 3 and 4 were also granted Grade Pay Rs. 8700 in 2015 as 3<sup>rd</sup> ACP on completion of 26 years of service on 31.10.2013, 29.12.2013 and 30.04.2015 (Annexure: A11) w.e.f. 01.11.2013 as per the G.O. dated 06.11.2013.

10.1 Learned counsel for the petitioners has argued that the petitioners who were directly appointed as Range Officers (Grade Pay Rs. 4800) have following posts of Promotion available for them:-

**First Promotion Post**

ACF (State Forest Service)  
Grade Pay Rs. 5400

**Second Promotion Post**

DCF (Indian Forest Service)  
Grade Pay Rs. 6600

**Third Promotion Post**

CF (Indian Forest Service)  
Grade Pay Rs. 8900

It is, therefore, the contention of learned counsel for the petitioners that the petitioners should have been granted Rs. 8900 Grade Pay as 3<sup>rd</sup> ACP in place of Rs. 8700. Instead of that, the respondent No. 2 vide G.O. dated 04.05.2018 (Annexure: A2) and respondent No. 3 vide order dated 08.05.2018 (Annexure: A1) have withdrawn even Grade Pay Rs. 8700 and reduced the 3<sup>rd</sup> ACP to Rs. 7600 with the order to re-fix the pay/pension and recover the excess payment. Learned A.P.O. on behalf of the Finance Department, Government of Uttarakhand (respondent No.2) in his counter argument has submitted that the petitioners were initially recruited as Range Officers. Earlier, their services were governed by the "Subordinate Forest ('Rangers', 'Deputy Rangers' and 'Foresters') Service Rules, 1951" which were adopted by the State of Uttarakhand. Later on, the Government of Uttarakhand framed its own Rules known as "Uttarakhand Forest Range Officers Service Rules, 2010" (which were notified on 03.01.2011). The contention of learned A.P.O. is that under both Service Rules (Rules of 1951 and Rules of 2010), there is no post of promotion available for Range Officers. As there is no post of promotion in their Service Rules, the Range Officers are entitled only to the higher Grade Pay of Rs. 5400, Rs. 6600 and Rs. 7600 (as per the Pay Matrix Table enclosed to the G.O. dated 17.10.2008) as laid down in the G.O. dated 06.11.2013 for their 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> financial upgradation under the scheme of ACP.

10.2 Learned counsel for the petitioners has further argued that as per Rule-5 of the U.P. Forest Service Rules, 1993, 50 per cent posts of ACF are filled by promotion from Range Officers and, therefore, first post of promotion for the Range Officer is ACF. It has further been contended by learned counsel for the petitioners that as per the Indian Forest Service (Recruitment) Rules, 1966, 33½ per cent posts of IFS are filled by promotion from amongst the substantive members of the State Forest Service (ACF). Since 50 per cent ACFs are from amongst Range Officers, 16.5 per cent Range Officers can be

appointed in IFS under ideal condition. The State Forest Service Officers, after their promotion/induction into IFS, are given the post of DCF and, therefore, the second post of promotion available for Range Officer is DCF. It has also been submitted by learned counsel for the petitioners that after the post of DCF, the officers of Indian Forest service are promoted on the post of CF and, therefore, for Range Officers, the 3<sup>rd</sup> post of promotion is the CF under the Indian Forest Service. Learned A.P.O. (on behalf of respondent No. 2) and learned counsel for the respondent No. 3 have vehemently opposed this contention of learned counsel for the petitioners. Learned A.P.O. has submitted that the availability of post of promotion for the purpose of the G.O. dated 06.11.2013 is necessarily to be seen with reference to the Service Rules to which the employees belong. As there is no post of promotion available for the Range Officers in their Service Rules (Rules of 1951 and Rules of 2010), the posts of promotion which are available in another Service Rules that is U.P. Forest Service Rules, 1993 cannot be taken into consideration for granting ACP to the petitioners. It is, therefore, the contention of learned A.P.O. that the petitioners cannot get the benefits under the scheme of ACP taking post of ACF under the U.P. Forest Service Rules, 1993 as post of promotion available for them. The benefit of ACP (which was provided earlier in the form of time scale promotion/next higher grade) for providing either the pay scale of post of promotion or the next higher grade has always been applied with reference to the cadre of the employees and the Service Rules by which they are governed. The pay scale of post of promotion is payable only when the promotional post is available in the cadre structure under the relevant Service Rules to which the employee belongs. If posts of promotion are not available in the cadre structure of relevant Service Rules, the employees were granted only the next higher grade under the Time Scale Promotion Scheme.



