

**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. 161/DB/2019**

1. Bharat Singh, Retired from Forest Department as Assistant Conservator of Forest, (Male) aged about 63 years S/o Late Sohan Lal, R/o-21, Chander Road, Dalanwala, Dehradun.
2. Surendra Kumar, Retired from Forest Department as Divisional Forest Officer, (Male) aged about 61 years S/o Late Shri Radhey Shyam, R/o-4/3. Mohini Road, Dehradun.
3. Chandra Prakash Sharma, presently working on deputation as in the O/o Forest Development Corporation, Dehradun, (Male) aged about 59 years S/o Late Thakur Dass Sharma, R/o- Rochi Pura Lane No. 2, Brahmanwala Road, Majra, Dehradun.
4. Dhananjay Prasad, Assistant Conservator of Forest, presently working in the O/o Uttarakhand Biodiversity Board, (Male) aged about 56 years, S/o Late B.P. Chaudhary, R/o-19, Indira Nagar Colony, Dehradun.

.....Petitioners

**VERSUS**

1. State of Uttarakhand through Principal Secretary (Forest), Civil Secretariat, Dehradun.
2. Secretary (Finance), Civil Secretariat, Dehradun.
3. Principal Chief Conservator of Forest, Uttarakhand, Dehradun.

Present: Sri Abhijay Negi, Advocate for the Petitioners.  
Sri V.P.Devrani, A.P.O. for the Respondents

**&**

**CLAIM PETITION NO. 43/NB/DB/2019**

1. Gopal Singh Karki (Male) aged about 60 years S/o Late Sri Uttam Singh Karki, (Retired) Deputy Director, Haldwani Zoo Safari, Deola Talla, Golapar, Haldwani, R/o 2-932/2 Chandrottam, Sheesh Mahal, Nainital Road, Haldwani.

2. Ravindra Kumar Singh (Male) aged about 58 years S/o Late Sri Ram Singh, presently posted as Deputy Director, Uttarakhand Forestry Training Academy, Haldwani, Nainital Uttarakhand.
3. Babu Lal (Male) aged about 55 years S/o Sri Shiv Lal, presently posted as Sub-Divisional Forest Officer (Khatima) at the office of Divisional Forest Officer, Terai East Forest Division, Jail Road, Haldwani, Nainital, Uttarakhand.
4. Rajesh Kumar (Male) aged about 58 years S/o Late Sri Satya Dev Prashad presently posted as Sub-Divisional Forest Officer (Sharda) at the office of Divisional Forest Officer, Haldwani Forest Division, Tikonia Forest Campus, Haldwani, Nainital, Uttarakhand.

.....Petitioners

**VERSUS**

1. State of Uttarakhand through Principal Secretary, Forest, Civil Secretariat, Dehradun, District Dehradun.
2. Secretary, Finance, Civil Secretariat, Dehradun, District Dehradun.
3. Principal Chief Conservator of Forest (HoFF), Dehradun, District Dehradun.
4. Director, Treasury, Pension and Entitlements, Uttarakhand, Dehradun, District Dehradun.
5. Finance Controller (Forest Department), Office of Principal Chief Conservator of Forest (HoFF), Dehradun, District- Dehradun.
6. Divisional Forest Officer/Drawing Disbursing Officer, Terai East Forest Division, Haldwani, District Nainital, Uttarakhand.
7. Divisional Forest Officer/Drawing Disbursing Officer, Haldwani Forest Division, Haldwani, District Nainital, Uttarakhand.
8. Deputy Director/Drawing Disbursing Officer, Uttarakhand Forestry Training Academy, Haldwani, District Nainital, Uttarakhand.

.....Respondents

Present: Sri Sandeep Tiwari & Sri Piyush Tiwari, Advocates for the Petitioners.  
Sri V.P.Devrani, A.P.O. for the Respondents.

**JUDGMENT**

**DATED: NOVEMBER 10, 2020**

**HON'BLE MR. RAJEEV GUPTA, VICE CHAIRMAN (A)**

1. The facts and question of law involved in these two claim petitions are similar and the reliefs sought in both the claim petitions are also

similar. Therefore, these claim petitions are being disposed of by a common judgment. For the sake of convenience, claim petition No. 161/DB/2019 is taken up as representative petition for the purpose of referring to annexures.

2. The issue involved in these claim petitions is the grant of 3<sup>rd</sup> ACP to the Rangers (DDRs) of the Forest Department, in accordance with the provisions of the G.O. dated 06.11.2013 (Annexure A 18) of the Finance Department of the Govt. of Uttarakhand regarding ACP (Assured Career Progression). The initial G.O. dated 08.03.2011 (Annexure A-15) regarding ACP provided for giving the benefit of ACP in terms of the next higher slab of Grade Pay and corresponding Pay Scale in the pay matrix, prevalent during the 6<sup>th</sup> Pay Commission. Under the amended G.O. for ACP dated 06.11.2013, the State employees, substantively appointed in the Grade Pay of Rs. 4800 or below, in case where the post of promotion was available for such employees, were made entitled to get the corresponding Grade Pay and Pay Band of the promotional post; and where the promotional posts were not available for the employees, they were entitled to get the next higher Grade Pay and corresponding Pay Scale as per the Pay Matrix Table of the 6<sup>th</sup> Pay Commission. This pay matrix table is Annexed as Annexure No.1 to the Finance Department G.O. dated 17.10.2008. The relevant Grade Pays and Corresponding pay scales in ascending order for the case in hand, are as follows:

वेतनमान (दिनांक 01-01-2006 के पूर्व)	दिनांक 01-01-2006 से संशोधित वेतन संरचना / ढाँचा		
	वेतन बैंड/वेतनमान का नाम	सदृश्य वेतन बैंड/वेतनमान	सदृश्य ग्रेड वेतन
7500-250-12000	वेतन बैंड-2	9300-34800	4800
8000-275-13500	वेतन बैंड-3	15600-39100	5400
8550-275-14600	वेतन बैंड-3	15600-39100	6600
10000-325-15200	वेतन बैंड-3	15600-39100	6600
10650-325-15850	वेतन बैंड-3	15600-39100	6600
12000-375-16500	वेतन बैंड-3	15600-39100	7600

14300-400-18300	वेतन बैंड-4	37400-67000	8700
16400-450-20000	वेतन बैंड-4	37400-67000	8900

3. The Grade Pay of DDRs was revised to Rs. 4800 in July 2011 and according to the above G.O. dated 06.11.2013, post of the promotion was to be considered for granting the benefit of ACP to them and if the same was not available, then next higher Grade Pay along with the corresponding Pay Scale, was to be given as the ACP. The petitioners had got the first and second ACP under earlier G.Os., which in terms of the Pay scale of 6<sup>th</sup> Pay Commission worked out to Grade Pay of Rs. 5400 and Grade pay of Rs. 6600 with corresponding pay scales respectively. The controversy about the 3<sup>rd</sup> ACP has arisen because of the interpretation of the G.O. dated 06.11.2013 in their case. As per the initial G.O. dated 08.03.2011 about ACP, the 3<sup>rd</sup> ACP worked out to be next higher Grade Pay of Rs. 7600 along with corresponding pay scale of Rs. 15600-39100. Interpreting the G.O. dated 06.11.2013 and taking the next post of promotion as Conservator of Forests, the then PCCF (Principal Chief Conservator of Forests) held them entitled to Grade Pay of Rs. 8900 with corresponding pay scale but as it was becoming higher than the third ACP of directly appointed ACFs (Assistant Conservator of Forests), he reduced it to Grade Pay of Rs. 8700 with corresponding pay scale making it equal to third ACP of ACFs. Respondent No. 3 has held their fixation of third ACP to be wrong as per the advice of the Finance Department. The petitioners and other similarly placed persons have approached Hon'ble High Court and this Tribunal, who have issued various orders in the respective writ/claim petitions. The impugned orders in the present claim petition are orders of PCCF (Respondent No.3) refixing the third ACP of the petitioners with Grade Pay of Rs. 7600 with corresponding pay scale and recovery of excess amount paid to the petitioners, which are primarily sought to be quashed in the claim petitions. The claim petition No. 161/DB/2019 further seeks that orders be issued by this Tribunal to grant third ACP to the petitioners with grade pay of Rs. 8900 with corresponding pay scale.

4. Counter Affidavits/Rejoinder affidavits/supplementary affidavits have been filed in the petitions and extensive arguments have been made. The arguments advanced by learned counsel for the petitioners in claim petition No. 161/DB/2019 who has also filed written arguments on behalf of the petitioners, are as below:

“1. That the DDRs were already granted the Pay scale /Grade pay of Rs. 7600 as 3<sup>rd</sup> ACP in accordance with the GO dated 08.03.2011, wherein the benefit was provided in terms of the “next higher slab of pay scale in the pay-matrix” but in view of the GO dated 06.11.2013, they became entitled to get the benefit in terms of the “next higher post of promotion”. The claim of the petitioners is that since as per the prevailing rules, the DDRs are promoted to the post of ACF as 1<sup>st</sup> promotion, on the post of DCF on 2<sup>nd</sup> promotion and on the post of CF on 3<sup>rd</sup> promotion, therefore they are entitled to get the pay scale equivalent to their 3<sup>rd</sup> post of promotion i.e. Conservator of Forest (CF) as 3<sup>rd</sup> ACP, having Grade pay Rs. 8900. However, the Grade pay of Rs. 8700 only was sanctioned (instead of Rs. 8900) by the PCCF vide letter dated 30.01.2014 (Annexure A-20) due to some pay anomaly and the matter was referred to the Government for direction vide another letter dated 30.01.2014 (Annexure A-21.).

2. In consequence, the Government (Respondent No.1) vide its G.O. dated 11.04.2018 (Annexure A-32) directed the PCCF (Respondent No.3) to grant the pay scale equivalent to that of Conservator of Forest (Rs. 37400-67000 & Grade Pay Rs. 8900) to the DDRs in view of the amended G.O. dated 06.11.2013. In the said G.O. dated 11.04.2018, the post of Assistant Conservator of Forest (ACF), Deputy Conservator of Forest (DCF) and Conservator of Forest (C.F.) were the posts taken as the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> post of promotion for the DDRs for the purpose of granting ACP.

3. But the said order of the Government dated 11.04.2018 was deliberately not complied by the PCCF. Although representation was made by the Association of DDRs but the PCCF acted as an autocrat and did not respond.

4. That meanwhile, Hon’ble High Court of Uttarakhand passed an order dated 27.07.2018 in consequence of W.P. No. 200(SB) of 2018 filed by some of the DDRs on the same issue. Hon’ble High Court in its order dated 27.07.2018 (Annexure A-5) directed the respondents/Govt. to take further action strictly in accordance with law. In consequence, the PCCF vide letter dated 27.08.2018 (Annexure A-37) requested Additional Chief Secretary, environment & Forest (Respondent No.1) to give direction. The Additional Chief Secretary, Environment & Forest in consultation with the Law department issued the order dated 29.11.2018 (Annexure A-40) in compliance of the order of Hon’ble High Court, directing the PCCF to grant the pay scale of Conservator of Forest (Rs. 37400-67000 and Grade pay Rs. 8900) to the DDRs as 3<sup>rd</sup> ACP in view of the GO dated 06.11.2013.

5. That the PCCF on one hand referred the matter to the Government for direction vide letter dated 27.08.2018 (Annexure A-37) and on the other hand, without waiting for the direction of the Government issued notice against the DDRs vide letter dated 21.09.2018 (Annexure A-38). The said act of the PCCF speaks a lot of his arbitrariness and his way of functioning. The DDRs/petitioners made representation against the said notice but the said representation remains un-disposed even today.

6. On the other hand, the PCCF once again did not comply with the order of the Govt. dated 29.11.2018 (Annexure A-40) and kept the said order in abeyance. Later, in most autocratic manner, the PCCF suo-moto issued another notice dated 03.08.2019 against the DDRs (Annexure A-47) which was vague in nature, and directed the DDRs/petitioners to make representation. Once again, the DDRs were compelled to make representation against the said notice vide letter dated 18.08.2019 knowing full well that the representation made against the earlier notice dated 21.09.2018 was pending at the level of PCCF. This time, the representation of the petitioners was rejected by the PCCF vide his order dated 16.09.2019 (Annexure A-1) which has also been challenged in this claim petition. The perusal of the said impugned order dated 16.09.2019 reveals that the representation of the petitioners was rejected on the following two grounds only:

(i) That since there is no post of promotion available for the DDRs in their recruiting rules and they are promoted to higher posts by way of provision made in some other service rule and not the recruiting rule, therefore they are not entitled to get the benefit of 3<sup>rd</sup> ACP in terms of their 3<sup>rd</sup> post of promotion.

