

**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.28/NB/DB/2020

Umesh Chandra Upreti, aged about 56 years (Male) S/O Sri Jamuna Dutt Upreti, R/O Krishna Colony, Gali No. 4, Village Lahariyasal Mala, P.O. Kathgodam, Haldwani, District Nainital.

.....Petitioner

Vs.

1. State of Uttarakhand through Secretary, Irrigation Department, Government of Uttarakhand, Dehradun.
2. Chief Engineer and Head of Department, Irrigation Department, Uttarakhand, Dehradun.
3. Chief Engineer, Irrigation Department, Kumaon Region, Haldwani, District Nainital.
4. Superintending Engineer, Irrigation Works Circle, Irrigation Department, Nainital.
5. Executive Engineer, Irrigation Division, Irrigation Department, Haldwani, District Nainital.
6. Secretary, Finance Department, Government of Uttarakhand, Dehradun.

.....Respondents

Present: Sri Bhagwat Mehra, Advocate for the petitioner
Sri Kishore Kumar, A.P.O. for the respondents

JUDGMENT

DATE: JANUARY 21, 2026

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 28-05-2019 issued by the Respondent No. 2 rejecting the request of the petitioner (Annexure No. 1 to the Compilation- 1).

B. To direct the Respondents, particularly Respondent No. 1 and 2 to give benefit of past services to the petitioner for the purpose of A.C.P., as has also been given to other similarly situated persons.

C. To direct the Respondents, particularly Respondent No. 2 to grant all consequential benefits to the petitioner.

D. To pass any other suitable order as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

E. To allow the claim petition with cost.”

2. Brief facts of the case are that-

2.1 The petitioner was initially appointed on the post of Junior Engineer in the Pay Scale of Rs. 1400-2300/-, vide order dated 11.02.1987 in Rural Works Department, Arunachal Pradesh on regular basis. He joined his duties w.e.f. 11.03.1987 and served in the said capacity for a period of more than 17 years i.e. upto his joining under the Respondent No. 2 w.e.f. 16.08.2004. The petitioner passed the Professional Examination conducted by the Rural Works Department, Government of Arunachal Pradesh vide order dated 01.08.1997.

2.2 In the year 2002, the Uttarakhand Public Service Commission advertised various posts of Junior Engineer (Civil), inter-alia for Irrigation Department of Uttarakhand Government. The petitioner as an in-service candidate applied for the post in Uttarakhand through proper channel after obtaining necessary No Objection Certificate from his previous employer. As the petitioner successfully completed more than 12 years of regular and confirmed service on the said post on 11.03.1999, as such, the earlier employer granted benefit of Selection Grade in the Pay Scale of Rs. 8000-13500, vide order dated 24.06.2003 and his pay as on 1.03.2003 was fixed at the basic pay of Rs. 8000/-.

2.3 The petitioner was selected for the post of Junior Engineer (Civil) by the Uttarakhand Public Service Commission and he was appointed in the Irrigation Department, Uttarakhand vide order dated 20.07.2004 by the Respondent No. 2 in the Pay Scale of Rs. 5000-8000. Vide letter dated 12.08.2004, the earlier employer forwarded the Last Pay Certificate of the petitioner to the Respondent No. 2. Vide order dated 13.08.2004, the earlier employer accepted the technical resignation of the petitioner w.e.f. 12.08.2004. Thereafter, the petitioner reported for joining before the Respondent No. 2 on 16.08.2004.

2.4 Since the petitioner was in a higher Pay Scale in his previous employment, he was also hopeful that benefit of pay protection will be given to him as has been given to some similarly placed employees, Shri Raghbir Dutt, Sri Deep Chandra (earlier working with PSU) and Shri Sunil Chandra Kandpal, who was earlier working in PWD Government of Arunachal Pradesh.

2.5 In the meantime, the Respondent No. 1 has issued a Modified Assured Career Progression Scheme vide Government Order dated 09.02.2010. Para- 9 of the said Government Order specifically provides that the benefit of past services rendered under any State Government/ Government of India shall be given. The Government of Uttarakhand has issued Government Order dated 22.02.2010 communicating the policy decision of the State Government dealing with the identical situation in which in Para 2 of the same, it has been specifically provided that if a person is promoted/ absorbed in the same Pay Scale, in that case, the benefit of services rendered on the earlier post, shall be counted for the purpose of admissibility of Time Scale/Selection Grade. Vide Government Order dated 08.03.2011, the Government of Uttarakhand promulgated the Assured Career Progression (A.C.P.) Scheme. Para 2 (viii) of the same provides the past services rendered under Central Government/Local Bodies/Autonomous Institutions/ P.S.U.s. and Corporations. Meaning thereby, the services rendered under any

State Government will be counted for the purpose of grant of benefit of A.C.P.

