

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

Present: Hon'ble Mr. Ram Singh

-----Vice Chairman (J)

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

CLAIM PETITION NO. 106/DB/2019

Tikam Singh Panwar (Male), aged about 61 years, S/o Sri Ajab Singh Panwar,
R/o 118/1, Neelkanth Vihar, Patharia Peer, Kalidas Road, Dehradun.

.....Petitioner

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CLAIM PETITION NO. 107/DB/2019

Govind Ballabh Oli (Male), aged about 58 years, S/o Late Sri Hari Dutt Oli,
R/o House No. 129, Old Nehru Colony, Haridwar Road, Dehradun.

.....Petitioner

VERSUS

1. State of Uttarakhand through its Chief Secretary, Government of Uttarakhand.
2. Secretary, Secretariat Administration, Uttarakhand Civil Secretariat, Govt. of Uttarakhand, Dehradun.

.....Respondents

Present: Dr. N.K.Pant, Ld. Counsel
for the petitioner
Sri V.P.Devrani, Ld. A.P.O.
for the respondents

JUDGMENT

DATED: MARCH 05, 2020

HON'BLE MR. RAM SINGH, VICE CHAIRMAN (J)

1. As both the petitions have been filed for the identical issue hence, they are being disposed off jointly.

2. Briefly stated, facts are, that in Secretariat Administration of the Uttarakhand, 09 posts of Additional Secretaries were allotted to Secretariat cadre. Vide Office Memorandum No. 820 dated 16.04.2015, a policy decision was taken by the State Govt. that out of 09 sanctioned posts of Additional Secretaries, two posts shall be of Grade Pay Rs. 10,000/- on fulfilling certain conditions. The upgraded pay of Rs. 10,000/- shall be provided as personal pay to only those Additional Secretaries of Secretariat Service cadre, who have rendered 09 years of service in such capacity or completed 25 years of service as Gazetted Officer.

3. The Secretariat Administration Department (SAD), Government of Uttarakhand issued an Office Memorandum No. 1114 dated 02.05.2015 whereby Sri Kishan Nath and Sri Ramesh Chandra Lohani, Additional Secretaries were granted the benefit of upgraded grade pay Rs. 10,000/- as personal pay against two posts of Additional Secretary, as per the policy decision already taken.

4. Sri Kishan Nath, Additional Secretary in the upgraded Grade pay of Rs. 10,000/, retired from the service on 30.09.2016 whereas, Sri Ramesh Chandra Lohani, Additional Secretary retired on 31.08.2016. Hence, on 01.10.2016, both these two posts of upgraded pay scales fell vacant. PetitionerS as well as Sri Arjun Singh (non- petitioner) became eligible for granting of such benefits against two vacancies of Additional Secretary in higher grade on retirement of Sri Kishan Nath and Sri Ramesh Chandra Lohani but no steps for such grant of scale was taken by the Government.

5. Sri Arjun Singh, Additional Secretary, who was next in the seniority of Additional Secretary and was eligible for grant of upgraded scale of Rs. 10,000/- approached the Hon'ble High Court by filing Writ Petition No. 77/ (S/B) of 2018, Arjun Singh vs. State of Uttarakhand, being aggrieved by non-granting of the benefits of the Office

