

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

Present: Hon'ble Mr. Ram Singh

----- Vice Chairman (J)

Hon'ble Mr. D.K.Kotia

-----Vice Chairman (A)

CLAIM PETITION NO. 26/NB/DB/2016

Umesh Chandra Upreti, S/o Late Sri Jamuna Dutt Upreti, R/o Krishna Colony,
Gali No.- 4, Village Lohariyasal Malla, P.O. Kathgodam, Haldwani, District
Nainital.

.....**Petitioner**

VERSUS

1. State of Uttarakhand, through Secretary, Irrigation Department,
Government of Uttarakhand, Dehradun.
2. Chief Engineer and Head of Department, Irrigation Department,
Uttarakhand, Dehradun.
3. Chief Engineer, Irrigation Department, Kumaon Region, Haldwani,
District Nainital.
4. Superintending Engineer, Irrigation Works Circle, Irrigation
Department, Nainital.
5. Executive Engineer, Irrigation Division, Irrigation Department,
Haldwani, District Nainital.

.....**Respondents**

Present: Sri Bhagwat Mehra, Ld. Counsel
for the petitioner.

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

JUDGMENT**DATE: AUGUST 07, 2018****HON'BLE MR. D.K. KOTIA, VICE CHAIRMAN (A)**

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

"A. To declare the inaction/omission on the part of the Respondents, particularly Respondent No. 2 in not granting the benefit of past services, for the purpose of A.C.P. benefits, as arbitrary and illegal.

B. To set-aside the impugned communication dated 08.09.2014 issued by the Respondent No. 3 virtually rejecting the request of the petitioner, copy of which was served for the first time, to the petitioner vide communication dated 25./29.06.2015 (Annexure No. 1 to the Compilation-I)

C. To declare the recommendation of the Screening Committee as made in the meeting dated 20.03.2014, virtually rejected the legitimate claim of the petitioner, which were forwarded for decision to the Respondent no. 2 vide covering letter dated 21.03.2014 (Annexure No. 34 to the Compilation-II), as arbitrary and illegal and without application to mind, and/or set aside the same.

D. To direct the Respondents, particularly Respondent No. 2 to give benefit of past services to the petitioner for the purpose of A.C.P.

E. To direct the Respondents, particularly Respondent No.2 to grant all consequential benefits to the petitioner.

F. To pass any other suitable order as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

G. *To allow the claim petition with cost. ”*

2.1 The facts, in brief are that the petitioner was initially appointed on the post of Junior Engineer in the Rural Works Department, Government of Arunachal Pradesh in 1987. While working in Arunachal Pradesh, in response to the advertisement issued by the Uttarakhand Public Service Commission, the petitioner applied for direct recruitment for the post of Junior Engineer in the Department of Irrigation of Uttarakhand Government. The petitioner was selected and he joined as Junior Engineer in the Department of Irrigation, Government of Uttarakhand on 16.08.2004. Before that, the resignation of the petitioner was accepted by the Government of Arunachal Pradesh on 13.08.2004. Thus, the petitioner was in the service of the Government of Arunachal Pradesh from 1987 to 2004. There were some other employees also who had been directly recruited on the post of Junior Engineer in Uttarakhand after they served in other States/Organizations of the Government of India. As the pay of other similarly situated persons was protected, the benefit of pay protection was also given to the petitioner after the order of the Hon'ble High Court dated 06.10.2012 (writ petition No. 1556 (S/S) of 2006).

2.2 In the present claim petition, the petitioner has claimed that apart from pay protection, his service in the State of Arunachal Pradesh should also be counted for the purpose of benefit under the Assured Career Progression (ACP). The petitioner has also stated that Sri Sunil Kumar Kandpal and Sri Vinod Kumar Joshi who are similarly situated persons, were given the benefit under the ACP scheme (Annexure: A19 and Annexure: A20).

2.3 The petitioner made many representations for sanction of benefit under the ACP scheme and finally, the Screening

Committee was constituted as per paragraph-5 of the G.O. dated 08.03.2011. The Screening Committee considered the claim of ACP of the petitioner and reached the conclusion that the petitioner is not entitled for the benefit of ACP scheme under the G.Os. The Minutes of the Screening Committee are enclosed as Annexure No. A 34 to the claim petition. The Minutes of the Screening Committee were forwarded to the Chief Engineer and Head of the Department (who is the Appointing Authority) for a decision on 21.03.2014 (Annexure: A34).