10.3 Learned A.P.O. has further submitted that the Time Scale Promotion Scheme was issued by the Government of U.P. on 02.12.2000 (which was adopted by the Government of Uttarakhand vide G.O. dated 12.03.2001). Under this scheme, two financial upgradations were provided after completion of 14 years and 24 years of service. It was very clearly mentioned in the G.O. dated 02.12.2000 that these two financial upgradations to the State Government employees will be provided in the form of pay scale of the promotion post if the promotional post is available and in the form of next higher grade in the Pay Matrix Table if the posts of promotion are not available in the cadre structure of the employees. The paragraphs 2 and 4 of the G.O. dated 02.12.2000 for providing financial upgradations to the State Government employees read as under:-

“प्रथम वैयक्तिक प्रोन्नतीय/अगला वेतनमान-

(2) उपर्युक्त श्रेणी के ऐसे अधिकारी/कर्मचारी जिन्होंने सेलेक्शन ग्रेड के लाभ की तिथि से 6 वर्ष की अनवरत सन्तोषजनक सेवा सहित कुल 14 वर्ष की अनवरत सन्तोषजनक सेवा पूर्ण कर ली हो और सम्बन्धित पद पर नियमित हो चुके हों, को प्रोन्नति का अगला वेतनमान वैयक्तिक रूप से अनुमन्य किया जाय। ऐसे संवर्ग/पद जिनके लिए प्रोन्नति का कोई पद नहीं है, उनको उस वेतनमान से अगला वेतनमान वैयक्तिक रूप से देय होगा।.....

द्वितीय वैयक्तिक प्रोन्नतीय/अगला वेतनमान-

(4) प्रत्येक नियमित कर्मचारी को वैयक्तिक प्रोन्नतीय/अगले वेतनमान में उपर्युक्त प्रस्तर-1(3) के अनुसार एक वेतनवृद्धि का लाभ अनुमन्य होने की तिथि से 5 वर्ष की अनवरत संतोषजनक सेवा सहित न्यूनतम 24 वर्ष की सेवा पर वैयक्तिक रूप से द्वितीय प्रोन्नतीय/अगला वेतनमान अनुमन्य होगा। ऐसे कर्मचारी जिनके संवर्ग में प्रोन्नति का पद उपलब्ध नहीं है, उनको उस वेतनमान का अगला वेतनमान वैयक्तिक रूप से देय होगा।”

10.4 Learned A.P.O. has further submitted that after the Sixth Pay Commission, the new ACP scheme (vide G.O. dated 08.03.2011)

was introduced and the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> benefits under the ACP scheme were confined only to the next higher grade and the concept of providing benefit of pay scale of the post of promotion was done away with. But vide G.O. dated 06.11.2013, for the employees directly appointed with Grade Pay Rs. 4800 or below, the benefit of pay scale of post of promotion was reintroduced as it was there during the period of 5<sup>th</sup> Pay Commission. In view of this, learned A.P.O. has argued that the Range Officers in the present case, cannot get the benefit of pay scale of promotion post which are not available in their cadre under the Service Rules by which they are governed. Since, there is no post of promotion available in the Service Rules of 1951 and the Service Rules of 2010 for the Range Officers, they are entitled to get only the next higher grade as per the Pay Matrix Table for the purpose of their 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> financial upgradation under the G.O. dated 06.11.2013.

Learned A.P.O. has also referred paragraph 4(1) of the G.O. dated 02.12.2000 which reads as under:-

“4(1) उपर्युक्त प्रस्तर-1(2) तथा 1(4) के अन्तर्गत वैयक्तिक प्रोन्नतीय वेतनमान की अनुमन्यता हेतु किसी पदधारक के लिये प्रोन्नति के पद का आशय उस पद से है जिस पर सेवा नियमावली अथवा कार्यकारी आदेशों के आधार पर सम्बन्धित पदधारक द्वारा धारित पद से वरिष्ठता के आधार पर प्रोन्नति का प्राविधान हो।.....”

10.5 On the basis of the para 4(1) of the G.O. dated 02.12.2000 above, learned A.P.O. has submitted that the definition of “post of promotion” has very clearly been stated as a post which has been specified in the Service Rules of the concerned employees and on which promotion is made by the criterion of seniority. Learned A.P.O. has emphasized that the definition of “post of promotion” for the purpose of G.O. dated 06.11.2013 is the same as provided in the G.O. dated 02.12.2000 as by the G.O. dated 06.11.2013, the

employees have been placed in the same position in which they were during the period of 5<sup>th</sup> Pay Commission by including the “post of promotion” available for promotion as a relevant factor for determining the benefit under the ACP scheme.