(ii) That since the element of "merit" is involved in the process of making promotion from the post of promotion to the post of DCF and CF (the posts under IFS cadre), therefore the DDRs are not entitled to get the benefit of 3<sup>rd</sup> ACP in terms of their 3<sup>rd</sup> post of promotion.

7. The impugned order dated 16.09.2019 (Annexure A-1) along with some other orders have been challenged in the present Claim petition, which have been argued on behalf of the petitioners and the judgment has been reserved by Hon'ble PST. Although detailed submissions have been made in the claim petition/supplementary claim petition and the rejoinders, the summary of the argument made before Hon'ble PST is submitted in the succeeding paras.

8. That detailed submissions have been made in claim petition & rejoinders with respect to the two grounds as mentioned in para-8 above, on the basis of which the representation of the petitioners have been rejected. However, during the course of argument, Hon'ble PST was apprised of the important fact that the PCCF (Respondent No. 3) in para W, 16, 19 and 64 of his reply has clearly admitted that Assistant Conservator of Forest (ACF) is the 1<sup>st</sup> post of promotion for the DDRs/petitioners and this admission of the PCCF (Respondent NO. 3) demolishes the very foundation of the impugned order dated 16.09.2019 which is based on the fact that there is "no post of promotion" for the DDRs. Therefore, the impugned order dated 16.09.2019 is liable to be quashed.

9. That the Hon'ble PST was also informed about the fact that the Principal Secretary, Environment & Forest (Respondent No. 1) in his affidavit dated 19.08.2019 (Annexure A-46) filed in Hon'ble High Court with respect to the Contempt petition No.271 of 2019 (filed by some of the DDRs) admitted that the "element of merit" is not involved in the process of granting ACP and that the criteria of "suitability" and "seniority" are the only relevant criteria's for granting ACP to the employees. Thus, the second ground on the basis of which the representation of the DDRs/petitioners was rejected by the PCCF vide impugned order dated 16.09.2019 also gets demolished by the admission of Principal Secretary (Respondent No. 1) made before Hon'ble High Court. Since both the grounds of rejection of the representation by the impugned order is proved wrong, therefore the impugned order dated 16.09.2019 is liable to be quashed.

10. That during the course of argument, it was submitted before the Hon'ble PST on behalf of the petitioners that the respondents are bent upon to apply the self-coined "recruiting Rule principle" and the "principle of merit" in case of DDRs, whereas there is no such provision made in the GO dated 06.11.2013 in accordance with which the benefit of 3<sup>rd</sup> ACP is to be granted to the DDRs. The argument of the Respondents regarding the self-coined "Recruiting Rule Principle" is that "post of promotion" must be mentioned in the "recruiting Rule" itself vide which the employee was initially appointed to a post but if the provision of promotion is either not made in the recruiting service rule or is made in some other service Rule (i.e. other than the recruiting Rule), then it shall be deemed that there is no "post of promotion" for the purpose of granting ACP. The argument put forward by the respondents in their reply to the claim petition is that the DDRs have been initially recruited on the post of Range Officer vide U.P. Subordinate Forest (Rangers, Deputy Rangers and Foresters) Service Rules 1951 wherein there is no provision for the "post of promotion" of the DDRs. The respondents in their reply have further contended that the Service Rules of 1951 pertaining to the Ranger Officer was substituted by Uttarakhand Forest Range Officers Service Rules 2010 but there is no provision of "post of promotion" in this service rule also.

In response to the above contention of the respondents, the petitioners in reply put forward a number of facts and raised fingers on the acts of the respondents which were in violation of Article 14 and 16 of the Constitution of India but those facts/questions were never responded to by the respondents. The summary of such facts brought to the knowledge of Hon'ble PST during oral argument are as under:

- (i) Firstly, it was brought before the notice of the Hon'ble Tribunal that Rule 21 of U.P. Subordinate Forest (Rangers, Deputy Rangers and Foresters) Service Rule 1951 as well as Rule 26 of Uttarakhand Forest Range Offices Service Rules, 2010 provide for the promotion of the Range Officers to the higher post. Therefore, the contention made by the respondents that there is "no post of promotion" for the DDRs in their recruiting rules is absolutely wrong.
- (ii) Secondly, the PCCF (Respondent No. 3) as well as the Principal Secretary, Environment & Forest (Respondent No. 1) in para W, 16, 19 and 64 of their reply have clearly admitted that the post of Assistant Conservator of Forest (ACF) is the 1<sup>st</sup> promotion post for the DDRs. The admission so made by the respondents itself proves their earlier statement as well as impugned order dated 16.09.2019 wrong, where they had claimed that "there is no post of promotion for the DDRs". Since the self-coined illogical "recruiting rule principle" have been self-demolished by the respondents, therefore it has no further relevance.
- (iii) That the law laid down by Hon'ble High Court of Uttarakhand in its order dated 10.09.2012 (Annexure A-52) in R.D. Pathak case was also brought to the notice of Hon'ble PST wherein Hon'ble High Court observed that the U.P. Forest Service Rules, 1993 have not taken away any existing right of the petitioners appointed under U.P. Forest Service Rules, 1952 because the right to be promoted under the 1952 rules was duly altered by the Indian Forest Service (Cadre) Rules 1966 and other connected rules. The said observation of Hon'ble High Court proves beyond doubt that the post of Deputy Conservator of Forest (DCF), Conservator of Forest (CF) and Chief Conservator of Forest (CCF) as provided in U.P. Forest Service Rules 1952 remains the post of promotion even after the enactment of IFS Rules 1966. Therefore, the post of DCF and CF are the 2<sup>nd</sup> and 3<sup>rd</sup> promotional

posts for the DDRs. However, the respondents did not respond to it in their reply and remained quiet.

- (iv) That during the course of argument, Hon'ble PST was also informed that the respondents specially Respondent No. 3 has been so eager to apply the "recruiting rule principle" in case of DDR cadre only, but he did not apply it in the case of Forest Guards, Foresters and Deputy Rangers although the "post of promotion" is not defined in their recruiting rule also alike DDRs. It is worth mentioning that in the recruiting rules of Forest Guards, Foresters and Deputy Rangers, the post of promotion is not defined in their recruiting rule and their promotion is made by other service rule (other than their recruiting rule) alike the DDRs. Thus, during the course of argument, the discriminatory attitude of the Respondents specially respondent No. 3 was highlighted before Hon'ble PST.
- (v) Hon'ble PST was also informed about the acute difference of opinion between the PCCF and the CCF (HRD), who did not agree with the "recruiting rule principle" coined by the PCCF. The CCF(HRD), who is responsible for granting the benefit of ACP to Forest Guards, Foresters and Deputy Rangers, vide his letter dated 21.11.2019 (Annexure SA-18) addressed to the PCCF categorically said that "post of promotion means the promotion made to any post by means of any service rule and it does not confine to the recruiting rule only". The PCCF remained silent and never responded to which proves his arbitrariness.
- (vi) That the respondents , specially respondent No. 2 (Secretary, Finance) also failed to explain the prominent question raised in the Claim Petition as to why the "recruiting rule principle" was not applied in case of Junior Engineer Cadre (JEs) working in 16 different departments of the state of Uttarakhand including PWD and Irrigation. It is pertinent to mention that there is no provision of promotion in the recruiting rule of the JEs however, they are promoted to the post of Assistant Engineer (AE) by virtue of another service rule (meant for AEs) alike DDRs. Therefore, in case "recruiting rule principle" is applied to JE cadre, who are recruited at the initial grade pay of Rs. 4600, they shall be entitled to get the pay scale of Grade Pay Rs. 4800 only and shall not be entitled to get the pay scale/grade pay of AE, which is Rs. 5400. But the Finance Department itself has granted them the benefit of GP of Rs. 5400 demolishing the "recruiting rule principle" vide the G.O. dated 24.01.2018 (Annexure A-73). It is also important to note that the Finance Department did not respond to the said issue and ran away by covering their face.
- From the contentions made above, it is evident that the respondents themselves made a mockery of their self-coined illogical "recruiting rule principle" and they tried to apply it in the case of DDR cadre only, violating article 14 and 16 of the Constitution of India. Therefore, the "recruiting rule principle" is *non-est* in the eye of law and the impugned order dated 16.09.2019 deserves to be quashed.

11. That the second ground of rejecting the representation of the petitioners by the PCCF in the impugned order dated 16.09.2019 has been that since the "element of merit" is involved in the process of making promotion from the post of ACF to the post of DCF and CF (the post under IFS cadre), therefore the DDRs are not entitled to get the benefit of ACP in terms of the pay scale equivalent to the post of promotion.

In this regard, Hon'ble PST was informed about the affidavit dated 19.08.2019 (Annexure A-46) filed by the Principal Secretary, Environment &



Forest (Respondent No. 1) before High Court in contempt petition No. 271 of 2019 in which, it has been admitted by him that the "element of merit" is not involved which granting the benefit of ACP to the employees. Therefore, the second pillar/ground of the impugned order dated 16.09.2019 also gets demolished.

Apart from the above, a very pertinent question was raised in para 4(K)(viii), (ix) & (x) of the claim petition before Respondent No. 2 (Secretary, Finance) contending that in the process of promotion from Executive Engineer (Ex.En) to the post of Superintending Engineer (SE), the "element of merit" is involved as is evident from the service rule - and applying the "principle of merit", the JEs were not entitled to get the pay scale of SE (GP Rs. 8700) and were entitled to get the GP Rs. 7600 only. Even then, the JEs were granted the pay scale/Grade pay of S.E. (Rs. 8700) vide GO dated 24.01.2018 (Annexure A-73) -why? Since the Finance Secretary (Respondent No.2) had no answer for this question therefore did not make any comment. (These are all grave violations of Article 14 of the Constitution).

It was also argued by the Petitioners that the Govt. of India vide OM dated 08.02.2002 (Annexure SA-14) and 16.02.2005 (Annexure SA-15) have abolished the criteria of "merit" in the process of promotion. Therefore, there is no element of merit involved in the promotion of ACF to the post of DCF and CF.

From the above, it is evident that the "principle of merit" has no significance while granting the benefit of ACP and therefore the impugned order dated 16.09.2019 is liable to be quashed.

12. That Hon'ble PST was also informed about various orders passed by Hon'ble High Court of Uttarakhand, related to the grant of 3rd ACP to the DDRs prior to as well as during the pendency of this Claim petition. In this regard, it was informed that the G.Os. either quashed/set aside/stayed by Hon'ble High Court shall not be taken into consideration by Hon'ble PST in view of the directions given by Hon'ble High Court in its order dated 23.05.2019 (Annexure A-4), 18.10.2019 (Annexure A-3) and 09.01.2020 (Annexure SA-I). The list of such directions given aside/stayed orders as well as other observations are as under:

(i) Order dated 20.12.2017(Annexure A-6) & 22.12.2017 (Annexure A-7), 21.09.2018 (Annexure A-38), 08.05.2018 (Annexure A-9) and 25.04.2019 (Annexure A-12) of the PCCF were set aside by Hon'ble High Court vide order dated 23.05.2018 (Annexure A-4) & 27.07.2018 (Annexure A-5).

(ii) Order dated 04.05.2018 (Annexure A-8) of Finance Department of the Govt. was set aside by Hon'ble High Court vide order dated 23.05.2018 (Annexure A-4) & 27.07.2018 (Annexure A-5).

(iii) Order dated 15.03.2019 (Annexure A-11) as well as dated 28.05.2018 (Annexure A-34) of the Dept. of Environment & Forest of the Govt. was set aside by Hon'ble High Court vide order dated 23.05.2018 (Annexure A-4) & order dated 27.07.2018 (Annexure A-5) respectively.