2.4 Vide Annexure No. A1, the petitioner has shown that vide letter dated 25.06.2015 and letter dated 08.09.2014, the decision on the report of the Screening Committee has not been taken by the Chief Engineer and Head of the Department (who is the Appointing Authority). This contention of the petitioner is that the proposal of the Screening Committee sent by the Respondent no. 3 on 21.3.2014 to Respondent no. 2 is still pending and no final decision has been taken by the Appointing Authority as prescribed under paragraph 5 of the G.O. dated 08.03.2011 (Annexure: A18).

3. Respondents No. 1 to 5 have opposed the claim petition and have stated in their joint written statement that according to the G.Os. of the ACP dated 08.03.2011 and 30.10.2012, the services rendered by the petitioner in the State of Arunachal Pradesh cannot be considered for granting the benefit under the scheme of ACP as has been rightly concluded and recommended by the Screening Committee, constituted under paragraph-5 of the G.O. dated 08.03.2011. It has further been contended by the respondents that like other persons of different departments, the benefit of pay protection has already been sanctioned to the petitioner under the Financial Rules for the services rendered by him in the State of Arunachal Pradesh. It has been stated by the respondents that while the matter of pay protection is quite

different which is governed by the Financial Rules under the Financial Hand Book, the benefit under the ACP scheme is governed by altogether separate set of Government Orders. The petitioner is not entitled to the benefit of ACP as per G.Os. dated 08.03.2011 (Annexure: A18) and dated 30.10.2012 (Annexure: A22). The respondents have further submitted that the cases of Sri Sunil Kumar Kandpal and Sri Vinod Kumar Joshi who have been sanctioned ACP are quite different compared to the case of the petitioner and they cannot be treated as similarly situated persons. It has further been submitted by the Respondents that if these two persons of different departments have been wrongly sanctioned the ACP, the petitioner cannot claim parity for any wrong action/decision taken by some other departments. The petitioner has also not brought necessary details to establish the parity on record. Respondents have submitted that letters dated 08.09.2014 and 25.06.2015 (Annexure: A1) are in order and do not require any interference by the Tribunal.

4. The petitioner has also filed rejoinder affidavit and the same averments have been reiterated and elaborated in it which are stated in the claim petition.

5. We have heard both the parties and perused the record. Learned counsel for the petitioner and learned A.P.O. on behalf of the respondents have argued on the same lines which have been stated in the preceding paragraphs 2 and 3 above.

6.1 After hearing both the parties and perusing the record, we find that the Screening Committee in its report dated 20.03.2014 has not found the petitioner entitled for the benefit of ACP because of the following Rule position:-

“ए0सी0पी0 सम्बन्धी मूल शासनादेश सं0-872/दिनांक 08.03.2011 के प्रस्तर-1 के उपप्रस्तर -02(1) में निम्न व्यवस्था है:-

“ए0सी0पी0 के अन्तर्गत सीधी भर्ती के किसी पद पर प्रथम नियमित नियुक्ति की तिथि से 10 वर्ष, 18 वर्ष व 26 वर्ष की अनवरत् संतोषजनक सेवा के आधार पर तीन वित्तीय स्तरोन्नयन निम्न प्रतिबंधों के अधीन अनुमन्य किये जायेगा।”

इसी शासनादेश प्रस्तर -1 के उपप्रस्तर-2 (vi) एवं (viii) में निम्न व्यवस्था है:-

(vi) प्रदेश के अन्य राजकीय विभागों में समान ग्रेड वेतन में की गयी नियमित सेवा को वित्तीय स्तरोन्नयन के लिए गणना में लिया जायेगा, परन्तु ऐसे मामलों में ए0सी0पी0 की व्यवस्था के अन्तर्गत देय किसी लाभ हेतु नये विभाग के पद पर परिवीक्षा अवधि (**probation period**) संतोषजनक रूप से पूर्ण करने के उपरान्त ही विचार किया जायेगा एवं संबंधित लाभ देय तिथि से ही अनुमन्य कराया जायेगा।

(viii) केन्द्र सरकार/स्थानीय निकाय/स्वशासी संस्था/सार्वजनिक उपक्रम एवं निगम में की गयी पूर्व सेवा को वित्तीय स्तरोन्नयन के लिए गणना में नहीं लिया जायेगा।

शासनादेश संख्या-313/दिनांक 30.10.2012 के प्रस्तर-5 में धारित पद को परिभाषित किया गया है जो निम्नवत् है:-

