

**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. 40/DB//2018

Kunwar Singh Barthwal, S/o Shri S.S.Barthwal, retired Assistant Agriculture Officer, retired from the office of Respondent No. 4, R/o 77, Vyomprasth, G.M.S. Road, Dehradun.

.....Petitioner

VERSUS

1. State of Uttarakhand through Secretary, Agriculture, Government of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Agriculture Director, Uttarakhand, Directorate of Agriculture, Nanda Ki Chowki, Premnagar, Dehradun.
3. Finance Controller, Directorate of Agriculture, Nanda Ki Chowki, Premnagar, Dehradun.
4. Agriculture and Soil Conservation Officer, Chakrata, Kalsi, Dehradun.

.....Respondents

Present: Sri L.K.Maithani, Advocate for the petitioner

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

JUDGMENT

DATED: JUNE 30, 2020

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

1. Petitioner has filed this claim petition for the following reliefs:

"i) To quash the impugned order dated 23.12.2016 of respondent No.2 (Annexure No. A-1) and impugned order of pay fixation dated 03.01.2017 (Annexure No. 2) of respondent No. 4 with its effect and operation declaring that the petitioner is entitled to get the benefit of Time scale/ACP on completion of 24

and 26 years service of promotion post inspite of general pay scale mentioned in G.O. dated 17.10.2008.

ii) To issue an order or direction to the concerned respondents to sanction the pay scale 5000-8000 grade pay 4600 and pay scale 9300-34800 grade pay 5400 in place of pay scale 5000-8000 grade pay 4200 and pay scale 9300-34800 grade pay 4600 on completion of 24 and 26 years service to the petitioner.

iii) To issue an order or direction to the respondents that after granting the grade pay 4600 and 5400, refix the pay and pension of the petitioner and according pay the pension and other retiral dues to the petitioner with interest on delayed payment since the date of the retirement upto the date of actual payment.

iv) To issue an order or direction to the respondents to return the recovered amount of Rs. 1,24,525/- to the petitioner with interest at the rate 12% per annum from the date of retirement upto the date of actual payment.

v) To issue any other order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

vi) To award the cost of the case."

2. Briefly stated facts giving rise to the petition are summarized as below:

Petitioner, who initially appointed as Junior Clerk on 05.09.1982 in the respondent department was later on promoted in Group-III post of Field Mechanic vide order dated 31.07.1984. The Deputy Director, Agriculture, Pauri vide order dated 21.10.2001 regularized the petitioner on Group-III post since the date of his appointment i.e. 31.07.1984.

In the year 1988-89, the erstwhile State of U.P. abolished the post of Field Mechanic and declared it dead cadre. Thereafter, vide Office Order dated 23.06.2000, the services of the petitioner were merged/absorbed on the post of Assistant Agriculture Officer (Group-III post), in the office of Deputy Director, Agriculture (Soil Conservation), Dehradun. After serving for a long period, petitioner worked on the post of Assistant Agriculture Officer; he was granted Regular promotional scale time to time; his name was included in the seniority list and finally,

petitioner was retired from the service from the post of Assistant Agriculture Officer, on 30.06.2016.

The matter of the petitioner, in respect of fixation of his pension, was sent to the Finance Controller, Agriculture Directorate, Dehradun (Respondent No. 3), who vide his letter dated 02.07.2016 raised some objections on the matter and asked respondent No. 4 to remove the objections. Petitioner also submitted his reply and submission to the department for release of his pension and, to remove objections. Respondent No. 4 vide letter dated 03.08.2016 clarified the objections, but respondent No. 3 was not satisfied with the clarifications of the respondent No. 4 and directed him to reexamine the matter. Again, petitioner vide his letter dated 22.09.2016, submitted that he was appointed on Class-III post in the year 1984 and petitioner continued in the service as Assistant Agriculture Officer till his retirement. He was also allowed promotional scale accordingly.

Respondent No. 4 also sent the matter of the petitioner to respondent No. 2 for decision vide his letter dated 26.09.2016. Respondent No. 2 vide impugned order dated 23.12.2016 (Annexure: A1) directed respondent No. 4 to amend the pay fixation of the petitioner accordingly and re-fix the pensionary dues on the analogy that the petitioner was not having qualification for the promoted post of Assistant Agriculture Officer, Group-II and as such, he was not eligible for further promotion in the cadre. Hence, the benefit of promotional scale cannot be granted to the petitioner. Accordingly, the committee recommended to sanction the scale of Rs. 5000-8000, Grade Pay of Rs. 4200 since 09.08.2008, on completion of 24 years of service and pay scale of Rs. 9300-34800 Grade Pay of Rs. 4600 as 3rd ACP. In compliance of the direction of respondent No. 2, respondent No. 4 passed the impugned order dated 03.01.2017 and amended the pay scale of the petitioner and he was placed in the Grade Pay of Rs. 4600 from the Grade Pay of Rs. 5400 from the post, he was retired.

