

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

CLAIM PETITION NO.153/SB/2024

Om Kailash Tyagi, s/o Sri Chohal Singh, aged 61 years, Ex. Statistical Officer,
r/o 5- New Defene Enclave, Sahastradhara Road, Near Amazon Institute,
Dehradun.

.....Petitioner

vs.

1. The Secretary , Forest, Environment Protection and Climate Change, State of Uttarakhand Subhash Road, Dehradun.
2. The Head of Forest Force (HoFF), Uttarakhand Government, 85 Rajpur Road, Uttarakhand, Dehradun.
3. The Principal Conservator of Forest & Environment, 85 Rajpur Road, Uttarakhand, Dehradun.
4. The Director of Pension & Entitlement, 23 Laxmi Road, Uttarakhand, Dehradun.
5. The Senior Treasury Officer, District Dehradun, Uttarakhand.

.....Respondents

Present: Sri Uttam Singh, Advocate, for the Petitioner.
Sri V.P. Devrani, A.P.O. for the State Respondents.

JUDGMENT

DATED: MAY 14, 2025.

Justice U.C. Dhyan (Oral)

By means of present claim petition, petitioner seeks the following reliefs:

“I)To set aside the order dated 01-03-2024 vide which the respondent has reduced the pay scale without detailing of review DSC / recommendation of the DSC. (Annexure No A-1).

II) To set aside the order/Letter No 2263/UK/13/30092023/64806 dated 3-9-2024 vide which the respondent has recovered a sum of Rs 13,63,630/-from the Gratuity. (Annexure No A-2)

III) To direct the respondent to refund a sum of Rs 13,63,630/- along with interest @ 6% per annum from the date of recovery.

IV) To pass any other suitable order, which the Hon'ble Tribunal may deem fit and proper on the basis of facts and circumstances of the case.

V) Award the cost of the petition to the petitioner."

2. Claim petition is supported by the affidavit of the petitioner. Relevant documents have been filed along with the petition.

3. Petition has been contested on behalf of respondents. Separate Counter Affidavits have been filed on behalf of Respondents No. 1, 2 & 3 and Respondent No. 4. C.A. has been filed by Sri Kapil Lal, Principal Chief Conservator of Forests, Environment, Uttarakhand, Dehradun, on behalf of Respondents No. 1, 2 & 3. Sri Dinesh Chandra Lohani, Director, Treasury, Pension & Entitlement, Uttarakhand, Dehradun, has filed C.A. on behalf of Respondent No. 4. Relevant documents have been filed in support of Counter Affidavits.

4. Petitioner retired as Statistical Officer in the respondent department on 30.09.2023. According to the petition, his retiral benefits were not paid within time, for which he reserves the right to file separate claim petition. On 01.03.2024, respondent department has revised the pay scale of the petitioner, which is under challenge. He was given pay scale of Rs.15600-39100 grade pay Rs.5400/-, which was subsequently withdrawn unilaterally, without notice, which is not sustainable in law. Respondents have deducted a sum of Rs.13,63,630/- from the gratuity of the petitioner arbitrarily, without notice. Petitioner did not commit any fraud in fixation of the pay and he is not responsible for the amount received from the department due to (alleged) wrong fixation of pay.

5. The relief in the claim petition is two fold:

(i) reduction of pay scale without taking into consideration the recommendation of the Departmental Screening Committee (DSC) and

(ii) setting aside the order by which respondents have recovered a sum of Rs.13,63,630/- from the gratuity of the petitioner and refund of the same along with interest.

6. Ld. A.P.O. submitted, on the strength of the Counter Affidavits thus filed, that before retirement the service book of the petitioner was sent to the Finance Controller of the Department, who, after verification of the pay fixation order, raised certain objections regarding grade pay Rs.5400/- from 01.06.2008, for which the petitioner was not entitled. In the subsequent paragraphs of the C.As., it has been mentioned as to how the pay of the petitioner was actually fixed. The Tribunal need not reproduce those paragraphs, for they are already part of record.