“उपर्युक्त शासनादेश दिनांक 08 मार्च 2011 के प्रस्तर-3 (प्रथम अंश) में उल्लिखित धारित पद का आशय एश्योर्ड कैरियर प्रोग्रेशन स्कीम (ए0सी0पी0) की व्यवस्था के प्रसंग में सामान्य अवधारणा के दृष्टिगत उस पद से समझा जाये, जिस पद पर सम्बन्धित कार्मिक सेवा के प्रारम्भ में सीधी भर्ती से नियुक्त हुआ हो और इसी प्रस्तर में उक्त आधार का आशय कि उक्त शासनादेश के ही प्रस्तर-1 (यथा संशोधित) में निहित व्यवस्था से है। इस सीमा तक उक्त शासनादेश दिनांक 08 मार्च 2011 का उपर्युक्त प्रस्तर-3 (प्रथम अंश) संशोधित समझा जायेगा।

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स्क्रीनिंग कमेटी की संस्तुति

प्रकरण दिनांक 20.03.2014 को स्क्रीनिंग कमेटी के समक्ष प्रस्तुत किया गया। ए0सी0पी0 सम्बन्धी विभिन्न शासनादेशों की व्यवस्थाओं के अनुसार यह पाया कि अन्य राज्य में पूर्व में की गई सेवाओं की गणना के आधार पर ए0सी0पी0 का लाभ प्रदान किया जाना सम्भव नहीं है।”

6.2 At this stage, it would be appropriate to look at the procedure for sanction of ACP as prescribed under paragraph 5 of the G.O. dated 08.03.2011 which is reproduced below for convenience:-

“5—(1) वित्तीय स्तरोन्नयन की अनुमन्यता के प्रकरणों पर विचार किये जाने हेतु प्रत्येक विभाग में एक स्क्रीनिंग कमेटी का गठन किया जायेगा। उक्त स्क्रीनिंग कमेटी में अध्यक्ष एवं दो सदस्य होंगे।

(2) स्क्रीनिंग कमेटी की केस-टू-केस प्राप्त होने वाले प्रस्तावों पर बैठक आयोजित कर विचार किया जायेगा।

(3) उक्त व्यवस्था के अन्तर्गत वित्तीय स्तरोन्नयन का लाभ संबंधित नियुक्ति प्राधिकारी/स्वीकर्ता अधिकारी द्वारा विभाग की स्क्रीनिंग कमेटी की संस्तुतियों के आधार पर स्वीकृत किया जायेगा।”

6.3 **It is clear from the paragraph 5 of the G.O. dated 08.03.2011 that the Appointing Authority/Accepting Authority considers the recommendation of the Screening Committee and makes a final decision regarding granting of ACP.**

6.4 In the present case, the Screening Committee submitted its recommendations to the Chief Engineer and Head of the Department (Appointing Authority) through a letter dated 21.3.2014 and the same is reproduced below for convenience:-

“कार्यालय मुख्य अभियन्ता (कुमाऊँ)
सिंचाई विभाग उत्तराखण्ड हल्द्वानी

पत्रांक:- D-294/सीईके/ई-10 (जेई)/उप्रेती/ दिनांक 21 मार्च, 2014

विषय:- श्री उमेश चन्द्र उप्रेती, अपर सहायक अभियन्ता को पूर्व में की गई सेवाओं के आधार पर ए0सी0पी0 का लाभ दिया जाने के सम्बन्ध में।

मुख्य अभियन्ता एवं विभागाध्यक्ष (कार्मिक अनुभाग),
सिंचाई विभाग उत्तराखण्ड, देहरादून।

उपरोक्त विषयक अपने पत्र संख्या- 5894/मु0अ0/सिं0वि0/दिनांक 23.10.2013 का संदर्भ ग्रहण करने का कष्ट करें, जिनके द्वारा प्रश्नगत प्रकरण पर शासनादेशों/नियमों में निहित प्राविधानानुसार गठित समिति से प्रस्ताव प्राप्त कर उपलब्ध कराने के निर्देश दिये गये हैं।

इस सम्बन्ध में इस कार्यालय स्तर पर गठित स्क्रीनिंग कमेटी के प्रस्ताव की प्रमाणित छायाप्रति संलग्न कर अग्रिम कार्यवाही हेतु प्रेषित की जा रही है। अधिशासी अभियन्ता से प्राप्त श्री उप्रेती, अपर सहायक अभियन्ता के सेवा विवरण की मूलप्रति भी संलग्न है।

संलग्नक:- यथोपरि।

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(आनन्द सिंह बृजवाल)
वरिष्ठ स्टाफ अधिकारी
कृते मुख्य अभियन्ता (कुमाऊँ)”