(iv) Hon'ble High Court in its order dated 09.01.2020(Annexure SA- 1) observed that the observation made by Hon'ble PST in any other case shall not be considered by Hon'ble PST while deciding the case of the petitioners. In addition, the order dated 18.10.2019 (Annexure A-3) of Hon'ble High Court was also to be considered by Hon'ble PST while deciding this case.

(v) Apart from the above, the order dated 28.05.2018 (Annexure A-60) of Finance Department of the Government has also been stayed

by Hon'ble High Court in its order dated 23.05.2018.

Therefore, all the above mentioned quashed/set aside/stayed orders as well as the observations made by Hon'ble High Court has to be considered by Hon'ble PST while passing the judgement related to this claim petition.

13. That the Hon'ble PST was also informed about an important letter of Additional Chief Secretary (Environment & Forest) addressed to the Finance Secretary made vide letter dated 04/07.05.2018 (Annexure A-33) communicating him that the order dated 28.11.2017 (Annexure A-30) is of no relevance while granting 3<sup>rd</sup> ACP to the DDRs.

14. That Hon'ble PST was also informed that the U.P. State Forest Service Rules 1952 & 1993 (Annexure A-51 & 49), IFS (Recruitment) Rules 1966 (Annexure A-53) read with the law laid down by Hon'ble High Court vide order dated 10.09.2012 (Annexure A-52) in *R.D. Pathak* case as well as order dated 03.03.2010 (Annexure RA-1/3) & order dated 27.02.2020 (Annexure RA-2/3), the DDRs are entitled to be promoted to the post of ACF (1<sup>st</sup> SI promotion), DCF (2<sup>nd</sup> Promotion) and CF (3<sup>rd</sup> promotion).

15. Hon'ble PST was informed during the course of argument that the DDRs were initially appointed on the Pay scale equivalent to the Grade pay of Rs. 4200 (and not Rs. 4800) and the initial pay scale of DDR was increased to Grade pay Rs. 4800 by an order dated 29.07.2011 (Annexure A-75). However, before this date, the Petitioners already got the benefit of 1<sup>st</sup> Time scale in terms of the pay scale of 1<sup>st</sup> post of promotion/ACF (Rs. 5400 Grade pay) and pay scale of 2<sup>nd</sup> post of promotion/DCF (Grade pay Rs. 6600) as 2<sup>nd</sup> Time scale, The 3<sup>rd</sup> post of promotion for the DDRs/petitioners being the post of CF, the Govt. issued order dated 11.04.2018 & 29.11.2018 granting the pay scale of CF as 3<sup>rd</sup> ACP.

That Hon'ble PST was also informed as to how the Respondents miserably failed to explain that why the DDRs, who were initially recruited at the Pay Scale/Grade Pay of Rs. 4200/- were granted the pay scale/G.P. of Rs. 5400 as 1<sup>st</sup> Time Scale/ACP by jumping three levels of pay scale, if at all there was no post of promotion.

16. That it was argued before Hon'ble PST that the fresh notice dated 03.08.2019 (Annexure A-47) issued against the DDRs/petitioners was vague in nature in terms of the law laid down by Hon'ble Supreme Court in *Keshav Mills Co. Ltd. Vs Union of India case*. The legal dictum regarding the said case was that, "*the notice which is given to the parties should be clear and unambiguous. If it is ambiguous and it is not clear, then the notice will not be considered as reasonable and proper.*"

In view of legal dictum of Hon'ble Supreme Court, the notice dated 03.08.2019 is liable to be Quashed. (Hard copy already supplied to Honorable Court).

17. That although the impugned order dated 16.09.2019 (rejecting the representation of the petitioners) does not refer to the issue of "Deputy Director" as this word was neither used even once in the impugned order nor was the basis of rejecting the representation, even then the respondents have come up with this new issue in their reply of the claim petition. It is interesting to note that respondent no. 3 while passing the impugned order dated 16.09.2019 (Annexure A-1) relied on the fact that there is no post of promotion for the DDRs/petitioners, has now stated in his reply that the post of Deputy Director is the 2<sup>nd</sup> post of their promotion.

A detailed argument in this regard was made before Hon'ble PST during the course of hearing relying on the case of *R.D. Pathak* and *Makardhwaj Pal*, explaining the issue, submitting in detail in para 45 of Rejoinder Affidavit RA-3

. Both these cases are in the pleadings of the Claimants. The Respondents gave no response to in either in their pleadings.

18. That it was argued before Hon'ble PST by citing the case of *Subramaniam Swami Vs CBI* that the principle applied by the Respondents in case of DDRs/petitioners lack "intelligible differentia" and "rational nexus" and such illogical act of the Respondents will defeat the objective of the very objective of the ACP to be given vide order dated 06.11.2013 (Annexure A-18).

19. That it was also submitted before Hon'ble PST that there is significant difference between the "post of promotion" and the "financial upgradation" and the law in this regard has been laid down by Hon'ble Apex Court in catena of judgements including *Bharat Sanchar Nigam Ltd. Vs. R. Santhakumari Veluswamy* [2011 (9) SCC 510], *Lalit Mohan Dev Vs. Union of India and Others* [1973(3) SCC 862], *Union of India Vs. S. S. Ranade* [1995(4) SCC 462]. It was also pleaded that the benefit of 3<sup>rd</sup> ACP is to be granted to the petitioners in consequence of the G.O. dated 06.11.2013 (Annexure A-18) in term of the "post of promotion" and not financial upgradation and therefore, the DDRs are entitled to get the pay scale of CF as 3<sup>rd</sup> ACP, which is their 3<sup>rd</sup> post of promotion.

20. That Hon'ble PST was informed about the biasedness of PCCF (Respondent No.3) towards the DDRs/petitioners to the extent that he violated the principles of natural justice a number of times as mentioned in para 4(P) of the Claim Petition. Citing the case of *Uma Nath Pandey Vs State of U.P.*[2009(237) ELT 241 (S.C.)], the Hon'ble PST was informed about the observation of Hon'ble Apex Court for strictly adhering with the Principles of Natural Justice. It was also submitted before Hon'ble PST that not even one opportunity of personal hearing was given by the PCCF in spite of repeated written request made by the petitioners.

21. That it was also submitted before Hon'ble PST that the grounds mentioned by the petitioners in their representation was not at all considered by the PCCF (Respondent No.3) before passing the impugned order dated 16.09.2019. In para 86 of the Rejoinder Affidavit R-3, all such 19 Grounds, which were not considered have been enlisted.

22. That it was also brought to the knowledge of, the Hon'ble PST that the answering respondents did not respond to a number of crucial issues having significant bearing on the adjudication of this case. The list of such issues are as under:

(i) That the respondents did not respond to the issue raised by the petitioner that why and how were the petitioners given the Jump of 03 pay scales while granting 1<sup>st</sup> "time scale" and again a jump of one pay scale while granting the benefit of 2<sup>nd</sup> "time scale". The answer to this question is of utmost importance because if there was/is no post of promotion for DDRs/petitioners, there was no question of jump in pay scale because as per the relevant GO, in case there is no post of promotion, then the pay scale in the pay matrix just above the one the employee is getting shall be admissible. This issue has been explained in Para 97 of the Rejoinder Affidavit R-3.

(ii) That the Junior Engineers (JEs) were given the pay scale/Grade pay of Rs. 8700 as 3<sup>rd</sup> ACP treating the post of Superintending Engineer (SE) as the 3<sup>rd</sup> post of promotion vide GO dated 24.01.2018 (Annexure A-73) issued by the Finance Department. However, it is of utmost importance to note that the post of promotion is not defined in the recruiting rule of the JEs. Thus, applying 'recruiting rule principle' as applied by the respondents in case of DDRs, the JEs were

not entitled to get the pay scale/Grade pay of Rs. 8700 as 3<sup>rd</sup> ACP and were entitled for Rs. 7600 only. So, the 'recruiting rule principle' was not fulfilled by the JEs alike DDRs even then the Finance department of the Govt. granted the grade pay of Rs. 8700 as 3<sup>rd</sup> ACP.

Secondly, the criteria of 'merit' is involved in the promotion of Executive Engineer (Ex. Eng.) to the post of Superintending Engineer (SE). So, 'merit' being the criteria of promotion, the JEs were not entitled to get the pay scale of Superintending Engineer as 3<sup>rd</sup> ACP as claimed by the respondents themselves. But in spite of the fact that the JEs did not fulfill the conditions coined by the respondents, the 3<sup>rd</sup> ACP of Rs. 8700 was granted by the Finance Department.

In the Comparative Chart prepared and displayed in Para 95 of the Rejoinder Affidavit R-3, the question was raised as to how the JEs were granted the benefit of 3<sup>rd</sup> ACP and how the DDRs have been denied the same benefit although the case of JEs and DDRs are exactly the same. But the respondents did not respond to it.

The learned APO argued by stating that the pay scale of S.E. has been revised from Grade pay Rs. 7600 to Rs. 8700 but he failed to respond to the question that why the JEs not promoted to the post of SE (working as AE or Ex. En.) were granted the pay scale of SE.

(iii) That a pertinent question of law was also raised by the petitioners in para 4(K)(iii) of the Claim Petition that was - "*can any Govt. servant be promoted without relevant service rule or executive order and the answer is "No" - then how the DDRs were promoted to the higher post of ACF & DCF, and if, they were promoted to the post of ACF & DCF by virtue of some provision made in some service rule, then how can that service rule be irrelevant for the DDRs?"*

But the said question was deliberately not answered by the respondents.

(iv) That another important question was raised by the petitioners that if there was/is no post of promotion for the DDRs/petitioners, then how the DDRs were promoted to the post of ACF (1<sup>st</sup> promotion) vide order dated 03.03.2010 (Annexure RA-1/3) and to the post of DCF (2nd promotion) vide order dated 27.02.2020(Annexure RA- 2/3). But the respondents had no answer for the said question.

(v) That Respondent No.3 did not respond to the question as to why 2nd notice dated 03.08.2019 (Annexure A-47) was issued when the Petitioners had represented against the 1<sup>st</sup> notice dated 21.09.2018 (Annexure A-38) and the representation was still pending for disposal?

(vi) In para 4(D)(j) of Claim Petition, the relevant service Rules were mentioned to show how DDRs are promoted to the post of ACF, DCF and CF. In response, the Respondent No. 3 called this erroneous without assigning any reason.

23. That the Hon'ble PST was also informed about the wrong information knowingly given by the respondents in their affidavit, the list of which are as under:

(i) That wrong Statement was made by the PCCF in Para 74 that the order dated 03.01.2019 (Annexure A-2) was issued after the cancellation of order dated 29.11.2018. But the fact is that the order dated 29.11.2018 was cancelled vide order dated 15.03.2019 (Annexure A-11). Therefore, wrong affidavit has been knowingly filed

by Respondent No.3 which requires close scrutiny of Hon'ble PST. Apart from that, a hypothetical story has been narrated by Respondent No.3 regarding the meeting of senior officers.

(ii) That wrong Statement has been made by the PCCF (Respondent No.3) claiming that the notice dated 21.09 .2018 was issued in compliance of the order of Hon'ble High Court. This statement is absolutely wrong because in consequence of the order of High Court dated 27.07.2018 (Annexure A-5), the PCCF requested Additional Chief Secretary(Environment & Forest), Govt. of Uttarakhand for direction vide letter dated 27.08.2018 (Annexure A-37) and in consequence the order dated 29.11.2018 (Annexure A-40) was issued by the Government. It is very interesting to note that the PCCF (Respondent No. 3) without waiting for the direction of the Govt. suo-moto issued notice dated 21.09.2018, which speaks a lot about the mindset of the PCCF.

(iii) That another false statement was made by the PCCF in his affidavit claiming that the committee under chairmanship of Mr. Jairaj, the then PCCF (Project) was constituted to look into the anomalies of all ACP benefits. It is a false statement because the committee under the chairmanship of Mr. Jairaj was created vide order dated 14.03.2017 (Annexure A-25) and on perusal of this order, it is revealed that the said committee, which was not the Screening Committee, was given the task to look into the case of 02 DDRs only. This committee did not had the right to look into the case of DDRs, who were already given the benefit of 3<sup>rd</sup> ACP earlier. Therefore, the statement made by Respondent No.3 is patently incorrect.

