

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

CLAIM PETITION NO.57/SB/2025

Rajendra Prasad Mamgain, s/o Late Sri Prem Dutt Mamgain, r/o Lane No.1,
Surya Colony, Nathuwala, P.O. Shamshegarh, Nathuwala, Dehradun,
Uttarakhand.

.....**Petitioner**

vs.

1. The State of Uttarakhand through its Secretary, Finance Department, Govt. of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. The Chief Project Director, Watershed Management Directorate, Dehradun.
3. The Project Director, Garhwal Region, Watershed Management Directorate, Muni ki Reti, Tehri Garhwal.
4. Officer, Finance & Accounts, Watershed Management Directorate, Dehradun

.....**Respondents**

Present: Sri M.C.Pant (online) & Sri Abhishek Pant, Advocates,
for the petitioner.
Sri V.P. Devrani, A.P.O. for the State Respondents.

JUDGMENT

DATED: AUGUST 20, 2025.

Justice U.C. Dhyani (Oral)

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

“I) 1 To quash the impugned departmental order dated 16.10.2024 for recovery of excess payment passed against the Petitioners by the Respondents along with its effect and operation after calling the entire record from the respondents, and further declaring the same as

arbitrary, malafide, void and a nullity keeping in view the facts highlighted in the body of the petition.

II. To issue an order or direction to the respondents to remit the amount back to the petitioners which has been deducted by way of recovery had it been the impugned order was not in existence, and further to pay Interest of 18% to petitioners on the deducted amount keeping in view the facts highlighted in the body of the petition.

III. To issue order or direction for the grant of damages and the compensation. such amount as the court may deem fit and proper in the circumstances of case in favour of the petitioner.

IV. To award the cost of petition.”

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. Sri Naveen Singh Barphal, Project Director, Watershed Management Garhwal Region, Muni ki Reti, Tehri Garhwal, has filed C.A. on behalf of Respondents No. 2 to 4. A document has been filed in support of Counter Affidavit. Sri V.P.Devrani, Ld. A.P.O., submitted that Respondent No.1, adopts the same affidavit, which has been filed on behalf of Respondents No. 2 to 4.

4. Petitioner was appointed as Peon (Class-IV) on 02.09.1986 in the respondent department. He is still in service.

4.1 Petitioner, along with other employees gave representation to the Project Director, Administration, that one of the employees, who retired recently, was given a recovery order, caused due to wrong fixation of pay. Their salary was refixed, but recovery made from them is not permissible in law.

4.2 Petitioner received the impugned order on 16.10.2024, which was a result of salary refixation. According to the department, excess payment was made to the petitioner. Recovery of Rs.1,83,340/- from the petitioner has been calculated. Deduction of Rs.10,000/- per month from his salary was started, without notice to him. Petitioner filed a representation to the authority concerned. He was informed that the pay fixation has been done in accordance with the Government Order.

4.3 It is the submission of Sri Abhishek Pant, Ld. Counsel for the petitioner that in a similar matter, Claim Petition No. 155/SB/2024 Trilok Singh Chauhan & others vs. State of Uttarakhand and others, the Tribunal, *vide* order dated 01.01.2025, has granted relief to the petitioner of that case. The same has been implemented by the respondent department and has attained finality. Petitioner prays for similar relief in this case too.

5. A.P.O. drew attention of the Tribunal towards Paragraphs No. 9 to 14 of the W.S./C.A., to submit that when an Enquiry Committee was constituted under the direction of the Chief Finance Officer, to examine the benefits extended to the petitioner and similarly situated employees, the Committee gave the report that excess payment has been made to the petitioner and other employees. Petitioner's pay was refixed as per Rule 81(3) of Financial Handbook and as per G.O. dated 30.08.2023, issued by the Finance Department.

5.1 Ld. A.P.O. also submitted that refixation order dated 16.10.2024 was issued by Respondent No.3, in which excess and over payment of Rs.1,83,340/- *w.e.f.* 01.01.2006 till 30.10.2024 was adjusted being a taxpayer's money.

5.2 Ld. A.P.O. also submitted that petitioner was not legally entitled to such benefit in law. Department has taken a conscious decision to adjust over and excess payment made to the petitioner, by making recovery order. Ld. A.P.O. would further submit that petitioner has voluntarily given undertaking at the time of implementation of revised pay scale to recover the excess and over payment, if made to him.

5.3 Ld. A.P.O. drew attention of the Tribunal towards 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, to submit that correct pay fixation order can be issued when it comes to the knowledge of the department that erroneous excess payment has been made.

6. Ld. Counsel for the petitioner submitted that recovery of excess payment from a Group-D employee is not permissible in law. He submitted that there was no fault, misrepresentation or any wrong on the part of the petitioner in getting service benefits. Even if, there was excess payment, the same cannot be recovered, in law from a Group-D employee unless and until he has been involved in wrong fixation. Ld. Counsel for the petitioner submitted that there was no mala fide or involvement of the petitioner in the alleged wrong fixation of salary.

7. Ld. Counsel for the petitioner referred to the judgments rendered by this Tribunal in Claim Petition No. 98/DB/2021, Gyan Singh Rawat vs. State of Uttarakhand and others, in claim Petition No. 155/DB/2024, Trilok Singh Chauhan vs. State of Uttarakhand and others and in Claim Petition No. 12/SB/2025, Sushil Kumar Chamoli vs. State of Uttarakhand and others, in support of their case.

8. Ld. Counsel for the petitioner submitted that petitioner is working as Class 'D' 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.