Memorandum dated 16.04.2015. The said writ petition was allowed with the direction to the respondent to consider and take a decision on the representation of the petitioner. On 03.04.2018, respondents issued an Office Memorandum No. 519, rejecting the claim of Sri Arjun Singh, on the ground that upgradation of two posts would amount to change in the Service Rules for which approval of the Cabinet is required. Hence, the matter would be placed before the Cabinet for taking decision. Sri Arjun Singh, again challenged the rejection order dated 03.04.2018 before the Hon'ble High Court by filing another writ petition No. 168 (S/B) of 2018, which was allowed by the Division Bench of the Hon'ble High Court, by holding it to be a case of invidious discrimination, as the two incumbents namely Sri Kishan Nath and Sri R.C.Lohani have been given the benefit of upgradation and the similarly situated persons cannot be treated differently. The order dated 03.04.2018 was quashed and set aside with the direction to pay the petitioner upgraded grade pay of Rs. 10,000/- w.e.f. 01.09.2016. On 05.10.2018, an Office Memorandum No. 1552 was issued by the Secretary, SAD, whereby the State Government took a decision to cancel the provision of the Office Memorandum dated 16.04.2015 for future. On the same date, vide O.M. No. 1554, Sri Arjun Singh was granted the benefit of upgraded pay scale of Rs. 10,000/- of the Additional Secretary w.e.f. 01.09.2016 in compliance of the judgment passed by the Hon'ble High Court on 08.08.2018 and it was made subject to the decision to be taken in the SLP to be filed before the Hon'ble Apex Court. Vide O.M. dated 12.11.2018, Arjun Singh was granted arrears of salary of upgraded pay of Rs. 10,000/- along with 9% interest from 01.09.2016 till the date of actual payment, subject to the final decision of the SLP(C) No. 28841 of 2018, State of Uttarakhand vs. Arjun Singh before the Hon'ble Apex Court. This SLP was dismissed on the ground that the order passed by the Hon'ble High Court has been implemented by the State.

6. It is the contention of the petitioners that on 05.10.2018, when Sri Arjun Singh was granted the benefit of higher salary of upgraded pay Rs. 10,000/- on the post of Additional Secretary, Sri Tikam Singh Panwar, next junior to Arjun Singh as well as petitioner (G.B.Oli) were also eligible to be considered for remaining one vacant post, but none of them was granted the same benefit. Sri Tikam Singh Panwar retired on attaining the age of superannuation on 31.12.2018 who was next in the seniority list of Additional Secretary, whereas, next senior Sri G.B.Oli has not been considered against remaining one post fallen vacant w.e.f. 01.10.2016 against which their right had already matured. Petitioners filed representations to the Chief Secretary and to the Secretary, SAD with the contention that when the decision dated 05.10.2018 was taken in favour of Sri Arjun Singh, the petitioners were also eligible in terms of the Office Memorandum dated 16.04.2015.

7. It was further contended that against two vacancies, which were lying vacant, Sri Arjun Singh was granted the benefit against one vacancy, but against another vacancy, the names of the petitioners were not considered though they were eligible. The Secretary, SAD passed the impugned orders dated 06.05.2019, rejecting the representations of the petitioners on the ground that the State Government has already taken a decision to discontinue the provisions of O.M. dated 16.04.2015. Furthermore, Sri Arjun Singh was granted the benefit in view of the judgment passed by the Hon'ble High Court, whereas, petitioners submitted representations after 05.10.2018. It is also contended that both the petitioners were entitled to be considered for the remaining one post which continued till 05.10.2018 when the decision was taken to discontinue the facility for future. Petitioner, Tikam Singh Panwar retired from the post of Additional Secretary on 31.12.2018, whereas, Sri Arjun Singh Retired from the same post in the Month of April, 2019. The pension of Arjun Singh has also been fixed in the upgraded pay of Rs. 10,000/- and thus, he is

drawing higher pension than the petitioners. The impugned rejection order dated 06.05.2019 passed by the respondents is not sustainable, being discriminatory inasmuch as the same discriminates between the two similarly placed persons on or before 05.10.2018, simply on the ground that the petitioners' representation were filed after 05.10.2018 and furthermore, Arjun Singh was having an order of the Hon'ble High Court in his favour. As similarly, situated persons have wrongly, illegally and arbitrarily been discriminated, without any justifiable ground and the same is violative to Article 14 of the Constitution of India, hence, this petition.