24. That Hon'ble PST was also informed about the fact that the ultimate authority to decide the 03 posts of promotion for the DDRs is its Administrative Department i.e. Dept. Of Environment & Forest and this department vide its order dated 11.04.2018 (Annexure A-32) decided that the posts of ACF, DCF and CF are the 03 successive posts of promotion for the DDRs/petitioners.

25. That it was also submitted before Hon'ble PST that 08 grounds have been mentioned by the petitioners in para 44 of Rejoinder Affidavit R-3 explaining why the impugned order dated 16.09.2019 (Annexure A-1) is liable to be quashed.

26. That it was specifically argued before Hon'ble PST that there is acute difference of opinion among all three respondent's which has been highlighted in Para 3 of the Rejoinder affidavit R-3. The learned APO representing all the 03 respondents miserably failed to explain the reasons for such acute difference of opinion and could not answer the question that the opinion of which of the 03 respondents shall be considered as correct while adjudicating this petition before Hon'ble PST.

27. That it was strongly argued before Hon'ble PST that the order dated 30.01.2014 (Annexure A-20) of PCCF was not at all conditional but a general kind of condition mentioned in all such orders. Moreover, the said order dated 30.01.2014 (Annexure A-20) read with letter dated 30.01.2014 (Annexure A-21) & note sheet dated 25.01.2014 (Annexure A-19) reveals the fact that the condition pertains to the adjustment of amount if the grade pay of Rs. 8900 is sanctioned by the Govt. instead of Rs.8700 sanctioned earlier by the PCCF. Therefore, the condition was only with respect to the grant of Grade Pay Rs. 8900 vis-a-vis Rs. 8700.

28. That special attention of Hon'ble PST was attracted towards Para - 44,

45, 47 and 88 of the Rejoinder Affidavit R-3, wherein it has been explained in detail as to why DDRs are entitled to get the benefit of 3<sup>rd</sup> ACP in terms of GO dated 06.11.2013, 11.04.2018 and 29.11.2018. Apart from this, the attraction was also drawn towards letter dated 04.12.2015 (Annexure A-62) of the office of PCCF in which the provisions of the Forest Manual has been referred to prove that the post of Conservator of Forest (CF) is the 3<sup>rd</sup> post of promotion.

29. That during course of argument it was argued by leaned APO that since the clarificatory order dated 28.11.2017 (Annexure A-30) has not been quashed, therefore the said order can be applied in the present issue. In response it was vehemently opposed by the counsel for the petitioners that Hon'ble High Court vide its order dated 23.05.2019 (Annexure A-4) has directed the respondents not to apply the GO dated 28.08.2018 (Annexure A-60) and this order speaks of the compliance of the order dated 28.11.2017. Therefore, the order dated 28.11.2017 cannot be applied while deciding this case.

Moreover, the Additional Chief Secretary (Environment & Forest) vide his letter dated 04/07.05.2018 (Annexure A-33) has already clarified that the provisions of the order dated 28.11.2017 has neither any relevance in the present case nor has any force."

5. Learned counsel for the petitioners in claim petition No. 43/NB/DB/2019 has submitted the following arguments for the legal issues involved in the matter.

"Legal issue involved in the matter and arguments thereof: -

Impact of the fact that in Subordinate Forest (Ranger, Deputy Ranger & Forester) Rules, 1951 as amended in 2010 no promotional post is define for Range Officer.

Arguments of claim Petitioner: -

Respondent are denying the claim of the petitioner on the ground that in, Subordinate Forest (Ranger, Deputy Ranger & Forester) Rules, 1951 as amended in 2010 no promotional post is define for Range Officer. Meaning thereby that accordingly to service rules ACF is not a promotional post for Forest Range Officer and petitioner is not entitled for benefit to the said promotion post in terms of G.O dated 6.11.2013. The contention of the respondent is misleading and misconceived.

As per The U.P. Forest Service Rules,1993 which were adopted by State of Utlarakhand the Source of recruitment for the Post of ACF is given as under:-

**5. Source of recruitment.** - Recruitment to the posts in the Service shall be made *from* the following sources:

(i) Fifty per cent by direct recruitment.

(ii) Fifty per cent by promotion from amongst substantively appointed as Forest Rangers of the Subordinate Forest Service who have put in at least eight years' service as such on the first day of the year of recruitment.

From the above it is clear that the contention of respondents has no limb to stand.

2. Whether any fraud or misrepresentation was done by the petitioner.

Arguments of claim Petitioner:-

Claim petitioner in his petition as well as in reply dated 15.07.2019 (Page 138 of Claim Petition), pursuant to show cause notice dated 21.09.2018 had categorically stated that 3<sup>rd</sup> ACP was sanctioned to applicant, after due consideration of screening committee for this purpose. So recovery, cannot be made from applicant as there was not fraud or misrepresentation in the grant of the said benefit to the applicant.

Respondent in his counter affidavit has also admitted in para 26 that "after the G.O dated 06.11.2013 was issued the then PCCF vide his order dated 30.01.2014, 15.01.2015 & 15.01.2015 granted as 3<sup>rd</sup> ACP the pay scale with G.P. Rs 8700/ to Range Officers but at the same time he was not fully confident that such a pay scale with G.P. RS.87001- is legally admissible to the Range Officer or not.

3. Whether CF 'is the IIIrd Promotional post for Directly Appointed Range Officer or otherwise.

Arguments of claim Petitioner: -

That all the petitioner were in receipt of IIIrd ACP before 01.05.2015. The ACP scheme cease to exist on 31.12.2016. At that time U.P Forest Service Rules 1993 were in existence. Rule 5 (2) categorically state to fill the 50% of ACF through Range Officer, Therefore, there is no doubt that ACF is the next promotional post of range officer.

As per Rule 9 of India Forest Service Rules 1966 there is a provision of 33.33% quota for promotion of ACF of State Service Cadre to the DCF Rank in IFS cadre.

Parallely there is a provision of post of deputy Director in State Forest Service but the same provision come by virtue of Uttarakhand Forest Service Rules, 2017 notified on 31.07.2017. Thus it has no retrospective effect. Although the post of Deputy Director was created in 1998 in State of U.P. and later on 04.09.2015 in State of Uttarakhand but that were subject to notification in Service rules which were notified only on 31.07.2017.

While all the four petitioners were granted benefit of IIIrd ACP only promotion post under service rules was DCF having III level of pay scale i.e. 6600/- which was initial pay scale, on completion of 5 years of service 7600 that too without any screening committee or DPC and on completion of further 4 years of service grade pay of Rs. 8700. DCF was eligible for the post of CF on further 1 years of service, however the post of CF was vacancy based and these three scales under DCF scale was time bound without linkage to vacancy. Therefore the next promotional post was CF and not the pay scale of 7600/-

There is a clear distinction between "advancement to promotion of post" and "advancement to promotion of Grade" as established by the law laid down by Apex Court in Bharat Sanchar Nigam Ltd. vs. R. Santhakumari Veluswamy (2011)9SCC 510 and explained the difference between "Upgradation and promotion" in para 29 of the judgment, however, clause (iii) & (iv) which is most relevant is appended below:-

29. On a careful analysis of the principal relating to promotion and upgradation in the light of the aforesaid decision, the following principles emerge:

(i).....

(ii).....

(iii) Therefore, when there is an advancement to a higher pay scale without change of post, it may be referred to as upgradation or promotion to a higher pay scale. But there is still difference between the two. Where the advancement to a higher pay-scale without change of post is available to everyone who satisfies the eligibility conditions, without undergoing any process of selection, it will be upgradation. But if the advancement to a higher pay-scale without change of post is as a result of some process which has elements of selection, then it will be a promotion to a higher pay scale. In other words, upgradation by application of a process of selection, as contrasted from an upgradation simplicitor can be said to be a promotion in its wider sense that is advancement to a higher pay scale.

(iv) Generally, upgradation relates to and applies to all positions in a category, who have completed a minimum period of service. Upgradation, can also be restricted to a percentage of posts in a cadre with reference to seniority (instead of being made available to all employees in the category) and it will still be an upgradation simplicitor. But if there is a process of selection or consideration of comparative merit or suitability for granting the upgradation or benefit of advancement to a higher pay scale, it will be a promotion. A mere screening to eliminate such employees whose service records may contain adverse entries or who might have suffered punishment, may not amount to a process of selection leading to promotion and the elimination may still be a part of the process of upgradation simplicitor. Where the upgradation involves a process of selection criteria similar to those applicable to promotion, then it will, in effect, be a promotion, though termed as upgradation.

During the course of argument another query comes that while deciding the benefit under IInd ACP Scheme wherein DCF post was considered as next promotional post or otherwise. In response to said query petitioner has provided a copy of order dated 20.08.2007 in respect of petitioner no. 1. In this order next pay scale was granted but it has not been clarified that to which post the benefit of these pay scale were granted. Therefore, note sheet for the said order has been called for.

The said note sheet was not held with the claim petitioner and therefore the same was called off from respondent through learned APO. However on scrutiny of the document petitioner found the note sheet on the basis of which IIIrd ACP Scheme was granted. This note sheet clearly shows that IIIrd ACP benefits were granted considering IIIrd Promotional post as Conservator of Forest in the pay scale of Rs. 8900/- Relevant portion is as under:-

Conservator of Forest (Headquarter) in Page 14 of the note sheet has stated as under:-

वन विभाग Forest Manual के संस्करण 2000 के Part-I organization of the Forest Department Chapter-I में निम्नानुसार प्रोन्नति पद विद्यमान है- (पताका-बी):-

- |                     |          |
|---------------------|----------|
| 1. वन रेंजर         | (Ranger) |
| 2. सहायक वन संरक्षक | (ACF)    |
| 3. उप वन संरक्षक    | (DCF)    |
| 4. वन संरक्षक       | (CF)     |

Chief Conservator of Forest (Administration) also agreed with the said note in page 6 and held that:-

- (iii) सेवा नियम के अनुसार वन क्षेत्राधिकारी के पदोन्नति के पद क्रमशः  
सहायक वन संरक्षक  
उप वन संरक्षक



तथा वन संरक्षक है।

In its final recommendation at page 19 Chief Conservator of Forest (Administration) has given its final remarks as under:-

उपर्युक्त तथ्यों को ध्यान में रखते हुए यह निष्कर्ष निकलता है कि शासनादेश के लागू होने पर निम्न स्थिति बनती है।

(1) वन संरक्षक व वनविद के प्रोन्नत वेतनमान तथा ग्रेड पे के आधार पर वन क्षेत्र अधिकारी को सहायक वन संरक्षक, उप वन संरक्षक तथा वन संरक्षक के ग्रेड पे अनुमन्यता है (वैसा कि "क" पर मुख्य वन संरक्षक ने भी स्पष्ट किया है।)

PCCF has accordingly given his approval after discussion.

From the above note it is clear that the matter has been thoroughly examined and thereafter decision has been taken considering Conservator of Forest Rank as IIIrd Promotional rank.

4. Whether petitioner is entitled for ACP benefit to the Promotional post under all India Service Cadre.

Arguments of claim Petitioner: -

The contention of the respondent that petitioner are not entitled for the promotional post of All India Services, as order dated 06.11.2013 no where say so, but respondent fails to appreciate the fact that this order also did not say that a person is not entitled for benefit of financial upgradation for All India Service Post. It is the misinterpretation of respondent who says so. Order dated 06.11.2013 on state promotional post. If the source of recruitment provide the promotional post from All India Services then definitely it is a promotional post for that person.

In the instant case petitioner No. 3 was appointed as direct Forest Range officer on 29.02.1988 and promoted on 11.07.2016 as ACF and now is empanelled by the DPC for the post of DCF, therefore definitely his promotional post under DCF is his next promotional post. In past also Direct appointed Range officer had attained three promotional post.

5. Legality of Recovery clause in order dated 30.01.2014 vide which Grade Pay of Rs.8700/- was granted to petitioner:-

Arguments of claim Petitioner:-

In para 26 of the counter affidavit respondent no 3 states that "this doubt clearly reflects in the order itself when the then PCCF imposed a rider that 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 officer. It is pertinent to mention that no undertaking in this regard has been obtained from the petitioner therefore respondent cannot rely on this clause.

