

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

Present: Hon'ble Mr. Rajendra Singh

.....Vice Chairman (J)

Hon'ble Mr. A.S.Rawat

.....Vice Chairman (A)

CLAIM PETITION NO. 93/DB/2022

1. Dilbagh Singh (male) aged about 70 years S/o Late Sri Banta Singh R/o Ward No. 2, Vidyapeeth Marg, Vikasnagar, District Dehradun. Retired from the post of Heavy Crane Operator, Establishment Division, Irrigation Department, Dakpathhar, Dehradun.
2. Akbar Ali (male) aged about 68 years S/o Late Sri Ijhar Hussain R/o Village Mehwala, Post Ambari, District Dehradun. Retired from the post of Mechanic, Establishment Division, Irrigation Department, Dakpathhar, Dehradun.
3. Johra Begum (female) aged about 72 years W/o Late Sri Hayat Ali R/o Village Jeevangarh, Post Ambari, District Dehradun. Late Sri Hayat Ali retired from the post of Master Mechanic, Establishment Division, Irrigation Department, Dakpathhar, Dehradun.
4. Kashi Ram (male) aged about 70 years S/o Late Sri Lal Singh R/o old Yamuna Colony, Dakpathhar, District Dehradun. Retired from the post of Heavy Crane Operator, Establishment Division, Irrigation Department, Dakpathhar, Dehradun.
5. Veer Bahadur Srivastava (male) aged about 70 years S/o Late Sri Baleshwar Srivastava R/o N-12/340-1C, Bharatpuram Colony, P.O. Bajardiha, District Varanasi, U.P. Retired from the post of Foreman, Irrigation Workshop, Roorkee, Haridwar.
6. Shobha Malkani (female) aged about 72 years W/o Late Sri Mohan Chand Malkani R/o Anand Vihar, Phase-I, Near Saraswati Academy, Loahariya Saal Malla, Post Kathghariya, Haldwani, District Nanital. Late Sri Mohan Chand Malkani retired from the post of Processing Plant Operator, Irrigation Department, Vikas Nagar, Dehradun.
7. Parmu Mistri (male) aged about 70 years S/o Late Sri Panthi R/o Village Baadwala, Post Baadwala, District Dehradun. Retired from the post of Operator, Establishment Division, Irrigation Department, Dakpathhar, Dehradun.
8. Kanhaiya Singh (male) aged about 70 years S/o Late Sri Shukla Singh R/o Village Allapur Mohkam, District Bijnaur, U.P. Retired from the post of

Driller, Establishment Division, Irrigation Department, Dakpathhar, Dehradun.

9. Muninder Kishore (male) aged about 70 years S/o Late Sri Parmanand R/o Village Thano, Post Thano, District Dehradun. Retired from the post of Heavy Crane Operator, Irrigation Department, Pashulok, Rishikesh.

10. Harbhajan Singh (male) aged about 70 years S/o Late Sri Darshan Singh R/o Sangatpura, P.O. Khalwad, District Kapurthala, Punjab. Retired from the post of Master Welder, Establishment Division, Irrigation Department, Dakpathhar, Dehradun.

11. Janeshwar Prasad (male) aged about 73 years S/o Late Sri Kundan Lal R/o Dinkar Vihar, Vikas Nagar, District Dehradun. Retired from the post of Chowkidar, Establishment Division, Irrigation Department, Dakpathhar, Dehradun.

12. Guljar Singh (male) aged about 70 years S/o Late Sri Fauja Singh R/o Village Dukoha, P.O. Baba Vakala, District Batala, Punjab. Retired from the post of Fitter, Establishment Division, Irrigation Department, Dakpathhar, Dehradun.

13. Poorna Devi (female) aged about 70 years W/o Late Sri Prem Singh R/o House No. 675, Ward No. 5, Kesar Bagh, Babugarh, District Dehradun. Late Sri Prem Singh retired from the post of Surveyor, Establishment Division, Irrigation Department, Dakpathhar, Dehradun.

14. Ravi Kumar Bhatnagar (male) aged about 70 years S/o Late Sri K.P. Bhatnagar R/o C-13, Tons Colony, Dakpathhar, District Dehradun. Retired from the post of Fitter, Irrigation Department, Nalkoop, Dehradun.

15. Baldev Singh (male) aged about 70 years S/o Late Sri Babu Singh R/o C/o Dilbagh Singh, Ward No. 2, Vidyapeeth Marg, Vikasnagar, District Dehradun. Retired from the post of Chargeman Rigger, Establishment Division, Irrigation Department, Dakpathhar, Dehradun.

