

**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.05/NB/DB/2025**

Inder Singh Bisht, (Male) age about 61 years S/o Late Narayan Singh Bisht  
R/o Village Pachpakariya, Post- Chandani, Champawat District  
Champawat, 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 30.07.2024 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 issued 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. Brief facts of the case are as under:

2.1 Petitioner being ITI holder appointed in the year 1989 was promoted to the post of Fitter on 01.12.1995. Thereafter, he was promoted to the post of Assistant Mechanic and subsequently retired from this post on 31.07.2024 after attaining the age of superannuation. He was drawing salary of grade pay Rs. 4200/- on that date. Vide order dated 30.07.2024, 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.

2.3 The petitioner was given show cause notices on 27.04.2019 and 19.07.2021 by the respondent No. 4 stating therein that under the arrangement of A.C.P., the sanctioned A.C.P. is being amended accordingly if the petitioner has any objections, then he can make representation within 10 days to the respondent office through proper channel, which was replied by the petitioner on 24.05.2019 & 28.07.2021 respectively.

2.4 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 22.08.2014 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.

2.5 The petitioner is entitled for his 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 his gratuity with interest thereon.

2.6 Vide order dated 30.07.2024, issued by Respondent No.4, it was ordered that a sum of Rs. 2,85,099/- shall be deducted from the amount of gratuity of the petitioner. This claim petition has been filed for setting aside the impugned order 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. 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 with relevant documents on behalf of Corporation, Kathgodam, Respondents No. 2, 3 & 4.

3.1 In the C.A., an endeavour has been made to justify the departmental action by stating that the grade pay of the petitioner was determined after conducting audit by the respondent corporation. The pay fixation of the petitioner is as per rules, therefore, the adjustment of the excess payment was rightly done by the respondent corporation. It is submitted that vide order dated 12.07.2021, the benefit of the ACP which has been given to the petitioner has been

amended in pursuance to the Government Order dated 11.11.2020. It is further submitted that vide order dated 19.07.2021, the petitioner was given the opportunity of hearing, to give the objection against the order dated 12.07.2021. The petitioner has given the objection and thereafter, vide order dated 30.07.2024, the order for recovery of the excess amount paid to the petitioner due to wrong fixation of ACP was passed.

3.2 It has further been stated that earlier that the petitioner was given the Grade pay of Rs. 2800/- vide order dated 01-11-2013 and grade pay of Rs. 4200/- vide order dated 11.09.2015, which has been amended as per the audit report dated 11.11.2020 and the order dated 30.07.2024 has been passed after hearing the petitioner. The payment of gratuity has been given on the basis of the amended grade pay of the petitioner. The petitioner has been given the benefit of the 3rd MACP in Grade pay of Rs. 4200/- from 01.12.2021 vide order dated 23.04.2022 and the earlier grade pay of Rs. 4200/- given from 01-11-2013 has been cancelled.

3.3 Further, in reply to contentions of the para 17 of the claim petition, it is stated that the judgment dated 17-08-2022 in the in Claim petition no. 27/NB/SB/2021 registered as Mahendra Singh Jeena and others Vs. State of Uttarakhand and others is already under challenged 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. There is no illegality in the order dated 30.07.2024 and 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 has argued that the petitioner retired from service after attaining the age of superannuation on 31.07.2024. Vide order dated 30.07.2024, 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 & others, 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 vide order dated 12.07.2021, the benefit of the ACP, which has been given to the petitioner has been amended in pursuance to the Government Order dated 11.11.2020. The petitioner was given the opportunity of hearing, to give the objection against the order dated 12.07.2021. The petitioner gave the objection and thereafter, vide order dated 30.07.2024, the order for recovery of the excess amount paid to the petitioner due to wrong fixation of ACP was passed. It has further been argued that earlier the petitioner was given the Grade pay of Rs. 2800/- vide order dated 01.11.2013 and grade pay of Rs. 4200/- vide order dated 11.09.2015 which has been amended as per the audit report dated 11.11.2020 and the order dated 30.07.2024 has been passed after hearing the petitioner. The payment of gratuity has been

given on the basis of the amended Grade pay of the petitioner. It is further argued the fixation of grade of Rs. 4200 is under challenge in similar matter before the Hon'ble High Court. There is no illegality in the order dated 30.07.2024 and the claim petition has no force and same 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' employees 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 2,85,099/- 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. 2,85,099/- 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*