

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
BENCH AT NAINITAL**

Present: Hon'ble Mr. Ram Singh

----- Vice Chairman (J)

Hon'ble Mr. A.S.Nayal

-----Member (A)

CLAIM PETITION NO. 15/NB/DB/2018

Ram Gopal Saxena, S/o Sri Tejraj Saxena, R/o Kasba Kemari, Tehsil Bilashpur,
District Rampur, Uttar Pradesh.

.....Petitioner

VERSUS

1. State of Uttarakhand through Chief Secretary, Revenue, Uttarakhand Government, Dehradun.
2. Chief Revenue Commissioner, Uttarakhand, Dehradun.
3. District Magistrate, Record Officer, District Udham Singh Nagar.

.....Respondents

Present: Sri Kishore Kumar &
Sri N.K.Papnoi, Ld. Counsels
for the petitioner
Sri V.P. Devrani, Ld. A.P.O.
for the Respondents.

JUDGMENT

DATED: AUGUST 28, 2019

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

1. The petitioner has filed this claim petition for the following reliefs:-

“(i) To quash the impugned orders dated 03rd March, 2018 passed by respondent No. 2 and the order dated 16.12.2017 passed by Respondent No. 3 by which the case of the petitioner has been rejected for allowing the benefit of pay scale of Naib Tehsildar from the date when the same was given to similarly

situated persons alongwith its effect and operation after calling the entire record.

(ii) To issue order or direction to the respondents to allow the benefit of pay scale the post of Naib Tehsildar w.e.f. 01.12.2001 as per the Government Order No. 3711/97/1-9-97-10-2(5)72 dated 06.09.1997 by which the pay scale of Naib Tehsildar was upgraded as 1400-2300 to 1640-60-2600-75-2900 (2000-60-3200-75-3200 grade pay 4200) as well as cadre and to provide them promotional avenues as at presently their complete stagnation till then along with benefit of higher pay scale as per grade pay of 5400 as given to the counterparts of the applicant by the State of Uttar Pradesh, including arrears and other consequential benefits.

(iii) To award damages and compensation in tune of Rupees Fifty lacs or such amount which this Hon'ble Court may deem fit and proper and same may be recovered jointly/severably from Corporation as well as erring persons including the private respondents.

(iv) To award cost of the petition. "

2. After initial appointment as Survey Lekhpal on 05.12.1978, against a substantive vacancy, the petitioner was promoted to the post of Survey Kanoongo on 01.12.1987, after completion of 9 years of service as Lekhpal. The services of the petitioner were governed by the *Uttar Pradesh Bhu-Sarvekshan Evam Abhilekh Prakriyao Mai Karyarat Karmcharyo Ki Sewa Niyamawali, 1987 (hereinafter referred to as 'Rules of 1987')*, which was made applicable to the State of Uttarakhand and remain in force till 16th March 2018, when the *Uttarakhand Bhu-Sarvekshan Evam Abhilekh Prakriyao Mai Karyarat Karmcharyo Ki Sewa Niyamawali, 2017* came into force.

3. After bifurcation of the State of Uttar Pradesh, the service of the petitioner fell under the State of Uttarakhand, because at that time, the petitioner was posted in Udham Singh Nagar Survey Unit. As per the relevant Rules of 1987, the cadre of field staff comprises of Survey Lekhpal, Survey Kanoongo and then to the promotional post of Survey Naib Tehsildar.

4. In the State of Uttar Pradesh, the pay scales of Tehsildar, Additional Tehsildar and Naib Tehsildar were upgraded vide Govt. Order dated 06.09.1997, by which the pay scale of the post of Naib Tehsildar was upgraded from Rs. 1400-2300 to Rs. 1640-2600-75-2900. It is also contended that after completion of 14 years of service as Survey Kanoongo on 01.12.2001, the petitioner became entitled to get the next pay scale of Naib Tehsildar according to the service rules, but the respondents granted him the benefit of promotional pay scale of Rs. 4500-7000 with Grade Pay of Rs. 2800 only while the pay scale of Naib Tehsildar was earlier upgraded to 1640-60-2600-75-2900 revised as 5500-175-9000 w.e.f. 01.01.1996, was again revised to Rs. 9300-34800 with Grade Pay of Rs. 4200 w.e.f. 06.09.1997.