10.6 According to learned A.P.O. following conditions are required to be fulfilled for providing the benefit of “post of promotion” to the State Government employees for the purpose of ACP under the G.O. dated 06.11.2013:-

- (i) The post of promotion is available in the cadre structure of the employee concerned;
- (ii) The post of promotion should be available in the relevant Service Rules of the employee; and
- (iii) The criterion for promotion under the Service Rules is seniority.

Since the petitioners do not fulfill the above conditions, they cannot go outside their cadre structure and outside their Service Rules for getting the benefit of pay scale of “post of promotion” for the purpose of benefit under the ACP scheme under the G.O. dated 06.11.2013.

**10.7 In reply to the contentions of learned A.P.O. in paragraph 10.3 to 10.6 above, learned counsel for the petitioners has submitted that vide G.O. No. 75/xxvii(7)ए०सी०पी०/2009 dated 28.02.2009, the G.O. dated 12.03.2001 by which the G.O. dated 02.12.2000 was adopted by the Government of Uttarakhand has been cancelled and, therefore, the contention of learned A.P.O. is not acceptable. The G.O. dated 12.03.2001 does not exist as it was cancelled by the G.O. dated 28.02.2009. Learned A.P.O. has vehemently opposed this contention of learned counsel for the petitioners and has pointed out that vide G.O. No.144/XXVII(7)ए०सी०पी०(1)/2010 dated 09.02.2010, the G.O. No. 75/xxvii(7)ए०सी०पी०/2009 dated 28.02.2009 has been superseded and, therefore, the G.O. dated 02.12.2000 which was**

**adopted by the State of Uttarakhand dated 12.03.2001 stands restored and it very much exists and it is quite relevant in the present case for the purpose of the G.O. dated 06.11.2013. We have perused above mentioned G.Os.and agree with the contention of learned A.P.O. that the G.O. dated 28.02.2009 (which had cancelled the G.O. dated 12.03.2001) has been superseded by the G.O. dated 09.02.2010 and the G.O. dated 12.03.2001 exists even today and, therefore, the contention of learned counsel for the petitioners is factually incorrect.**

10.8 Learned A.P.O. on behalf of the respondent no. 2 has also submitted that the definition of “post of promotion” has also been reiterated vide G.O. No. 327/xxvii(3)संवे0/2005 dated 23.08.2005 as under:-

“समयमान वेतनमान व्यवस्था के अन्तर्गत वैयक्तिक प्रोन्नतीय वेतनमान की अनुमन्यता हेतु किसी पदधारक के लिए प्रोन्नतीय पद का आशय उस पद से है जिस पर सेवा नियमावली अथवा कार्यकारी आदेशों के आधार पर सम्बन्धित कर्मचारी की प्रोन्नति वरिष्ठता-कम-उपयुक्तता के आधार पर की जाती हो। ऐसी स्थिति में जिन पदों पर पदोन्नति की व्यवस्था वरिष्ठता-कम-उपयुक्तता के साथ ही साथ योग्यता/उच्च अर्हता/मेरिट के आधार पर हो, वे पद समयमान वेतनमान की अनुमन्यता हेतु पदोन्नतीय पद नहीं माने जायेंगे। ऐसे मामलों में अन्य शर्तों की पूर्ति की दशा में अगला उच्चतर वेतनमान जैसा कि शासनादेश दिनांक 12 मार्च, 2001 के संलग्नक प्रस्तर-4(1) में स्पष्ट किया गया है, देय होगा।”

10.9 Learned A.P.O. has also pointed out that the provisions of the G.O. dated 02.12.2000 (adopted by the State of Uttarakhand on 12.03.2001) and the G.O. dated 23.08.2005 have further been reiterated by the Department of Finance vide G.O. dated 28.11.2017

(Annexure: A15) and paragraphs 2 and 3 of the said G.O. read as under:-

“2. शासनादेश सं०-1014/01 वित्त/2001 दिनांक 12 मार्च, 2001 सपठित शासनादेश दिनांक 02 दिसम्बर, 2000 में वैयक्तिक प्रोन्नति वेतनमान की अनुमन्यता हेतु किसी पदधारक के लिए प्रोन्नति के पद का आशय उस पद से है जिस पर सेवा नियमावली अथवा कार्यकारी आदेशों के आधार पर सम्बन्धित पदधारक द्वारा धारित पद से वरिष्ठता के आधार पर प्रोन्नति का प्राविधान हो। .....

