

**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. 49/DB/2019

Udai Singh Sanger s/o Late Shri Bihari Singh, aged about 70 years, retd.,
Assistant Engineer, Public Works Department r/o 14/11, Old Survey Road,
Dehradun.

.....Petitioner

VS.

1. State of Uttarakhand through Secretary, Public Works Department, government of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Engineer-in-Chief and Head of the Department, Public Works Department, Uttarakhand, Yamuna Colony, Dehradun.

.....Respondents.

Present: Sri L.K.Maithani, Counsel for the petitioner.
Sri V.P.Devrani, A.P.O., for the Respondents.

JUDGMENT

DATED: DECEMBER 12, 2019

Justice U.C.Dhyani (Oral)

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

“(I) To quash the impugned correction office order dated 06.02.2019 of respondent no.2 (Annexure: A-1) with its effect and operation and

declaring that the petitioner is/ was fully and legally entitled for the third benefit of ACP under the provision of para 1 of G.O. dated 08.03.2011 since 01.01.2006.

(ii) To issue an order or direction to the concerned respondents to restore the office order dated 22.10.2011 and correct the date of admissibility of benefit of third ACP to the petitioner and accordingly grant and sanction the benefit of third ACP to the petitioner since 01.01.2006 instead of 01.09.2008..

(iii) To issue an order or direction to the respondents to sanction and release the arrears of amount/ benefit of ACP with interest to the petitioner since the 01.01.2006 till the date of actual payment.

(iv) To issue any other order or direction which this court may deem fit and proper in the circumstances of the case in favour of the petitioner.”

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

Petitioner was initially appointed as Junior Engineer on 26.10.1972. He was promoted to the post of Assistant Engineer in the year 2000. He attained the age of superannuation on 31.01.2008. At the time of retirement, he was getting grade pay of Rs.6600/-.

Vide Government Order dated 08.03.2011, the State Government framed Assured Career Progression Scheme (for short, ACP).

Petitioner was getting grade pay of Rs.6600/- on 01.01.2006. As per para 1 of the G.O. dated 08.03.2011, he was entitled to grade pay Rs.7600/-, as benefit of 3rd ACP since 01.01.2006 (instead of 01.09.2008). Respondent No.2 sanctioned benefit of 3rd ACP to the petitioner wrongly from 01.09.2008. Petitioner made representation to Respondent No.2, but the said respondent *vide* impugned order dated 06.02.2019 (Annexure: A 1), cancelled the benefit of 3rd ACP to the petitioner on the ground that the petitioner has since retired on 31.01.2008, therefore, the benefit of 3rd ACP given to him since 01.09.2008 is bad in law.

As per provisions of G.O. dated 08.03.2011, a Screening Committee was constituted, who found the petitioner eligible for the benefit of ACP, but the benefit was granted from 01.09.2008, instead of 01.01.2006. According to G.O. dated 30.10.2012, the benefit of ACP, which was already given as per the G.O. dated 08.03.2011, cannot be reopened. The benefit of 3rd ACP

has been given to the petitioner in the year 2011, prior to G.O. dated 30.10.2012, which matter could not have been reopened.

Petitioner is aggrieved with impugned order dated 06.02.2019, which is Annexure: A-1 to the claim petition.

3. Counter Affidavit has been filed on behalf of respondents. As per para 3 of the C.A., filed by Sri Jeet Singh Rawat, Executive Engineer, NH, PWD, the petitioner has retired from service on 30.01.2008. The relationship of master and servant between Respondent State and Petitioner ceased on 30.01.2008, therefore, the benefit of 3rd ACP, grade pay Rs.7600/- was not available to the petitioner. Inadvertently, he was given grade pay Rs.7600/- *vide* office order dated 22.10.2011, which was rectified on 06.02.2019 (Annexure: A-1), which is valid in law. Office order dated 06.02.2019 was passed to rectify the mistake committed earlier and the same was not punitive in nature.

4. According to W.S./C.A., the petitioner remained as Junior Engineer from 26.10.1972 till 31.05.1999. In June, 1999, he was promoted to the post of Assistant Engineer. The respondent- State has highlighted, in para 6 of the W.S., that the benefit of financial up-gradation, as per Government Orders, was given to the petitioner. In paras 8 and 10 of the same, an endeavour has been made to justify the action of the respondent- State. The claim petition, according to respondents, should be dismissed.