5. When the government granted the upgraded pay scale of Rs. 1640-2900 (revised to 5500-9000) w.e.f. 06.09.1997 to officiating Survey Naib Tehsildar vide order 07.06.2004, then the petitioner and similarly situated Survey Kanoongo, who completed 14 years of service as Survey Kanoongo, made representation for granting them upgraded pay scale and their representations were forwarded by the Additional District Magistrate, Udham Singh Nagar to the Chief Revenue Commissioner, but the respondent did not consider their demand.

6. It has also been contended that at the time of bifurcation of State, petitioner opted for the State of U.P., but his matter of cadre allocation was rejected vide letter dated 29.03.2005 on being an employee working in Survey Unit as district cadre. Petitioner had been working as Survey Kanoongo in the department with utmost ability and honesty and from time to time, he was allowed and rewarded with higher scale and 'Prasasti *Patra*' and his complete service has been unblemished and outstanding. It is also contended that in the district, five posts of Survey Naib Tehsildar were sanctioned and out of which, only two were filled up but petitioner's claim for promotion was not considered inspite of three vacancies lying vacant since long.

Respondent authority did not initiate any promotional exercise in this regard.

7. Three months training was provided for the Revenue Inspector, in another rules to be a basic requirement for promotion in revenue branch. For obtaining this training, petitioner and similarly situated persons also represented respondent No. 3, from time to time to send them for training, but they were not sent for such training for a long period and several Survey Kanoongos have retired from the service without such training like petitioner. When, the petitioner specifically asked why he was not sent for training and requested for his promotion, the simple answer of the department was, that the option of the petitioner is for State of Uttar Pradesh hence, he was not sent for training. When the petitioner requested for promotion, the answer was that he was untrained Kanoongo and as such, he cannot be promoted. On the other hand, respondent department promoted the similarly situated Revenue Kanoongos namely, Sri Radhey Shyam and Mr. Ijharul Haq on the post of Naib Tehsildar, without sending them for training. In spite of repeated request to send him for training since 2004, petitioner was not allowed to participate in the same. Petitioner has also contended that similarly situated other person, promoted as Survey Kanoongo in 1987, was allowed to serve on the post of Tehsildar and another person, Sri Ved Pal who was junior to the petitioner was also allowed to serve as Tehsildar (Magistrate) in the pay scale of Rs. 15600-39100 with grade pay of Rs. 5400. While, petitioner was deprived, applying the pick and choose policy.

8. As per the Assured Career Progression (ACP) Scheme, three financial upgradations are permitted to each and every employee and they are entitled to get such benefit after 10, 16 and 26 years of satisfactory service in view of the order dated 08.03.2011. On 18.01.2014, petitioner again submitted a representation to respondent No. 3 for giving him promotion on the vacant post of Survey Naib

Tehsildar, but his demand was not considered and no action was taken for the same, inspite of the vacant post.

9. After completion of 38 years of service in the department, petitioner retired on 31.01.2016. He served as Survey Kanoongo for 29 years, whereas, he was entitled for next promotion as "Survey Naib Tehsildar" after completion of 14 years of service, for which, the post was lying vacant. By applying the pick and choose policy, respondents being inactive, on the request of the petitioner for sending him for training, adopted a discriminatory attitude in unfair manner and later on, alleging the petitioner as untrained, he was denied promotion, whereas, several other employees, even if, untrained, were granted that facility. The respondents by adopting a discriminatory attitude violated the provisions of Article 14 of the Constitution of India and the principles of natural justice.

10. It is also contended that at the time of retirement, the petitioner was allowed only the pay scale of Rs. 5500-9000 with grade pay of Rs. 4200 whereas, he was entitled for the grade pay of Rs. 5400. Petitioner has also contended that similarly situated persons were allowed such benefit. He was neither allowed to go to U.P. and alleging him the optee of U.P., nor he was sent for training, and thereafter, alleging him untrained, promotion was denied.

11. In State of U.P., one Mr. Momraj Sharma of 1980 batch, much junior to the petitioner, who retired on 30.09.2015, prior to the petitioner, as Survey Lekhpal, even got the grade pay of Rs. 4600 at the time of his retirement, while, petitioner being senior to him, in length of service, as well as being senior in the cadre as Survey Kanoongo for 28 years of service, has been granted only a grade pay of Rs. 4200, which is clear violation of the principles of natural justice.

