

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
BENCH AT NAINITAL**

Present: Hon'ble Mr. Rajendra Singh

----- Vice Chairman (J)

Hon'ble Mr. A. S.Rawat

-----Vice Chairman (A)

CLAIM PETITION NO.04/NB/DB/2025

Charu Chandra Joshi, (Male) age about 61 years S/o Late Pitambar Dutt Joshi R/o EWS 115/3 Awas Vikas Colony, Post Bhotiya Paraw, Haldwani District Nainital, Uttarakhand.

.....**Petitioner**

Vs.

1. State of Uttarakhand through Secretary Transport, Civil Secretariat, Subhash Marg, Dehradun.
2. Managing Director, Uttarakhand Transport Corporation U.C.F. Sadan, Deep Nagar Road, Vishnu Vihar, Ajabpur Kalan, Dehradun.
3. General Manager, (Technical) Uttarakhand Transport Corporation U.C.F. Sadan, Deep Nagar Road, Vishnu Vihar, Ajabpur Kalan, Dehradun.
4. Divisional Manager, (Technical) Uttarakhand Transport Corporation, Tanakpur, District Champawat.

.....**Respondents**

Present: Sri G.C.Kandpal, Advocate for the petitioner
Sri Kishore Kumar, A.P.O. for the Respondent no. 1
Sri Shobhit Joshi, holding brief of
Sri Ashish Joshi, Advocate for the respondents no. 2,3 & 4

JUDGMENT

DATED: SEPTEMBER 04, 2025

HON'BLE MR. A.S.RAWAT, VICE CHAIRMAN (A)

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

“A. To set aside the impugned order dated 29.05.2024 passed by respondent No. 4 (Annexure No. 1 to the compilation No.1)

B. To direct the respondents after calculating the gratuity according to the grade pay 4200/-, to pay the amount of difference which is stopped/recovered by the respondent from the gratuity of the petitioner as well as the remaining amount of earn leave which was calculated according to the grade pay 2800.

C. To issue any other order or direction, which this Hon'ble Tribunal may deem fit proper in the circumstances of the case.

D. Award the cost of the Claim petition in favour of the petitioner.”

2. Relevant facts, which are necessary for adjudication of present claim petition, are as under:

2.1 Petitioner was initially appointed as Cleaner in the respondent department on 14.06.1989. The petitioner was promoted to the post of Assistant Mechanic and subsequently retired from this post on 31.05.2024 after attaining the age of superannuation. Vide order dated 29.05.2024, issued by Respondent No. 4, his enhanced grade pay of Rs. 4200/- was reduced to Rs.2800/-. The petitioner's gratuity was sanctioned to the tune of Rs. 13,23,686/-on the basis of grade pay 4200/- when the same was ought to be given to the petitioner by the respondent department.

2.2 Vide office order dated 06.09.2021 issued by the Assistant General Manager, Haldwani stating therein that the tentative salary assessment has been done according to the order dated 11.11.2020 of Corporation Headquarters, Dehradun and other Government orders. The amended tentative salary assessment was finalized by the order dated 18.08.2021, if the concerned employee is not satisfied by the said order, then he can approach the General Manager (administration) with written representation. The petitioner moved a representation dated 08.09.2021 to the respondent No. 3 stating his grievances and requested that his grade pay 4200/- may be restored

in view of the government orders relating to the salary up gradation and ACP.

2.3 An identical matter, "Mahendra Singh Jeena Vs. State of Uttarakhand" and several matters decided by a common judgment in "Dalip Singh vs State of Uttarakhand" have been dealt with at length by this Hon'ble Tribunal. In the said judgment the Hon'ble Tribunal has held that the G.O. Dated 22/8/2014 is not contrary to the G.O. Dated 06.11.2013, it is only a supplement to the G.O. dated 06.11.2013 and directed the respondents to pay the gratuity and the other arrears stopped/recovered by them within 60 days calculating the grade pay at Rs. 4200.

2.4 The petitioner is entitled for gratuity under grade pay 4200/- which was last drawn by him at the time of his retirement and even the petitioner is entitled to get the amount of difference which is stopped / recovered from gratuity with interest thereon

2.5 Vide order dated 29.05.2024, issued by Respondent No.4, it was ordered that a sum of Rs. 2,31,018/- shall be deducted from the amount of gratuity of the petitioner. This claim petition has been filed for setting aside the impugned orders of recovery and releasing the gratuity amount along with interest. A prayer has also been made for releasing leave encashment along with interest. The Hon'ble Apex Court has given arrangements in some matter where recovery cannot be made from employees belonging to class III and class IV service, from retired employees as well as the employees who are due to retire within one year of the order of recovery.

3. The claim petition has been contested on behalf of respondents. Sri Manoj Durgapal, General Manager (Personnel), Uttarakhand Transport Corporation, Nainital Region, Nainital has filed Counter Affidavit on behalf of Corporation, Kathgodam, Respondents No. 2, 3 & 4. Relevant documents have also been filed in support of the Counter Affidavit.

3.1 In the C.A., an endeavour has been made to justify the departmental action. It has mentioned in the C.A. thus filed that in pursuance to the report of the special audit committee, the salary of the petitioner has been fixed vide order dated 18.08.2021. After his retirement, the amount of gratuity to be paid to the petitioner was calculated to be Rs.13,23,686/-. But due to the wrong fixation of salary/ grant of ACP the petitioner was given excess amount during his service period i.e. Rs. 2,31,018/- which has been adjusted towards the amount of gratuity and remaining amount of gratuity Rs.10,92,668/- has been paid to the petitioner through cheque no. 392624 dated 25.10.2024. The amount of Leave Encashment calculated in the favour of petitioner is Rs. 6,55,540/- which has already been paid to him through cheque no. 974554 dated 13-09-2024. The petitioner has received the amount of gratuity and leave encashment which was re-fixed by the Corporation on the basis of the report of the special audit committee and after receiving the said amount without any protest now the petitioner is challenging the same in the present claim petition.