8. Respondents have opposed the petition and admitting some factual issue, it was contended that against two posts in upgraded grade pay, this facility was granted to Sri Kishan Nath and Sri R.C.Lohani after perusal of their service record on 27.04.2015 through four member Committee under the Chairmanship of the then Chief Secretary. On the basis of service record of Sri Kishan Nath and Sri Lohani, this benefit was granted, as their personal pay, after perusal of outstanding service record and merit. Although no such post was created in the structure in the upgraded pay scale and it was not mandatory for the Government to grant the upgraded grade pay without, break to the senior most Additional Secretary. Thereafter, the matter was presented before the Cabinet in its meeting dated 12.09.2018 and consequently, the decision was taken. Thereafter, vide O.M. dated 05.10.2018, the facility of G.O. dated 16.04.2015 was withdrawn. Sri Arjun Singh was granted the benefit only in compliance of the order of the Hon'ble High Court. When the petitioners submitted their representations, the said G.O. dated 16.04.2015 did not exist hence, their representation was rightly rejected, as the G.O. dated 16.04.2015 was made inoperative w.e.f. 05.10.2018. The petition having no merit, deserves to be dismissed.

9. Petitioners have also filed R.A., reiterating the same facts as have been mentioned in the claim petition.

10. We have heard both the sides and perused the record.

11. In both the petitions, question to be decided, is the same.

12. This fact is admitted that vide O.M. No.820 dated 16.04.2015, the facility of grade pay Rs. 10,000/- was provided against two posts of Additional Secretaries in the Secretariat Cadre, having total strength of 09 posts. To get this facility, the Additional Secretaries of the Secretariat Cadre, must have rendered 09 years of service in such capacity or completed 25 years of service as Gazetted Officer.

13. The above G.O. was acted upon when Sri Kishan Nath and Sri R.C.Lohani were granted the benefits after holding a Screening/DPC committee dated 27.04.2015. Sri Kishan Nath retired on 30.09.2016 whereas, Sri R.C.Lohani retired on 31.08.2016 hence, w.e.f. 01.10.2016, both the upgraded posts of Rs. 10,000/- fell vacant and the right had accrued to other two persons against two vacant posts w.e.f. 01.10.2016. The facts also reveal that Sri Arjun Singh who was next in the seniority of the Additional Secretaries, filed Writ Petition before the Hon'ble High Court when his case was not considered for granting the benefit of O.M. dated 16.04.2015. In two rounds of litigation, a direction was issued by the Hon'ble High Court to the Government to grant the benefit of such G.O. dated 16.04.2015. Ultimately, Sri Arjun Singh was granted such benefit of upgraded pay Rs. 10,000/-w.e.f. 01.09.2016, in compliance of the judgment of the Hon'ble High Court dated 08.08.2018. However, it was granted subject to the decision taken in the SLP to be filed before the Hon'ble Apex Court. The SLP of the government was also dismissed. In this way, against one post out of two, Sri Arjun Singh was granted arrears of salary of Rs. 10,000/- w.e.f. 01.09.2016 and interest till the date of actual payment and he was

allowed this benefit till the date of his retirement in the month of April 2019.

14. The record also reveals that the State Government on the date of grant of the benefit of higher pay to Sri Arjun Singh dated 05.10.2018 with back date, also took a decision to cancel the provisions of the O.M. dated 16.04.2015 for future. The said G.Os. reads as under:

“उत्तराखण्ड शासन
सचिवालय प्रशासन (अधि०) अनुभाग-1
संख्या: 1552/XXXI(1)/2018-विविध-12/2014
देहरादून: दिनांक 05 अक्टूबर, 2018

कार्यालय ज्ञाप

सचिवालय प्रशासन (अधि०) अनुभाग-1 के कार्यालय ज्ञाप संख्या: 820/विविध-12/XXXI(1)/2014, दिनांक 16-04-2015 द्वारा सचिवालय सेवा संवर्ग के अन्तर्गत अपर सचिव के स्वीकृत/सृजित कुल 09 पदों में से ही 02 पदों को अपर सचिव, वेतनमान 37400-67000, ग्रेड वेतन रू० 10000/- व्यक्तिगत वेतन के रूप में उच्चिकृत किये जाने का प्राविधान किया गया है। शासन द्वारा सम्यक् विचारोपरान्त कार्यालय ज्ञाप संख्या 820/विविध-12/XXXI(1)/2014, दिनांक 16-04-2015 के उक्त प्राविधान को भविष्य हेतु समाप्त किये जाने का निर्णय लिया गया है।