12. The petitioner filed a writ petition before the Hon'ble High Court bearing no. 235 of 2017 (S/S), Ramgopal Saxena vs. State of

Uttarakhand and others, whereby respondent No. 2 was ordered to consider the representation of the petitioner and to decide the same as per law. Thereafter, petitioner's representation was decided and he was granted the grade pay of Rs. 4200, whereas, the petitioner was entitled to the same pay scale, as granted to his junior and similarly situated persons, Mr. Radhey Shyam and Ijrahul Haq w.e.f. 01.12.2001. Petitioner has not been granted the scale of Naib Tehsildar hence, the order dated 16.12.2017 has been challenged for the relief mentioned as above with the request for a direction to the respondents to allow the scale of Naib Tehsildar w.e.f. 01.12.2001 with a higher pay scale and 5400 grade pay, as allowed to their counterparts, alongwith suitable compensation and cost of the petition.

13. Petition was opposed by the respondents with the contention that by G.O. dated 01.09.1997 issued by the State of U.P. only the pay scale of Tehsildar and Naib Tehsildar in revenue branch were upgraded whereas, the petitioner belongs to the Survey Branch to which, this G.O. is not applicable. As the Naib Tehsildar revenue branch of district are different from Survey Unit and the person of Survey branch cannot get promotion to the post of Tehsildar and their promotions are confined only to the post of Naib Tehsildar. The petitioner was not promoted as Survey Naib Teshildar because of the reason that he was not a trained Revenue Inspector and accordingly, he was only allowed the facility of next pay scale whereas the other similarly situated persons were working as Naib Tehsildar hence, they were allowed the new pay scale.

14. The respondents also contended that by a letter No. 1167/9-5 Writ/1999 dated 02.09.2000, the Board of Revenue has clarified that the revenue inspectors, after getting training, are entitled for regular promotion as Naib Tehsildar. Because the petitioner never had been a trained Survey Kanoongo, hence, without training, he was denied the promotion and the financial benefits. Petitioner's allegations for discriminatory attitude are not correct. After completion of 60 years of

age, the petitioner has already retired on 31.01.2016 and being untrained Kanoong, he is only entitled for the last salary of the grade pay of Rs. 4200. Now, his grade pay of Rs. 4200 has been substituted with grade pay of Rs. 4600 vide order dated 25.05.2018, in view of the latest Government orders. The directions issued by the Hon'ble High Court were complied with and his representation was decided as per law and with effect from 03.03.2018, the petitioner has rightly been granted the grade pay of Rs. 4600 and he is not entitled for other benefits and the petition deserves to be dismissed.

15. Through his rejoinder affidavit, petitioner denied the submission made in the counter affidavit and reiterated the version of his claim petition and contended that the contention of the answering respondents is based on twisted facts and misrepresentation. It has been stated that by not allowing the pay scale of Naib Tehsildar from the date when the same was granted to other similarly situated persons, petitioner is suffering from financial loss and he has been treated discriminately. Petitioner has also contended that during his service period, he was ordered to discharge the function of the post of vacant Survey Naib Tehsildar. It has also been contended that in Tehsil Sitarganj vide order dated 06.05.2015, he was ordered and allowed to work as Officiating Survey Naib Tehsildar and it has also been contended that there is no provision in law, which prescribed for any training, before promotion from Survey Kanoongo to Survey Naib Tehsildar as per the Rules. In the new Rules, made by the Uttarakhand State, there is also no requirement of any such training for promotion to the next post and the petition deserves to be allowed.

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

17. Some facts are admitted to both the parties. The petitioner after joining the service as Survey Lekhpal on 15.12.1978, was promoted as Survey Kanoongo on 01.12.1987 and thereafter till his retirement on

31.1.2016, he served the department for a total length of 38 years, out of which, for almost more than 28 years of service, he had been working on the post of Survey Kanoongo.

18. This fact is not denied by the department that promotional post from Survey Kanoongo is Survey Naib Tehsildar. In the district, three posts were lying vacant since very long time i.e. from the inception of the State. At the time of bifurcation of the State of U.P., the petitioner was working as Survey Kanoongo in district Udham Singh Nagar. Although he opted for the State of U.P. but being an employee of district cadre, his option was rejected and he was forced to serve in the State of Uttarakhand, and the matter of his option was finally decided vide order dated 29.03.2005 (Annexure: 8).