3. शासनादेश सं०- 327/XXVII(3)सं०वे०/2005 दिनांक 23 अगस्त, 2005 में समयमान वेतनमान व्यवस्था के अंतर्गत वैयक्तिक प्रोन्नतीय वेतनमान की अनुमन्यता हेतु किसी पदधारक के लिए प्रोन्नतीय पद का आशय उस पद से है जिस पर सेवानियमावली अथवा कार्यकारी आदेशों के आधार पर सम्बन्धित कर्मचारी की प्रोन्नति वरिष्ठता-कम-उपयुक्तता के आधार पर की जाती हो, परन्तु जिन पदों पर पदोन्नति की व्यवस्था वरिष्ठता-कम-उपयुक्तता के साथ-साथ योग्यता/उच्च अर्हता/मेरिट के आधार पर हो, वे पद समयमान वेतनमान की अनुमन्यता हेतु पदोन्नतीय पद नहीं माने जायेंगे। ऐसे मामलों में अन्य शर्तों की पूर्ति की दशा में अगला उच्चतर वेतनमान/वेतन मैट्रिक्स में अगला उच्च स्तर जैसा कि उपरोक्त प्रस्तर-2 एवं 3 में स्पष्ट किया गया है, देय होगा।”

**10.10** It has further been submitted by learned A.P.O. that vide G.O. No. 132/XXVII(7)40/2018 dated 04.05.2018, the Finance Department has also reiterated that “ऐसे कार्मिकों के लिए पदोन्नत वेतनमान का तात्पर्य केवल उनके संवर्गीय ढांचे एवं उनकी संगत सेवा नियमावली में उल्लिखित पदोन्नति के पदों के वेतनमान से है। जहाँ संवर्गीय ढांचे में पदोन्नति के पद उपलब्ध नहीं हैं वहाँ धारित वेतनमान से अगला वेतनमान ए०सी०पी० के रूप में देय होगा।”

**10.11** After hearing learned counsel for the petitioners and learned A.P.O. on behalf of the respondent No. 2 and after perusing the record, we are of the view that the G.O. dated 06.11.2013 is

restoration of the position which was prevailing during the 5<sup>th</sup> Pay Commission period and the G.O. dated 02.12.2000 (adopted by the State of Uttarakhand vide G.O. dated 12.03.2001), G.O. dated 23.08.2005 and G.O. dated 28.11.2017 exist and quite relevant for the purpose of defining the “post of promotion” as mentioned in the G.O. dated 06.11.2013 and our conclusion in this regard is that since there are no posts of promotion available for the Range Officers in the cadre structure under their Service Rules of either 1951 or 2010, the petitioners can get the benefit of 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Time Scale/ACP only in the form of next higher grade in the Pay Matrix Table of the Pay Commission and accordingly the petitioners are entitled to the Grade Pay of Rs. 5400, Rs. 6600 and Rs. 7600 as three financial upgradations as per the G.O. dated 06.11.2013.

11.1 In reply to the submission of learned counsel for the petitioners that second post of promotion for the Range Officers is the post of DCF (under the Indian Forest Service), learned counsel for the Respondent no. 3 (PCCF, Uttarakhand) has stated that even if it is assumed that there is post of promotion for the petitioners outside the Service Rules of Range Officers (Rules of 1951 and Rules of 2010), Range Officers are promoted on the post of ACF under the U.P. Forest Service Rules, 1993 (Grade Pay Rs. 5400) and after that there is a post of promotion of Deputy Director (Grade Pay Rs. 6600) which was created by the Governor vide G.O. No. 1825/14-1-98 dated 30.06.1998 (Annexure: R2 to the W.S. of Respondent no. 3). It has further been stated by learned counsel for respondent no. 3 that the post of Deputy Director exists in the State of Uttarakhand also and at present there are 32 posts of Deputy Director (Grade Pay Rs. 6600) in the cadre structure of the Forest Department on which promotions of ACF (Grade Pay Rs. 5400) are made. There are many Range Officers who after their promotion as ACF under the Rules of 1993 have further been promoted as Deputy Director from time to time. Learned counsel

for the Respondent no. 3 has also pointed out that the petitioner No. 1 has also been promoted as Deputy Director and working on the post.

11.2 Learned counsel for the petitioners though admitted that the post of Deputy Director exists and Range Officers have also been promoted (after their promotion on the post of ACF) as Deputy Director yet the post of Deputy Director has not been created under the U.P. Forest Service Rules, 1993 and this post of Deputy Director was created only by a G.O. Since the post of Deputy Director has not been created under the Rules of 1993, the same cannot be treated as the promotion post available under the Service Rules as it was created under an Executive Order and an Executive Order cannot be above the Rules. The contention of the learned counsel for the petitioners is that the post of Deputy Director is not a post of promotion for the Range Officers as the same has not been created under the Service Rules.

