

**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)

**REVIEW PETITION NO.01/DB/2020  
(ARISING OUT OF JUDGMENT DATED 06.12.2019,  
IN CLAIM PETITION NO. 115/DB/2019)**

1. Shiv Nath Singh aged about 64 years, S/o Sh. Ram Nath Singh, R/o A-7, Vishwakarma Nagar Colony, Chitapur-Chunar Road, Kandawa, Varanasi, U.P.-221106, retired as Assistant Conservator of Forest, Kedar Nath Wild Life Division, Gopeshwar, District Chamoli, Uttarakhand.
2. Rakesh Kumar Vashistha, aged about 61 years, S/o Late Sri Shyam Bihari Lal, Retd. ACF as D.L.M. Tanakpur, Uttarakhand R/o 21-Prateeksha Enclave, Dayal Bagh, Agra, U.P.
3. Chandra Bhushan Tripathi, aged about 61 years S/o Late Sri H.N. Tripathi Retd. Dy. Director from the office of Principal Chief Conservator of Forest (HOFF) R/o 306 Crown residency, Panditwari, Dehradun.
4. Subhash Chandra aged about 60 years S/o Late Bachai Lal at presently working and posted as Divisional Forest Officer, Soil Conservation Division, Ramnagar, Nainital, residing at H. No. 7, Street No. 6, Vasant Vihar Enclave, Dehradun, PIN- 248006.

.....**Review Applicants/Petitioners**

**VERSUS**

1. State of Uttarakhand through Principal Secretary, Department of Forest and Environment, Government of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Principal Chief Conservator of Forest (HOFF), Uttarakhand, Dehradun (HOFF), Rajpur Road, Dehradun, Uttarakhand.
3. Director, Treasury, Pension, Lekha and Haqdari, Dehradun.
4. Finance Controller, Forest Department, Rajpur Road, Dehradun, Uttarakhand.
5. Divisional Forest Officer, Kedar Nath Wild Life Division, Gopeshwar, District Chamoli, Uttarakhand.

6. Divisional Forest Officer, Tarai West, Forest Division, Ramnagar, Nainital, Uttarakhand.

7. Divisional Forest Officer, Addl. Soil Conservation Division, Ramnagar, Nainital, Uttarakhand.

.....**Respondents**

Present: Sri Abhijay Negi & Sri L.K.Maithani, Advocates  
for the Review Applicants/Petitioners.

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

### **JUDGMENT**

**DATED: OCTOBER 07, 2020**

1. This review/modification petition has been filed by the review applicants/petitioners, in connection with the judgment and order dated 06.12.2019, passed by this Tribunal, in Claim Petition No. 115/DB/2019.

2. The review applicants/petitioners have filed this petition more like an appeal and have challenged the findings of this Court, contending that the finding is erroneous from their point of view.

3. The respondents have opposed this review petition on the ground that the applicants cannot be allowed to file an appeal before this Court in disguise against the judgment passed by this Court, as the scope of review is very limited.

4. We have heard both the sides and perused the record and the judgment dated 06.12.2019, passed by us in the original claim petition No. 115/DB/2019.

5. Admittedly, the scope of review is very limited. The review can only be entertained, if there is any mistake apparent on the face of record. By way of a review petition, applicants/petitioners cannot be allowed to make a new case and to raise new plea, which was not raised by them in earlier petition. Furthermore, this Court cannot hear an appeal against its own judgment. By way of this review, only those mistakes can

be corrected, which are apparent on the face of record and were pointed out by the parties and were not taken note of by the Court.

6. After going through the review petition, we find that the applicants have challenged the finding of this court, contending that the finding is erroneous in law and fact and a different finding must have been arrived on the basis of record. Such type of plea can only be raised in an appeal and not before this Court, which passed the judgment. All the points raised in the review petition, are not of such nature, which can be corrected by way of this review petition because the scope of review is not only very narrow but it prohibits the Court to alter its judgment and to draw a different conclusion.

7. Review applicants/petitioners have raised the point that initially they were appointed in the Grade Pay of Rs. 4200, whereas, Tribunal has written in its judgment that as Rangers, they were appointed in the Grade Pay of Rs. 4800 and it is a material fact, which can affect the judgment.

8. We do not agree with this argument because of the reasons that firstly, it was the version recorded on the basis of the narration of the parties. Furthermore, it makes no difference in the finding because of the reasons that such Grade Pay, either of 4200 or of 4800, were to be seen for the applicability of the G.O of 2013 because such G.O. was made applicable to the employees, drawing Grade Pay of Rs. 4800 and below, so, all the employees drawing Grade Pay of Rs. 4200 and Rs. 4800 stand on the same footings. It makes no difference for the purpose of drawing conclusion by the Court for applicability of the concerned G.O. Moreover, the Grade Pay of Rangers had been raised to Rs. 4800 in July 2011, i.e. before application of the G.O. dated 06.11.2013.