2.6 In view of the aforesaid Government Order dated 08.03.2011, Sri Sunil Kumar Kandpal and Sri Vinod Kumar Joshi were granted the benefit of past services for the purpose of A.C.P. vide Government Order dated 18.07.2012 issued by the Respondent No. 1, State of Uttarakhand.

2.7 When the said benefit was not given to the petitioner despite repeated requests, the petitioner approached the Hon'ble Uttarakhand High Court by filing Writ Petition No. 1556 (S/S) of 2006 (Umesh Chandra Upreti Vs. State of Uttaranchal and others, in the year 2006, which was allowed vide judgment and order dated 6.10.2012 with the direction to grant the benefit of past services to the petitioner as has been granted to other similarly situated persons and further direction was issued to pay the arrears of the same.

2.8 In compliance of the order of the Hon'ble High Court, the Respondent No. 1 issued an order in the matter on 25.06.2013 for grant of benefit of past services to the petitioner. Consequently, the Respondent No. 2 issued an office memo dated 4.07.2013 granting the benefit of past services.

2.9 The Respondent No. 5 vide office memo dated 24.07.2013 refixed the salary of the petitioner after granting the benefit of past services and salary was fixed at Rs. 26,230/- as on 01.07.2012.

2.10 Respondent No. 5 sent a letter dated 26.07.2013 to the Respondent No. 4 seeking his guidance regarding the benefit of A.C.P. after counting the past services of the petitioner. The petitioner submitted a detailed representation dated 12.08.2013. Respondent No. 4 forwarded the same to the Respondent No. 3 by means of a detailed letter dated 29.08.2013 seeking his guidance in the matter. Thereafter vide letter dated 23.10.2013, the Respondent No. 2 directed the Respondent No. 3 to firstly get a proposal in the matter of

the petitioner from a duly constituted Committee, then only the further action can be taken.

2.11 The petitioner submitted another representation on 8.11.2013 to the Respondent No. 2 claiming benefit of 2nd A.C.P. in the Grade Pay of Rs. 6600 and 3rd A.C.P. in the Grade Pay of Rs. 7600 on completion of 26 years of service.

2.12 In the month of November, 2014, the Respondent No. 5 recommended that the petitioner is entitled for benefit of 2nd A.C.P. in the Grade Pay of Rs. 6600 w.e.f. 1.09.2008 and similarly for 3rd A.C.P. in the Grade Pay of Rs. 7600 w.e.f. 11.03.2013. The petitioner again submitted a detailed representation to the Respondent No. 2 on 14.05.2015 in the matter.

2.13 When no decision whatsoever, was taken in the matter, the petitioner was constrained to approach this Hon'ble Tribunal by filing Claim Petition No. 26/NB/DB/2016 (Umesh Chandra Upreti Vs. State of Uttarakhand and others). This Tribunal allowed/disposed off the said Claim Petition vide judgment dated 07-08-2018 and directed the Respondent No. 2 to decide the matter and pass a reasoned order in the matter within a period of 8 weeks.

2.14 In compliance of the order of the Tribunal, the Respondent No. 2 along with a detailed representation dated 05-09-2018 of the petitioner referred the matter to the Respondent No. 2 to constitute a screening committee in the matter. In compliance of the aforesaid order dated 04-01-2019, the Respondent No. 3 examined the matter vide letter dated 15-02-2019 recommended the claimed benefit to the petitioner. The petitioner also submitted a detailed representation to the Respondent No. 1 in the matter. The Respondent No. 2 vide letter dated 27-02-2019 directed the Respondent No. 3 to get the said proposal approved through screening committee. The Screening Committee held its meeting and found the petitioner's claim as genuine one and recommended the same in favour of the

petitioner. The said report was forwarded by the Respondent No. 3 to the Respondent No. 2 vide covering letter dated 23-03-2019.

2.15 The Respondent No. 2 vide letter dated 03-05-2019 sought certain quarries from the Respondent No. 3 in the matter. The Respondent No. 3 vide letter dated 06-05-2019 submitted the reply with the required information to the Respondent No. 2. The Respondent No. 1 vide impugned order dated 28-05-2019 by completely ignoring, the recommendation of the screening committee, summarily rejected the petitioner's claim in a very cursory and cryptic manner.