11.3 **We have perused the U.P. Forest Service Rules, 1993 (which are applicable in the State of Uttarakhand) and do not agree with the contention of learned counsel for the petitioners that the post of Deputy Director has not been created under the Rules. We find that the post of Deputy Director has been created under Rule 4 of the U.P. Forest Service Rules, 1993 which reads as under:-**

**“4. Cadre of Service.-(1) The strength of the service and of each category of posts therein shall be such as may be determined by the Government.**

**(2) The strength of the service and of each category of posts therein shall until orders varying the same are passed under sub-rule(1) be as given below:**

Name of the post	Number of Posts		
	Permanent	Temporary	Total
Assistant Conservator of Forests	97	63	160

*Provided that:*

- (i) *the appointing authority may leave unfilled or hold in abeyance any vacant post without thereby entitling any person to compensation;*

**(ii) The Governor may create such additional, permanent or temporary posts from time to time as he may consider proper."**

Perusal of above Rule makes it clear that strength of the service of each category of post shall be determined by the Government, the strength of service and each category of post can be changed by the Government by passing an order under Rule-4(1) above and the Governor may create additional posts from time to time as he may also consider proper under Rule 4(2) (ii) above.

In view of this, we are of clear opinion that the post of Deputy Director (Grade PayRs. 6600) is duly created post by the Government under Rule -4 of the U.P. Forest Service Rules, 1993 vide G.O. dated 30.06.1998 (Annexure: R-2 to the W.S. of Respondent no. 3).

12.1 Learned counsel for the petitioners has also argued that the petitioners have already been given the benefit of second ACP by granting the Pay Scale of DCF which is a post in IFS cadre even during the period of Fifth Pay Commission. It has further been stated by him that even before the period of Fifth Pay Commission period, the officers of the State Forest Service were given the Pay Scale of DCF (a post belonging to the IFS) in undivided State of U.P. It is the contention of the petitioners that during the period of Fourth and Fifth Pay Commission also, the benefit of Pay Scale of an IFS post i.e. DCF was given to the State Forest Service Officers under the Time Scale Promotion Scheme. Petitioners have filed a copy of the order dated 10.03.1995 (Annexure: 8 to the Rejoinder Affidavit) to show that the ACF (State Forest Service Officers) were given the Pay Scale of DCF (IFS post) under the Time Scale Promotion Scheme. The initial paragraph of the said order reads as under:-



“संख्या-856 / 14-1-95

प्रेषक,  
प्रमुख सचिव  
वन विभाग  
उत्तर प्रदेश शासन।

सेवा में,  
प्रमुख वन संरक्षक,  
उत्तर प्रदेश, लखनऊ।

वन अनुभाग-एक लखनऊ: दिनांक- मार्च 10, 1995  
विषय:- सहायक वन संरक्षकों एवं वन प्रभाग अधिकारी को रू0  
3000-4500 का समयमान वेतनमान वैयक्तिक रूप से स्वीकृत किया  
जाना।

महोदय,

उर्पयुक्त विषय पर मुझे यह कहने का निदेश हुआ है कि  
शासनादेश संख्या 965 / 14-1-93-45(67) / 91, दिनांक 5 नवम्बर, 1993  
में किए गए प्रावधानों के अनुसार निम्नलिखित अधिकारियों को उनके नाम  
के सम्मुख स्तम्भ-3 में अंकित तिथि से समयमान वेतनमान रू0  
3000-4500 वैयक्तिक रूप से स्वीकृत करने का निर्णय लिया गया है:”

**12.2 Learned counsel for the respondent no. 3 has submitted that in the order dated 10.03.1995, no where it has been mentioned that the ACFs have been given the Pay Scale of the DCF. Learned A.P.O. on behalf of the Finance Department, Government of Uttarakhand (respondent no. 2) has submitted that the Pay Scale of ACF in 1995 was Rs. 2200-75-2800-EB-100-4000 and the next higher grade according to the Pay Matrix Table of the Fourth Pay Commission was Rs.3000-100-3500-125-4500. The ACFs at that time received the next higher grade of Rs. 3000-4500 after completion of 8 years of service according to the Time Scale Promotion Scheme in the form of next higher grade. The contention of learned A.P.O. is that since the Pay Scale of DCF and the next higher grade for the post of ACF in the Pay Matrix Table are the same, the petitioners are trying to mislead the Tribunal by stating that the ACFs vide order dated 10.03.1995 received the Pay Scale of DCF which is an IFS post. Learned A.P.O. has also stated that since beginning of the Time**

Scale Promotion Scheme in 1983, no State employee was granted pay scale of “post of promotion” unless the “post of promotion” was available as the next post in the cadre of the State employee under the relevant Service Rules which govern the service conditions of that employee and if that was not so, the benefit of only next higher grade as per the Pay Matrix of the Pay Commission was permissible under the Time Scale Promotion Scheme. In no case, the Time Scale Promotion Scheme provided benefit of the “post of promotion” outside the cadre structure provided in the Service Rules to which the employee belongs.

