

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

Present: Hon'ble Mr. Justice U.C.Dhyani

----- Chairman

Hon'ble Mr. Arun Singh Rawat

-----Vice Chairman (A)

CLAIM PETITION NO.53/DB/2024

1. Bachan Singh, aged about 65 years, s/o Sri Trilok Chandra, r/o II-No. A/5-11 Workshop Colony, Civil Line, Roorkee, Tehsil- Roorkee, District- Haridwar, Token No. 378, Operator for Heavy Crane.
2. Chetpal Giri, aged about 60 years, s/o Late Sri Shankar Lal Giri, r/o P-III, 9/3, Colony Bajuhedi, Sinchai Vibhag, P.O. Mehwad Kalan, Roorkee, District- Haridwar, Token No. 682, Master Molder.

.....Petitioners

vs.

1. State of Uttarakhand through Secretary, Irrigation Department, Secretariat, Dehradun.
2. Chief Engineer and Head of the Department, Irrigation Department, Yamuna Bhawan, Dehradun, Uttarakhand.
3. Promotion Committee, Industrial Establishment, Irrigation Workshop, Roorkee, District- Haridwar through its President Superintending Engineer, Tubewell Division (Establishment) Roorkee, Haridwar, District- Haridwar.
4. Executive Engineer, Irrigation Workshop, Roorkee, Haridwar, District- Haridwar.

.....Respondents

Present: Sri Prateek Kanojia (online) and Sri Rahul Manwal,
Advocates, for the Petitioners.
Sri V.P. Devrani, A.P.O. for the Respondent.

JUDGMENT

DATED: AUGUST 08, 2025.

Justice U.C. Dhyani (Oral)

By means of present claim petition, petitioners, seek the following reliefs:

- “i) Issue an order or direction, to quash the impugned order dated 10.04.2024 passed by the Respondent. (Contained as Annexure No. 10 to this Claim Petition.)*
- ii) Issue the direction commanding the Respondents to grant the promotion to the petitioners with effect from 27.04.2022 with all consequential benefit including arrear of difference between Pre-Revised pay scale and Revise Pay Scale.*
- iii) Issue any other relief, which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case be passed in favour of the petitioners.*
- iv) Award Cost.”*

2. Claim petition is supported by the affidavit of Sri Chetpal Giri, petitioner no.2. Relevant documents have been filed along with the petition.

3. Claim petition has been contested on behalf of respondents. Sri Gaurav Kumar, Assistant Engineer, Irrigation Workshop, Roorkee, Uttarakhand, has filed Counter Affidavit on behalf of Respondents. Relevant documents have been filed in support of Counter Affidavit.

4. Rejoinder Affidavit has been filed on behalf of the petitioners, reiterating the averments made in the claim petition.

5. Facts, giving rise to present claim petition are as follows:

5.1 Petitioner No.1 is posted as Heavy Crane Operator in the Industrial Establishment Workshop, Roorkee, District Haridwar. Petitioner No. 2 has retired as Master Molder from the same establishment.

5.2 Respondent No. 4 issued seniority list of the employees of the Industrial Establishment under the Irrigation Workshop, Roorkee. In the said seniority list, the names of the petitioners have been mentioned.

Copy of seniority list has been brought on record as Annexure-1 to the petition. According to the petition, neither DPC was constituted after 27.04.2022, nor the aforesaid committee approved promotion. [As such, there was no question of approving the promotion of the petitioner by the said committee].

5.3 Respondent No.4 issued Office Memorandum on 09.03.2022 to show that six posts of Foreman are vacant in the Industrial Establishment of Workshop. The O.M. was issued that if any employee has objection regarding the promotion of eligible employees, then he can submit his written objection up to 14.03.2022. After this prescribed time, no objection shall be entertained. (Copy of O.M.: Annexure- 2).

5.4 A promotion committee was constituted under the president ship of Superintending Engineer, Tube Well Division Establishment, Roorkee. In the meeting of said committee on 27.04.2022, a decision was taken to grant promotion to the eligible employees in the grade pay of Rs.2800/- Level- 5 to grade pay Rs.4200/- Level-6, provided that, they withdraw their cases pending before Hon'ble High Court. Hon'ble High Court at Nainital, *vide* judgment and order dated 08.07.2022, allowed all the cases of the petitioners (Copy: Annexure- 5). The petitioner filed writ petition being WPSS No. 681/2023, before the Hon'ble High Court of Uttarakhand, whereby the dispute was relegated to State Public Services Tribunal (Copy: Annexure-6).