2.16 The action of the Respondent No. 2 in the matter while passing the impugned order, is totally arbitrary and illegal, which cannot be justified in the eyes of law, particularly in view of facts and circumstances of the case as has been mentioned above. There cannot be different yardsticks for similarly situated persons at the hands of the State Government and its authorities. Hence, the impugned order cannot be sustained and same deserves to be set-aside forthwith.

3. C.A./W.S. has been filed on behalf of the respondents no. 1 to 5 contending therein that-

3.1 The respondent department while deciding the claim of the petitioner for grant of A.C.P. considered the various facts and also followed the directions of this Hon'ble Tribunal issued in earlier round of litigation in Claim Petition No. 26/ NB/DB/2016 vide judgment and order dated 07-08-2018. The respondents rejected the case of the petitioner by a reasoned and speaking order and also by following due transparency and law. Thus, the order under challenge is just and proper and the claim petition filed by the petitioner is liable to be dismissed. Apart from this, the benefit of A.C.P. to an employee is governed by the government orders dated 08-03-2011 and 30-10-2012 and as per the provisions contained in the government orders, the petitioner was not found suitable for granting the benefit of A.C.P.

on the basis of his past service rendered by him in the State of Arunachal Pradesh. The services rendered by the petitioner in the State of Arunachal Pradesh cannot be considered for granting the benefit under the scheme of ACP. The benefit of pay protection has already given to the petitioner under the financial Rules for the services rendered by him in the State of Arunachal Pradesh, because the matter of pay protection is quite different and is governed by the Financial Rules under the Financial Hand Book but the benefit of A.C.P. is governed by separate set of government decisions and government orders.

3.2 The contention of the petitioner regarding the parity with the persons who have been granted the benefit of A.C.P. are quite different compared to the case of the petitioner and they cannot be treated as similarly situated persons. The petitioner worked in Government of Arunachal Pradesh upto 12-08-2004 and thereafter the petitioner had given his joining in the respondent department on 16-08-2004. In the acceptance of resignation order dated 13-08-2004, the earlier department of the petitioner mentioned that the resignation of the petitioner has been accepted in view of O.M. No. 28034/25/87 Rett. (A) dt. 11-02-1988 and the earlier department released the petitioner for joining in the present department. Thus, it is clear from the order dated 13-08-2004 the earlier department of the petitioner has not recommended the case of the petitioner for adding his service. Hence the contention of the petitioner for adding his service rendered by him in State of Arunachal Pradesh is misleading and also against the provisions of law. So far as the contention regarding the pay protection is concerned, it has been allowed to the petitioner and by allowing the pay protection, the petitioner has not got any right for counting the earlier resigned service for the benefit of A.C.P. By wrongly granting the benefit of A.C.P. to any employee, the petitioner cannot claim parity for any wrong action/decision taken by other departments.

3.3 In view of the provisions contained in paragraph no. (02)(1)(Ka) (vi) and (viii) of the government order no. 872/xxvii (7)न०प्रति०/2011 dated 08-03-2011, the petitioner is not entitled for the benefit of A.C.P., on the basis of his previous Inter State Service and the respondent authorities by following the procedure and government orders passed the order against the petitioner. On the request of the petitioner a screening committee was constituted in view of the paragraph no.5 of the government order dated 08-03-2011 and the committee by following the procedure and after applying its mind took the decision in the case of the petitioner and recommended that the petitioner is not entitled for benefit of A.C.P for the service rendered by him in Arunachal Pradesh. The respondent authority by following the procedure and in view of the provision contained in paragraph no. (02)(1)(Ka) (vi) and (viii) of the government order no. 872/xxvii (7) न०प्रति०/2011 dated 08-03-2011 passed the order against the petitioner. Hence the petitioner is not entitled for the benefit of A.C.P. on the basis of his previous Inter State Service. The claim petition of the petitioner is devoid of merit and liable to be dismissed with cost.