19. It is an admitted fact that the services of the petitioner were governed by the "Rules of 1987". According to the petitioner, he served as Survey Kanoongo in the Tehsil of revenue department, Uttarakhand till his retirement from the service, on 31.01.2016. His grievance had been that inspite of the vacancies, he was not allowed promotion on the next post of Survey Naib Tehsildar and as per the ACP, rules the pay scale of that post Rs. 5500-9000 became due to him w.e.f. 01.12.2001, which were not paid to him and in place of that pay scale, he was granted only the pay scale of Rs. 4000-6000. He has also contended that some similarly situated persons namely; Sri Narendra Singh, Sri Balikaran, Sri Chhuttan Singh and Sri Ijraulhaq were given the pay scale of Rs. 5500-9000 from the due date, but adopting the pick and choose policy, he was denied the same hence, he claimed parity with those persons. The respondents mainly contended that the petitioner cannot claim parity with other persons, who were trained Survey Kanoongos, and such training was the requirement for promotion as Survey Naib Tehsildar, whereas, the petitioner being untrained Survey Kanoongo, cannot claim parity. Petitioner denied from this fact.

20. In this respect, the petitioner raised several points, firstly, that there was no legal requirement for any such training under the rules, for promotion from Survey Kanoongo to Survey Naib Tehsildar. Secondly, even if it is so construed, he, from the year 2004, was continuously requesting the respondent department to send him for training, which can be done only by the intervention of the respondent and such training cannot be obtained by the petitioner at his own, without the permission of the respondents. On the one hand, respondents never sent him for training for a long period of 10 years, and on that ground of being untrained, they denied him the promotion. Several other junior persons were sent for training and a pick and choose policy was adopted towards the petitioner, and the principles of natural justice and provisions of Article 14 of the Constitution of India were violated. It has also been contended that during his service period, for more than 28 years as Survey Kanoongo, he was also required by the department to discharge the duties of Survey Naib Tehsildar and served as officiating Survey Naib Tehsildar in Sitarganj in compliance of the order dated 06.05.2015 and as per the rules, he was due for promotion after 14 years of service as Survey Kanoongo. Although he was allowed promotional pay scale w.e.f. 01.12.2001, but the correct pay scale of the post of Naib Tehsildar has not been allowed to him, taking the plea that he is an untrained person.

21. Learned counsel for the petitioner also contended that there is no provision in the concerned Service Rules of 1987, for any such training for Survey Kanoongo, to get his next promotion.

22. We have gone through the rules and perusal of the record, the court has noticed that before the enactment of the "**Uttarakhand Working Employees in the Land Surveyor and Records Procedures Service Rules, 2017**" on 16.03.2018 (hereinafter referred to as '**Service Rules of 2017**'), the concerned rules, applicable to the petitioner, were the '**Rules of 1987**'. In Rule 5 of the "**Rules of 1987**", the cadre

comprises of two categories, one is the '**field staff**' and other is the '**office staff**'. The 'office staff' includes Senior Assistant, Reader, Pashi Kanoongo, Cashier, Assistant Record Keeper, Ahlmad, Typist, Peshi Mohrir etc. and the employees of IVth class, Orderly, Chowkidar, Dafttari, Daakerner, Chainmen, Chaprasi etc. and the matter of the petitioner does not come under such category.

23. The matter of the petitioner is covered under the '**field staff**', which comprises Jeep Chalak, Trashar and Draftsman, in the lower category and thereafter, **Survey Lekhpal**, Survey Kanoongo and **Survey Naib Tehsildar** in higher category. The recruitments as Survey Lekhpal can be made from the serving trained Lekhpal and also 50 % from the high school pass Chainman. For the post of **Survey Kanoongo**, recruitment can be made 50% from Survey Lekhpal by promotion and 50% from direct recruitment. For **Survey Naib Tehsildar**, the recruitment as per the rules, can be made by promotion from Supervisor Kanoongo/Survey Kanoongo and Pasi Kanoongo with the condition that the quota of Survey Kanoongo will not exceed than 50%. There **is no provision in the rules**, which prescribes any such training for Survey Kanoongo as a precondition for promotion to the post of "**Survey Naib Tehsildar**". Respondents have failed to show any such provision or rule which could legally support their stand that, before promotion to the post of Survey Naib Tehsildar, there was any need of any such training for Survey Kanoongo.