6. Whether any amount can be recovered from petitioner who are retired or who are on the fag end of their service.

Arguments of claim Petitioner: -

That as per the judgment of Hon'ble Supreme Court in State Of Punjab & Ors vs Rafiq Masih 2015(4) sec 334 held that :-

12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.

The case of petitioner no 1, 2 & 4 who are already retired squarely fall under the clause (ii) and case of petitioner no 3 who is presently serving fall under clause (iii) as the ACP, benefit was granted w.e.f 01.03.2014 and recovery order was issued on 01.08.2019. The period of five years has already been elapsed on 28.02.2019.

It is also pertinent to mentioned that Hon'ble Supreme Court also in cases like *Shyam Babu Verma vs UOI*, 1994 SCR (1) 700, 1994 see (2) 52, *Syed Abdul Qadir and Ors. v. State of Bihar and Ors*, (2009) 3 SCC 475, *Sahib Ram vs. State of Haryana*, 1995 Supp (1) SCC 18 etc, had not allowed recovery of excess payment in view of the peculiar facts and circumstances of those cases so as to avoid extreme hardship to the concerned employees, for example, where the employees had retired or were on verge of retirement, the employees were not at fault, and recovery which was ordered after a gap of many years would have caused extreme hardship.

Additional plea:-

Rule. of Estoppel:- That order dated 04.05.2018 of Secretary (Finance) and order dated 08.05.2018 of PCCF wherein the Illrd ACP benefit to the grade pay of Rs. 8700/- instead of Grade Pay of Rs.8900/- granted to the petitioners was challenged by the way of Writ Petition No 200(S/B) of 2018 in Hon'ble High Court, Uttarakhand. Hon'ble High Court quashed both the order and directed respondents to take further action in accordance with law. In compliance to the order of Hon'ble High Court, Secretary Environment and Forest issue GO dated 29.11.2018 directing PCCF to grant Pay scale of Rs.37,400-67,000/- and a grade pay of Rs. 8900/- as 3rd ACP to all such directly appointed Range Officer (DDRs) completing 26 years of service on or before 31.12.2016. Therefore, now respondents cannot deviate from their earlier stand and principal of estoppel is applicable in this case."

6. Learned A.P.O. on behalf of the respondents mainly argued that in both the claim petitions, the impugned orders have been rightly issued by the respondent No. 3 (Principal Chief Conservator of Forests) inasmuch as the appointment of the petitioners as Rangers was done under the U.P. Subordinate Forest (Rangers, Deputy Rangers and Foresters) Service Rules,

1951 and the interpretation of the posts of promotion for them according to the G.O. dated 06.11.2013 of the Finance Department is to be the post of promotion within these very service rules and these service rules do not prescribe any post of promotion for them. Therefore, the next Grade Pay and corresponding Pay Band has been given to them as the 3<sup>rd</sup> ACP. He stressed that the petitioners on the one hand are stating Grade Pay of Rs. 4800 of their substantive appointment under the U.P. Subordinate Forest (Rangers, Deputy Rangers and Foresters) Service Rules, 1951 (amended in 2010), on the other hand for the first promotion post, they are going to U.P. Forest Service Rules, 1993 and for the 2<sup>nd</sup> and 3<sup>rd</sup> promotion post, they are going to the Indian Forest Service. It is not material that the petitioners were subsequently promoted as ACFs (Assistant Conservator of Forests) under the U.P. Forest Service Rules, 1993 but for the application of the G.O. dated 06.11.2013, the promotion posts available should be in the parent service rules under which they were recruited and in the absence of any promotion post therein, their next Grade Pay and corresponding Pay Band is admissible for ACP.

7. Learned A.P.O. has further argued that while petitioners are claiming the post of ACF under the U.P. Forest Service Rules, 1993 as their first promotion post, they are not agreeing to the post of Dy. Director under the same service rules to be their second promotion post. The post of ACF has Grade Pay of Rs. 5400 when the post of Dy. Director has the Grade Pay of Rs. 6600, which is also the Grade Pay of the post of DCF (Deputy Conservator of Forest) in the Indian Forest Service cadre. Incidentally, the next higher grade pays according to the Pay Matrix Table above Rs. 4800 are also Rs. 5400 and Rs. 6600 respectively. Therefore, by any logic, first and second ACPs have grade pays of Rs. 5400 and Rs. 6600 respectively. Had the G.O. dated 06.11.2013 not made a special provision for the persons substantively appointed in the grade pay of Rs. 4800 or less, as per the initial G.O. of ACP dated 08.03.2011, the 3<sup>rd</sup> ACP would have been the next grade pay which is Rs. 7600. Even if it is assumed that the first and second ACPs admissible to them were on the basis of the

posts of promotion, these posts of promotion should be considered as posts of ACF and Dy. Director only under the U.P. Forest Service Rules, 1993 and since in these Service Rules, there was no further post of promotion beyond Dy. Director, 3<sup>rd</sup> ACP could only be the next higher grade pay i.e. Rs. 7600.

8. Learned A.P.O. further argued that the Respondent No. 3 (PCCF) has correctly held in the impugned orders that Indian Forest Service is an All India Service, while ACP is permissible only under the State Services. Moreover, the promotions/induction in the Indian Forest Service also has the consideration of merit. He further argued that the post of DCF (Deputy Conservator of Forests) with Grade Pay of Rs. 6600, to which induction is done from the State Forest Service to the IFS cadre, further has the promotion post of Junior Administrative Grade in Grade Pay of Rs. 7600, then the next promotion post of Selection Grade with Grade Pay of Rs. 8700 and further promotion post of Conservator of Forests with Grade Pay of Rs. 8900. Therefore, even if for sake of argument, the second promotion post for Rangers (DDRs) is considered to be DCF of the Indian Forest Service cadre, then as per the promotion rules, in that cadre, the next post of promotion is Junior Administrative Grade, post with Grade Pay of Rs. 7600. So, considering from all angles, the 3<sup>rd</sup> ACP for the petitioners can be with Grade Pay of Rs. 7600 only and the higher fixation of Grade Pay is liable to be recovered from the pay/pension of the petitioners.

9. Learned A.P.O. also argued that the petitioners cannot get the benefit of recovery not being made from them on the basis of the judgment of Hon'ble Supreme Court in State of Punjab vs. Rafiq Masih and others, for the following reasons:

"1. The then PCCF in his order dated 30-01-2014 (and also subsequent-similar orders), while granting the Grade Pay of Rs. 8700/- and corresponding scale of pay under the 3<sup>rd</sup> ACP to the petitioners and similarly situated Range Officers, specifically imposed a condition in the concerned order(s) that the sanction of Rs. 8700/- in place of Rs. 7600/- will be governed by the fact that if any anomaly or otherwise instructions were received from the State Government, the amount

paid to the persons will be adjusted from the concerned officers. The petitioners and similarly placed persons, who were duly under notice stating that any payment found subsequently to be wrongly paid, would be adjusted did not protest or challenge at any time this specific condition that was notified and this implies their explicit acceptance.

2 It is humbly reiterated that the case of State of Punjab and Others v. Rafiq Masih (2015) 4 SCC 334 does not hold any merit in this present matter. In this regard, it is pertinent to mention the position of law laid down by the Hon'ble Supreme Court in High Court of Punjab and Haryana & Ors v. Jagdev Singh AIR 2016 SC 3523 para 11 wherein it has distinguished the position of law laid down by the Rafiq Masih case by referring to para 18 of the judgment and stating that, "[ii] Recovery from retired employees, or employees who are due to retire within one year, of the order 'of recovery'" was not applicable since the retired officer concerned was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. Similarly, in this instant matter also, the order dated 30.01.2014 and subsequent- similar orders, were of conditional in nature where toward the end of the orders it has been clearly mentioned that, in case of any anomaly/objection, the amount which has been paid shall be adjusted from the concerned officers.

3. Further, it is imperative to mention the case of Chandi Prasad Uniyal & Ors. v. State of Uttarakhand and Ors. para 14 & para 16 where the Hon'ble Supreme 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. The aforesaid position of law has also been relied upon by the Central Administrative Tribunal, Ernakulam Bench in the case of P.Koya vs. Union of India & Ors. MANU/CA/0539/2017 para 16."

10. Replying to the arguments of the petitioners that the post of Deputy Director is not a post created under the U.P. Forest Service Rules, 1993 and has been included in the Uttarakhand Forest Service Rules, 2017 subsequently wherein, the further posts of Joint Director and Additional Director have also been included, learned A.P.O. referred to the G.O. dated 30.06.1998 of the U.P. Government vide which 34 posts of Deputy Directors were included in the State Forest Service cadre with the approval of the Governor and this was done in accordance with the powers under Rule 4 of the U.P. Forest Service Rules, 1993. After bifurcation of the State,

these posts and functionaries have been available in the State of Uttarakhand also. He also produced a copy of the promotion order dated 14<sup>th</sup> August 2013 of some ACFs to the post of Deputy Director. This G.O. is reproduced as below:

“उत्तराखण्ड शासन  
वन एवं पर्यावरण अनुभाग-1  
संख्या 2266 / X-1-2013-04(07) / 2011  
देहरादून: दिनांक 14 अगस्त, 2013  
विज्ञप्ति / पदोन्नति आदेश”

उत्तर प्रदेश शासन के शासनादेश संख्या 1325/14-1-98-31/76, दिनांक 30.06.1998 के क्रम में राज्य वन सेवा संवर्ग में वेतन बैण्ड-3-15,600-39,100 एवं ग्रेड वेतन रू0 5400 के निम्नलिखित पद धारकों (सहायक वन संरक्षक) को कार्यभार ग्रहण करने की तिथि से एतद्वारा उप निदेशक के पद पर पदोन्नति प्रदान किये जाने की श्री राज्यपाल सहर्ष स्वीकृति प्रदान करते हैं:-

क्र0 सं0	अधिकारी का नाम
1.	श्री अशोक कुमार मेंहर
2.	श्री इन्द्रपाल सिंह
3.	श्री सी0के0 कविदयाल
4.	श्री जी0के0 रस्तोगी
5.	श्री मान सिंह
6.	श्री ए0के0 बनर्जी
7.	श्री दिवाकर सिन्हा
8.	श्री रमेश चन्द्र
9.	श्री राजमणि
10.	श्री राम गोपाल
11.	श्री अशोक कुमार गुप्ता
12.	श्री अंजनी कुमार
13.	श्री नित्यानंद पाण्डे
14.	श्री आर0सी0शर्मा
15.	श्री धर्मेश कुमार सिंह
16.	श्री संतोष कुमार गुप्ता
17.	श्री राजेन्द्र प्रसाद मिश्रा
18.	श्री शिवराज राम प्रजापति

(एस0 रामास्वामी)  
प्रमुख सचिव”

11. From the Above, It is clear that the posts of Deputy Director existed and promotions thereto were being done in the State of Uttarakhand before issuance of the G.O. dated 06.11.2013. Learned A.P.O.

also stated that the order dated 20.08.2007 by which Sri Gopal Singh Karki (petitioner No. 1 in Claim Petition No. 43/NB/DB/2019) was granted second promotional pay scale of Rs. 10000-325-15200 (Grade Pay of Rs. 6600 according to the 6<sup>th</sup> Pay Commission) was the pay scale of Deputy Director, the post created in 1998 in exercise of the powers under Rule 4 (1) of U.P. Forests Service Rules, 1993. The post of Deputy Director(Grade Pay Rs. 6600/-) continues to exist in the State of Uttarakhand in the cadre structure of the Forest Department on which promotions of ACF have been done from time-to-time. He emphasized that the directly appointed Rangers have been enjoying the benefits of 2<sup>nd</sup> promotion mainly against the post of Deputy Director and not against the post of Deputy Conservator of Forests as being averred by the petitioners, though both the posts of Deputy Director and Deputy Conservator carry the same scale of pay and grade pay.

12. We sought clarifications on the following two points:

- (i) The pay fixation procedure adopted for fixing the pay of the State Forest Service officers after their induction/promotion in IFS.
- (ii) Comparison of promotion opportunities of directly recruited Rangers to the posts of Deputy Director and DCF and the actual number of the directly appointed Rangers promoted to these posts since the inception of the State of Uttarakhand.