4. During pendency of the claim petition, the petitioner has also impleaded respondent no. 6. C.A./W.S. has been filed on behalf of the respondent no. 6 separately, in which, it has been contended that-

4.1 The petitioner was initially an employee of the State of Arunachal Pradesh, wherein the petitioner was working as Junior Engineer in the pay scale of 1400-2300 since 11.03.1987. After completing 12 years of service in State of Arunachal Pradesh the petitioner was granted 1 ACP as a result of which he became entitled to a pay scale of 8000-275-13500 and was drawing salary of Rs. 8275/-. The petitioner was duly selected vide order dated 20.07.2004 (Annexure no.7 to the claim petition) for the post of Junior Engineer, Irrigation Department, State of Uttarakhand by the Uttarakhand Public Service Commission in the pay scale of 5000-150-8000 and he joined on 16.08.2004.

4.2 The petitioner, as per his last pay certificate (LPC) issued by the State of Arunachal Pradesh was drawing salary of Rs. 8275/-. He was given pay protection vide the order of the Hon'ble High Court of Uttarakhand at Nainital vide order dated 06.10.2012 in Writ Petition No.1556/2006. The Irrigation Department Haldwani vide its order dated 24.07.2013 protected the salary of the petitioner on the basis of the LPC, Salary @ Rs. 8,275/- and also protected his pay scale and fixed the pay scale of 8000-275-13500. Hence the aforesaid act of protecting the pay scale was beyond the directions issued by the Hon'ble High Court vide its order dated 06.10.2012.

4.3 The petitioner has been wrongly granted the pay scale protection which has placed the petitioner at level 10 in pay matrix instead of level 06. The date of joining of the petitioner in the State of Uttarakhand is 13.08.2004, therefore, he is governed by the provisions of ACP laid down in G.O dated 08.03.2011 for the benefit of 1st ACP and thereafter, the petitioner is governed by the provision of MACP laid down in G.O dated 17.02.2017 for benefit of 2nd and 3rd ACP. As per the provisions of the aforesaid G.Os' the entitlement of the petitioner to the first, second and third ACP/MACP ought to have been as follows:-

- i. First ACP on completing 10 years of service on 13.08.2014 in the pay scale of 8000-13500, revised pay band of 15600-39100, grade pay Rs. 5400/- (Level 10).
- ii. Second MACP on completing 20 years of service on 13.08.2024 in the pay scale of 10000-15200, revised pay band of 15400-39100, grade pay Rs. 6600/- (Level 11).
- iii. Third MACP on completing 30 years of service on 13.08.2034 in the pay scale of 12000-16500, revised pay band of 15600-39100, grade pay Rs. 7600/- (Level 12).

4.4 The impugned order dated 28.05.2019 passed by the respondent no.2 is completely legal and valid as it is not possible/ permissible to grant benefit of 2nd and 3rd ACP to the petitioner after duly adding the services rendered by the petitioner in the State of Arunachal Pradesh w.e.f. 11.03.1987 to 12.08.2004 as per clause

2(1) of the G.O Dated 08.03.2011. the petitioner should have been granted the benefit of 1" ACP only after calculating his services in the State of Uttarakhand from the date of his joining.

4.5 The G.O dated 09.02.2010 is not applicable as its effect has been cancelled vide G.O dated 08.03.2011. The provision laid down in G.O dated 22.02.2010 is applicable only when an employee working in a department of the State Government is absorbed in another department of the State Government. Only in the given circumstance above, the services rendered by an employee in the previous department will be taken into account in the subsequent department. Clause 1, sub clause 2 (viii) of G.O dated 08.03.2011, clearly provides that services rendered in Central Government/ Local Body/ Autonomous Body/ PSU/Nigams will not be considered while granting benefits of ACP.

4.6 In case the said benefit has been granted to them by adding past services rendered by them, the same is in violation of Clause 1, sub clause 2 (viii) of G.O dated 08.03.2011. The letter bearing No.07/XXVII(7)43(47)/2022 dated 18.01.2023 has already been issued by the answering respondent directing the concerned departments to take necessary action and inquire whether while giving benefit of ACP, the past services rendered by the concerned employee in other State has been taken into account or not. In case the answer is in affirmative, the concerned department is required to take appropriate action for the recovery of excess payment which has been granted wrongfully.

4.7 The impugned order passed by the respondent no.2 is legal and valid and it has rightly been held that it is not possible/permissible to grant benefit of 2nd and 3rd ACP to the petitioner after duly adding the services rendered by the petitioner in the State of Arunachal Pradesh w.e.f. 11.03.1987 to 12.08.2004. The said respondent has further rightly held that as per clause 2(1) of the G.O. Dated 08.03.2011 the petitioner should have been granted the

benefit of 1st ACP only after calculating his services in the State of Uttarakhand from the date of his joining. It is further stated that the petitioner is wrongly interpreting the amended rules of 2015 because the intention of the provision is that any service rendered by any employee in other state shall be considered only for the determination of the pensionary benefits after retirement and the said service cannot be taken into account during the service of the employee for any reason whatsoever. Hence, the claim petition is liable to be dismissed.