**12.3** In view of description in 12.1 and 12.2 above, we are not convinced by the argument of learned counsel for the petitioners that the Range Officers/State Forest Service Officers got the promotional pay scale of the post of DCF (an IFS post) under the Time Scale Promotion Scheme. By order dated 10.03.1995, it cannot be established that the Pay Scale of “promotion post” of DCF was given to the ACFs under the Time Scale Promotion Scheme. The order dated 10.03.1995 is too little and too far to show that the ACF got their Time Scale Promotion for the post of DCF. Further, after 10.03.1995 till date no record was presented by the petitioners to show that the Range Officers got their Second Time Scale for the post of DCF. Learned counsel for the petitioners has, therefore, failed to demonstrate that the Range Officers ever got the Pay Scale of “promotion post” DCF. We are, therefore, of the clear view that the petitioners have never got the benefit of Time Scale/ACP for the post of DCF.

13. It is pertinent to note here that earlier to the U.P. Forest Service Rules, 1993, the Uttar Pradesh Forest Service Rules, 1952 were in existence. Rule 4 of the Rules of 1952 provided the cadre structure of the Uttar Pradesh Forest Service as under:-

1. Assistant Conservators of Forest (ACF)

2. Deputy Conservators of Forest (DCF)
3. Conservators of Forest (CF)
4. Chief Conservator of Forest (CCF)

Rules of 1952 were superseded by the U.P. Forest Service Rules, 1993 and initially there was only the post of ACF available in the cadre structure in the Rules of 1993. By exercising its power under Rule 4(1) of the Rules of 1993, the Government also created the post of Deputy Director, Forest in 1998. The posts of DCF, CF, and CCF were excluded from the cadre structure of the State Forest Service in the U.P. Forest Service Rules, 1993. Thus, the posts of DCF, CF and CCF were no longer remained the posts of the State Forest Service when the Rules of 1993 came into force. However, the post of Range Officer was never a State Forest Service Post. There were separate Service Rules for the Range Officers (Rangers) known as the Subordinate Forest (Rangers, Deputy Rangers and Foresters) Service Rules, 1951 which were replaced by the Uttarakhand Forest Range Officers Service Rules, 2010. It may also be noted here that the posts of DCF, CF and CCF stand transferred to the Indian Forest Service long back (w.e.f. 1966) and since then appointment on these posts is within the purview of the Government of India. Thus, the posts of DCF, CF and CCF ceased to be State Forest Service posts long back.

14. It is also pertinent to note that directly appointed Range Officers get Grade Pay (in its corresponding Pay Band) Rs. 4800. Their First and Second benefit under the ACP scheme can be viewed in the following three ways:-

(i) **Next Higher Grade Pay in Pay Matrix Table**

- |     |         |           |
|-----|---------|-----------|
| (a) | First:  | Rs. 5,400 |
| (b) | Second: | Rs. 6,600 |

(ii) **Promotion Grade Pay in the State Forest Service**

- |     |                  |           |
|-----|------------------|-----------|
| (a) | ACF:             | Rs. 5,400 |
| (b) | Deputy Director: | Rs. 6,600 |

**(iii) Promotion Grade Pay in the State/IFS**

- (a) ACF-State Service: Rs. 5,400
- (b) DCF-Indian Forest Service: Rs. 6,600

It is very interesting to note that from all above 3 angles, the amount of the Grade Pay of 1<sup>st</sup> and 2<sup>nd</sup> ACP to the Range Officers is the same. While the Finance Department, Government of Uttarakhand (respondent No. 2) has shown that the First and Second ACP is payable to the Range Officers under the G.O. dated 06.11.2013 as per the next higher Grade Pay in Pay Matrix Table because no “post of promotion” is available in the cadre structure in the relevant Service Rules (Rules of 1951 and Rules of 2010), learned counsel for the petitioners has contended that the First ACP pertains to the promotion post of ACF (State Forest Service) and the Second ACP falls under the Indian Forest Service related to the promotion post of DCF. We have already discussed in the preceding paragraphs that the learned counsel for the petitioners has not been able to show any order by which the ACP (First or Second) to the Range Officers was granted for the “Post of Promotion” (ACF or DCF). Since the amount of Grade Pay in respect of First and Second ACP is the same in all three scenario, the real controversy is in respect of the Third ACP. While the Finance Department, Government of Uttarakhand is of the view that next higher Grade Pay (Rs. 7600) as per Pay Matrix Table is payable as the Third ACP, the petitioners have claimed the Grade Pay of IFS post of CF Rs. 8900. We have further discussed the contention of the petitioners for their claim for the availability of the post of CF as the post of promotion (from the post of DCF) for the Third ACP in the next paragraph.