Respondent No. 3 vide his affidavit dated 16.10.2020 has informed that as per G.O. dated 27.02.2020, the 11 State Forest Officers (who originally joined and started their service as direct-recruit Rangers) were inducted into the Indian Forest Service. They were inducted at the level of Deputy Conservator of Forests in the senior time scale (which corresponds to grade pay of Rs. 6600) of the Indian Forest Service. Regarding promotion opportunities from the post of Ranger to Deputy Director, Rangers become eligible for promotion to the post of ACF after 8 years of service. Thereafter, on completing 8 years of service as ACF, they

become eligible for promotion to the post of Deputy Director having grade pay of Rs. 6600. As far as opportunity for them to be inducted in IFS is concerned, on completing 8 years of service as ACF, they become eligible for induction (subject to their fulfilling the conditions/criteria of induction as given in relevant IFS Rules) into Indian Forest Service. Induction into IFS is limited to the maximum age of 56 years. For induction into the IFS, the relevant rules are the IFS (Recruitment) Rules, 1966. Rule 8 of the said rules provides for recruitment by promotion from amongst State Forest Service Officers. The IFS (Appointment by Promotion) Regulation, 1966 sets the criteria/minimum benchmark for induction into IFS from State Forest Service. The minimum benchmark fixed is minimum 8 years of service in State Forest Service with preparation of lists with entry of 'Outstanding', 'Very Good' and 'Unfit' against each candidate being considered with the age limit of 56 years. He has also filed the list of direct recruit rangers who have been promoted as Deputy Director/inducted into the IFS from the date of creation of the State of Uttarakhand according to which 32 officers have been promoted as Deputy Director from 28.02.2018 to 21.04.2020. Out of these officers (Deputy Directors), 11 officers have been inducted/promoted into the IFS on 27.02.2020.

13. Replying to this affidavit, petitioners in Claim Petition No. 43/NB/DB/2019 vide affidavit dated 26.10.2020 have stated that the post of Deputy Director, Joint Director and Additional Director in the State Service were created in the year 2015 and relevant service rules including these posts were notified in the year 2017. The opportunity for promotion to the post of Deputy Director came only after framing of these Rules in 2017 and prior to that the direct appointee rangers were first inducted into PFS (Provincial Forest Service) cadre after promotion to the post of ACF and later on inducted in IFS cadre. IFS Seniority Rules, 1997 provide minimum grace of three years to the promotee officers in IFS seniority at the time of induction. Promotee officers from direct appointee ranger cadre reach grade pay of Rs. 7600 after 25 years which is reduced to 22 years after considering the grace period of 3 years. The contention of



Respondent No. 3 that they reach grade pay of Rs. 7600 in 26 years of service, is factually incorrect. The cases of the petitioners for 3<sup>rd</sup> financial upgradation are prior to the year 2016 and therefore, it cannot be said that the promotional post of petitioners at the relevant time was Deputy Director.

14. Petitioners in C.P. No. 43/NB/DB/2019 in their response affidavit dated 26.10.2020 have stated that the primary issue is whether the DDRs can be promoted to the post of Conservator of Forests as their 3<sup>rd</sup> promotion. Therefore, the fixation of pay after promotion to the post of DCF (IFS cadre) or the comparison of promotion opportunity for DDRs on the post of Deputy Director vis-à-vis DCF has no relevance in the present case. They have further stated that when the DDR after promotion to the post of ACF becomes member of the State Forest Service, gets further promotion and enters in the IFS cadre, he is directly promoted to the post of DCF in the grade pay of Rs. 6600. A DDR can be ideally promoted to the post of Conservator of Forest in 26 years of service. They have also mentioned the advantage of at least three years of seniority to the promoted officers. They have further mentioned that the pay of DDRs after being promoted to the post of DCF having pay scale/Grade pay of Rs. 6600 is fixed in a manner that the higher pay scale, is drawn by the personnel, is fully protected. They have reiterated in this affidavit that the next higher Junior Administrative Grade (JAG) and Selection Grade (SAG) of IFS are merely financial up-gradations and not the posts of promotion. The next higher promotion post is the post of Conservator of Forests, with pay scale of Rs. 37400-67000 and grade pay of Rs. 8900 and the same pay scale/grade pay should be given as the 3<sup>rd</sup> ACP to them in compliance of the G.O. dated 06.11.2013. Regarding comparison of promotion opportunity to the post of Deputy Director vis-à-vis DCF, they have pointed to the mismanagement of the cadre and therefore, the promotional avenues of the DDRs to the post of DCF has been pretty abnormal since 1986. According to the petitioners, the post of Deputy Director was created keeping in the view the condition and bar of 56 years (earlier it

was 54 years) put for the promotion for ACF to the post of DCF. So any ACF crossing the age of 56 years is not entitled to be promoted to the post of DCF under IFS rules. It was for the benefit of such personnel, the parallel promotional avenue in the form of Deputy Director was created. But the creation of post of Deputy Director will not affect that promotional avenues to the post of DCF, which continues even today. The promotional avenues of DDRs continued to deteriorate after the creation of Uttarakhand also. All the 32 DDRs promoted to the post of Deputy Director have been promoted after the enactment of the Uttarakhand Forest Service Rules, 2017. While the grant of 3<sup>rd</sup> ACP to the DDRs pertain to period before 31.12.2016 only. They have further stated that any DDR, who has not been promoted to the post of ACF substantively but is simply officiating on the post of ACF for 8 years, can be promoted to the post of DCF in IFS cadre, but such officiating DDRs without being promoted substantively and putting in 8 years of service as ACF cannot be promoted to the post of Deputy Director.

The petitioners have repeated many of their contentions of the earlier affidavits and pressed them in the hearing of 28.10.2020. They also stressed on the following point, which is mentioned in this affidavit:

*“That the learned Tribunal should specifically note pages 149, point 3 and page 150, point 5-(1) as well as page 294 of the claim petition itself-which will dispel the misplaced notion that if under the ACP system a junior officer is entitled to a grade pay higher than a senior officer: the junior should be denied the benefit. The Tribunal has erroneously held so in all its judgments and orders without even dealing with the main GO at hand, the GO dated 08.03.2011 that squarely hold the field that junior officer’s pay will not be reduced but this has so far been overlooked in all judgments and orders in the present matter.”*

15. Learned A.P.O. was not present in the hearing of 28.10.2020. Respondent No. 3 was contacted on phone during the hearing, who requested to be given an opportunity of replying to the points raised by the petitioners through affidavit. With the consent of the petitioners, opportunity was given to him to submit reply, if any, within three days and matters were reserved for judgment.

16. Respondent No. 3 has stated in his affidavit dated 31.10.2020 that the benefit of 3<sup>rd</sup> ACP to DDRs is to be determined in the light of G.O. dated 06.11.2013 read with clarification G.O. dated 28.11.2017, according to which grant of promotional pay scale as ACP is subject to the rider/condition that the criteria for promotion is seniority alone in the relevant services rules and where criteria for promotion is also based on merit/eligibility in addition to seniority, the promotional pay scale is not to be given. The contention of the petitioners that ACF, DCF and CF are their first, second and third posts of promotion, is wrong and misconceived. The correct fact is that in between the post of ACF and DCF, there is post of Deputy Director on which DDRs can be promoted. For induction from State Forest Service to IFS, the relevant rules are the IFS (Appointment by promotion) Regulations, 1966, according to which three categories of lists have been prescribed to be prepared 'Out Standing', 'Very Good' and 'Unfit' on the basis of service records and the selection has to be first from the 'outstanding' and then from 'very good'. This is clearly indicative of the minimum benchmark for induction into the IFS which is merit. The examples of Forest Guards, Foresters/Deputy Rangers are not applicable in the present matter because for promotion on these posts, the sole criteria, is seniority alone and all posts fall under the State Service. In the present matter, the question of admissible pay scale of DCF or CF arises only if the DDRs after competing qualifying services are automatically inducted into IFS merely on the basis of their seniority in the State Forest Service cadre. Reacting to the claim of petitioners that the Govt. of India, vide O.M. dated 08.02.2002 and 16.02.2005 have abolished the criteria of merit in the process of promotion, he has stated that these G.Os. are at the most guidelines having no force of law. The criteria of 'Outstanding', 'Very Good' and 'Unfit' was followed when the latest induction exercise into IFS for State Forest officers was conducted in the State of Uttarakhand. Respondent No. 3 has also reiterated some parts of his earlier replies submitted by means of Counter Affidavit and other affidavits, which are reproduced as below:

*“After the G.O. dated 29.11.2018 was issued by the Additional Chief Secretary, the respondent No. 3 vide his letter dated 21.12.2018 requested the State Government to reconsider its earlier order dated 29.11.2018 with a copy of finance department. The State Government on such letter sought clarification from the Finance Department of the State Government. The Finance Department after considering all relevant facts cancelled the G.O. dated 29.11.2018 and held that the direct appointed Range Officers are entitled as 3<sup>rd</sup> A.C.P. the G.P. of Rs. 7600/- accordingly the G.O. dated 15.03.2019 was issued by the State Government. In the order dated 15.03.2019 it is specifically held that direct appointed Range Officers are entitled as 3<sup>rd</sup> ACP the G.P. of Rs. 7600/- and directed the respondent No. 3 to take appropriate decision accordingly”.*

*“The personal opinion of earlier PCCF are not binding upon any authority. The post of promotions are governed by the provisions of law which in the present case are to be applied in the light of ACP scheme G.O. dated 06.11.2013 read with G.O. Dated 27.11.2017”.*

*“So far the averments with regard to G.O. dated 11.04.2008 issued from the office of Additional Chief Secretary (Forest & Environment) directing the PCCF to grant G.P. Rs. 8900/- to the petitioner and others similarly situated, the PCCF referred the matter to the State Government with a copy of Finance Department since the Finance Department is height authority and its decision is final in the matters of fixation of ACP. The Secretary (Forest & Environment) vide his letter dated 4/5.05.2018 addressed to Finance Department requested it to retain G.O. dated 11.04.2018 but as the same time left it open for the Finance Department to take its final decision on in the matter. The Finance Department vide its G.O. dated 04.05.2018 clarified that for the purpose of G.O. dated 06.11.2013 the post of promotion which is included in the cadre structure of the state employees under the relevant Service Rules can only be considered for the first, second and third ACP. It was made clear in the G.O. that where the post of promotion are not available in the cadre structure of the employees, only the next higher Grade Pay with its pay Matrix Table will be permissible for the purpose of fixing first, second and third ACP. It was specifically made clear in the same G.O. that in the implementation of the G.O. dated 06.11.2013, the post of promotion under All India Services are not included. On the basis of the G.O. dated 04.05.2018 the PCCF passed order dated 08.05.2018. The orders dated 04.05.2018 and 08.05.2018 were quashed by the Hon’ble Court on technique grounds but it is at the same time also evident that the G.O. dated 11.04.2018 was passed without approval of Finance Department and its execution was not possible in the absence of legal administrative procedure being followed and mandatorily complied with”.*

*“So far the issue of jump in pay scale is concerned it is submitted that the petitioners have deliberately tried to mislead in the matter taking wrongful advantage of the fact that the scale of pay of the post Deputy Conservator of Forests (a post in the “Indian Forest Service” cadre) and Deputy Director (a post in the “Provincial Forest Service Cadre”) are the same. Moreover, it is to be added that whereas for Forest Rangers (Petitioners), the first and second posts of promotion are defined being Assistant Conservator of Forests (ACF) and Deputy Director respectively, the third post of promotion is not defined by way of any service rule or executive order of the State Government. While the posts of ACF and Deputy Director are within the purview of State Service and hence the State Government, the post of Deputy Conservator of Forests is in the cadre of “Indian Forest Service” which is an “All India Service”, controlled by the Central Government. The scheme of ACP (Assured Career Progression) is applicable only for employees of the State Government having*