5. R.A. has been filed by the petitioner to reassert the logic and relief, as projected in the claim petition.

6. It is the submission of Ld. Counsel for the petitioner that as per para 1 of the G.O. dated 08.03.2011, the benefits of scheme have been made applicable since 01.09.2008, to those employees and officers who hold the posts up to the grade pay Rs. 4800/- in revised pay band of previous pay scale Rs.7500-12000/- and since 01.01.2006, to those employees and officers who hold the post in grade pay Rs.5400/- in revised pay band of pay scale Rs.8000-13500/- or above pay band or grade pay. As per Para 2(i) of G.O. dated 08.03.2011, the benefit of three ACPs. have been granted to an employee/officer of the State services after completion of 10 years, 18 years

and 26 years continuous satisfactory service after the appointment on the post of direct recruitment. It is the submission of petitioner's Counsel that as per para 1 and 2 of said G.O. the petitioner was fully eligible and entitled for benefit of 3rd ACP admissible after completion of 26 years' service since 01.01.2006, as, on that date, the petitioner was getting grade pay Rs.6600/-

7. The petitioner has contended that under the provisions of G.O. dated 08.03.2011, a proposal was made for the benefit of ACP to the employees/officers of the department and Screening committee was constituted for that purpose. On the recommendation of the Screening Committee, *vide* office order No. 1596 of dated 22.10.2011(Annexure: A-4), benefit of 3rd ACP was sanctioned since 01.09.2008 to the petitioner along with other persons. Since petitioner was getting grade pay Rs.6600/- on 01.01.2006, hence as per para 1 of the G.O. dated 08.03.2011, petitioner was entitled for grade pay Rs.7600/- as benefit of 3rd ACP since 01.01.2006, instead of 01.09.2008. Respondent No.2 sanctioned the benefit of 3rd ACP to the petitioner wrongly from 01.09.2008. Petitioner made several representations to Respondent No.2, to grant him benefit of 3rd ACP from 01.01.2006, instead of 01.09.2008. But, Respondent No.2 *vide* office order dated 06.02.2019 (Annexure: A-1) cancelled the benefit of 3rd ACP to the petitioner on the ground that the petitioner has retired from service on 31.01.2008, hence, benefit of 3rd ACP given to him since 01.09.2008 is not as per law. It is the submission of the petitioner that on 01.01.2006, his grade pay was Rs.6600/-, hence as per provisions of Para 1 of the G.O. dated 08.03.2011, he was entitled for the benefit of 3rd ACP, grade pay Rs.7600/- *w.e.f.* 01.01.2006, but Respondent No.2 cancelled the benefit of ACP, instead of correcting the date of grant of benefit of ACP, therefore, impugned order dated 06.02.2019 is wrong, arbitrary, discriminatory and illegal.

8. Under the provisions of G.O. dated 08.03.2011, the Screening Committee was constituted, who found the petitioner eligible for the benefit of ACP, but the benefit was granted from 01.09.2008 instead of 01.01.2006. The date 01.01.2006 was changed to 01.09.2008 *vide* G.O. dated 30.10.2012. In the G.O. dated 30.10.2012, it is clearly mentioned that the benefit of ACP which are already sanctioned prior to issuance of this G.O. under the provisions of G.O. dated 08.03.2011, cannot be reopened. The benefits of 3rd

ACP have been sanctioned to the petitioner in the year 2011 prior to issuance of G.O. dated 30.10.2012, hence on this count the respondents cannot reopen the matter of the petitioner.

9. It is the submission of Ld. A.P.O. that in G.O. dated 08.03.2011, grade pay Rs.4800/- and grade pay Rs.5400/- pertains to those employees who were directly appointed on the said grade pay substantively. The petitioner was substantively appointed in the pay scale of Rs. 175-10-300, as Junior Engineer in the year 1972. Hence, the petitioner was not entitled to grade pay of Rs.7600/- since 01.01.2006. The petitioner was wrongly given the benefit of 3rd ACP *w.e.f.* 01.09.2008 because he had already retired on 31st January, 2008. When this fact came to light, the benefit of 3rd ACP, which was given to the petitioner *w.e.f.* 01.09.2008, was cancelled *vide* office order dated 06.02.2019. According to Ld. A.P.O., since it was not a punitive measure, therefore, it was not necessary for the respondent department to have heard the petitioner. However, once the order was passed on the representation of the petitioner, that is sufficient compliance of the principles of natural justice.

10. The following points for determination, therefore, arise before this Tribunal:

- (i) Whether the petitioner was entitled to grade pay Rs.7600/-, as benefit of 3rd ACP, since 01.01.2006 or 01.09.2008?
- (ii) Whether petitioner's entitlement to the 3rd ACP *w.e.f.* 01.01.2006, which should have been sanctioned in 2011, could not be reviewed, after the relevant date was made 01.09.2008 for all grade pays and pay scales *vide* G.O. dated 30.10.2012?
- (iii) Whether an opportunity of hearing was required to be given to the petitioner while passing the impugned order?

No other point has been pressed nor arises.