हरबंस सिंह चुघ
सचिव”

“उत्तराखण्ड शासन
सचिवालय प्रशासन (अधि०) अनुभाग-1
संख्या: 1554/XXXI(1)/2018-विविध-12/2014
देहरादून: दिनांक 05 अक्टूबर, 2018

कार्यालय ज्ञाप

सचिवालय प्रशासन (अधि०) अनुभाग-1 के कार्यालय ज्ञाप संख्या: 820/विविध-12/XXXI(1)/2014, दिनांक 16-04-2015 द्वारा सचिवालय सेवा संवर्ग के अन्तर्गत अपर सचिव के स्वीकृत/सृजित कुल 09 पदों में से ही 02 पदों को अपर सचिव, वेतनमान 37400-67000, ग्रेड वेतन रू० 10000/- व्यक्तिगत वेतन के रूप में उच्चिकृत किये जाने का प्राविधान किया गया है। शासन द्वारा सम्यक् विचारोपरान्त उक्त प्राविधान को भविष्य हेतु समाप्त किये जाने का निर्णय लिया गया है।

2- रिट संख्या: 168(एस0/बी0)/2018 श्री अर्जुन सिंह बनाम उत्तराखण्ड राज्य में मा0 उच्च न्यायालय, नैनीताल द्वारा पारित आदेश दिनांक 08-08-2018 के विरुद्ध शासन द्वारा मा0 उच्चतम् न्यायालय में विशेष अनुज्ञा याचिका दायर किये जाने का निर्णय लिया गया है।

3- इस सम्बन्ध में मा0 उच्च न्यायालय, नैनीताल के पारित आदेश दिनांक 08-08-2018 का क्रियान्वयन किये जाने हेतु लिये गये निर्णय के क्रम में श्री अर्जुन सिंह अपर सचिव को दिनांक 01-09-2016 से वेतनमान रू0 37400-67000, ग्रेड वेतन रू0 10000/- व्यक्तिगत वेतन का लाभ अनुमन्य किया जाता है। श्री अर्जुन सिंह, अपर सचिव को यह लाभ मा0 उच्चतम् न्यायालय में दायर की जाने वाली विशेष अनुज्ञा याचिका के निर्णय के अधीन होगा।

हरबंस सिंह चुघ
सचिव”

The plain reading of the above G.O. No. 1552 reveals that the facility was discontinued for future and this G.O. was not applicable retrospectively. It is contended by the petitioners that against two posts of higher grade falling vacant w.e.f. 01.10.2016, the persons next in the seniority, having merit and experience, were having right to be considered to get this scale. On this analogy, Sri Arjun Singh, then senior most in the cadre, was allowed the benefit after intervention of the court whereas, for remaining other post, no decision was taken. This one post was lying vacant since 01.10.2016 and both the petitioners have contended that they were having the qualifications to be considered for such higher grade of Rs. 10,000/- as they have completed 09 years of service on the post of Additional Secretary and were having good service record. It is contended that the next senior after Sri Arjun Singh was Sri Tikam Singh Panwar, thereafter, Sri G.B. Oli, were also having the required qualification to be considered for the post before setting aside the concerned G.O. dated 16.04.2015, on 05.10.2018.

15. Learned counsel for the petitioners also contended that, rights of both the petitioners had accrued and matured, to get the benefit of enhanced pay scale and simply for the reasons of, inaction

on the part of the government, they cannot be denied of such benefit. The inaction of the respondents is arbitrary, discriminatory and illogical. Once the right had accrued and matured against the vacant posts before setting aside the G.O. dated 16.04.2015 in 2018, the petitioners were having every right to be considered and to get the benefit of such G.O.