*basic pay up to 4800/- rupees and not beyond and for whom Service Rules/Executive orders/GOs of the State Government are applicable. This scheme of ACP as applicable to the State Government employees does not permit the scales of pay admissible to the posts under the All India Services. It is also noteworthy that the question of jump in scales has no relevance in this case where the post of promotions (first and second) are well defined. The Hon'ble Tribunal has dealt with the matter at length and delivered the judgment dated 06.12.2019 in Claim Petition No. 115/DB/2019 (Shiv Nath Singh) & others vs. State of Uttarakhand & others) in which it has been categorically held that the petitioners (in that petition) never got the scale DCF as the 2<sup>nd</sup> promotional pay scale. The same applies to the petitioners in the present petition also. The relevant para 31 of the judgment dated 06.12.2019 of the Hon'ble Tribunal quoted as under:*

*'In view of description above, we are not convinced by the argument of learned counsel for the petitioners that the Range Officers/State Forest Service Officers got the promotional pay scale of the post of DCF (an IFS post) under the Time Scale Promotion Scheme. By order dated 10.03.1995, it cannot be established that the Pay Scale of "promotion post" of DCF was given to the ACFs under the Time Scale Promotion Scheme. The order dated 10.03.1995 is too little and too far to show that the ACF got their Time Scale Promotion for the post of DCF. Further, after 10.03.1995 till date no record was presented by the petitioners to show that the Range Officers got their Second Time Scale for the post of DCF. Learned counsel for the petitioners has, therefore, failed to demonstrate that the Range Officers ever got the Pay Scale of "promotion post" DCF. We are, therefore, of the clear view that the petitioners have never got the benefit of Time Scale/ACP for the post of DCF.'*

*It is again clear from the above narrated facts that the petitioners were never given the pay scale of DCF as first promotional pay scale. Nor the petitioners have placed any evidence on record which proved that any DDR was given pay scale of DCF under IFS".*

17. Supplementary Rejoinder Affidavit on behalf of the petitioners in Claim Petition No.161/DB/2019 has been filed on 04.11.2020, rebutting the submission of Mr. Jai Raj, who retired from the post of PCCF on 31.10.2020. This affidavit states that a unique situation has emerged in the present matter, where the view of Mr. Jai Raj, former PCCF is at logger heads with the view of the present PCCF, Head of Forest Department, Madam Ranjna Kala who has vide Annexure 62, page 403-407 of the claim petition clearly stated that the post of Conservator of Forests is the third post of promotion for the DDR cadre. Besides repeating many of their earlier submissions and arguments, at many places they have written that Mr. Jai Raj is talking about a non-existent order dated 27.11.2017 (Actually Mr. Jai Raj is talking about G.O. dated 28.11.2017). Regarding the averment of PCCF in his affidavit dated 31.10.2020 that between the post

of ACF and DCF, there is post of Deputy Director, on which DDR can be promoted, the petitioners have submitted that there is no post in between ACF and DCF and any ACF completing 8 years of service becomes eligible for being promoted to the post of DCF. If any ACF after completing 8 years of service crosses the age of 56 years, he cannot be promoted to the post of DCF but he can still be promoted to the post of Deputy Director. The DCF and Deputy Director both hold the charge of forest division and are equivalent posts. It is also vehemently denied that any criteria of "merit" was followed in the exercise of promotion from the post of ACF to the post of DCF.

18. We have perused the pleadings of the parties and heard both the sides. As far as the interpretation of the G.O. dated 06.11.2013 in respect of the petitioners is concerned, there have been differences of opinion between Principal Chief Conservators of Forests, Forest Department and the Finance Department. However, the G.Os. issued by the Forest Department acting with the consultation of the Finance Department have always held that Grade Pay of Rs. 7600 is admissible to the Rangers (DDRs) as their 3<sup>rd</sup> ACP. A G.O. of the Finance Department has also said that posts of All India Services are not to be taken into consideration for ACP. Many G.Os. and orders of PCCF have been superseded by subsequent G.Os. or quashed/set aside by the Hon'ble High Court with direction to consider the issue afresh in accordance with law. Even in the affidavits filed by the respondents in Claim Petition No. 161/DB/2019, there are certain differences of opinion, but none of these affidavits agree to the 3<sup>rd</sup> ACP of the petitioners to be given with Grade Pay of Rs. 8900 or Rs. 8700.

We find it proper to thoroughly examine the provisions of the G.O. of the Finance Department dated 06.11.2013, whose interpretations have given rise to the entire controversy and not to consider any subsequent G.Os. issued by the Finance Department or Forest Department or any orders of PCCF. We are objectively going to conclude as to what should be the 3<sup>rd</sup> ACP admissible to the petitioners in view of the G.O. dated

06.11.2013. We have given full opportunity of hearing to the petitioners and respondents and after careful consideration, we come to the following conclusions:

i. It is conclusively held that the first post of promotion for Rangers (DDRs) is ACF as provided in the U.P. Forest Service Rules, 1993.

ii. Rule 4 of the U.P. Forest Service Rules, 1993 is as follows:-

“4. (1) सेवा की सदस्य संख्या और उसमें प्रत्येक श्रेणी के पदों की संख्या उतनी होगी जितनी सरकार द्वारा अवधारित की जाय।

(2) जब तक कि उपनियम (1) के अधीन परिवर्तन करने के आदेश न दिये जायें, सेवा की सदस्य संख्या और उसमें प्रत्येक श्रेणी के पदों की संख्या उतनी होगी जितनी नीचे दी गयी है:-

पद का नाम	पदों की संख्या		
	स्थायी	अस्थायी	योग
सहायक वन संरक्षक	97	63	160

परन्तु:

(एक) नियुक्ति प्राधिकारी किसी रिक्त पद को बिना भरे हुए छोड़ सकता है या उसे आस्थगित रख सकता है, जिससे कोई व्यक्ति प्रतिकर का हकदार न होगा।

(दो) राज्यपाल ऐसे अतिरिक्त स्थायी या अस्थायी पदों का सृजन कर सकते हैं, जिन्हें वह उचित समझे।”

Proviso (2) to this Rule empowers the Governor to create posts, as he deems fit.

The posts of Deputy Director in the undivided State of U.P. were created vide G.O. dated 30.06.1998 by the Govt. with the approval of the Governor. Therefore, the posts of Deputy Director were validly created under these service rules and after the bifurcation of the State, posts of Deputy Directors have existed in the State of Uttarakhand and promotions thereto have

been made from ACFs as is evident from the promotion order dated 14.08.2013 mentioned in Para no. 10 above. Though all the persons promoted vide this order were directly appointed ACFs (as clarified by Ld. A.P.O.), but it does not mean that the second promotion opportunity to the post of Deputy Director was not available to the Rangers (DDRs) after their first promotion opportunity as ACF at that time. As promoted ACFs, they were eligible for further promotion to the post of Deputy Director at that time, which was the next promotion post for all ACFs. It could have been due to the directly appointed ACFs being senior, that Rangers (DDRs) got their second promotions to the post of Deputy Director only in 2018 and afterwards, but it does not mean that this promotion opportunity did not exist for them earlier. Petitioners are wrongly projecting this opportunity to have come only after the amendment of the State Forest Service Rules in 2017. Promotion opportunity to the post of Deputy Director existed as first promotion opportunity for directly appointed ACFs and second promotion opportunity for Rangers (DDRs) before issuance of the G.O. dated 06.11.2013, as is evident by the promotion order dated 14.08.2013. Similarly, after the creation of State of Uttarakhand, the Rangers/DDRs got the opportunity of induction/promotion into IFS only in the year of 2020 but it does not mean that promotion/induction opportunity into IFS was not available to them in earlier years.

It is to be noted that since the inception of the State, 32 DDRs got promoted as Deputy Directors and out of these 32 Deputy Directors, 11 officers were inducted/promoted into the IFS. These DDRs were already drawing Grade Pay of Rs. 6600 or more (as third ACP) and it was a sort of lateral entry for them into IFS with the same Grade Pay of Rs.6600 to the post of DCF, with their earlier salary being protected in the pay fixation. It is not to say that this is the normal channel of induction/promotion



into the IFS and DDRs after their promotion as ACF can be straight away inducted into the IFS and the present situation has emerged because of cadre mismanagement. But however, this shows that promotion opportunities for DDRs to the posts of Deputy Director are more than the promotion opportunities to the post of DCF in IFS cadre. For appointment to the post of ACF, there is 50% promotion quota for promotion of Rangers/DDRs and remaining 50% appointments are by direct recruitment. All ACFs (including promoted DDRs) have the opportunity of promotion to the post of Deputy Director till their retirement, while opportunities for induction/ promotion to IFS ceases after the age 56 years. While, all ACFs are eligible for further promotion to the post of Deputy Director and other further posts created in the latest rules of 2017, the promotion quota for them in the IFS is only 33⅓% of which only half of this opportunity becomes available to the Rangers/DDRs and that too becomes restricted by the upper age limit of 56 years. The appointment orders to the Indian Forest Service are issued by the Govt. of India. One such order is available at Annexure: R-A2 in Claim Petition No. 43/NB/DB/2019.

With the above observations, we hold that since the inception of the State of Uttarakhand, for Rangers (DDR), there have been two posts of second promotion-the first one being Deputy Director in the State Forest Service and second one being DCF in the Indian Forest Service, both in the grade pay of Rs. 6600.

iii. There is no ambiguity in the ACPs of the directly appointed ACFs whose Grade Pay is Rs. 5400 and the first, second and third ACP are with Grade Pay of Rs. 6600, 7600 and 8700 as per Pay Matrix Table of the 6<sup>th</sup> Pay Commission. Promotional posts are

not considered for them for grant of ACP because their initial Grade Pay is more than Rs. 4800.

iv. The relevant para of the G.O. dated 06.11.2013 is as follows:

“2-शासन द्वारा विचारोपरान्त लिये गये निर्णय के क्रम में मुझे यह कहने का निदेश हुआ है कि राज्य कर्मचारियों के लिये ए0सी0पी0 की लागू पूर्व व्यवस्था के स्थान पर रू0 4800 ग्रेड वेतन या उससे न्यून पाने वाले मौलिक रूप से नियुक्त राज्य कर्मचारियों के लिए जहां पदोन्नति का पद उपलब्ध है, वहाँ पदोन्नति के पद का ग्रेड वेतन एवं सुसंगत वेतन बैंड वैयक्तिक रूप से पदोन्नतीय वेतनमान के रूप में तथा जहां पदोन्नति का पद उपलब्ध नहीं है वहाँ शासनादेश संख्या-395/XXVII(7)/2008 दिनांक 17 अक्टूबर, 2008 के संलग्नक-1 में उपलब्ध तालिका के अनुसार अगला ग्रेड वेतन एवं सुसंगत वेतन बैंड वैयक्तिक रूप अगले वेतनमान के रूप में दिनांक 01 नवम्बर 2013 से संशोधित व्यवस्था के अन्तर्गत तत्काल प्रभाव से अनुमन्य किये जाने की श्री राज्यपाल सहर्ष स्वीकृति प्रदान करते हैं।”

Above stipulation of the post of promotion is too general and liable to interpretation in different ways. It has not been made clear whether the post of promotion should be in the same service rules under which the substantive appointment has been made or it can also be under different service rules. The above also does not spell out that for every ACP, the post of promotion will be considered even when after the first ACP, the grade pay becomes more than Rs. 4800. For Rangers (DDRs) after the first ACP on the basis of their post of promotion (ACF), their grade pay becomes Rs. 5400. The question arises that for 2<sup>nd</sup> and 3<sup>rd</sup> ACP why should the further posts of promotion be considered for them and why not the next Grade Pays of Rs. 6600 and 7600 be granted as the 2<sup>nd</sup> and 3<sup>rd</sup> ACPs, as is done in granting the 1<sup>st</sup> and 2<sup>nd</sup> ACPs to ACFs.

v. We put it to the learned counsel for the petitioners in C.P. No. 161/DB/2019 that why should the posts of promotion be considered for granting 2<sup>nd</sup> and 3<sup>rd</sup> ACP to Rangers (DDRs) when after the first ACP, their pay scale becomes Rs. 5400 while, it is

not explicitly mentioned in the G.O. dated 06.11.2013 that after crossing the Grade Pay of Rs. 4800, for further ACPs, the posts of promotion will be considered. His reply was that it is being done like that only in every department.