The petitioner made representations to the respondents against the wrong fixation of pay. The pension and other dues including leave encashment were sanctioned to the petitioner without any interest on delayed payment vide order dated 27.01.2017 and 10.08.2017, and an amount of Rs. 1, 24,525 has been recovered by the respondent No. 4 from the pension of the petitioner.

Hence, this claim petition has been filed by the petitioner on the ground that re-fixation of his pay after retirement in lower Grade Pay of Rs. 4200 on completion of 24 years of service and Grade Pay of Rs. 4600 on completion of 26 years of service, is wrong, illegal and therefore, recovery amount of Rs. 1,24, 525/- from the retiral dues, is also wrong and illegal and the same has been done without giving an opportunity. Hence, the orders are not sustainable in the eyes of law and the deduction has been made without giving any show cause notice. The petitioner has worked for a long time on the post of Assistant Agriculture Officer Group-III which has promotional post of Assistant Agriculture Officer- Group-II as further promotional post. Earlier, the promotional pay scales were rightly sanctioned hence, the pay fixation of the petitioner after retirement on lower grades is wrong, arbitrary and not tenable in the eyes of law. The petitioner is legally entitled to get the pay scale of Rs. 5000-8000 Grade Pay of Rs. 4600 and pay scale of Rs. 9300-34800 Grade Pay of Rs. 5400 on completion of 24 years and 26 years of service respectively. The impugned orders are highly discriminatory, wrong, illegal and are also against the principles of natural justice, which violate the provisions of Article 14 & 16 of the Constitution. Hence, this petition.

3. Respondents have opposed the petition on the ground that the petitioner was not having necessary qualification of the promotional post of Assistant Agriculture Officer, Group-II, as he was simply a diploma holder and was not having the competent degree. Although, it has not been denied by the department that petitioner was working on the post

of Assistant Agriculture Officer, Group -III but taking the analogy that petitioner belongs to the mechanical branch of agriculture service, which was having no promotional post, hence, he cannot be granted benefits of promotional post, which was not in his cadre. The Finance Controller of the department rightly raised objections and accordingly, his pay scale and other benefits were refixed and the higher amount already drawn by him under wrong fixation, was ordered to be recovered accordingly.

4. The petitioner was only entitled to get the next Grade Pays of Rs. 4200 and Rs. 4600 instead of Rs. 4600 and Rs. 5400, as per the general pay scales mentioned in G.O. dated 17.10.2008 and was not entitled for the pay scale of next promotional post of Assistant Agriculture Officer, Group-II (of development branch), in view of the fact that he was not having necessary degree to get promotion on the next post. Hence, petition has no merit and deserves to be dismissed.

5. The petitioner has submitted Supplementary Affidavit and denied the contention of the respondents. He has contended that as per the U.P. Subordinate Agriculture Service Rules, 1993, promotion channel from the post of Field Mechanic was also available and due to the technical branch having been declared as dead cadre, he was merged on the post of Assistant Agriculture Officer Group-III. The absorption of the petitioner was not due to the wrong or fault of him but due to the policy of the then government. Even if the respondents merged the petitioner on wrong post that time and was allowed to work and discharge the function of that post, he cannot be deprived by the department for their own wrong, after a lapse of more than a decade and after the retirement of the petitioner. The petitioner has also filed a promotion order dated 17.08.2007 of Addl. Agriculture Director (Admin.) U.P. by which promotion has been granted to some persons of Group-III of mechanical Branch to Group-II post of Junior Engineer, even after the declaration of mechanical branch as dead cadre. It is not justifiable, in view of the judgment pronounced by the Hon'ble Supreme Court in the case of State

of Punjab and other vs Rafiq Masih (white washer) and others (2015)4 SCC 344 and also in view of the judgment of the Hon'ble High Court in WPSB No. 161 of 2016, Avtar Singh Chaudhary vs. State & others. The claim petition deserves to be allowed.

6. The Tribunal gave ample opportunity to learned A.P.O. to file the concerned G.O./Rules on the basis of which merger order was passed. The documents subsequently filed do not spell any terms and conditions of merger, which can be used to the disadvantage of the merged employees.

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

8. It is an admitted fact to both the parties that the petitioner, who was working on the post of Field Mechanic since 09.08.1984 after his promotion on 31.07.1984, a Group-III post in the Mechanical Branch of Agriculture Department. In the erstwhile State of U.P., the cadre of Field Mechanic was declared as dead cadre in the year 1988-89. The services of the petitioner were merged/absorbed on the post of Group-III (according to the petitioner on the post of Assistant Agriculture Officer) in the office of Deputy Director, Agriculture, Dehradun vide order dated 23.06.2000 (Annexure: A3). It is nowhere disputed that the post of Assistant Agriculture Officer, Group -III and merged post of petitioner are of the same class and Group-III. The only difference is that the petitioner was of the same class on mechanical side whereas, the other persons were working on development side. But, after absorption, the whole cadre was merged as one i.e. Assistant Agriculture Officer-Class-III. Furthermore, the petitioner during his service period, was allowed to work on the post of Assistant Agriculture Officer and his services were counted from the date of his regularization i.e. 31.07.1984. The petitioner has also contended that his name was figured in the seniority list issued in 2003 of the State Agriculture Officer- Group -III. It is nowhere disputed that the petitioner worked on that post on the same nomenclature and vide department order dated 30.06.2016 (Annexure:

4), his retirement order was passed by the respondents clearly mentioning his name and the post of Assistant Agriculture Officer (Group-III) from the pay scale of Rs. 15600-39100 with Grade Pay of Rs. 5400.

