

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

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

Hon'ble Mr. A.S.Nayal
-----Member (A)

CLAIM PETITION NO. 03/DB/2019

1. Narendra Kumar, s/o Sh., Tirkha Ram, aged about 52 years, r/o Shyam Nagar Sunhara Road, Near Transformer Lane, Roorkee, Uttarakhand, Presently working and posted on the post of Senior Foreman Grade-I at UTC Rishikesh Depot, Uttarakhand.

CLAIM PETITION NO. 04/DB/2019

2. Rajendra Singh s/o Sh., Dular Singh , aged about 51 years, , Presently working and posted on the post of Senior Foreman Grade-I at UTC Almora Depot, Almora, Uttarakhand.

CLAIM PETITION NO. 05/DB/2019

3. Rakesh Kumar s/o Sh., Om Prakash, aged about 52 years, r/o House No. 50, Lane 2 Bank Colony, Ajabpur Kalan, Dehradun, Uttarakhand, Presently working and posted on the post of Senior Foreman Grade-I at UTC Hill Depot, Dehradun, Uttarakhand.

CLAIM PETITION NO. 06/DB/2019

4. Satish Kumar s/o Sh., Puran Singh, aged about 54 years, r/o Nand Vihar Colony, Sunhara Road, Roorkee, Distt. Haridwar, Uttarakhand, Presently working and posted on the post of Senior Foreman Grade-I at JNNURM Depot, Haridwar, Uttarakhand.

CLAIM PETITION NO. 07/DB/2019

5. Sukhbeer Singh Gupta s/o Sh. Chhote Lal, aged about 54 years, r/o EWS- 72 MDDA Colony Dalanwala, Dehradun, Uttarakhand, Presently working and posted on the post of Senior Foreman Grade-I at UTC Hill Depot, Dehradun, Uttarakhand

CLAIM PETITION NO. 08/DB/2019

6. Praveen Kumar Gupta s/o Sh. Ramkishan Gupta, aged about 56 years, r/o 1- Dilaram Bazar, Dehradun, Uttarakhand, Presently working and posted on the post of Senior Foreman Grade-I at UTC B-Depot, Dehradun, Uttarakhand.

CLAIM PETITION NO. 09/DB/2019

7. Qaseem Ahmad s/o Sh., Amir Ahmad , aged about 59 years, r/o 82-SOT Street Roorkee, Distt. Haridwar, Presently working and posted on the post of Senior Foreman Grade-II at Roorkee Depot, Uttarakhand.

CLAIM PETITION NO. 15/DB/2019

8. Pankaj Aeron s/o Sh., Harish Chandra Aeron, aged about 53 years, r/o House No. 179/1 makhtul Puri Roorkee, Presently working and posted on the post of Senior Foreman Grade-I at UTC Workshop, Haridwar, Uttarakhand.

CLAIM PETITION NO. 16/DB/2019

9. Anil ;Kumar Sharma s/o Late Sh., Dinesh Chand Sharma, aged about 53 years, r/o Village and post office Padampur Sukhro, Kotdwar, Distt. Pauri Garhwal, Presently working and posted on the post of Senior Foreman Grade-I at UTC Kotdwar Depot,Uttarakhand.

CLAIM PETITION NO. 17/DB/2019

10. Ramesh Chandra Pandey s/o Late Sh., Kailash Chandra pandey, aged about 53 years, r/o Vasant Vihar, Giritaal, Kashipur, Distt. Udham Singh Nagar, Presently working and posted on the post of Senior Foreman, Regional Workshop Kathgodam, Nainital, Uttarakhand.

CLAIM PETITION NO. 91/DB/2018

11. J.K.Pathak s/o Late Sh., G.R.Pathak, aged about 56 years, Presently working and posted on the post of Senior Foreman Grade-I at Tyre Shop Divisional Workshop, Dehradun, r/o House No. 5, Lane No.-1, E-Block, Saraswati Vihar, Ajabpur Khurd, Distt. Dehradun, Uttarakhand,

.....Petitioners

vs.