5.5 Aggrieved against the same, petitioners filed Special Appeal No. 130/2023, which was disposed of by the Hon'ble Court by directing the petitioners that they could invoke the jurisdiction of the Tribunal (for redressal of their grievances) (Annexure: 7). Petitioners filed claim petition No. 111/SB/2023 before the Tribunal, which was disposed of by directing Respondent No.2 to decide the representation of the petitioners. (Annexure: 8). Petitioners made representation. Respondent rejected the relief sought by the petitioners to grant promotion to them from 27.04.2022 *vide* impugned order dated 10.04.20224 (Annexure: 10). The petitioners have filed present claim petition to set aside the order impugned.

6. In the Counter Affidavit, filed on behalf of the respondents, it has been mentioned that whereas, petitioner No.1 is working as Heavy Crane Operator, Grade-I, Petitioner No.2 has retired as Master Molder on 31.05.2023 from the Industrial Establishment Workshop, Roorkee. Master-servant relationship between petitioner no.2 and respondent department has ceased to exist.

6.1 Respondent No.4 issued O.M. dated 09.03.2022 and asked for the objections. Tentative seniority list was issued on 10.02.2022. A few objections were received against the same. However, it was not possible to address these objections due to the necessity of rectifying the previously wrong pay fixation orders. The departmental committee, therefore, took a decision on 27.04.2022 that if employees withdraw pending writ petitions, the promotion exercise can be initiated. The DPC could not be convened and promotion exercise could not be undertaken because of this reason.

6.2 During the pendency of the claim petition, the Hon'ble Court decided the Special Appeal No. 370 of 2022 and other connected special appeals *vide* judgment and order dated 19.12.2023 (Copy: annexure CA-RA-1. The impugned judgment dated 08.07.2022, passed by Hon'ble Single Judge in WPSS No. 503/2018 and other connected matters, was set aside.

6.3 It has been mentioned in Para 13 of the C.A. that on 27.04.2020, no DPC was convened by the department. DPC was to be convened for promotion on the post of Foreman in grade pay Rs.4200/- , after Model Code of Conduct for Parliamentary Elections, 2024 (Copy: Annexure- CA-R-2). In the meanwhile, Respondent No.2 retired on 31.05.2023.

6.4 It has further been submitted in para 18 of the C.A., that on 24.06.2024, when undisputed service cadre was available in the committee meeting for promotion of the employees working in the Industrial Establishment, Roorkee, it was decided that as against six vacant posts in grade pay Rs.4200/-, only three employees were eligible for promotion. On the recommendation of the DPC, three eligible

employees, namely- Sri Bachan Singh, Sri Vinod Kumar and Sri Rajendra Kumar were promoted to the post of Foreman in the pay scale Rs.9300-34800/- grade pay Rs.4200/-, *vide* order dated 27.06.2024 issued by the Superintending Engineer, Tube Well Circle, Roorkee with the condition that the said promotion shall be subject to the decision of Claim Petition No. 53/DB/2024. (Copy of promotion order: Annexure-CA-R-4).

6.5 Petitioner No.1, on accepting the said promotion, joined his duties on 29.06.2024, hence claim petition in respect of such petitioner has become redundant. (Copy of joining letter: Annexure- CA-R-6).

6.6 So far as Petitioner No.2 is concerned, he has retired on 31.05.2023. Hence, he is not legally entitled to get promotion, as per law.

6.7 Since no DPC was conducted on 27.04.2022, therefore, no promotion order has ever been issued on the said date to the post of Foreman in grade pay Rs.4200/-, therefore, the relief sought by the petitioners, is not tenable, in the eye of law.

7. In WPSS No. 503/2018, Chetpal Giri vs. State of Uttarakhand, Irrigation Department through Secretary and others and connected writ petitions, Hon'ble High Court *vide* order dated 08.07.2022 observed thus:

"2. In almost all the writ petitions, which are connected with this bunch matters, the petitioners have sought a writ of mandamus, commanding the respondents, to grant them upgraded grade pay of Rs. 2800/- to Rs. 4200/- by extension of the benefit as contemplated as per the Government Order dated 5th October 2015, as it had been issued by respondent No. 1, as well as a consequential Government Order, which had been issued in compliance thereto, i.e. Government Order dated 28 October 2016.