16. Dr. Vijay Singh Gupta (male) aged about 75 years S/o Late Sri Jagdish Prasad R/o Behat, Behat Road, Saharanpur, District Saharanpur, U.P. Retired from the post of Doctor, Establishment Division, Irrigation Department, Dakpathhar, Dehradun.

17. Aliyama George (female) aged about 70 years W/o Late Sri C.O. Thomas R/o C/o Dilbagh Singh, Ward No. 2, Vidyapeeth Marg, Vikasnagar, District Dehradun. Late Sri C.O. Thomas retired from the post of Technician, Establishment Division, Irrigation Department, Dakpathhar, Dehradun.

18. Sushila Jha (female) aged about 70 years W/o Late Sri Gopal R/o Kunj Vihar, Phase No. 1, Haridwar Bypass, Post Banjarawala, District Dehradun. Late Sri Gopal retired from the post of Doctor, Establishment Division, Irrigation Department, Dakpathhar, Dehradun.

19. Bhoop Singh (male) aged about 75 years S/o Late Sri Sadaram R/o Hospital Road, Vikas Nagar, District Dehradun. Retired from the post of Telephone Operator, Establishment Division, Irrigation Department, Dakpathhar, Dehradun.

20. Fakir Chand Pathak (male) aged about 71 years S/o Late Sri Devi Datt Pathak R/o Ram Bagh, Herbertpur, District Dehradun. Retired from the post of Assistant Storage Keeper, Establishment Division, Irrigation Department, Dakpathhar, Dehradun.

21. Kunwar Singh Negi (male) aged about 70 years S/o Late Sri Govind Singh Negi R/o Ram Bagh, Herbertpur, District Dehradun. Retired from the post of Crane Operator, Tubewell Division, Irrigation Department, Dehradun.

22. Jainand Prasad Tyagi (male) aged about 75 years S/o Late Sri Sugan Chand Tyagi R/o B-247, Lakhwad Colony, Dakpathhar, Dehradun. Retired from the post of Supervisor, Irrigation Department, Dakpathhar, Dehradun.

.....**Petitioners**

Vs

1. State of Uttarakhand through its Secretary, Irrigation, Uttarakhand, Dehradun.
2. Chief Engineer/Head of the Department, Irrigation Department, Uttarakhand, Yamuna Colony, Dehradun.
3. Executive Engineer, Establishment Division, Irrigation Department, Dakpathhar, Dehradun.
4. Executive Engineer, Nalkoop Division, Irrigation Department, Dehradun.
5. Executive Engineer, Irrigation Workshop, Irrigation Department, Roorkee, Haridwar.
6. Executive Engineer, Power House Division, Irrigation Department, Pashulok, Rishikesh.

.....**Respondents**

Present: Sri S.S.Yadav, Advocate for the petitioners
 Sri Kishore Kumar, A.P.O., for the respondents

JUDGMENT

DATED: DECEMBER 09, 2025

Per: Hon'ble Sri A.S.Rawat, Vice Chairman (A)

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

"I. Issue an order or direction to set aside the impugned order dated 17.03.2020 (Annexure No. 1 to the claim petition) so far concerned to the petitioners.

II. Issue an order or direction to the respondents to pay the benefit of ACP, MCP and increments and its arrears of 03 years to the petitioners but the previous service be counted as a length of service and other increments be fixed revising and giving fresh look to re-fix and pay the same excluding the due arrears prior to rendered service of 03 years from the date of judgment i.e. 02.09.2019 be treated as cut-off date and fix the all admissible service benefits on the date since which 03 years starts and onwards till retirement and on that basis fix the pension revising it respectively to each petitioner.

III. Issue an order or direction to the respondents to pay the arrears of leave encashment of about 300 days as depicted in the service book of each petitioner except petitioner no. 22 because he has already filed the Writ Petition No. 1691 (S/S) of 2021 "Jainand Prasad Tyagi Vs. State of Uttarakhand and others" for the same benefit of leave encashment of 300 days.

IV. Issue an order or direction which this Hon'ble Tribunal may deem fit and proper under the circumstances of the case may kindly be passed.

