

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

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

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

CLAIM PETITION NO. 27/DB/2019

Smt. Pratibha Pant, State Tax Officer, Sector-07, Lakshmi Road, Dehradun.

.....Petitioner

vs.

1. State of Uttarakhand through Principal Secretary Finance, Uttarakhand, Secretariat, Dehradun.
2. Commissioner State Tax Uttarakhand, Dehradun.
3. Additional Commissioner, State Tax Uttarakhand, Dehradun..

.....Respondents.

Present: Sri B.B.Naithani, Counsel for the petitioner.

Sri V.P.Devrani, A.P.O., for the Respondents.

JUDGMENT

DATED: NOVEMBER 19, 2019

Justice U.C.Dhyani (Oral)

By means of present claim petition, the petitioner seeks following reliefs:

“ (a) This Hon'ble Tribunal may be pleased to quash the impugned order dated 20.12.2018.

(b) This Hon'ble Tribunal may further be pleased to direct the respondent no.2 to grant 1st ACP in the pay scale of 15600-39100 with grade pay of Rs.5400 according to the provisions of above said G.Os.

dated 08.03.2011 and dated 01.07.2013 by calculating the total service since the date of 1st appointment in the service of State of Uttarakhand.

(c) To issue direction to grant all consequential benefits after grant of 1st ACP w.e.f. 25.01.2016 with arrears of ACP.

(d) To grant any other relief/ reliefs which this Hon'ble Tribunal may deem fit and proper under the circumstances of the case

(ii) To issue order of direction quashing the report dated 22.11.2016 of the committee formed by the respondent No.2 to re-fix the seniority of the petitioner.

(e) To award cost to the petitioner.”.

2. Facts, giving rise to present claim petition, are as follows:

Petitioner was initially appointed on 25.01.2006, as Pharmacist, in Community Health Center, Jangliagaon, Bhimtal, District Nainital, in the Department of Medical Health and Family Welfare. Pay scale of Pharmacist was Rs.5200-20200/- with grade pay of Rs.2800/-. After completing two years of service, Pharmacists were given pay scale of Rs. 9300-34800/- with grade pay of Rs. 4200/-. *Vide* Government Order dated 31.12.2013, the pay scale of Pharmacists was revised. Revised pay scale has been depicted in Annexure: A 2 to the claim petition. Petitioner was also granted grade pay of Rs.4600/- in the pay scale of Rs.9300-34800/-, after completion of two years of service. Copy of LPC has been enclosed with the claim petition as Annexure: A 3.

Petitioner was, thereafter, selected on the post of Commercial Tax Officer (for short, CTO) through Public Service Commission. She joined as CTO on 03.03.2015 in the same pay scale of Rs.9300-34800/- with grade pay of Rs.4600/-, as is evident from order dated 19.02.2015, passed by the Commissioner Tax, Uttarakhand (Copy of order: Annexure- A4). Service rendered by the petitioner in the Medical Department has been duly recognized and included in the existing service of Respondent No.2 in the State of Uttarakhand. Her pay has appropriately been fixed in the pay scale of Rs.9300-34800/- with grade pay of Rs.4600/- when the petitioner joined as CTO (Copy of the order: Annexure A-4A). The petitioner has, therefore, been continuously serving the State of Uttarakhand without break in service since 25.01.2006.

After serving the State for a period of 10 years, the petitioner made a representation to Respondent No.2 to grant her first ACP in the pay scale of Rs.15600-39100/- with grade pay of Rs.5400/-. The said representation of the petitioner has been dismissed by Respondent No.3.

According to the petitioner, Respondent No.3 has acted without authority, and without following the provisions of G.O. dated 08.03.2011 (Copy: Annexure- A 6). Benefit of ACP has to be granted by the appointing authority on the recommendation of Screening Committee duly constituted as per the procedure prescribed in the G.O. dated 08.03.2011, but, in the instant case, no such exercise has been undertaken. Aggrieved with the rejection of her representation, present claim petition has been filed.

3. C.A./W.S. has been filed on behalf of respondents, opposing the claim petition. R.A. thereto has also been filed by the petitioner reiterating the facts of claim petition. Thereafter, supplementary C.A./W.S. has been filed on behalf of respondents to underline the facts contained in C.A./W.S.
4. Ld. Counsel for the petitioner submitted that the petitioner's representation has been dismissed by Respondent No.3 without application of mind and without considering G.Os. of 08.03.2011 (Annexure: A 6) and 01.07.2013 (Copy: Annexure- A 7).
5. The respondent department has assigned three main reasons for dismissing the representation of the petitioner. Those reasons are: (i) the petitioner has not completed 10 years' continuous satisfactory service as CTO; (ii) the pay scales in Medical Department and Commercial Tax Department are different; and (iii) first ACP was denied to the petitioner on the ground that she was granted grade pay of Rs.4600/-, as non-functional pay scale, which pay scale is not applicable to the post, presently occupied by the petitioner.
6. According to the petitioner, Respondent No.3 has knowingly and intentionally failed to appreciate the contents of Para 2 (vi) of the G.O. dated 08.03.2011, whereby services rendered in other department(s) have to be taken into consideration for calculating the period of service for the purpose of granting ACP. *Proviso* to Para 2 (1) (ka) of G.O. dated 08.03.2011 and *proviso* to Para 1 (ka) of G.O. dated 01.07.2013 have not

been considered by Respondent No.3, which mandate that the total service done in the lower as well as in higher upgraded pay scale shall be combined together to calculate the period of eligibility for grant of ACP in the pay scale with grade pay, next higher to the upgraded pay scale with grade pay.