1. State of Uttarakhand through Secretary, Transport,Government of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Managing Director, Uttarakhand Transport Corporation, Head Quarter, Raj Vihar, Dehradun.
3. General Manager (Technical) Uttarakhand Transport Corporation, Head Quarter, Raj Vihar, Dehradun.

.....Respondents.

Present: Sri M.C.Pant & Sri L.K.Maithani, Counsel for the petitioner.
Sarvsri U.C.Dhaundiya & V.P.Devrani, A.P.Os., for Respondents

JUDGMENT

DATED: FEBRUARY 07, 2019

Justice U.C.Dhyani (Oral)

Since the factual matrix of the above noted claim petitions and law governing the field is the same, therefore, all the claim petitions are being decided together, by a common judgment and order, for the sake of brevity and convenience.

2. By means of above noted claim petitions, petitioners seek following reliefs:

i. To declare the impugned order dated 22.11.2018 (AnnexureNo. A-1) and all consequential order as non-est, void and unconstitutional and to quash the same and further to restrain the respondents to take any steps in furtherance to the impugned order to cause any monetary loss to the petitioners by reducing their grade pay or salary keeping in view the fact highlighted in the body of the petition along with its effect and operation also after calling the entire order from the respondents.

ii. To issue an order or direction to the concerned respondents to grant the benefit of second ACP grade pay 5400 since 01.09.2008 and benefit of third ACP grade pay 6600 since 01.07.2016 with all consequential benefits along with arrears had it been the impugned order the impugned order was never in existence.

iii. To award damages and compensation in tune of rupees 10 lakhs and the same be paid to the petitioners jointly and severally by the respondents keeping in view the facts highlighted in the body of the petitions.

iv. To issue any other order or direction which this Court may deem fit and proper in the circumstances of case in favour of the petitioners.

v. To award the cost of petitions.

3 Claim Petition No. 03/DB/2019 , Narendra Kumar vs. State & others shall be the leading case.

4 Facts giving rise to claim petition No. 03/DB/19 are as follows:

Petitioner was initially selected and appointed on the post of Mechanic in respondent department in Kumaon Region in the erstwhile State of U.P. on 20.03.1989. Thereafter, the petitioner was promoted to the post of Junior Foreman on 17.04.1993.. Post of Mechanic and Junior Foreman, both were the posts of direct recruitment and have the same grade pay of Rs.2800/-. Respondents granted the second promotion to the petitioner on the post of Senior Foreman Grade II on the same grade pay on 17.07.2009 and third promotion on the post of Senior Foreman Grade-I on 10.03.2013, in the grade pay 4200/-. The Accelerated Career Progression Policy became effective from 01.09.2008 *vide* G.O. No. 872 dated 08.03.2011. The said G.O. was

further modified by G.O. No. 313 and 314 dated 30.10.2012 (Copies: Annexure A-2,A-3 & A-4). On completion of continuous satisfactory regular service of 10,18 and 22 years from the date of their initial appointment, the employees were allowed up-gradation to the next scale of pay, as per Para 2(ii) of the aforesaid Government order. *Vide* G.O. ;No. 770 dated 06.11.2013, the above G.Os. were modified. It was provided that where a post of promotion is available to the employees up to the grade pay of Rs.4800/-, grade pay and pay band will be admissible of the promotional post and where promotional post is not available, then it will be given as per Annexure: A-1 of G.O. No. 395 dated 17.10.2008 (Copy: Annexure A-5). *Vide* order dated 20.06.2016 of the respondent no.2, the above G.O. dated 06.11.2013 was made applicable to the employees of the corporation and after that vide Order No. 534 dated 11.10.2017 of respondent no.2, the benefit of second ACP grade pay 5400/- since 01.11.2013 and benefit of third ACP grade pay 6600/- since 01.09.2015 was granted to the petitioner.