24. Learned A.P.O. on behalf of the respondents, has referred to the *U.P. Adhinasth Rajswa Karyapalak Bhulekh Nirikshak Sewa Niymawali, 1977* (Annexure: CA-2)(hereinafter referred to as '**Rules of 1977**') and has argued that for the post of Revenue Inspector (Bhulekh Nirakshak), the source of recruitment has been prescribed under Rule 5 and as per rule-6, there is a necessity for taking such training in Hardoi Training Institute. Rule 5 & 6 of the said rules read as under:-

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25. Learned counsel for the petitioner has argued that these rules have no application in the case of the petitioner.

26. We have gone through these Rules. Rule-4 of the said Rules of 1977, prescribes the scope of its applicability and is very much clear that these rules were applicable only for the post of Revenue Inspector. It has been contended by the petitioner that Revenue Inspectors belong to the other branch of the Tehsil i.e. the Revenue Branch. The source of recruitment of Revenue Inspector had been by direct recruitment as well as, by promotion from permanent Lekhpal, land acquisition, Amin and Supervisor Amins. We find that these Rules of 1977 nowhere prescribe anything for the post for Survey Lekhpal or of Survey Kanoongo and Survey Naib Tehsildar. Furthermore, the Rules of 1977 stand superseded by the subsequent Rules of 1987, in respect of all the services of the Survey branch of Tehsil. The heading of the Rules of 1987, reads as under:-

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27. Hence, we find that after enactment of the Rules of 1987, for regulating the services of Survey Department, Rules of 1977 had no application to them. Hence, the provisions for training in Rule- 6 of Rules

30. The petitioner has also contended that there was no legal requirement for survey kanoongo to get any training from any such institute as alleged by the respondents. We agree with this argument. The petitioner has also referred to latest enacted Niyamawali known as **“The Uttarakhand Working Employees in the Land Surveyor and Records Procedures Service Rules, 2017”** (hereinafter referred to as ‘Service Rules of 2017’). We have also gone through it. Rule 5 of the same, prescribes for cadre of Group-D which comprises from lowest as Driver, Peshkar, Ahlmed, record keeper, cashier draftsman and thereafter, the higher category of Survey Lekhpal 75% by direct recruitment and 25% by promotion from Chainmen and upto the higher post of Survey Naib Tehsildar, 75% by direct recruitment through Public Service Commission, 25 % by promotion from Survey Kanoongo and Pasi Kanoongo, having 7 years of experience on the basis of the seniority. In the new Rules also there is no requirement of any such training for any Survey Kanoongo for getting his promotion as Survey Naib Tehsildar.

31. We hold that when the rules do not prescribe any such necessary qualification for promotion to the post of Survey Naib Tehsildar from the post of Survey Kanoongo, then the respondents cannot be permitted to impose any such condition beyond the rules. The respondents have denied the pay scales of Naib Tehsildar to the petitioner and treated him discriminatorily vis-a-vs the similarly situated persons, simply on the ground that other persons were trained Survey kanoongo and the petitioner was not trained. We find that the stand of the respondents is not correct, it is discriminatory, it is not as per the rules and, is against Article 14 of the Constitution of India and also against the principles of natural justice, because the respondents cannot impose any condition at their own, beyond the rules. Furthermore, during hearing of the petition, the respondents were unable to produce any such basis or any such G.O., on the basis of which, petitioner was denied his dues.

32. On factual side, the petitioner also contended that after the directions of the Hon'ble High Court, he raised all the matters in detail in his representation, but vide impugned order dated 03.03.2018 (Annexure: 1), he had been denied his rightful due. Discriminatory attitude of the respondents is also reflected from the facts that the petitioner vide his application dated 19.07.2016 (Annexure: A-10), sought some information from the respondent department under RTI Act, which was replied by the respondent department vide their letter dated 16.08.2016 (Annexure: A-11) and it was admitted by the respondents that Sri Ijraulhaq, retired as Survey Naib Tehsildar, never got any training of revenue inspector, similarly Sri Radhey Shyam, retired Survey Naib Tehsildar, was not a trained revenue inspector. This admission on behalf of the respondents clearly shows that some of the Survey Naib Tehsildars, Ijraulhaq or Radhey Shyam got their promotion as Survey Naib Tehsildar, without being the trained Revenue Inspector or Survey Kanoongo. When other persons from Survey Branch were promoted as Survey Naib Tehsildar without getting the training of revenue Inspector, as admitted by the respondents then, on what ground, the discriminatory attitude was adopted towards the petitioner for not granting him the promotion or the pay scale of Survey Naib Tehsildar.