11. A good number of days are relevant for deciding various issues projected in the claim petition. Petitioner joined as Junior Engineer on 26.10.1972. He was promoted as Assistant Engineer on 29.06.1999. In this way, he remained Junior Engineer from 1972 to 1999 and devoted approx. 27 years of service as Junior Engineer. Before advent of ACP Scheme, petitioner, on completion of 10 years of service was granted an additional increment on 01.07.1982. On completion of 16 years of service, in the year

1988, he was given higher pay scale of Rs.2200-4000/- *w.e.f.* 26.10.1988. On completion of 14 years + 6 years = 20 years' satisfactory service on 01.03.1995, he was given additional increment in the pay scale of Rs.2200-4000/-. He was promoted as Assistant Engineer on 29.06.1999, in the pay scale of Rs.8000-275-13500/-. He gave joining on the post of Assistant Engineer on 01.07.1999. In the year 2002, when he completed 24 years of satisfactory service, petitioner was given pay scale of Rs.10000-325-15,200/- *w.e.f.* 24.01.2002. The petitioner retired on 31.01.2008. He remained as Assistant Engineer only for 8 years 7 months, but for financial up-gradation, he was required to complete 10 years' service as Assistant Engineer. Petitioner was already granted time pay scale on the post of Junior Engineer, on which he was directly appointed. As per G.O. dated 08.03.2011, he was required to complete 10 years of service (as Assistant Engineer), but before completing 10 years, and on completion of 8 years 7 months' service as Assistant Engineer, he retired.

12. G.O. dated 08.03.2011 was amended *vide* G.O. dated 30.10.2012 and ACP was made effective from a single date, which is 01.09.2008 irrespective of the grade pay. Since the master-servant relationship between State Government and Petitioner ceased *w.e.f.* 31.01.2008, the date of retirement of the petitioner, therefore, the petitioner is not entitled to the benefit of 3rd ACP, according to the respondents.

13. The core issue for deciding the first point of determination is whether the petitioner's direct appointment in the initial post of joining the service, which, in the revised pay scale, would carry grade pay up to Rs.4800/- should be considered to be the applicable grade pay for granting ACP under the G.O. dated 08.03.2011 or his grade pay as on 01.01.2006 which was higher than Rs.5400/- be considered for grant of ACP under this G.O. The second consideration allows him ACP with grade pay of Rs.7600/- *w.e.f.* 01.01.2006 while first consideration grants him this ACP only from 01.09.2008, which becomes infructuous in his case, as he has already retired on 31.01.2008. The subsequent G.O. regarding ACP dated 30.10.2012, in addition to making the date uniform (01.09.2008) for all pay bands and grades pays, clearly stipulates that the "post held" 'in relation to the ACP Scheme', should be understood to be the post on which the concerned employee has

been appointed by direct recruitment at the start of the service. The relevant portion of para 2 of G.O. No.314 /xxvii(7)40(ix)/2011 dated 30.10.2012 (Annexure: A 6) is reproduced herein below for ready reference :

2(ka)Here also, the implication of “ Post held” in respect of the ACP Scheme be generally understood to be the post on which the concerned employee has been appointed in the beginning of the service by “direct recruitment”.....

[This is not exact translation. It only conveys the meaning.]

14. From the above, it is more than clear that 3rd ACP could not have been granted as per the G.O. dated 08.03.2011 to the petitioner *w.e.f.* 01.01.2006 and had he not retired prior to 01.09.2008, the same would have been admissible to him *w.e.f.* 01.09.2008.

15. As regards the second point for determination that the petitioner's entitlement could not be reviewed in view of the G.O. dated 30.10.2012, it is to state that had he been entitled to 3rd. ACP *w.e.f.* 01.01.2006, the same could not be reviewed. But this is not so in the petitioner's case.

16. As regards the point that opportunity of hearing was not given to the petitioner before passing the impugned order dated 06.02.2019, it is clear from the above that cancellation of the order dated 22.10.2011 was only to rectify the mistake committed in granting ACP to the petitioner *w.e.f.* 01.09.2008, as he had retired prior to this date, and it was not at all punitive in nature. Even otherwise the order dated 22.10.2011 could not have given any financial benefit to the petitioner as his pay could not be revised *w.e.f.* a date after his retirement, because the master- servant relationship between the State and him had already ceased on 31.01.2008.

17. From the above analysis, we hold that the petitioner was not entitled to grade pay Rs.7600/-, as benefit of 3rd ACP since 01.01.2006. He would have entitled to this grade pay *w.e.f.* 01.09.2008 had he continued in service till then. We also hold that no opportunity was required to be given to the petitioner while passing the impugned order (Annexure: A-1) by which the enhanced grade pay granted to him *w.e.f.* 01.09.2008 was cancelled, as the same was mistakenly granted to him.

18. The claim petition, therefore, fails and is dismissed. In the circumstances, no order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: DECEMBER 12, 2019
DEHRADUN

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