Suddenly, *vide* office order dated 22.11.2018, the respondent no.2 without giving any notice and opportunity of hearing to the petitioner downgraded the grade pay 5400 and 6600 respectively to the grade pay of 4600 and 5400 (Annexure: A-1)

In G.O. dated 22.08.2014 it is provided that in the department where the grade pay of post hold and post of promotion are same, the next grade pay of post in the department was/ is sanctioned to the employees. In the department/ cadre of the petitioner, the next grade pay of grade pay 4200 is the grade pay 5400, hence *vide* office order No. 534 of dated 11.10.2017, the grade pay 5400 was rightly given to the petitioner as second ACP, but later on, the respondent misinterpreted the G.O. dated 22.08.2014 and downgraded the benefit of second ACP from grade pay 5400 to 4600 which is wrong and illegal. The G.O. dated 22.08.2014 is not an exception to the G.O. dated 06.11.2013, but in addition to the G.O. The meaning of “next higher grade pay” in the G.O. dated 22.08.2014 is next higher grade pay in the cadre of the department and not the grade pay mentioned in the Annexure No.1 of G.O. dated 17.10.2008. Hence, the petitioner

was/ is entitled to get the grade pay 5400/- as second ACP since 01.11.2013 and accordingly, the grade pay 6600/- as third ACP since 01.07.2016. Thus, the action of the respondent is wrong and illegal.

5 Annexure: A-1 is, therefore, in the teeth of above noted claim petitions.

6 A ground has been taken in the claim petitions that neither any opportunity of hearing has been given nor any notice was given to the petitioners prior to downgrading the benefit of ACP and , therefore, principle of natural justice is violated.

7 Basic contention of Ld. Counsel for petitioners is that no opportunity of hearing was given to them before issuing the impugned Office Order dated 22.11.2018.

8 Petitioners jointly, through their Union, and severally, made representations to respondent no.2 on 06.12.2018 and 10.12.2018, which are still pending decision before authority concerned (Copy Annexure: A-7 colly).

9 It is prayed that representations of the petitioners are pending decision of Respondent No.1, which may kindly be directed to be decided within a reasonable time and till then effect and operation of orders impugned may be kept in abeyance.

10 The same is vehemently opposed by Ld. Counsel for respondents stating that the respondents may, at the best, be directed to decide the representation of the petitioners by a reasoned and speaking order. Ld. Counsel for respondents no. 2 & 3 also submitted that, so far no recovery order has been issued, as against the petitioners.

11 Normally, we would have admitted such petitions and would have granted opportunity to the respondents to file C.A./W.S., but since we feel that we are deciding the claim petitions on admitted facts, purely on question of law, and keeping these claim petitions pending would serve no purpose, therefore, we proceed to decide the petitions at the admission stage itself.

12 The decision rendered by Hon'ble Apex Court in **State of Punjab and others vs. Rafiq Masih , (2015) 4SCC 334** has been cited in support of their contention by the Ld. Counsel for the petitioners. Hon'ble Court, in para 18 of the decision, has held as under:

“It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.”

13 In similar bunch of writ petitions, Learned Single Judge of Hon'ble High Court of Uttarakhand, in *WPSS No. 562/18 and another connected petitions*, has observed, on 20.06.2018, as below:-

“**34.** Apparently, this Court is also of a considered view that a recovery of the amount from the salary already paid bonafidely to the incumbents by making deduction or recovery has a serious consequence, more particularly, when it is intended to be made against the lower cadre of employees who have limited financial resources to sustain themselves, because major part of their earning is used for sustaining themselves and their families and they are hardly able to make any savings or when it intends to be made against a retired employee who too sustains on the reduced remuneration. This Court also is of the view that even if in those circumstances where the excess payment of the salary has been made wrongfully to an employee, in that eventuality

also, the authorities cannot sit for a long period or for an indefinite period and then at a later stage wake up from the deep slumber and take an action belatedly for recovering the amount, because, the belated recovery too has a severe consequence on the employees. Hence, the Hon'ble Apex Court has postulated that if, at all, a recovery is intended to be made, it should be at least before 5 years period from the date when actual payment was made. The Hon'ble Apex Court has also laid down that since the recovery if made from an employee would be iniquitous, harsh and arbitrary it would outweigh the balance of the employer's right to recover.