33. We are of the view that for getting promotional pay scale of Survey Naib Tehsildar, the requirement of being a trained Revenue Inspector, is nowhere prescribed in the rules, hence, on this ground, the respondents have wrongfully denied the promotional pay scale of Naib Tehsildar to the petitioner.

34. Learned A.P.O. on behalf of the respondents have contended that other Survey Naib Tehsildars were paid the pay scale of Rs. 5500-9000 (revised to 9300-34800 with grade pay of Rs. 4200) and the petitioner was paid similarly thereafter with the grade pay of Rs.4600. The petitioner is claiming the grade pay of Rs. 5400, like the post of Naib

Tehsildar in Revenue Branch to which, the respondents are opposing the matter on the basis, that pay scale of Naib Tehsildar, which was revised vide order dated 06.09.1997, in the State of U.P., was not revised in relation to the Naib Tehsildar in Survey Unit and it was issued only in respect of the Tehsildar and Naib Tehsildar of the revenue branch. The petitioner has contended that when the pay scale of Naib Tehsildar prior to the G.O. dated 06.09.1997 were the same in both the branches, then, there is no point to discriminate between the two and there is no such word in the said G.O. of 1997 to make any such difference.

35. Both the parties have agreed that before creation of the State of Uttarakhand, vide letter No.3711/1-9-97-10-2(5)/92 dated 06.09.1997, the pay scale of the post of Naib Tehsildar was upgraded from Rs. 1400-2300 to the scale of Rs. 1640-2900, which ultimately was revised to the pay scale of Rs. 5500-9000 and was again revised accordingly and ultimately, to the grade pay of Rs. 5400. The relevant G.O. (Annexure: 4) issued on 06.09.1997 in the State of U.P. reads as under:-

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Naib Tehsildar of revenue branch of the Tehsil, because both these branches of revenue and survey do come under the Tehsil and the district administration. On this analogy, the respondents cannot deny the promotional pay scale of Naib Tehsildar granted by the G. O. of 1997 to the petitioner on this assumption that the pay scale of Rs. 5500-9000 (revised to 9300-34800) was not applicable in the case of the Naib Tehsildar of Survey branch of Tehsil.

38. Furthermore, in the letter No. 245/jrko@ 2004 dated 07.06.2004, issued by the Government to the District Magistrate/record Officer, Udham Singh Nagar, it is very clear that the officiating Naib Tehsildar in Survey Unit, Udham Singh Nagar, Sri Ijrhaul Haq, Sri Chhuttan Singh, Balikaran and Sri Narendra Singh were allowed the new pay scale of Rs. 5500-9000, in view of the G.O. of the Uttar Pradesh dated 06.09.1997. Hence, this letter also reflects that the similarly situated persons, Ijrhaul Haq and Radhey Shyam were allowed the pay scale of Rs. 5500-9000, even if they were not trained.

39. The petitioner also contended that from the year 2004, even if, the training was not necessary, was not allowed to the petitioner after his continuous request and the respondents were not giving permission to him. He requested to make his promotion vide letter dated 25.04.2004. He has also annexed a copy of the letter dated 27.07.2009 whereby he himself requested to send him for training so that he may get his promotion. His request was also forwarded by the authority to the Board of Revenue and certain queries were also made vide letter dated 13.09.2009. The petitioner was regularly requesting the authorities, to send him for training from the year 2004, but he was not sent for such training, on account of the fact of his being optee for the State of U.P. Thereafter, at the fag-end of his career, he was offered to consent, for joining the Training programme in 2014. Learned A.P.O. on behalf of the respondents contended that vide letter dated 17.06.2014, the petitioner himself made a submission that as he is due to retire after

19-20 months and thereafter, his services will be left for one year and now, by getting trained, neither there will be any benefit to the department nor to the petitioner. So, he himself requested that he be not sent for training. Referring to Annexure: C.A-4, the respondents argued that as the petitioner himself has denied to go for any such training hence, he cannot claim any such benefit of promotion.