6.5 The perusal of the record reveals that the Appointing Authority has not taken any decision on the recommendation of the Screening Committee and the impugned order dated 08.09.2014 (Annexure: A1) regarding non-entitlement of the petitioner for ACP (because the services rendered by him in the State of Arunachal Pradesh cannot be counted) has been passed on behalf of the Chief Engineer, Kumoun Region (Respondent No. 3). The letter dated 08.09.2014 reads as under:-

“कार्यालय मुख्य अभियन्ता (कुमाऊँ)
सिंचाई विभाग उत्तराखण्ड हल्द्वानी

पत्रांक:- 3952/सीईके/ई-10 (जेई)/

दिनांक:- 8 सितम्बर 2014

विषय:- श्री उमेश चन्द्र उप्रेती, अपर सहायक अभियन्ता का प्रार्थना पत्र माननीय उच्च न्यायालय में दायर रिट संख्या- 1556/एस0एस0/2006 के दिनांक 06.10.2012 में दिये गये निर्णय की अनुपालना ।

अधीक्षण अभियन्ता, सिंचाई कार्य मण्डल, नैनीताल ।

उपरोक्त विषयक अपने पत्र संख्या- 6174/सिकाम/सी-4/दिनांक 22.08.2014 का संदर्भ ग्रहण करने का कष्ट करें, जिसके द्वारा श्री उमेश चन्द्र उप्रेती, अपर सहायक अभियन्ता का प्रार्थना पत्र माननीय उच्च न्यायालय में दायर रिट संख्या-1556/एस0एस0/2006/ दिनांक 06.10.2012 में दिये गये निर्णयानुसार ए0सी0पी0 का लाभ दिये जाने हेतु प्रेषित किया गया है। इस संबंध में इस कार्यालय के पत्र संख्या-4003/सीईके/दिनांक 11.10.2013 (जिसकी छायाप्रति आपको भी पृष्ठांकित है) के क्रम में मुख्य अभियन्ता एवं विभागाध्यक्ष सिंचाई विभाग, उत्तराखण्ड देहरादून के पत्र संख्या- 5894/मु0अ0/सिं0वि0/कार्मिक/ई-6/ए0सी0पी0 दिनांक 23.10.2013 द्वारा ए0सी0पी0 का लाभ स्वीकृत किये जाने सम्बन्धी शासनादेशों /नियमों में निहित प्राविधानानुसार इस संगठन के अन्तर्गत गठित समिति से प्रस्ताव प्राप्त कर तदनुसार अग्रेत्तर कार्यवाही हेतु प्रेषित करने के निर्देश प्राप्त हुये। इस संबंध में इस कार्यालय के पत्र संख्या-डी-294/सीईके/दिनांक 21.03.2014 द्वारा मुख्य अभियन्ता एवं विभागाध्यक्ष (कार्मिक अनुभाग), सिंचाई विभाग, उत्तराखण्ड देहरादून को स्क्रीनिंग कमेटी की रिपोर्ट प्रेषित कर दी गई, स्क्रीनिंग कमेटी की संस्तुति के अनुसार अन्य राज्यों में पूर्व में की गई सेवाओं की गणना के आधार पर ए0सी0पी0 का लाभ प्रदान किया जाना संभव नहीं है।

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(आनन्द सिंह बृजवाल)
वरिष्ठ स्टाफ अधिकारी
कृते मुख्य अभियन्ता (कुमाऊँ)''

6.6 When the above position was pointed out to learned A.P.O., he admitted that the final decision on the matter of the benefit of ACP to the petitioner has not been taken by the Respondent no. 2 as per paragraph-5 of the G.O. dated 08.03.2011. We, therefore, agree with the contention of the petitioner in

paragraph 43 of the claim petition that the report of the Screening Committee submitted to the Appointing Authority is still pending and remains undecided.

7. In view of the description in paragraphs 6.1 to 6.6 above, we are of the view that the impugned order dated 08.09.2014 (Annexure No. A1) is bad in the eye of law as the same has not been decided by the Competent Authority and, therefore, the order dated 08.09.2014 is hereby set aside. Respondent No. 2 (Chief Engineer & Head of the Department, Irrigation Department) is directed to decide and pass a reasoned order on the recommendation of the Screening Committee dated 20.03.2014 submitted to him vide letter dated 21.03.2014 (Annexure: A34), within a period of 8 weeks from today and thereafter, communicate the decision to the petitioner also.

The claim petition is disposed of accordingly.

It is, however, made clear that no opinion has been expressed on the merits of the case.

No order as to costs.

(RAM SINGH)
VICE CHAIRMAN (J)

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

DATE: AUGUST 07, 2018
NAINITAL
KNP