V. Award the cost of the petition."

2. Brief facts of the case, are as follows:

2.1 All the petitioners have been retired but they have been denied for the pensionary benefits the reason was they were not fulfilling the qualifying regular service of 10 years in a regular establishment albeit they have worked more than 28 to 32 years in the work charged establishment and their services were not regularized. The numbers of writ petitions in the concern subject were filed in the State of U.P. and in the State of Uttarakhand that was allowed by Hon'ble High Courts of Allahabad and Nainital. Against those judgments the State has filed SLP before Hon'ble Apex Court but the matter was identical so it was clubbed with the leading case of "Prem Singh Vs. State of U.P. and others" Civil Appeal No. 6798 of 2019 @ Special Leave Petition (C) No. 4371 of 2011 which was finally decided on 02.09.2019

whereby the Hon'ble Apex Court has given directions as quoted here as under: -

"36. In view of reading down Rule 3(8) of the U.P. Retirement Benefits Rules, 1961, we hold that services rendered in the work-charged establishment shall be treated as qualifying service under the aforesaid rule for grant of pension. The arrears of pension shall be confined to three years only before the date of the order. Let the admissible benefits be paid accordingly within three Resultantly, the appeals filed by the employees are allowed and filed by the State are dismissed."

2.2 As a result, an office memorandum dated 28.02.2020 was issued from the office of respondent no. 2 that the work charged employees appointed prior to 01.10.2005 and their length of service as a work charged is not less than 10 years they will be entitled for the annual increment time scale and benefit of MACP etc. all service benefits will be given notionally. The calculation of pension be placed before the Treasury and after its proceeding interim pension be issued immediately. Thereafter, on 17.03.2020 was issued by virtue of which already given benefits vide office memorandum dated 28.02.2020 in the strength of order dated 13.02.2020 has been partly the withdrawn without affording opportunity to effected persons denying the fundamental rights and violating the spirit of judgment dated 19.02.2019 passed by the Hon'ble Supreme Court.

2.3 One Sri Prem Singh, Retired Meth who was appointed on 03.01.1998 in work charged establishment and after his retirement on 30.04.2019, the retiral dues on the basis of length of service and as per the discipline of judgment of the Hon'ble Apex Court in the Civil Appeal No. 6798 of 2019 @ SLP Civil No. 4378 of 2011 the department has prepared the total pensionary benefits and also monthly pension of Sri Prem Singh but in the case of the petitioners such parameters have not been adopted. It is a hostile discrimination between the same category of the employees. No doubt Sri Prem Singh was appointed on 03.01.1998 in work charged establishment

but they were not in regular establishment but they have got the same status due to judgment of Hon'ble Apex Court dated 02.09.2019.

2.4 The petitioners have made their representation dated 05.05.2022 in regard to the payment of ACP, MCP, increment and all benefits notionally as per the office memorandum dated 28.02.2020 and in the representation they have stated vide letter dated 17.03.2020 violating the spirit of the order dated 02.09.2019 passed by the Hon'ble Apex Court the respondents have violated, denied and committed the contempt of Hon'ble Apex Court without taking leave from the Hon'ble Apex Court under which authority of law they have passed the order on 17.03.2020 and reduced the miscellaneous benefits of the petitioners which once granted vide office memorandum dated 28.02.2020 and without affording the opportunity of hearing it has been withdrawn as per their own wisdom, this act can be term as arbitrary, illegal and violative of the judgment dated 02.09.2019 Hon'ble Supreme Court. After being tired from all corners, the petitioners have approached the Hon'ble Apex Court and the Hon'ble Apex Court kind enough and treated was the petitioners equally entitled to the employees working in the regular establishment.

2.5 The petitioners filed Writ Petition No. 454 of 2022 (S/B), Dilbagh Singh and others Vs. State of Uttarakhand and others, which has been remitted back by the Hon'ble High Court on 03.08.2022. The petitioners are retired and they have been denied the equal fixation of their pensions like it has been fixed in the case of Sri Prem Singh so they are getting a very less amount of per month pension.

2.6 By the strength of letter dated 17.03.2020, the respondents have taken back the benefits which was granted to the petitioners in the discipline of the order of the Hon'ble Apex Court under which provisions of law it has been withdrawn. The order dated 17.03.2020 is the arbitrary, illegal and liable to be quashed and petitioners be permitted for same benefits like in the case of Sri Pem Singh and also

for monthly pensions respectively as per their posts. The petitioners be provided all the admissible benefits on the basis of as per para no. 36 of the judgment dated 02.09.2019 but the respondents have misinterpreted the judgment passed by the Hon'ble Apex Court and they have only paid the scale of their post drawn on the date of retirement as per their calculation but admissible other benefits other benefits have been denied so they are praying to be paid the benefit of ACP, MCP and increments and its arrears of 03 years but the previous service be counted as a length of service and other increments be fixed revising and giving fresh look re-fix and pay the same excluding the due arrears prior to rendered service of 03 years but before retirement of 03 years be treated as cut-off date and fix the all admissible service benefit on the date since which 03 years starts and onwards till retirement and on that basis fix the pension revising it.