vi. In the Indian Forest Service Pay Rules, 2007 after senior time scale having Grade Pay of Rs. 6600, the next promotion is to Junior Administrative Grade having Grade Pay of Rs. 7600 and then to Selection Grade, having Grade Pay of Rs. 8700 followed by further promotion to the post of Conservator of Forests with Grade Pay of Rs. 8900.

vii. The petitioners are claiming that in view of the rulings of the Hon'ble Apex Court, the next promotion post after DCF in the Indian Forest Service is only C.F. and the other two scales in between, are mere financial upgradations. According to the petitioners after first promotion post of ACF, their second promotion post is DCF and 3<sup>rd</sup> promotional post is C.F. with Grade Pay of Rs. 8900 which should be admissible to them as the 3<sup>rd</sup> ACP.

viii. The basic G.Os. for ACP are issued by the Finance Department and their view on the issues involved therein are binding on other departments. The Finance Department has consistently held that 3<sup>rd</sup> ACP admissible to the petitioners, is with Grade Pay of Rs. 7600.

ix. Rangers (DDRs) have two posts for second promotion i.e. Deputy Director in State Forest Service and DCF in the Indian Forest Service, both having the Grade Pay of Rs. 6600. Then it should be the choice of the sanctioning authority to consider one of the posts as the promotion post for grant of second ACP. The sanctioning authority is well within its right to consider their

second post of promotion as Deputy Director and thereby grant Grade Pay of Rs. 6600 as second ACP.

x. Since there was no further promotion post beyond Deputy Director in the State Forest Service Rules at that time, the next Grade Pay of Rs. 7600 is correct to be given as 3<sup>rd</sup> ACP. Even after the creation of further posts of Joint Director and Additional Director in the State Forest Service, the Grade Pay of Joint Director is Rs. 7600.

xi. It is to be kept in mind that granting ACP is not an actual promotion but compensation in lieu of promotion. Even if, DCF is considered to be the second promotional post for Rangers (DDRs), that post belongs to Indian Forest Service wherein appointment is made by the Government of India. According to the promotion structure in the Indian Forest Service, the next promotion is to Junior Administrative Grade with Grade Pay of Rs. 7600 only. Even according to this logic, 3<sup>rd</sup> ACP for Rangers (DDRs) should be with Grade Pay of Rs. 7600. There is no need to go into the argument whether Junior Administrative Grade of IFS and further promotional grade of Rs. 8700 (selection grade) are financial upgradations and not promotions and the next promotion is only to the post of C.F. with Grade Pay of Rs. 8900. Even assuming this to be correct, this post of C.F. as the third promotional post is not necessary to be considered for the third ACP of Rangers (DDRs). While directly appointed ACFs with initial Grade Pay of Rs. 5400 are getting the 3<sup>rd</sup> ACP with Grade Pay of Rs. 8700, no logic, which makes their Junior Rangers (DDRs) with initial Grade Pay of Rs. 4800 to get a higher Grade Pay of Rs. 8900 as 3<sup>rd</sup> ACP, can be acceptable. It is not necessary to consider the post of promotion for the 3<sup>rd</sup> ACP, if it leads to an ambiguous situation. The G.O. dated 06.11.2013 does not prescribe the same and in such a case the next higher grade pay and

corresponding pay scale in the pay matrix can be granted as the 3<sup>rd</sup> ACP which again comes to the Grade Pay of Rs. 7600 with corresponding pay scale.

xii. The government's intention in issuing the G.O. dated 06.11.2013 was to give better Grade Pay/pay scales than next Grade Pay/pay scales of the Pay Matrix Table to the persons initially appointed with Grade Pay of Rs. 4800 or less, but it could never have been to lay down a stipulation which gets more Grade Pay/pay scale as compared to their seniors, who were initially appointed with Grade Pay of more than Rs. 4800. It is perhaps, therefore, not clearly mentioned that if, after first or second ACPs, the Grade Pay of such persons exceed Rs. 4800, even then for the next ACP, further posts of promotion shall be considered. Even when two different posts of promotion are available, that post should be considered which does not lead to ambiguity. Moreover, as the opportunity of second promotion for Rangers (DDRs) to the post of Deputy Director is greater than their opportunity to get inducted into the IFS, therefore, the posts of Deputy Directors should be the first choice for consideration of grant of second ACP. IFS is a service of the Govt. of India wherein the provision of transfer to other State cadre in public interest or on the officer's own request is also there as stated in Rule 6 of The Indian Forest Service (Regulation of Seniority) Rules, 1997 annexed as Annexure P-1 to petitioners' Supplementary Affidavit dated 26.10.2020 for clarification, filed in Claim Petition No. 161/DB/2019. Therefore, the normal promotion channel for Rangers (DDRs) is that of the State services only and induction/promotion into the IFS cannot be considered as the usual promotion channel for Rangers (DDRs).

Under these circumstances, after the first promotional post for DDRs as ACF, the second promotional post should be

taken as Deputy Director and since there was no further promotion post available in the state service rules at that time, the next grade pay of Rs. 7600 is correct to be given as 3<sup>rd</sup> ACP.

xiii. The petitioners have also given the example of Junior Engineers who have been granted 3<sup>rd</sup> ACP as the pay scale of the Superintending Engineer with Grade Pay of Rs. 8700. Their case is firstly of a different department and secondly, distinguishable from the case of the Rangers/DDRs for the following reasons:

(a) No All India Service is involved in the case of the Engineers and all the concerned promotion posts are of the State services.

(b) When the Junior Engineers were granted 3<sup>rd</sup> ACP as the pay scale of Superintending Engineer then the Grade Pay of the post of Superintending Engineer was Rs. 7600 and they were given this grade pay and corresponding pay scales only as 3<sup>rd</sup> ACP. Subsequently, when the pay scale of the post of Superintending Engineer was revised with Grade Pay of Rs. 8700 and corresponding pay scale, the Junior Engineers were also granted the same as 3<sup>rd</sup> ACP.

(c) Even after this revision of the pay scale and Grade Pay and with Junior Engineers getting 3<sup>rd</sup> ACP with Grade Pay of Rs. 8700, their 3<sup>rd</sup> ACP did not become more than the 3<sup>rd</sup> ACP of their superior directly appointed Assistant Engineers.

Therefore, this example is not relevant to the present case in hand.

xiv. The petitioners in Claim petition No. 161/DB/2019 have also pressed the point that the initial G.O. of ACP dated 08.03.2011 allows the junior officers to be entitled to a grade pay higher than the senior officers. In our view, this can happen in

certain individual cases, *e.g.* when the senior has put in lesser years of service than a junior officer and the junior officer by virtue of longer service gets more ACPs/increments than the senior officer. It cannot be interpreted to allow a situation when the 3<sup>rd</sup> ACP of all the Rangers/DDR's which they get after 26 years of service, can be more than the 3<sup>rd</sup> ACP of their senior directly recruited ACFs after 26 years of service.

xv. On the basis of the above analysis, we hold that 3<sup>rd</sup> ACP of Rangers (DDR's) should be with Grade Pay of Rs. 7600 and corresponding pay scale.

xvi. The impugned orders of PCCF do not consider alternative interpretations of the G.O. 06.11.2013, but the conclusion about the entitlement of the 3<sup>rd</sup> ACP with Grade pay of Rs. 7600 with corresponding pay scale, is correct.

19. Regarding recovery of the excess amount paid to the petitioners on account of higher Grade Pay/pay scale having been given earlier as 3<sup>rd</sup> ACP, we observe the following:

Petitioners in claim petition No. 161/DB/2019 had approached Hon'ble High Court against the order dated 03.01.2020 passed by this Tribunal whereby their request for grant of stay of impugned order dated 16.09.2019 was rejected. Without going into the merits of the dispute, Hon'ble High Court in its order dated 09.01.2020 gave directions about recovery in equal monthly installments spread over a period of two years. The relevant part of the order of Hon'ble High Court is reproduced below:-

*"3. Reliance has been placed by Mr. Abhijay Negi, learned counsel for the petitioners on the judgment of Supreme Court in State of Punjab and others Vs. Rafiq Masih (White Washer) and others (2015)4 SCC 334, to contend that, in so far as those who have already retired from service and those who are due to retire in the next one year, the amounts paid to them earlier by mistake cannot be recovered. In Rafiq Masih, the Supreme Court observed:*

*"..... It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly*

*been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:*

- (i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).*
- (ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.*
- (iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.*
- (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.*
- (v) In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."*

*4. The petitioners are, admittedly, not Class III and Class IV employees and do not fall in the first category. They claim to fall within the ambit of clauses II, III and V. The Tribunal held that the judgment in Rafiq Masih, was inapplicable since the benefit of higher Grade Pay was granted to the petitioner conditionally; the condition was very specific that, if directions to the contrary were received from the Government or any other level, the excess amount would be adjustable; the petitioners had accepted the condition under the order by which the benefit had been granted; and, applying the said condition, recovery can be made.*

*5. In High Court of Punjab and Haryana Vs. Jagdev Singh (orders in Civil Appeal No.3500 of 2006 dated 29.07.2016), the Supreme Court observed:*

*"..... In State of Punjab & Ors etc. vs. Rafiq Masih (White Washer) etc1. this Court held that while it is not possible to postulate all situations of hardship where payments have mistakenly been made by an employer, in the following situations, a recovery by the employer would be impermissible in law:*

- "(i) Recovery from employees belonging to Class-III and Class IV service (or Group 'C' and Group 'D' service).*
- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.*
- (iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.*
- (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.*



*(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover." The principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking. For these reasons, the judgment of the High Court which set aside the action for recovery is unsustainable. However, we are of the view that the recovery should be made in reasonable instalments. We direct that the recovery be made in equated monthly instalments spread over a period of two years."*

*6. While Mr. Abhijay Negi, learned counsel for the petitioners, would seek to distinguish the aforesaid judgment, contending that, unlike in Jagdev Singh, the petitioners have not furnished any undertaking, it is not in dispute that the petitioners were, like in the case of Jagdev Singh, informed that, if the higher Grade Pay being paid to them was found erroneous later, the said amount would be recovered from them.*

*7. Mr. Abhijay Negi, learned counsel for the petitioners, would submit that the amounts sought to be recovered from petitioner No.1 is in excess of ₹ 12 lacs, from petitioner No.2, in excess of ₹ 15 lacs, and from petitioner No.3 in excess of ₹ 17 lacs; and recovering the entire amount from them, in one lump sum, would be iniquitous.*

*8. Following the Judgment of the Supreme Court in Jagdev Singh, we direct the respondents to recover the amount, allegedly due from the petitioners, in equal monthly installments spread over a period of two years."*

We understand that the recovery from the petitioners of Claim Petition No. 161/DB/2019 would be going on in accordance with the directions of Hon'ble High Court as above. As far as recovery from the petitioners in Claim Petition No.43/NB/DB/2019 is concerned, the above observations as made in the Hon'ble High Court's order, hold good in their case also. It is to add that 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. Learned counsel for the petitioners also pressed the point that according to Rafiq Masih judgment, recovery cannot be made for the

excess payment for a period exceeding 5 years. We however, note that the notices for recovery of excess amount had been issued within a period of 5 years though, the final orders have been passed on 01.08.2019. Therefore, no relief can be granted on this ground. Recovery from the petitioner No. 1 in Claim Petition No. 43/NB/DB/2019 was stayed by this Tribunal during hearing, as he had retired from service. The stay orders issued by this Tribunal on the recovery from petitioner No. 1, in C.P. No. 43/NB/DB/2019, are hereby vacated and recovery of the excess amount be made in equal installments spread over a period of two years. We understand that recovery from other petitioners in this claim petition is already going on.

ORDER

The reliefs sought by the petitioners are not allowed. We dispose off the claim petitions holding that the Rangers (DDRs) are entitled to the 3<sup>rd</sup> ACP with Grade Pay of Rs. 7600 with corresponding pay scale of Rs. 15600-39100.

Recovery of the excess amount paid to the petitioners, from whom recovery is not already being done, can be made in equal monthly installments from their pay/pension spread over a period of two years.

No order as to costs.

Let copy of this judgment be kept on the file of Claim Petition No. 43/NB/DB/2019.

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

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

*DATED: NOVEMBER 10, 2020*  
*DEHRADUN.*  
*KNP*