7. Relying on the Govt. Order dated 30.08.2023, issued by the Finance Department, Ld. A.P.O. submitted that respondent department is entitled to adjust the excess amount paid to the incumbent other than his actual entitlement. Ld. A.P.O. further submitted, on the strength of averments contained in the C.As., that pay fixation is permissible in view of the decision rendered by the Hon'ble Supreme Court, in Civil Appeal No.1985 of 2022, the State of Maharashtra and another vs. Madhukar Antu Patil and another, on 21.03.2022 and the decision rendered by Hon'ble High Court of Judicature at Allahabad on 17.12.2018 in Writ -A No. 26639/2018, Smt. Hasina Begum vs. Purvanchal Vidyut Vitran Nigam Ltd, Prayagraj and 02 others. But, Sri Uttam Singh, Ld. Counsel for the petitioner submitted that the same was fixed arbitrarily, without giving notice to the petitioner. The questions, which arise for consideration of this Tribunal, are:

- (i) Whether it is permissible to recover any sum from the gratuity of the petitioner, who retired as a Class-III employee, if he had no role to play in fixation of enhanced pay scale, which subsequently came to the light of the respondent department and on the basis of which recovery was thus made?
- (ii) Whether re-fixation of the pay by the respondent department is permissible in law?

8. Hon'ble Apex Court has dealt with these issues in the decision rendered in State of Punjab vs. Rafiq Masih, (2015) 4 SCC 334 and in Civil Appeal No.1985 of 2022, the State of Maharashtra and another vs. Madhukar Antu Patil and another. Hon'ble High Court of Allahabad has dealt with the issue of refixation in Writ -A No. 26639/2018, Smt. Hasina Begum vs. Purvanchal Vidyut Vitran Nigam Ltd, Prayagraj and 02 others. Hon'ble High Court of Uttarakhand at Nainital has dealt with the above noted issues in catena of decisions.

9. The petitioner, in his petition, has cited various decisions rendered by this Tribunal to submit that recovery from a retired Government servant from his retiral dues is not permissible, if he had no role to play in alleged wrong fixation of pay. It is not the case of the respondents that the petitioner was in hand-in-glove with the Accounts Section of the respondent department in the wrong fixation of his pay.

10. In the context noted above, Hon'ble Apex Court in Paragraphs 6, 7 & 8 of the decision rendered in State of Punjab vs. Rafiq Masih, (2015) 4 SCC 334, has observed thus:

"6. In view of the conclusions extracted hereinabove, it will be our endeavour, to lay down the parameters of fact situations, wherein employees, who are beneficiaries of wrongful monetary gains at the hands of the employer, may not be compelled to refund the same. In our considered view, the instant benefit cannot extend to an employee merely on account of the fact, that he was not an accessory to the mistake committed by the employer; or merely because the employee did not furnish any factually incorrect information, on the basis whereof the employer committed the mistake of paying the employee more than what was rightfully due to him; or for that matter, merely because the excessive payment was made to the employee, in absence of any fraud or misrepresentation at the behest of the employee.

7. Having examined a number of judgments rendered by this Court, we are of the view, that orders passed by the employer seeking recovery of monetary benefits wrongly extended to the employees, can only be interfered with, in cases where such recovery would result in a hardship of a nature, which would far outweigh, the equitable balance of the employer's right to recover. In other words, interference would be called for, only in such cases where, it would be iniquitous to recover the payment made. In order to ascertain the parameters of the above consideration, and the test to be applied, reference needs to be made to situations when this Court exempted employees from such recovery, even in exercise of its jurisdiction under Article 142 of the Constitution of India. Repeated exercise of such power, "for doing complete justice in any cause"

would establish that the recovery being effected was iniquitous, and therefore, arbitrary. And accordingly, the interference at the hands of this Court.

8. As between two parties, if a determination is rendered in favour of the party, which is the weaker of the two, without any serious detriment to the other (which is truly a welfare State), the issue resolved would be in consonance with the concept of justice, which is assured to the citizens of India, even in the Preamble of the Constitution of India. The right to recover being pursued by the employer, will have to be compared, with the effect of the recovery on the employee concerned. If the effect of the recovery from the employee concerned would be, more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer to recover the amount, then it would be iniquitous and arbitrary, to effect the recovery. In such a situation, the employee's right would outbalance, and therefore eclipse, the right of the employer to recover."