9. The petitioners have tried to make a totally different case and have raised the point that the departmental order and judgment of this Court are affecting their pensionary rights, which are protected by the Constitution. Admittedly, "right to pension" may be a fundamental right,

but its fixation in terms of quantum, will have to be done by the department. A person cannot be denied this right, which is guaranteed as constitutional right but the amount of pension is to be fixed as per the rules and the Gov. Orders, hence, the points raised by the petitioners in review has no meaning, for review of our judgment.

10. In the original petition, the main issue was very specific and the Court was to see as to what "Grade Pay as 3<sup>rd</sup> ACP", was admissible to the review applicants/petitioners.

11. In our judgment, we have discussed in detail at length, about the promotional posts, the relevant Service Rules and the scales/Grade Pay to be granted to the petitioners. It was also discussed in the judgment that the post of Deputy Director, which was created by a G.O. under the U.P. Forest Service Rules, 1993, was having a Grade Pay similar to the post of DCF mentioned in All India Service Rules. Secondly, ACP was granted to the petitioners, specifically not for the post of DCF, and the post of Deputy Director was a promotional post, having superior powers and responsibility from the post of ACF. Later on under Rule 4(1) of the State Rules, the further promotional post of Joint Director and Additional Director have also been created.

12. We had already discussed the situation when the post mentioned in the All India Service is also made available to them, we find that in both the circumstances, the conclusion was rightfully drawn and the issue was discussed in detail and needs no review.

13. The basic purpose of the scheme of ACP was to grant higher grade to such an employee, who could not get the benefit of promotion in his service career. An Assistant Conservator of Forest (ACF), which is a senior post to the Ranger, cannot get the post of C.F. as second promotion, but he has to be promoted in All India Service Rules in senior scale in JAG and SAG grade. If a person of the cadre of ACF, senior to the petitioners (Range Officers), cannot get their second promotion as C.F.,

directly without completing the stage of JAG and SAG, how a junior official (Ranger) can get its 3<sup>rd</sup> ACP grade of C.F. directly and it is also illogical, to grant him second promotional benefit more than the directly recruited ACF.

14. In our previous judgment, considering all the rule position of Ranger cadre, State cadre and All India Service Cadre, from all the alternatives, we had already discussed and recorded our finding that the petitioners are only entitled to the promotional pay scale with grade pay of Rs. 7600 as 3<sup>rd</sup> ACP. Petitioners cannot be allowed to raise a new case by way of this review petition; neither they can file an appeal against our judgment before ourselves. Their review petition is a kind of appeal and is not entertainable as a review petition. The petitioners cannot be allowed to raise this point before ourselves that our finding recorded in the judgment is not correct. This can be raised only before the Appellate/Revisional Court.

15. The petitioner has also raised the point that in our judgment dated 06.12.2019, we have drawn heavily from our previous judgment dated 20.08.2018. While preparing the judgment in C.P. No. 115/DB/2019, we had perused the judgment dated 20.08.2018 delivered by this Tribunal in C.P. No. 23/DB/2018 which had discussed the relevant issues in detail. In that claim petition, the Tribunal did not pass any specific orders in view of the order of the Hon'ble High Court dated 27.07.2018, passed in Writ Petition(SB) No. 200/2018.

16. The argument of learned counsel for the review applicants to the fact that previous judgment of this Tribunal was infructuous, is not correct because of the reasons that in that judgment, all the issues agitated by the parties (similar to this petition) were heard, discussed and analyzed in detail. This previous judgment was also referred by the respondents during arguments and while writing the judgment, Court also perused that judgment and due to that reason, the annexure number A5 of previous case and Annexure 8 of R.A. of the previous case were

inadvertently referred to in para 13 and para 29 respectively of the judgment under review. However, these corresponding G.O./letter referred to in previous judgment are also relevant for the discussion of issues in this case.

17. Learned counsel for the review applicants has raised some points about the wording of the judgment that on the date of final argument, on behalf of the respondents, learned A.P.O. was not present and the case was argued by respondent No. 2, while in the judgment, Court has recorded that argument of learned A.P.O. were heard. Similarly, the case of the petitioners was also mainly argued by petitioner No. 1 personally, not by their counsel whereas, in the judgment, argument by the counsel is recorded.