3. Simultaneously, they have also prayed for, that after the determination of the upgraded pay scale, based on the two Government Orders, they may also be paid with the interest, which would be due to be paid to them with effect from the date, when the other similarly placed employees were already extended with the benefit of grant of upgradation of the pay scale.

4. Brief facts of the case are, that the petitioners contended that they are Group-D employees, who are presently working with the respondents and they have submitted that responded No. 3, based on a communication dated 22nd October 2016 which was made to

respondent No. 2 herein, had sought for requisite direction for the purposes of fixation of the pay-band and the grade-pay, which will they would be entitled to be paid to Group-D employees in the respective Division of the respondents, the learned counsel for the petitioners contends, that in furtherance of the aforesaid communication sought by the respondent No. 3 from the office of respondent No. 2, the respondent No. 2, vide its letter dated 28 October 2016, had given direction, that the Government Orders, based on which the pay scale was upgraded i.e. 15 October 2016, is still in force, and the promotional grade pay may be given to the petitioners and such similarly placed Group D employees from the date of the application of the Government Order dated 15 October 2015.

5. The Government Order dated 28 October 2016, which has been annexed with the writ petition, it rather refers to the earlier Government Order dated 15 October 2015, whereby they have reiterated the stand that the Government Order No. 377/11/2015-01(09)/2020 dated 15th October 2015, was enforced to be made effective with immediate effect, in order to extend the benefit of the upgraded pay scale to the industrial establishments and the Group-D employees, working in it, in order to bring them within the ambit of grant of upgraded pay scale, which has been prayed for by the petitioners to be granted to them in the writ petition for the grant of grade pay of Rs. 4200/- by enhancing from the earlier grade pay of Rs. 2800/-.

6. The facts, which has come on record are, that as a consequence of the Office Memorandum dated 28th October 2016, in fact, the respondent had proceeded to extend the benefit of upgraded pay scale to the list of employees, whose name has been projected by the petitioner in Annexure 4 to the writ petition, who where the employees, who were working in the irrigation work shop, and had already been given with the upgraded pay scale of Rs. 5200/- to Rs. 20200/- with grade pay of Rs. 2400/-.

9. Respondents Nos. 2, 3 and 4, have filed their counter affidavit on 2nd September 2019. In the counter affidavit thus filed by them, they have submitted, that in pursuance to the aforesaid Government Orders, which have been referred thereto, in fact, in view of the Standing Orders, the petitioners would not be entitled for the extension of upgraded pay scale, as enforced by the Government Order dated 28th October 2016.

24. With all due reverences at my command, I don't find that when the extension of benefit of the Government Order dated 5th October 2015, and the effect of Office Memorandum dated 28th October 2016, was already extended to the similarly placed employees, no such exception was ever attempted to be carved out in the said decision, which had been taken by them, qua the pleadings raised in para 5 of the counter affidavit, because in case, if their case was that the service of the petitioners would be governed by the Standing Orders, then they ought to have taken their stand therein at that stage but as ever since the first stage of the proceedings when the matter was initially decided by the co-ordinate Bench of this Court, vide its judgement dated 31st May 2018 no such case was ever attempted to be developed, even till the stage when the issue was carried before the Hon'ble Apex Court.

25. In that eventuality, when the respondents themselves have submitted to the decision on 31st May 2018, and had accepted it, they cannot now be permitted to take altogether a contrary stand, which they had not otherwise pressed, when the matter was decided by the decision on 31st May 2018 or when the matter was decided by the Division Bench of this Court on 24th January 2021. Hence, the respondents are

estopped to take a contrary stand at this stage when they themselves submitted to the judgments, and that the judgement rendered by the coordinate Benches of this Court, hence the stand taken by the learned Additional Chief Standing Counsel, is not acceptable by this Court and is turndown, and the writ of mandamus as issued above is hereby sustained to be complied with by the respondents within the aforesaid time period as prescribed.