15.1 Learned counsel for the petitioners has contended that the petitioners are entitled to Second ACP of Grade Pay Rs. 6600 as DCF in the IFS and since the next promotion from the post of DCF is

made to the post of CF (in the IFS), the petitioners are entitled to the Grade Pay of the CF (Rs. 8900) as the Third ACP.

15.2 We have made an attempt here to examine whether the next promotion from the post of DCF is CF in the Indian Forest Service.

15.3 The Indian Forest Service (Pay) Rules, 2007 provide Rules in respect of the “promotions” and the “pay scales” associated with the promotions.

15.4 **Rule-2(k) of the said Rules defines the “Promotion” in the IFS as under:-**

**“Promotion” means appointment of a member of the Service to the next higher grade over the one in which he is serving at the relevant time.**

15.5 Rule 3(1) of the Indian Forest Service (Pay) Rules, 2007 provides the Pay Bands and Grade Pays admissible to an IFS officer as follows:-

**A. Junior Scale: Pay-Band – 3: Rs.15600-39100 plus Grade Pay Rs.5400;**

**B. Senior Scale:**

**(i) Senior Time Scale: Pay-Band - 3: Rs.15600-39100 plus Grade Pay Rs.6600;**

**(ii) Junior Administrative Grade: Pay-Band - 3: Rs.15600-39100; plus Grade Pay Rs.7600;**

**(iii) Selection Grade: Pay-Band - 4: Rs.37400-67000; plus Grade Pay Rs.8700;**

**C Super Time Scale:**

**(i) Conservator of Forests of Forests : Pay-Band – 4: Rs.37400-67000; plus Grade Pay Rs.8900;**

**(ii) Chief Conservator of Forests/Regional Chief Conservator of Forests : Pay-Band – 4: Rs.37400-67000; plus Grade Pay Rs.10000;**

**D Above Super Time Scale –**

(i) *Additional Principal Chief Conservator of Forest : 7 HAG  
Scale : Rs.67000 (annual increment @ 3%)-79000/- Grade  
Pay : nil;*

(ii) *HAG + Scale: Rs.75500- (annual increment @ 3%)-80000/-  
Grade Pay : nil;*

(iii) *Apex Scale : Rs.80000/- (fixed), Grade Pay : nil*

.....

***Note 1: Appointment of a member of the Service to the Senior Time Scale and above shall be regulated as per the provisions in the Guidelines regarding promotion to various grades in the Indian Forest Service.***

15.6 Rule 6(3) of the Indian Forest Service (Recruitment) Rules, 1966 provides that the initial appointment of persons recruited to the IFS by promotion from the State Forest Service shall be in the Senior Scale of Pay.

15.7 The petitioners have contended that their second post of promotion is DCF (in the IFS) having Grade Pay Rs. 6600 (Senior Time Scale).

15.8 As is clear from the above position of IFS (Pay) Rules, the next "promotion" from the Grade Pay Rs. 6,600 is "Junior Administrative Grade" the Grade Pay of which is Rs. 7600.

15.9 It is, therefore, clear from the above Rule position that the next promotion from the post of DCF having Grade Pay Rs. 6600 is not made to the post of CF (Grade Pay Rs. 8900). After the post of DCF (Grade Pay Rs. 6,600), there are promotions in Junior Administrative Grade (Grade Pay Rs. 7600) and in the Selection Grade (Grade Pay Rs. 8700) and only after that the promotion is made to the post of CF (Grade Pay Rs. 8,900).

15.10 In view of above, the contention of the petitioners that next promotion from the post of DCF (Grade Pay Rs. 6,600) is made to the post of CF (Grade Pay Rs. 8900) is patently against the IFS (Pay) Rules and, therefore, their claim of Grade Pay of Rs. 8900 for the 3<sup>rd</sup> ACP is grossly misconceived and cannot sustain. We have no

**hesitation in holding that the contention of the petitioners that promotion from the post of DCF (Grade Pay Rs. 6600) is made to the post of CF (Grade Pay Rs. 8900) is based on wrong facts and the same is against the Rules and this alone is sufficient to reach a conclusion that the petitioners have no case and the very basis of the claim for the Grade Pay Rs. 8900 (as Third ACP) is not tenable.**