We considered this point also. Petitioners' counsel and learned A.P.O. on behalf of the respondents are the agents of the petitioners and the respondents respectively. The objective of the court is to hear the parties. When the petitioners and respondents themselves have been heard for their case on merit, it makes no difference whether their counsel are present or not. Admittedly, in the judgment, as a routine matter, the argument on behalf of the petitioners, by their counsel and argument on behalf of respondents, by A.P.O. have been shown, but both the parties were given full opportunity of hearing. In the judgment, the presence of their counsel were written as a routine matter and it makes no difference on the merits of the case.

18. In para 44 of the judgment under review, the discussion with the petitioners' counsel about Rafiq Masih's case was also inadvertently picked up from the previous judgment in Claim Petition No. 23/DB/2018. Although, in the judgment, the issue of applicability of Rafiq Masih's case was also discussed, in brief for its not being applicable on account of the fact that the order sanctioning higher grade pay was conditional. But, now, by way of review, learned counsel for the review applicants has again raised this issue about applicability of Rafiq Masih's case, hence on

this point, we have heard on merit both the parties at length and the following finding is being recorded on this point.

19. This Court has discussed the applicability of the law laid down in Rafiq Masih's case and recorded that the benefit to the petitioners was granted conditionally and they were already under the notice. That condition was never challenged hence, they cannot claim the benefit of such case law. On this point, respondents further submitted that the parameters laid down by Hon'ble Supreme Court in State of Punjab & others vs. Rafiq Mashi 2015(4) SCC 334, are not applicable for the following reasons:-

- (i) Firstly, in the order dated 30.01.2014 and also other similar order, granting Grade Pay of Rs. 8700 as 3<sup>rd</sup> ACP to the petitioners and similarly situated Range Officers, there was specifically imposed condition in the concerned order that sanction of grade pay of Rs. 8700 in place of Rs. 7600 to Range officers, is conditional and if any anomaly or otherwise instructions are received from the State Government, the higher amount paid to the persons, will be adjusted from the concerned officers. They never protested or challenged the same at the time of accepting this benefit or at any later time. As this specific condition was never challenged so it implies acceptance on their behalf.
- (ii) It has also been submitted that the position of law laid down by Hon'ble Supreme Court in the case of Rafiq Masih, was also clarified by Hon'ble Supreme Court in the case of High Court of Punjab and Haryana & ors vs. Jagdev Singh, AIR 2016 SC 3523, wherein the position of law laid down by the Hon'ble Supreme Court in Rafiq Masih's case was distinguished, in para 18 of the judgment, stating that the recovery from retired employees, or employee who are due to retire within one year, of the order of recovery, was not applicable in the case when the retired officer concerned, was clearly placed on notice, that any payment having

been made in excess would be required to be refunded. Applying this analogy in the present case, when by order dated 30.01.2014 and by similar order, a condition was attached, clearly mentioning that in case of anomaly/objection, the amount, which has been paid shall be adjusted from the concerned officers, so by virtue of conditional order, looking into the case law of Hon'ble Supreme Court passed in Jagdev Singh's case, the petitioners are not entitled for the benefit of the case of Rafiq Masih.

- (iii) In Chandi Prasad Uniyal & Ors vs. State of Uttarakhand and Ors in Civil Appeal No. 5899 of 2012, decided on 17.08.2012, Hon'ble Apex Court has held that tax payers money, neither belongs to the officers who had effected over-payment nor to the recipients, and thus excess payment made due to wrong/irregular pay fixation could always be recovered since it would otherwise lead to unjust enrichment.

20. Considering all the points & case law, we find that Rafiq Masih's case does not apply to the persons, who were covered by a notice. All the petitioners were already covered by the notice in the form of a condition attached with the order, granting benefits. So we are also of the view that the petitioners, who were granted the benefits of the Grade Pay of Rs. 8700, were having a notice by way of condition attached with the same, that excess amount shall be recovered, so they cannot claim the benefit of Rafiq Masih's judgment now. Rafiq Masih's judgment also mentioned that for the excess payment made for a period in excess of five years, recovery cannot be made. In the present matter, orders of recovery of excess payment have been issued within five years. So, in this situation also, Rafiq Masih's case does not apply. Accordingly, we are of the view that the petitioners cannot claim the benefit of Rafiq Masih's judgment.

21. It is reiterated that we are not having the authority to hear an appeal against our judgment. It is the domain of the Appellate Court/Revisional Court.

22. Considering all the points raised by the petitioners, we are of the view that there is no need to change the findings and conclusions already recorded by us.

23. The review petition is decided and disposed of accordingly.

24. This order will stand amalgamated with the judgment under review.

**(RAJEEV GUPTA)**  
VICE CHAIRMAN (A)

**(RAM SINGH)**  
VICE CHAIRMAN (J)

*DATED: OCTOBER 07, 2020*  
*DEHRADUN.*

*KNP*