2.7 The petitioners have not been given the arrears of leave encashment of about 300 days as depicted in the service book of each petitioner except petitioner no. 22 because he has already filed the Writ Petition No. 1691 (S/S) of 2021 "Jainand Prasad Tyagi Vs. State of Uttarakhand and others" for the same benefit of leave encashment of 300 days. The petition filed by the petitioner no. 22 is still pending before this Hon'ble Court for final adjudication. It is a different issue related to the direction of the judgment passed by the Hon'ble Apex Court. This is also denied by the respondents till date. The petitioners be paid the benefit of ACP, MCP and increments and its arrears of 03 years, but the previous service be counted as a length of service and other increments be fixed revising and giving fresh look to re-fix and pay the same excluding the due arrears prior to rendered service of 03 years from the date of judgment i.e. 02.09.2019 be treated as cut-off date and fix the all admissible service benefits on the date since which 03 years starts and onwards till retirement.

3. Opposing the claim petition, the respondents have filed C.A/W.S. in which they have stated that the petitioners have

challenged the Office Memorandum dated 17.03.2020, by which they have demanded for calculating their past services for the benefit of ACP, MCP and three years' arrears along with pay hike. It is mentioned that earlier the service of the work-charged establishment was not permissible for retirement benefits like pension etc. But by the order dated 02.09.2019 passed by the Hon'ble Supreme Court, New Delhi, instructions were given to include the services of the work-charged establishment in the qualifying service for retirement benefits and regarding the encashment of earned leave in the service of work-charged establishments, as per the letter No. 3876/Ka.P.A.P./132 Miss/Leave Cases and Service Interruption, dated 30.01.1985 of the Chief Engineer (Work-charged Establishment), Irrigation Department, Uttar Pradesh, work-charged employees are not entitled to the facility of encashment of earned leave. The order of the Hon'ble Supreme Court, New Delhi, dated 02.09.2019 also does not contain any order regarding the liability for earned leave and the retirement benefits of retired employees are to be given by considering their service in the work-charged establishment as qualifying service for pension. Therefore, the pension/gratuity of all such retired work-charge employees has been calculated according to the last salary drawn at the time of retirement. The Hon'ble Supreme Court has clearly stated that pension/gratuity benefits have been granted based on the work-charge service being considered solely as a qualifying service for pension. The Hon'ble Supreme Court, New Delhi, has not mentioned its order for calculation of work-charge service for the retirement benefits. The petitioners have misinterpreted the order of the Hon'ble Supreme Court for their own illegal benefit. Therefore, their claims that the Office Memorandum dated 17.03.2020 disregards the order of the Hon'ble Supreme Court, New Delhi, is false. The letter dated 30.01.1985 of the Chief Engineer, Irrigation Department, Uttar Pradesh, Lucknow, clearly states that there is no rule for the use or encashment of leave earned for services rendered in a charge-charged establishment upon appointment to a regular establishment. Furthermore, the decision dated 02.09.2019 passed by the Hon'ble

Supreme Court, New Delhi, also does not issue any comment/directive in this regard. It is also worth mentioning here that the above facts have already been mentioned in the counter affidavit filed on behalf of the State in Writ Petition No. 1691/SS/2021/Shri J.P. Tyagi vs. State and others and the said writ petition is pending before the Hon'ble High Court of Uttarakhand, Nainital. The claim petition is based on false and misleading facts and is liable to be dismissed.

4. The petitioners have also filed R.A. denying the averments made in the C.A./W.S. and it has been stated that the denial of the earn leave of the petitioners and also the denial of the arrears of leave encashment of about 300 days as depicted in the service book of the petitioner is arbitrary and illegal. The petitioners deserve the same benefit. The Hon'ble Supreme Court in the case of Prem Singh Vs. State of Uttar Pradesh dated 02.09.2019 has directed to count the previous service for the pension and other service benefits, but the respondents are misinterpreting and they are not giving the leave encashment benefit of 300 days to each petitioner from their respective due date. The petitioners have not disobeyed the order dated 02.09.2019; but the respondents have knowingly avoided the effect of the order dated 02.09.2019. The due amount prayed by way of the claim petition is the earning of the petitioners during their service period. The respondents constituting a committee dated 17.03.2020 have transgressed and wrongly misinterpreted the judgment of 02.09.2019 in the case of Prem Singh and Others vs. State of Uttar Pradesh and others, which is the leading case on this issue and the principle and all directions laid down in the said judgement of the Apex Court is mandatory. The respondent authority has no right to sit over the judgement and so far, the constitution of the committee dated 17.03.2020 and its decision is void because it is against the natural justice. The affected persons' objections have not been invited. The respondent authority sitting in their office have taking this decision against the spirit of the judgement dated 02.09.2019 passed by the

Hon'ble Apex Court, this is an arbitrary, illegal and contemptuous act. Hence the claim petition is liable to be allowed.