38. As already observed above that salary constitutes to be a property within the meaning under Article 300A of the Constitution of India. If there happens to be any bleakest situation where it has been wrongfully paid and if, at all, it is required to be recovered, in that eventuality, it could only be in accordance with procedure provided under law. Meaning thereby, it cannot be recovered by a unilateral act or decision taken by the respondent without the participation of the persons against whom the excess payment is alleged to have been made and from whom the recovery is being sought to be made. On scrutiny of any of the communications ever since 20th October, 2011 or even to say since 2009 when the revised scale was paid to the petitioner i.e. the decision of the Committee or till passing of the impugned order dated 9th February, 2018, none of the orders reflect that at any stage or point of time, the petitioners were given prior notice and they were called upon by notice duly served, to participate in the proceedings to enable them to have their say in the proceedings because any proceedings drawn for recovery of the amount will have ultimate bearing on the rights of the petitioners' deprivation of salary earned by them which has been held to be a property.

39. At this stage, this Court, in view of analogy and logic assigned above, is of the considered view and feels it appropriate to point out that it would be apt to clear that while this Court is deciding these bunch of writ petitions, it may not be construed that as if this is an adjudication on the merits of claim for the revised pay-scale or entitlement of the petitioners to get revised scale, as has been paid to them or the liability of the

respondents to pay revised pay-scale as per the law applicable. It is only an adjudication from limited view point that since a right was conferred and settled by way of payment of the revised payscale in favour of the petitioners by a voluntary act of authorities, without any influence or misrepresentation or fraud exercised by the petitioners or by misleading or distortion of facts or law, its recovery should have been made if at all permissible under law it would be only after giving an opportunity of hearing to the petitioners which has not been admittedly provided to the petitioners. As such the impugned order dated 9th February, 2018 (and such other impugned orders passed in bunch of other writ petitions) do not satisfy the test of reasonableness and violates the principles of natural justice and not equitotus because any action taken of recovering the amount will obviously have a civil consequence, hence it ought to have been made only after providing an opportunity of hearing which lacks in the present case.

40. On that limited score only, all these writ petitions would stand allowed. All the impugned orders passed in each set of writ petitions (as detailed above) would stand quashed. However, this will not preclude or prejudice the rights of the respondents to take a fresh action on the same facts and conditions, but only after providing an opportunity of hearing to the petitioners and after recourse as permissible under law by adopting the parameters laid down by Hon'ble Apex Court in Rafiq Masih's case (Supra). During the period in which the respondents take an action in pursuance to today's judgment, the recovery as sought to be made would be kept in abeyance unless determined afresh, after providing an opportunity to the petitioners. However there is one more clarification required to be made at this juncture that the recovery as sought to be made would be exclusively dependent upon the decision which has to be taken by the respondents after providing an opportunity to the petitioners in pursuance of today's order. Respondents are also directed that till the time they take a decision the orders pertaining to the recovery and reduction of pay scale too would be kept in abeyance."

[Emphasis supplied]

14 The facts and foundation of above noted claim petitions are identical to WP SS No. 562/18 and other connected writ petitions. Present claim petitions should, therefore, be disposed of, at the admission stage, in the same manner, in which Hon'ble High Court has decided a bunch of writ petitions on 20.06.2018.

15 All the above noted claim petitions are, accordingly, disposed of at the admission stage by directing respondent no.2 to decide the representation of the petitioners by a reasoned and speaking order, in accordance with law, after affording due opportunity of personal hearing to the petitioners, within a period of four weeks of presentation of certified copy of this judgment along with fresh representations.

16 Needless to say that the decision so taken, shall be communicated to the petitioners soon thereafter

17 Claim petition No. 91/DB/2018, J.K.Pathak vs. State & others was although admitted, but since no C.A./W.S. could be filed so far, therefore, the said claim petition is also disposed of in the same terms.

18 Till such decision is taken, the orders pertaining to recovery and reduction of pay scale, would be kept in abeyance, *qua* petitioners, in the interest of justice.

(A.S.NAYAL)
MEMBER (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: FEBRUARY 07, 2019
DEHRADUN

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