16. We agree with this argument that all the eligible persons having required qualifications and merit, had a right to be considered to get the benefit against one post lying vacant since 01.10.2016. But we do not agree with the argument of the petitioners that all the eligible persons, who acquired qualification to be considered for that post, will get the benefit because of the reasons that when there is only one post vacant, then, right will accrue only against that one post to anyone person, whosoever may be in the line of seniority and merit, and there is a requirement of action on the part of the government to consider the service record of all the qualified persons, to grant the benefit of upgraded pay scale against one post of the upgraded pay of Rs. 10,000/-.

17. There is difference between 'having eligibility for getting higher pay' and 'having his right matured' against the post. Several persons may be qualified to get a benefit, but the right will mature only to such number of persons against number of vacant posts, and only those persons in the order of seniority and merit, will be entitled to get such benefits.

18. Hence, the court is of the view that even if the provision of G.O. dated 16.04.2015 was cancelled vide order dated 05.10.2018 (Annexure: 1) for future, but against one post lying vacant since 01.10.2016, the petitioners as well as other qualified persons having required qualification, were and are having right to be considered for getting such benefit, with the conditions that only one person will get

this benefit because the post against which the benefit is allowed was only one as the other post was occupied by Sri Arjun Singh, who continued on the same and retired after enforcement of the G.O. dated 05.10.2018. Although, the claim of the persons against both the posts, will not accrue after 05.10.2018, but against one post lying vacant since 01.10.2016, all eligible persons whose right had matured, should be considered by the government whether they have approached the Hon'ble High Court or not. It is the requirement of law that only one person will get this benefit against one post. Who will be that person, it has to be considered and decided by the Government after considering their claim and records.

19. Learned A.P.O. has argued that now, there is no such post in the cadre and the representations were made by the petitioners for considering such benefit, after issuance of the G.O. dated 05.10.2018 hence, their claim was rightly rejected. We do not agree with this argument because the petitioners' right was accrued & matured on 01.10.2016 against those posts, and against one post of grade pay of Rs. 10,000/-, only one person is entitled. For that purpose, Government has to consider the record of the eligible persons and thereafter, such benefit will be granted to one person.

20. The argument of the petitioners that both the petitioners should be allowed such benefit, cannot be accepted because of the reasons that only one post was vacant and anyone of them will get this benefit, who will be that person, it has to be decided by the respondents through appropriate Committee/DPC at their level. Respondents cannot discriminate Sri Kishan Nath and Sri R.C. Lohani and the petitioners in case of implementation of the G.O. dated 16.04.2015. However, it is very much clear that no right will accrue to any person, after issuance of the G.O. dated 05.10.2018, if the posts fell vacant after this period. The prayer to quash G.O. No. 1552 dated 05.10.2018, cannot be accepted as the same was the prerogative of

the Government and the Government was within their right to discontinue the benefit for future.

21. In such circumstances, we are of the view that there is a need for such direction to the respondents to consider the claim of the petitioners against one post of upgraded grade pay of Rs. 10,000/- to anyone of them, after considering their service records. Both the petitions need to be disposed of accordingly.

ORDER

The claim petitions are partly allowed and impugned rejection orders dated 06.05.2019 are set aside.

Both the claim petitions are disposed of, with the direction to the respondents to consider the claim of the petitioners, as well as other qualified persons, against one post of Additional Secretary for granting of the upgraded grade pay of Rs. 10,000/- after considering their service records through an appropriate Committee/DPC and to grant such benefit to any one of the claimant, w.e.f. 01.10.2016, within a period of four months from the date of this order.

No order as to costs.

Let copy of this order be placed in the file of Claim Petition No. 107/DB/2019, Govind Ballabh Oli vs. State & others.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(RAM SINGH)
VICE CHAIRMAN (J)

DATED: MARCH 05, 2020
DEHRADUN.
KNP