40. The petitioner has contended that as per the old Rules of 1977 of the Revenue Inspector, where training was prescribed, it was also provided that after getting training of Revenue Inspector, a person must serve for at least seven years of service and only then he can get his promotion as Naib Tehsildar hence, offering the training to the petitioner, when his service was left for only one year, there was no meaning of any such training because he was not left seven years to serve to get his next promotion.

41. The court is of the view that such training was not for Survey Unit. As per the Rules of 1977, the training is only prescribed for Revenue Inspector i.e. different branch and after getting training, revenue inspector can be promoted as Naib Tehsildar in revenue side only after completion of 7 years of service. Firstly, we find that there was no need for any such training for a Survey Kanoongo to get his promotion to the post of Survey Naib Tehsildar. Furthermore, petitioner was requesting the department since 2004 for such training but he was not sent for the same. Had he been sent for training, he would have been an opportunity for serving for the requisite seven years period after training, for getting his promotion as per the contention of the respondents. Hence, denial by the petitioner to join the training at the fag-end of his career, cannot affect his right of promotion. This court does not agree with their arguments that the training was necessary for the members of Survey Unit. An employee could not get any such training at his own, and it is the case of the department, where the person acceding to the wrongful eligibility criteria, requested for such

training (even if not necessary as per rules), was denied this opportunity, and by wrongful denial of such opportunity, he was wrongfully denied his promotion, and lastly, he was denied the appropriate pay scale. On this count, the conduct of the respondents has been, not as per the law and it was discriminatory towards the petitioner and violated the principles of natural justice as well as Article 14 of the Constitution of India.

42. Learned A.P.O. on behalf of the respondents has also contended that other similarly situated persons were granted the enhanced pay scale, because of the reasons that they actually worked on the post of Survey Naib Tehsildar, whereas, the petitioner never worked on that post. This contention of the respondents cannot be accepted, as the petitioner was requesting regularly for his promotion since a long period of 14 years. He was having very good record, and nothing adverse was shown in his service record. Furthermore, in 2015, the petitioner was also assigned the work of officiating Survey Naib Tehsildar in Sitarganj Tehsil. He was fully eligible to be promoted for that post and the promotion order, was denied by the respondents to the petitioner, without any lawful reasons. The respondents cannot be allowed to take the benefit of their own fault and they cannot be permitted to do injustice towards the petitioner on account of lapses on their own part.

43. Considering all the circumstances of the case, the court is of the view that the respondents have denied the petitioner from his due promotional scale of Naib Tehsildar and he has been treated discriminatory *vis-à-vis* the similarly situated persons. He has wrongly denied the promotional pay scale of Naib Tehsildar, as allowed by the U.P. Government Order dated 06.09.1997.

44. The argument of the learned A.P.O. cannot be accepted, that Ijrulhaq was also allowed the grade pay of Rs. 4200, so the petitioner

cannot be allowed the grade pay of Rs. 5400. This court finds that the respondents cannot discriminate between the pay scale of Naib Tehsildar on Revenue, and on Survey side and the pay scales admissible as per the G.O. dated 06.09.2017, are also admissible to the petitioner w.e.f. 01.12.2001 if Ijrahulhaq was not properly paid, that does not affect the legal right of the petitioner and the impugned order dated 03.03.2018 and order dated 16.12.20017 deserve to be set aside, with the direction to the respondents to allow the pay scale of Naib Tehsildar w.e.f 01.12.2001 as per the U.P. Government Order 3711/1-9-97-10-2(5)/92 dated 06.09.1997 and the upgraded pay scale and revised pay scale from time to time with grade pay of Rs. 5400. Following order is hereby passed.

ORDER

The claim petition is allowed. The impugned order dated 03.03.2018, passed by the respondent No. 2, order dated 16.12.20017, passed by the respondent No. 3 are hereby quashed.

The respondents are directed to grant the benefit of the pay scale of the post of Naib Tehsildar as per the U.P. Government order No. 3711/1-9-97-10-2(5)/92 dated 06.09.1997 w.e.f. 01.12.2001 to the petitioner and to provide him the equal pay scales with grade pay, revised pay scales from time to time with grade pay of Rs. 5400 along with its arrears and other consequential retiral benefits, within a period of six months from the date of this order.

No order as to costs.

Sd/-

(A.S.NAYAL)
MEMBER (A)

Sd/-

(RAM SINGH)
VICE CHAIRMAN (J)

DATE: AUGUST 28, 2019
NAINITAL
KNP