5. The petitioner has also filed two separate R.As. against the C.A/W.S. filed on behalf the respondents no. 1 to 6. The petitioner has reiterated the averments as have been stated in the claim petition.

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

7. Learned Counsel for the petitioner has argued that the petitioner has worked in the Rural works department, Government of Arunachal Pradesh w.e.f. 11/02/1987 to 12/08/2004 in the scale of Rs 1400-2300 and 8000-13500 after getting selection grade there. He was appointed as Junior Engineer (Civil) in the Irrigation Department on 16/8/2004 and has already completed 26 years service and he is entitled to the 2nd and the 3rd MACP as per point 2(viii) the order of the Uttarakhand Government dated 08/03/2011 by adding the service rendered by him in the Arunachal Pradesh Government. He has cited the examples of some of the employees working in the Uttarakhand Government after working in the Arunachal Government and other departments of the State Government and the PSU who have been given the benefit of adding past service for grant of ACP/MACP. In support of his contention, learned Counsel for the petitioner has also relied upon the judgment of Hon'ble Apex Court rendered in Civil Appeal No. 4446 of 2008, State of Haryana & another vs. Deepak Sood & others and the

judgment passed by the Hon'ble High Court of Uttarakhand in Writ Petition No. 465 of 2018 (S/S), Mandan Singh Rana vs. State of Uttarakhand & others. He has prayed to allow the claim petition.

8. Learned A.P.O. argued that the benefit which has been given wrongly to some of the employees which the petitioner mentioned in the Claim petition has been withdrawn. There is no provision in the order dated 08/03/2011 of the Finance Department to grant the benefit of MACP to the employees by counting the past service rendered in the other State Government. The judgments as cited by the petitioner are quite distinguishable and facts of the cases are different. In view of the above the claim petition is liable to be dismissed.

9. Based on the arguments of Learned Counsel for the parties and perusal of the record, the Tribunal finds that the petitioner worked w.e.f. 11/02/1987 to 12/8/2004 as regular Junior Engineer with Arunachal Pradesh Government. He joined the Government of Uttarakhand as Junior Engineer in the Department of Irrigation after passing through the due process of selection. His pay scale rather than the pay was protected after the order of the Hon'ble High Court of Uttarakhand at Nainital in the Writ Petition No. 1556 (S/S) of 2006. He has requested for grant of 2nd and 3rd ACP after completing 26 years of the service as per the order dated 08/03/2011 of the Uttarakhand Government. He has cited that some similarly placed employees have been given the benefit of ACP by counting the service rendered by them with Arunachal Pradesh Government and another organisations. The ACP Rules dated 08/11/2011 do not provide counting the past service for the benefit of ACP in case of the persons, who worked in Central Government/Local Bodies/Autonomous Bodies/PSU and the Corporations and subsequently join Government of Uttarakhand. There is no mention of giving benefit of working with another State Government in the aforesaid ACP order. But it is applicable in case the persons who have worked in the other departments of the State Government

before joining the new department in Government of Uttarakhand. The Govt. servants who have worked in other organizations other than the State of Uttarakhand, their previous services will not be counted for the purpose of MACPS, this has been clarified at Clause no. 11 of the Annexure-1, attached with the Office Memorandum dated 17.02.2017 issued by the Finance Department, Govt. of Uttarakhand. The State Government has further issued a letter dated 18/01/2023 directing the Irrigation/PWD/Rural Engineering Departments not to include the past services rendered in another State Government for admissibility of ACP and, in case it has been done in the past, the excess amount paid to such employees may be recovered. The judgments as cited by the petitioner in support of his case, are not applicable in the present claim petition, as the facts of these judgments are on different footings from the facts of the present case. As per Rules of ACP/ MACP, the petitioner is entitled to get the benefit of ACP/MACP after joining the Uttarakhand Government on 16/08/2004 without getting benefit of the past service rendered with Arunachal Pradesh Government. Hence, the petitioner is not entitled to get any relief and the claim petition 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)

DATE: JANUARY 21, 2026
DEHRADUN.
KNP