[Emphasis supplied]

8. It will be worthwhile to reproduce the observations made by the Division Bench of the Hon'ble Court on 19.12.2023 in Special Appeal No. 370 of 2022 and other connected special appeals, which was delivered in Intra Court Appeal, for convenience, as under:

"7. Learned Additional C.S.C. submits that Government Order dated 05.10.2015 was issued pursuant to decision taken in 27th Meeting of Pay Anomalies Committee held on 25.06.2015, wherein it was decided that such Group 'D' employees, who are getting salary in the Grade Pay of ₹1300/-₹1400/-₹1650/- shall be given Grade Pay of ₹1800 with immediate effect. He further submits that in terms of Government order dated 05.10.2015, Grade Pay of ₹1800 was to be given to all such Group 'D' employees whose Grade Pay was less than ₹1800 as on 05.10.2015. He further submitted that since the writ petitioners (respondents herein) were getting Grade Pay of ₹2800 on 05.10.2015, therefore, they were not entitled to get benefit of Government Order dated 05.10.2015, as it was not retrospective, but was made applicable prospectively. He thus submits that learned Single Judge erred in completely overlooking this vital aspect and directed the Departmental Authorities to give benefit of Government Order dated 05.10.2015 to all persons, who had filed the writ petition even though they were getting grade pay of more than ₹1800 as on 05.10.2015. He further submits that in the letter dated 28.10.2016, Chief Engineer clearly mentioned that the Government Order dated 05.10.2015 is applicable only prospectively; therefore, benefit of said Government Order is to be given only from the date of issuance of Government Order. However, learned Single Judge erred in not appreciating the import of the expression "prospectively" used in para 2 of the letter dated 28.10.2016. He further submitted that Superintending Engineer, Tube-well Circle had misinterpreted the Government Order by holding that benefit of Government Order dated 05.10.2015 is applicable retrospectively from 01.01.2006, however, the Chief Engineer, who holds superior position, in his letter dated 28.10.2016 had made it clear that said Government Order is applicable prospectively.

8. This Court finds force in the submission made by learned State Counsel. The Government Order dated 05.10.2015 is not retrospective and it provides that such Group 'D' employees, who are getting Grade Pay of less than ₹1800 shall be given Grade Pay of ₹1800 from the date of issuance of Government Order i.e. 05.10.2015. Since the writ petitioners (respondents herein) were getting Grade Pay of ₹2800, before enforcement of Government Order dated 05.10.2015, therefore, they are not entitled to get any benefit of the said Government Order in view of clear stipulation made in the Government Order and its benefit cannot be given retrospectively from 01.01.2006.

9. The Chief Engineer (Mechanical) in para 2 of his letter dated 28.10.2016 has rightly stated that benefit of Government Order dated

05.10.2015 would be available to employees of Irrigation Workshop from 05.10.2015 or date of actual promotion, whichever is later. The view to the contrary taken by learned Single Judge is, thus, unsustainable.

10. Learned counsel for respondents submits that some employees of Irrigation Workshop are getting higher Grade Pay in terms of letter dated 28.10.2016 issued by Superintending Engineer, Irrigation Workshop, therefore, his clients are also entitled to parity with them in the matter of Grade Pay.

11. We are not impressed by the said submission. The Pay Scales and Grade Pay payable to State employees are decided by the State Government. Officers of State Departments have to act strictly as per the decision taken by State Government. If some Group 'D' employees are given higher Grade Pay by Departmental Officers by misinterpreting a Government Order, that cannot be made a ground for claiming similar benefit by others, as it would amount to claiming negative equality, which is not permissible.

12. For the aforesaid reasons, the special appeals are allowed. The impugned judgment dated 08.07.2022, passed by learned Single Judge in WPSS No. 583 of 2018 & other connected matters, are set aside."

[Emphasis supplied]

9. **In response to the query of the Tribunal, Sri Prateek Kanojia, Ld. Counsel for the petitioner submitted that no junior to the petitioners was ever promoted to the higher post. DPC for promotion was never convened before 24.06.2024.** It may be noted here that no legal right accrues to anyone for promotion on the date the vacancy in the higher post arise. One cannot claim promotion as a matter of right. An employee is only entitled to be considered for promotion as per the criteria fixed in promotion rules.