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

6. Learned Counsel for the petitioners argued that the petitioners were appointed as work charged employees in the Irrigation Department of the erstwhile Uttar Pradesh and were subsequently taken in the State of Uttarakhand after bifurcation. These work charged employees were never regularized even after putting 30-40 years of the service in the irrigation department. They have been paid pension/gratuity in view of the judgement of the Hon'ble Apex Court in SLP (Civil) No 4371/2011 dated 02/09/2019 in the matter of Prem Singh Vs State of U.P. & others. In compliance of the judgement of the Hon'ble Apex Court, the Respondents No-2 issued an order dated 28/02/2020 by which the work charged employees were ordered to be given benefit of Annual increments, ACP, MACP and time scale of pay etc. notionally in fixing the last pay for calculation of the pension, but the order was modified on the instruction of the Committee under the Chairmanship of the Chief Secretary and the amended order was issued on 17/03/2020 vide which the work charged employees were made entitled to the Pension and gratuity only. The learned Counsel for the petitioner further argued that that similar benefits has been to the worked charged employees of Haryana vide the order of the Hon'ble Apex Court in Civil Appeal No. 5740-5471 of 1997 dated 31st October 2000 in the matter of State of Haryana and others vs. Ravindra Kumar and others. In view of above the impugned order date 17/03/2020 is liable to be quashed and the Claim petition is liable to be allowed.

7. Learned A.P.O. argued that the earlier the service rendered in the work charged establishment was not admissible for the pensionary benefits. But in view of the order of the Hon'ble Apex Court dated 02/9/2019 in the matter of Prem Singh and others vs State of U.P. and

others service rendered in the work charged establishment was included for the qualifying service for the pensionary benefits. The work charged employees were never given the facility of leave encashment vide order dated 30/01/1985 and there is no order for payment of the leave encashment in the aforesaid order of the Hon'ble Apex Court also. Accordingly, the petitioners have been paid pension and gratuity based on their last pay drawn as work charged employees. The order dated 28.02.2020 of the Respondent No-2 has been rectified vide order dated 17.03.2020 on the correct interpretation of the aforesaid order of the Hon'ble Apex Court. He has further argued that claim of the petitioners is based on the wrong interpretation of the order of the Hon'ble Apex Court. Hence, the claim petition is liable to be dismissed.

8. Based on the arguments of the parties and the records place before the Tribunal, we find that the petitioners have been paid pension and gratuity in view of the impugned order dated 17/03/2020. They are praying for payment of the Annual Increments/ACP/ MACP and time scale as per the order dated 28/02/2020 of Respondent no. 2 and fix their pension accordingly. They are drawing analogy with the case of Prem Singh who was regularized on 03.01.1998 and was paid the benefits of the regular employees after regularization and his services rendered as the work charged employees was added for the pensionary benefits. The case of the petitioner is different on the point that they were never regularized and the entire service rendered by them was as work charged employees. So the last pay as work-charged employees have been considered for fixation of pension and gratuity. The relevant para of the order of the Hon'ble Apex Court in the case of Prem Singh vs. State of U.P. & others is being reproduced below to bring a clear perspective of the matter:

""36. In view of reading down Rule 3(8) of the U.P. Retirement Benefits Rules, 1961, we hold that services rendered in the work-charged establishment shall be treated as qualifying service under the aforesaid rule for grant of pension. The arrears of pension shall be confined to three years only before the date of the order. Let the

admissible benefits be paid accordingly within three Resultantly, the appeals filed by the employees are allowed and filed by the State are dismissed."

9. The judgement of the Hon'ble Apex Court in the matter of **State of Haryana and others vs. Ravindra Kumar and others** being relied upon by Learned Counsel for the petitioners is not relevant to this case, as the rules related to the work-charged establishment of Haryana are different from Uttarakhand.

10. In view of the above discussion, we are of the opinion that the petition is devoid of merit and is liable to be dismissed.

ORDER

The claim petition is hereby dismissed. No order as to costs.

RAJENDRA SINGH
VICE CHAIRMAN (J)

A.S.RAWAT
VICE CHAIRMAN (A)

*DATED: DECEMBER 09, 2025
DEHRADUN
KNP*