7. According to the petitioner, first ACP is to be granted to the petitioner after completion of regular continuous and satisfactory service from the date of first regular appointment (i.e., 25.01.2006) as per G.Os. dated 08.03.2011 and 01.07.2013, and as such, the petitioner is eligible for grant of first ACP in the pay scale of Rs.15600-39100/- with grade pay of Rs.5400/-. Paras 2(3) (4k) and (4kh) of G.O. dated 01.07.2013 provide that the concept of functional pay scale has to be ignored. The impugned order has been passed in contravention of G.Os. dated 08.03.2011 and 01.07.2013. Assured Career Progression Scheme (for short, ACP) is not related to any particular post but is based on stagnation on a particular pay scale without having been given up-gradation in the pay scale. ACP scheme starts from the date of first appointment in any pay scale and where employee is stagnated in the same pay scale for continuously 10 years, the benefit of first ACP has to be given. Since the petitioner joined her services in Medical Department of State of Uttarakhand on 25.01.2006, therefore, she should be given the benefits of Government Orders dated 08.03.2011 and 01.07.2013 for grant of first ACP in the pay scale of Rs.15600-39100/- with grade pay of Rs.5400/- *w.e.f.* 25.01.2016.
8. Ld. A.P.O. submitted that although in G.O. dated 08.03.2011, there is a provision for counting regular service(s) rendered in different departments, in the same grade pay for the calculation of ACP, but the petitioner was appointed as a Pharmacist on 25.01.2006 with pay scale of Rs.5200-20200/- grade pay Rs.2800/- (upgraded to Rs.9300-34800 with grade pay Rs.4200/-). She was granted non-functional pay of Rs.5000-8000/- after completion of two years of service [revised pay scale Rs.9300-34800/- with grade pay rs.4200/-], which was upgraded as Rs.9300-34800/- with grade pay Rs.4600/ from 01.01.2008. Ld. A.P.O. contended that even if it be assumed for the sake of arguments that grade pay of Rs.4600/- be considered for calculating the period of 10 years for first ACP, then also an employee who worked in grade pay of Rs.4600/- from 01.01.2008 onwards,

is only entitled to first ACP after completion of 10 years of satisfactory service on 01.01.2018. The petitioner joined as CTO (now known as State Tax Officer), with pay scale Rs.9300-34800/- grade pay Rs.4600/ on 03.03.2015, and therefore, she is entitled to get the benefit of first ACP after completion of 10 years of service beyond 03.03.2015, only if, during this period, she was not granted promotion to the next higher post.

9. In *Dwijen Chandra Sarkar and another vs. Union of India and another*, [1999 SC- SLR 278], it was held by Hon'ble Apex Court, on the basis of various earlier decisions, that the past services of the employee are to be counted for limited purposes of eligibility for computing the number of years of qualifying service to enable him to claim the higher grade under the scheme of time bound promotion. In *Union of India and another vs. V.M.Bhat*, [2003 (99)FLR 1053], it was observed by Hon'ble Apex Court that the well settled principle of law is that even in the case where the transfer has been allowed, on request, the concerned employee merely loses his seniority, but the same, by itself, could not lead to a conclusion that he should be deprived of all other benefits including his experience and eligibility for promotion.
10. Therefore, in view of consistent approach of the Hon'ble Apex Court, this question is no more *res integra* that the incumbent, even on transfer, to the new department, may not get the seniority, but his experience of the past services rendered, will be counted for the purposes of other benefits, like, higher pay scale, as per scheme of the Government.
11. In *State of Maharashtra and others vs. Uttam Vishnu Panwar*, [2008 (116) FLR 788], the Tribunal had held that the services rendered by incumbent, in previous department, shall be counted for the purpose of Time Bound Promotion Scheme. Hon'ble Supreme Court held that, the view taken by the Tribunal was correct and found no ground to interfere with the same.
12. Order dated 09.10.2015 (Annexure: A- 4A), issued by Commissioner Tax, is in favour of the petitioner. Exercising the power under Fundamental Rule-22 (B), Financial Handbook Part-II, Volume 2-4, the petitioner has been granted pay protection by including her past services (as

Pharmacist) in the Commercial Tax Department. The departmental order quoted above has explicitly dealt with past service (as Pharmacist) rendered by the petitioner in the Medical Health and Family Welfare Department, from 25.01.2006 to 02.03.2015. It has been quoted in the departmental order referred to above that the petitioner worked as Pharmacist from 25.01.2006 to 02.03.2015, without (service) break. As per the LPC of February, 2015 of the petitioner, issued by Chief Treasury Officer, Nainital, the petitioner was drawing , in February, 2015, basic pay of Rs.16150/- grade pay Rs.4600/- which was higher than the basic pay Rs.12540/- grade pay of Rs.4600/-, for the post of CTO. She was drawing higher salary, as Pharmacist, than the initial pay of CTO (when she joined as CTO). Pay protection of the petitioner was, therefore, ordered by HOD.