9. The respondents did not deny this fact that petitioner was allowed to work on the post of Assistant Agriculture Officer Group-III and he has discharged his duties on that post. This post finds place in the relevant Service Rules and in the same rules, the next promotional post of this is Assistant Development Officer, Group-II. During service period, the petitioner was also allowed the promotional pay scale of the next post. The department allowed him all the facilities upto the grade pay of Rs. 5400. In his retirement order (Annexure: A4), petitioner was allowed to retire from the post of Assistant Agriculture Officer Group -III with promotional pay of Rs. 15600-39100 with Grade Pay Rs. 5400.

10. The dispute in issue arises only when the matter of the petitioner was sent by the department to the Finance Department for verification of pensionary benefits, from where, Finance Controller has raised objections for granting him the time scale of the promotional post and also raised objections that the petitioner, who was although Assistant Agriculture Officer Group-III and there is a next promotional post of Assistant Agriculture Officer Group-II, but the petitioner was not having the requisite degree in agriculture hence, he was not entitled for next promotional scale. Accordingly, he could not be allowed the benefit of promotional scale of promotional post. Learned counsel for the petitioner has contended that before declaration of the dying cadre, the mechanical cadre of the petitioner was also having promotional posts, but on account of dying cadre, he was absorbed in the cadre of Assistant Agriculture Officer.

11. We find that the petitioner was also having a technical qualification, although not having the requisite degree for promotion in the Assistant Agriculture Officer cadre. It cannot be said that the post of

Assistant Agriculture Officer Group-III was having no promotional post. As the cadre of Assistant Agriculture Officer- Group-III was having further promotional post, so we are of the view that even if the petitioner was not having the degree to entitle him to get promotion in this cadre but he was very much in the cadre of Assistant Agriculture Officer Group-III, who was having the promotional post as per the rules. Had the mechanical cadre not been declared dead, the petitioner would have had entitlement to promotion in that cadre. The merger conditions, being silent, cannot be used to the disadvantage of the petitioner. Hence, accordingly, the petitioner was legally entitled for the time scale as per the promotional post and accordingly, he was allowed the same grade from time to time. He discharged the duties of the post accordingly, and on 30.06.2016, he was retired as per the departmental order with Grade Pay of Rs. 5400.

12. We find that the objection raised by the Finance Controller after such a long period of his service, even after his retirement, is not as per law and against the principles of natural justice. The petitioner was retired from the post of Assistant Agriculture Officer and the department has taken the work of that post from him. The time scale was granted to him for no fault or misrepresentation on his part from the department. In such circumstances, following the principles laid down in Rafiq Masih case, we are also of the view that petitioner cannot be deprived and cannot be ordered to refund the amount drawn by him for the job of the post. As the department, who has taken the work of the post from the petitioner, cannot debar him from financial benefit of that cadre. That pay cannot be downgraded now after fulfilling his duties on his retirement. Till his retirement, the petitioner has very well worked on the post mentioned in his retirement order even with Grade Pay of the promotional pay scale granted by the department. It cannot now be withdrawn from him. It is against the principles of natural justice, because he never induced the department to grant that higher pay scale by exercising any fraud or misrepresentation.

13. In the result, we find that the petition deserves to be allowed and following order is hereby passed.

ORDER

The claim petition is allowed. The impugned order dated 23.12.2016 by respondents Annexure A-1 and the order dated 03.01.2017 passed by respondent No. 4 (Annexure: A2) are hereby set aside with all its effect and operation and it is hereby declared that the petitioner is entitled to get the benefits of time scale and ACP on completion of 24 and 26 years of service of the promotional post of Assistant Agriculture Officer Group-III and accordingly, respondents are directed to sanction the pay scale of Rs. 5000-8000 Grade Pay of Rs. 4600 and Pay Scale of Rs. 15600-39100 with Grade Pay of Rs. 5400 in place of lower Grade Pays, granted by the impugned order.

Respondents are further directed to refix the pay and pension of the petitioner accordingly and to pay all the pensionary and retiral dues to him immediately within a period of three months from the date of order of the court, and are also directed to return and refund the recovery amount of Rs. 1,24,525/- to the petitioner with interest @ 6% per annum from the date of his retirement to the date of actual payment.

No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(RAM SINGH)
VICE CHAIRMAN (J)

DATED: JUNE 30, 2020
DEHRADUN.
KNP