16.1 Learned counsel for the petitioners has also argued that there was no fraud or misrepresentation committed by the petitioners and, therefore, excess money, if any, paid to the petitioners cannot be recovered from the petitioners. When asked specifically by the Tribunal that is it the case of the petitioners that the re-fixation of pay be made from future date and the excess money already paid be not recovered as per the judgment of the Hon'ble Supreme Court in State of Punjab vs. Rafiq Masih (2015)4 SCC, 334, learned counsel for the petitioners categorically replied in "NO" and submitted that the case of the petitioners is this that the 3<sup>rd</sup> ACP of the petitioners has been wrongly reduced from Rs. 8700 to Rs. 7600 and further that the 3<sup>rd</sup> ACP should have actually been granted as Rs. 8900. Learned counsel for the petitioners has further argued that the petitioners have not been given any opportunity of hearing before passing the order of re-fixation of pay and order to recover the so called excess money paid.

16.2 Learned counsel for the Respondent no. 3 has refuted the argument of learned counsel for the petitioners and has submitted that when the 3<sup>rd</sup> ACP was amended from Rs. 7600 to Rs. 8700 in respect of 52 Officers on 30.01.2014 and 19 other Officers in 2015, it was made clear in the order itself that the sanction of 3<sup>rd</sup> ACP is conditional and if any otherwise instructions are received from the Government, the higher amount paid will be recovered from the concerned officers. Learned counsel for the Respondent no. 3 has pointed out the content of the last paragraph of the order of the PCCF dated 30.01.2014 and orders issued in 2015 which reads as under:-

“उक्त संशोधन इस प्रतिबन्ध के साथ किये जाते हैं कि यदि भविष्य में शासन अथवा अन्य किसी स्तर से कोई विपरीत निर्देश प्राप्त होते हैं अथवा किसी प्रकार की विसंगति/आपत्ति प्राप्त होती है तो तदनुसार भुगतान की गयी धनराशि का समायोजन सम्बन्धित अधिकारियों से सुनिश्चित कर लिया जाय।”

The contention of learned counsel for the Respondent no. 3 is that the last paragraph in the orders of PCCF clearly indicates that the Sanctioning Authority was in doubt and not certain of its action for granting 3<sup>rd</sup> ACP enhancing it from Rs. 7600 to Rs. 8700. The Range Officers whose amount of 3<sup>rd</sup> ACP was increased on 30.01.2014 and in 2015, were clearly put on notice that if excess payment was found to have been made would be required to be refunded. The petitioners did not challenge the above condition mentioned in the orders of the PCCF and accepted the condition and, therefore, the petitioners have waived their right to challenge the same.

16.3 During the course of writing the judgment, learned counsel for the petitioners has submitted an application on 20.08.2018 along with copy of the judgment of the Hon'ble High Court at Nainital passed in WPSB No. 200 of 2018 on 27.07.2018, the same is reproduced below:-

*“WPSB No. 200 of 2018*

**Hon'ble Rajiv Sharma, J.**

**Hon'ble Alok Singh, J.**

*Mr. Rakesh Thapaliyal, Advocate for the petitioners.*

*Mr. Paresh Tripathi, Chief Standing Counsel for the State of Uttarakhand/respondent Nos. 1 to 5.*

*The petitioners were granted higher pay scale in the year 2014 and 2015. The same have been withdrawn vide order dated 08.05.2018.*

*The case of the petitioners, in a nutshell, is that the petitioners have neither misled, nor misrepresented or concealed the facts at the time when the higher pay scale was granted to them. The petitioners have not been*



*issued any cause notice before reducing their salary vide order dated 8<sup>th</sup> May, 2018.*

*The petitioners have suffered civil and evil consequences. There is the violation of principle of natural justice.*

*Accordingly, the writ petition is allowed. Impugned orders dated 04.05.2018, 08.05.2018 and consequential order if any are quashed and set aside with liberty reserved to the respondents to proceed with the matter strictly in accordance with law.*

*Pending application, if any, also stand disposed of.*

*Sd/-  
(Alok Singh, J.)*

*Sd/-  
(Rajiv Sharma, J.)*

*27.07.2018"*

17. In view of the order of the Hon'ble High Court at Nainital dated 27.07.2018 above, neither there is any need nor we are in a position to pass any order in respect of relief sought in the claim petitions as the impugned orders dated 04.05.2018 (Annexure: A2) and 08.05.2018 (Annexure: A1) have already been set aside by the Hon'ble High Court with liberty reserved to the respondents to proceed with the matter strictly in accordance with law.

The claim petitions are disposed of accordingly.

The Copy of this order be placed on files of the Claim Petitions No. 21/DB/2018, 22/DB/2018, 23/DB/2018, 30/DB/2018, 31/DB/2018 and 32/DB/2018.

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

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

*DATE: AUGUST 20, 2018  
DEHRADUN*