13. It may be stated that similarly placed Pharmacists in the Medical Health and Family Welfare Department have been given the benefit of first ACP after 10 years of their joining as per orders issued by the officers of that Department, placed in file as Annexure: A-11 to Supplementary R.A., which have not been denied by the respondents. Had the petitioner not left her parent department, she would also have been granted first ACP after 10 years of service, i.e., *w.e.f.* 25.01.2016. Her joining the Commercial Tax Department on 03.03.2015 was also in the same pay scale and same grade pay as she was getting on the earlier post. The order of the Commissioner Tax, Uttarakhand added such past services to the present services and provided pay protection to her, as she was getting higher basic pay due to the earlier length of service. This transition did not involve any financial up-gradation which could have prevented her from getting ACP on 25.01.2016, which has been received by similarly placed Pharmacists, in the Medical Health and Family Welfare Department after 10 years of service.

14. The respondents have also argued that as per the G.O. dated 01.07.2013, it has been provided in para 4(*kha*) that presently non-functional pay scale/grade pay is provided only on the post of Pharmacist and if any other post has been wrongly given, any financial benefit, on this basis, the same should be corrected and excess payment made, is required to be adjusted. The respondents are also insisting on the fact that the services of the petitioner in the present pay scale and grade pay have commenced

only after two years of her joining the services of pharmacist and hence, she should be provided ACP as per the G.Os. of 2011 and 2013 only in 2018, but even that is not possible, as from 2017, the ACP has been replaced by MACP which does not take into account the service rendered in another department of the Government.

15. At internal page No. 3 of the G.O. dated 08.03.2011 (Annexure: A6), it is clearly mentioned that service in the same grade pay of other Government Department of the State shall be taken into account for financial upgradation but in such cases, the consideration of the benefit of ACP shall be done only after satisfactory completion of the probation period, but shall be given from the due date. Presumably, the petitioner has already completed her probation period and, therefore, her past services as Pharmacist were to be added for consideration of ACP. The question is, whether they should be added from 25.01.2006 or two years thereafter, when she got the present pay scale and grade pay. The service rendered prior to her joining the State Tax Department has to be considered *at par* with the services of other similarly placed Pharmacists in the Medical, Health and Family Welfare Department. If those services qualified the other Pharmacists, appointed in January, 2006 to be granted ACP from January, 2016, the mere transition of the petitioner in another department of the State Government in the same pay scale and grade pay, does not disqualify her from getting ACP in January 2016. The State Tax Department cannot apply their own perspective to the past services rendered in previous department, when the previous department counts the entire period as qualifying period for consideration of ACP.

16. Similarly placed Pharmacists have got the grade pay of Rs. 5400 after ACP in January 2016 and the same would have been given to the petitioner by the State Tax Department *w.e.f.* 25.01.2016 had she initiated her services as C.T.O. on 25.01.2006. An argument has also been advanced by the respondent department that granting ACP to her in January 2016 would be unfair to the other C.T.Os., who were directly recruited along with the petitioner in 2015. This Tribunal does not find any force in this argument because the petitioner is already getting higher salary as compared to other contemporary CTOs by way of her pay protection and the *inter-se* seniority

of the CTOs is also not going to be affected in any manner. The petitioner had an accrued right to be considered for ACP on the basis of the past length of her service which should be viewed from the lens of the previous department and as analyzed in the preceding paras, the same should have been granted to her *w.e.f.* 25.01.2016.

17. Nowhere it has been projected by the respondent department that the benefit of ACP is not given to the petitioner on account of unsatisfactory service, either in the present or in her previous department. Therefore, treating her services to be satisfactory, orders for granting her ACP *w.e.f.* 25.01.2016 may be issued.
18. The Tribunal, therefore, is of the opinion that the impugned order (Annexure: A1) should be set aside and a direction should be given to respondent No. 2 to grant 1st ACP in the pay scale of Rs. 15,600-39100 with Grade Pay of Rs. 5400 in accordance with the provisions of the G.Os. dated 08.03.2011 and 01.07.2013, by calculating the total period of 10 years of service from the date of her first appointment in the service of State of Uttarakhand i.e. 25.01.2006 . The petitioner is also entitled to be given all consequential benefits, after grant of 1st ACP *w.e.f.* 25.01.2016 with arrears of ACP.
19. Order accordingly.
20. The claim petition is allowed. No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: NOVEMBER 19, 2019
DEHRADUN

KNP/VM