9. The petitioner was given monetary benefit, which was in excess of his entitlement. The monetary benefits flowed to him consequent upon a mistake committed by the respondent department in determining the emoluments payable to him. The respondent department has admitted that it is a case of wrongful fixation of salary of the petitioner. The excess payment was made, for which petitioner was not entitled. Long and short of the matter is that the petitioner was in receipt of monetary benefit, beyond the due amount, on account of unintentional mistake committed by the respondent department.

10. Another essential factual component of this case is that the petitioner was not guilty of furnishing any incorrect information, which had led the respondent department to commit the mistake of making a higher payment to the petitioner. The payment of higher dues to the petitioner was

not on account of any misrepresentation made by him, nor was it on account of any fraud committed by him. Any participation of the petitioner in the mistake committed by the employer, in extending the undeserved monetary benefit to the employee (petitioner), is totally ruled out. It would, therefore, not be incorrect to record, that the petitioner was as innocent as his employer, in the wrongful determination of his inflated emoluments. The issue which is required to be adjudicated is, whether petitioner, against whom recovery (of the excess amount) has been made, should be exempted in law, from the reimbursement of the same to the employer. Merely on account of the fact that release of such monetary benefit was based on a mistaken belief at the hand of the employer, and further, because the employee (petitioner) had no role in determination of the salary, could it be legally feasible to the employee (petitioner) to assert that he should be exempted from refunding the excess amount received by him ?

11. In so far as the above issue is concerned, it is necessary to keep in mind that a reference, in a similar matter, was made by the Division Bench of two Judges of Hon'ble Supreme Court in Rakesh Kumar vs. State of Haryana, (2014) 8 SCC 892 for consideration by larger Bench. The reference was found unnecessary and was sent back to the Division Bench of Hon'ble Apex Court for appropriate disposal, by the Bench of three Judges [State of Punjab vs. Rafiq Masih, (2014) 8SCC 883]. The reference, (which was made) for consideration by a larger Bench was made in view of an apparently different view expressed, on the one hand, in Shyam Babu vs. Union of India, (1994) 2SCC 521; Sahib Ram vs. State of Haryana, (1995) (Suppl) 1 SCC 18 and on the other hand in Chandi Prasad Uniyal vs. State of Uttarakhand, (2012) 8 SCC 417, in which the following was observed:

“14. We are concerned with the excess payment of public money which is often described as “tax payers money” which belongs neither to the officers who have effected over-payment nor that of the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. Question to be asked is whether excess money has been paid or not may be due to a bona fide mistake. Possibly, effecting excess payment of public money by Government officers, may be due to various reasons like negligence, carelessness, collusion, favouritism etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the

recipients also without any authority of law. Any amount paid/received without authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment.”

It may be noted here that the petitioners Chandi Prasad Uniyal and others were serving as Teachers and they approached Hon’ble High Court and then Hon’ble Supreme Court against recovery of overpayment due to wrong fixation of 5th and 6th Pay Scales of Teachers/ Principals, based on the 5th Pay Commission Report.

12. 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]

13. 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.”

14. The parties are not in conflict on facts. Petitioner’s case is squarely covered by the aforesaid decision of Hon’ble Supreme Court. The Tribunal observes that the petitioner is a Group ‘D’ employee and recovery made from him would be iniquitous or harsh to such an extent that it would far outweigh the equitable balance of employees’ right to recover.

15. 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, decision 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 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.

16. Since 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. Hon'ble Supreme Court has nowhere observed in any of the decisions, much less in Civil Appeal No.1985 of 2022, the State of Maharashtra and another vs. Madhukar Antu Patil and another, decided on 21.03.2022, that the petitioner is entitled to interest on excess payment. 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. 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. After all, it is public money/ tax payers' money. It was received by the recipient without any authority of law. In Balam Singh Aswal also Hon'ble High Court of Uttarakhand has nowhere directed the respondent department to pay interest to the petitioners on the recovered amount while directing the respondents to return the amount recovered from the retiral dues of the employee.

17. Hon'ble Supreme Court in the decision rendered in *Jogeshwar Sahoo and others vs. the District Judge, Cuttack & others, in civil appeal, arising out of SLP (C) No. 5918/2024*, observed as follows:

“.....7. The issue falling for our consideration is not about the legality of the retrospective promotion and the financial benefit granted to the appellants on 10.05.2017. The issue for consideration is whether recovery of the amount extended to the appellants while they were in service is justified after their retirement and that too without affording any opportunity of hearing.

.....

9. This Court has consistently taken the view that if the excess amount was not paid on account of any misrepresentation or fraud on the part of

the employee or if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous, such excess payments of emoluments or allowances are not recoverable. It is held that such relief against the recovery is not because of any right of the employee but in equity, exercising judicial discretion to provide relief to the employee from the hardship that will be caused if the recovery is ordered.

.....

12. For the aforesaid, we are of the considered view that the appeal deserves to be allowed. Accordingly, we allow the appeal and set aside the order of the High Court and in consequence the orders dated 12.09.2023 and 08.09.2023 by which the appellants were directed to deposit the excess drawn arrears are set aside.”

18. Correct fixation of pay is permissible, after notice, 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

19. Interference is called for in the impugned order dated 16.10.2024 (Annexure: A 1), on the basis of above discussion. The same is, accordingly, set aside/ modified, to the extent as is found necessary. Respondents are directed to refund Rs.1,83,340/- to the petitioner, which have been recovered from him, without unreasonable delay.

20. The claim petition is disposed of. No order as to costs.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: AUGUST 20, 2025
DEHRADUN

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