10. Ld. Counsel for the petitioners drew attention of the Bench towards the observations made in Para 4 by Hon'ble Apex Court in Civil Appeals No. 301-21/1987, Union of India vs. K.V. Jankiraman on 27.08.1991, that "If on the conclusion of the departmental/court proceedings, the officer concerned is completely exonerated, and where he is under suspension it is also held that the suspension was wholly unjustified, the sealed cover is opened and the recommendations of the DPC are acted upon. If the officer could have been promoted earlier, he is promoted to the post which is filled on an officiating basis, the officiating arrangement being terminated. On his promotion, the officer gets the benefit of seniority and fixation of pay on a notional basis with reference to the date on which he would have been promoted in the

normal course, but for the pending disciplinary/ court proceedings. However, no arrears of salary are paid in respect of the period. prior to the date of actual promotion. The Memorandum goes on to state further that it was noticed that some- times the cases in the courts or the departmental proceedings take unduly long time to come to a conclusion and the officers undergo considerable hardship, even where it is not intended to deprive them of promotion for Such a long time.”

11. In all humility, the Bench is of the view that the said decision has no relevance to the facts of this case. The case which has been referred to, was a case in which “sealed cover was opened. The recommendations of DPC were acted upon.” The instant case is not the case of the disciplinary proceedings pending against the petitioners. No sealed cover procedure was adopted and as such there is no question of granting them benefit of K.V.Jankiraman’s case (*supra*).

12. Ld. Counsel for the petitioners also relied upon a decision rendered by the Central Administrative Tribunal, Kolkata Bench on 25.03.2025 in O.A. No. 350/1074/2020 M.A. No. 350/466/2021, Amlanjyoti Kar vs. Central Ground Water Board, to submit that the petitioners are entitled to get promotion from the date of DPC. There was no dispute that vacancy has arisen from that date DPC was conducted, therefore, the petitioners are entitled to get a direction to grant promotion or notional promotion from the date of DPC. Para 5 of the said decision mentions that,

“5. The documents relied upon by the applicant clearly establishes that he was found fit for promotion to the post of Regional Director, at least from the date of the DPC.”

13. The facts of present claim petition are also distinguishable from the facts of Amlanjyoti Kar case (*supra*). The petitioners were, never found fit for promotion, in any meeting of DPC of the respondent department before 24.06.2024. Hence, the petitioners are not entitled to any benefit out of such decision of CAT.

14. Vacancies might have arisen earlier, but no DPC was convened for the purpose before 24.06.2024. In the instant case,

petitioners were never found fit for promotion before 24.06.2024, therefore, there is no question of giving a direction to respondents to grant promotion to the petitioners from the date DPC was convened. **DPC was convened on 24.06.2024 and Petitioner No.1 was promoted vide order dated 27.06.2024. Petitioner No.2 retired on 31.05.2023, even before DPC was convened.** There is, therefore, no question of directing the respondents to grant promotion to the petitioners *w.e.f.* 27.04.2022, with all consequential benefits, including arrears of difference between pre-revised pay scale and revised pay scale, as is their prayer in Clause-2 of the prayer clause.

15. It is an admitted fact that Petitioner No.1 was promoted on 27.06.2024 and since then he is getting promotional pay scale of Rs.4200/-. He did not work on the promoted post from 27.04.2022 till 27.06.2024, hence, he is not entitled to promotional pay scale of the post of Foreman.

16. Petitioner No.2 has retired on 31.05.2023. He is not entitled even to the promotional pay scale. Had the Petitioner No.2 been in service, he too would have been considered for promotional pay scale of Rs.4200/- from 27.06.2024, but that was not to be.

17. For the reasons indicated in the foregoing paragraphs of the judgment, no interference is called for in the order dated 10.04.2024, issued by Superintending Engineer, Irrigation Department, Uttarakhand. The same deserves to be affirmed.

18. The respondent department is ready to give retiral dues on grade pay Rs.2800/- to Petitioner No.2, who retired on 31.05.2023, but he is claiming retiral dues of the post of Foreman, grade pay Rs.4200/-, to which (grade pay) he was never promoted.

19. It may again be noted here that Petitioner No.2 is entitled to grade pay Rs.2800/- and not grade pay Rs.4200/-, as prayed for by him. He is only entitled to retiral dues on grade pay Rs.2800/- the post on which he retired.

20. Ld. A.P.O. submitted that retiral dues like GPF, GIS and Leave Encashment have been released, only Pension and Gratuity remain to be paid to the Petitioner No.2.

21. Respondent department is, therefore, directed to release admissible retiral dues to Petitioner No.2, as expeditiously as possible, without unreasonable delay.

22. Claim petition is, accordingly, disposed of. No order as to costs.

(ARUN SINGH RAWAT)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: AUGUST 08, 2025
DEHRADUN

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