3.2 In reply to the contentions of para 19 of the claim petition, it is stated that the judgment dated 17.08.2022 in Claim petition no. 27/NB/SB/2021 registered as Mahendra Singh Jeena and others Vs. State of Uttarakhand and others is already under challenge before the Hon'ble High Court in Writ Petition (S/B) No. 669 of 2022 registered as M.D. Uttarakhand Transport Corporation and others Vs. Mahendra Singh Jeena wherein the Hon'ble Court vide its order dated 21.02.2023 has granted stay on the Execution Proceedings before the Tribunal. The claim petition has no force and same is liable to be dismissed.

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

5. We have heard Learned Counsel for the parties and perused the record.

6. Learned Counsel for the petitioner argued that the petitioner retired from this post on 31.05.2024 after attaining the age of superannuation. Vide order dated 29.05.2024, issued by Respondent No. 4, his enhanced grade pay of Rs. 4200/- was reduced to Rs.2800/-. The petitioner's gratuity was sanctioned to the tune of Rs. 13,23,686/- on the basis of grade pay 4200/- when the same was ought to be given to the petitioner by the respondent department. It is further argued that the petitioner is entitled to receive gratuity amount calculated on the basis of grade pay 4200/-, as decided in the Claim petition No 27/NB/SB/2021, Mahendra Singh Jeena vs. State of Uttarakhand & ors, which was last drawn by him at the time of his retirement. The petitioner is entitled to get the amount of difference, which is stopped/recovered from his gratuity with interest thereon. Learned Counsel for the petitioner has also given a reference of the judgment passed by this Tribunal in Claim Petition No. 90/NB/SB/2021, Dalip Singh vs State of Uttarakhand & Ors and other connected Claim Petitions, in which, the respondents were directed to pay the gratuity and other arrears stopped/ recovered by them and the present claim petition may also be decided in terms of the said judgments.

7. Learned Counsel for the contesting respondents has argued that after retirement of the petitioner, the amount of gratuity to be paid to the petitioner was calculated to be Rs.13,23,686/-. But due to the wrong fixation of salary/ grant of ACP the petitioner was given excess amount during his service period i.e. Rs. 2,31,018/- which has been adjusted towards the amount of gratuity and remaining amount of gratuity Rs.10,92,668/- has been paid to the petitioner through cheque no. 392624 dated 25.10.2024. It is further argued that the fixation of grade of pay Rs. 4200 is under challenge in similar matter before the Hon'ble High Court. Hence the Claim petition is liable to be dismissed.

8. Based on the arguments of the Learned Counsels for the parties and the records placed before the Tribunal, we find that the petitioner was given monetary benefit, which was in excess of his entitlement. The monetary benefits given was consequent upon

mistakes committed by the Respondent Corporation in determining the emoluments payable to him. He was in receipt of monetary benefits, beyond the due amount, on account of unintentional mistake committed by the Respondent Corporation.

9. One essential factual component of the above noted case is that the petitioner was not guilty of furnishing any incorrect information, which led the Respondent Corporation to commit the mistake of making higher payments to him. In other words, 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 him, is totally ruled out. The petitioner was as innocent as their employer, in the wrongful determination of his inflated emoluments.

10. The issue was settled by the Hon'ble Apex Court in State of Punjab vs. Rafiq Masih, (2015) 4 SCC 334. 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."*

[Emphasis supplied]

11. 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.

12. There is, however, no embargo on the respondent department against correct fixation of pay after retirement, as per 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 [Citation-2018: AHC:204373].

13. Hon'ble Supreme Court, in the decision rendered in Civil Appeal No.1985 of 2022, the State of Maharashtra and another vs. Madhukar Antu Patil and another, on 21.03.2022, has observed that, on re-fixation of pay scale and pension, there shall not be any recovery of the amount already paid to the retired employees.

14. In view of the facts and the judgements of the Hon'ble Courts, it is clear that the petitioner is a retired 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 employers' right to recover. This case is covered under the guidelines laid down by the judgement of Hon'ble Apex Court in State of Punjab vs. Rafiq Masih, (2015). The petitioner is liable to be refunded the amount of Rs 2,31,018/- deducted from his gratuity amount. The relief sought by the petitioner for direction to the respondents calculating the gratuity according to grade pay on 4200/- and pay the difference, which is deducted/stopped, by relying on the judgement of this Tribunal in claim petition 27/NB/SB/2021 has not been considered, as the similar controversy related to fixation of grade is pending before the Hon'ble High Court. Hence the claim petition is liable to be partly allowed to the extent of refunding the deducted/recovered amount from gratuity.

ORDER

The claim petition is partly allowed to the extent of refunding the deducted/recovered amount from gratuity and accordingly, the respondents are directed to refund the amount of Rs 2,31,018/- to the petitioner, which was deducted from the gratuity of the petitioner within two months of presenting the certified copy of the judgement. No order as to costs.

RAJENDRA SINGH
VICE CHAIRMAN (J)

A.S.RAWAT
VICE CHAIRMAN (A)

DATED: SEPTEMBER 04, 2025
DEHRADUN
KNP