[Emphasis supplied]

11. Based on the decision, rendered by Hon'ble Apex Court in Syed Abdul Qadir vs. State of Bihar, (2009) 3 SCC 475 and hosts of other decisions, which were cited therein including B.J. Akkara vs. Union of India, (2006) 11 SCC 709, the Hon'ble Apex Court concluded thus:

"18. 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."

12. The parties are not in conflict on facts. Petitioner's case is squarely covered by the aforesaid decision of Hon'ble Supreme Court. Petitioner is a 'Group-C' employee and recovery made from him would be

iniquitous or harsh to such an extent that it would far outweigh the equitable balance of employer's right to recover.

13. Reference may also be had to the decisions rendered by the Hon'ble Apex Court on 02.05.2022 in Civil Appeal No. 7115 of 2010, Thomas Daniel vs. State of Kerala & others, & in Civil Appeal No. 13407/ 2014 with Civil Appeal No. 13409 of 2015, B.Radhakrishnan vs. State of Tamil Nadu on 17.11.2015, decisions rendered by Hon'ble Uttarakhand High Court on 12.04.2018 in WPSS No. 1346 of 2016, Smt. Sara Vincent vs. State of Uttarakhand and others, in WPSS No. 1593 of 2021, Balam Singh Aswal vs. Managing Director and others and connected writ petitions on 14.06.2022 & in WPSS No. 363 of 2022 and connected petitions on 05.01.2024 and decision rendered by Hon'ble Madras High Court on 019.06.2019 in WP(MD) No. 23541/ 2015 and M.P. (MD) No. 1 of 2015, M. Janki vs. The District Treasury Officer and another, in this regard.

14. The Tribunal, thus comes to the conclusion that there should not be any recovery from the petitioner, much less the gratuity, who retired as Statistical Officer, 'Group-C' and had no role to play in alleged wrong fixation of pay. It is not the case of the respondents that the petitioner misrepresented his case or played fraud when the respondent department fixed his salary. The amount of gratuity thus recovered from him post-retirement, should be refunded to him.

15. There is no question of giving interest on the same inasmuch the employee was not entitled to keep such amount, therefore, he is not entitled to interest, while giving a direction to the respondent department to restore the recovered amount to the employee. It is not his entitlement. When an employee is not entitled to keep the money, as of right, then he is not entitled to interest while directing the respondent department to make refund of the same to the retired employee. It has been observed in several decisions that the relief is to be granted on the basis of equity and not as a matter of right. After all, it is public money/ tax payers' money. It was received by the recipient without any authority of law.

16. So far as the refixation of pay is concerned, the Tribunal has noted above, on the strength of the decision rendered in Madhukar Antu Patil (*supra*), and the decision rendered by Hon'ble High Court of Judicature at Allahabad in Smt. Hasina Begum (*supra*), that refixation is permissible in law. But, in the instant case, since the petitioner was not heard and no notice was given to him before refixing the pay, which should have been done only after due notice to him, the Tribunal observes that re-fixation of pay is permissible, but only after giving due notice to him.

17. Petitioner is entitled to refund of Rs.13,63,630/- (but without interest). Respondent department is directed to refund the same to the petitioner, as expeditiously as possible and without unreasonable delay, preferably within 12 weeks of presentation of certified copy of this order. Letter/order dated 03.09.2024 (Annexure: A-2), whereby a sum of Rs.13,63,630/- was recovered from the petitioner, who retired as a Group 'C' employee on 30.09.2023, is hereby set aside.

Respondent department is also directed to hear the petitioner in person, before refixing his pay scale, which is permissible in view of decision rendered by the Hon'ble Supreme Court, in Civil Appeal No.1985 of 2022, the State of Maharashtra and another vs. Madhukar Antu Patil and another, and the decision rendered by Hon'ble High Court of Judicature at Allahabad in Writ -A No. 26639/2018, Smt. Hasina Begum vs. Purvanchal Vidyut Vitran Nigam Ltd, Prayagraj and 02 others. Order dated 01.03.2024 (Annexure: A-1) shall abide by the same.

18. The claim petition thus stands disposed of. No order as to costs.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: MAY 14, 2025
DEHRADUN