

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.56/NB/DB/2025

Bhawan Singh Bohra (Male) aged about 63 years S/o Sri Diwan Singh Bohra, R/o Parvati Sadan, Surabhi Colony, Bhagwanpur Jai Singh, District Nainital.

.....**Petitioner**

Vs.

1. State of Uttarakhand, through its Secretary, Rural Works Department, Government of Uttarakhand, Dehradun
2. Chief Engineer (Level-1)/Head of Department, Rural Works Department, Uttarakhand, Tapovan Marg, Dehradun.
3. Executive Engineer, Rural Works Department, Pithoragarh Division, Pithoragarh, District Pithoragarh.
4. Director, Lekha Evam Haqdari, Uttarakhand, 23-Laxmi Road, Dalanwala, Dehradun
5. Additional Director, Treasury, Pension and Entitlement, Camp Office Haldwani, District Nainital.

.....**Respondents**

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

JUDGMENT

DATED: FEBRUARY 03, 2026

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

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

"A. To declare the action of the Respondents in withholding the amount from the gratuity of the petitioner, as arbitrary and illegal.

B. To direct the Respondents, particularly Respondent No. 2 and 5 to forthwith release the withheld amount of Rs. 8,10,099/- to the petitioner, alongwith the interest at a rate to be specified by this Hon'ble Tribunal.

C. To direct the Respondents to pay interest on the delayed payment of pension amount as well as amount of gratuity (reduced) for a period of 12 months i.e. for the period January, 2020 to December, 2021, at a rate to be specified by this Hon'ble Court.

D. To direct the Respondents, to grant all consequential benefits to the petitioner.

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

F. To allow the claim petition with cost."

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

2.1 The petitioner was initially appointed in Kumaon Mandal Vikas Nigam Ltd. w.e.f. 16-01-1982. He was appointed on ad-hoc basis after due selection on the post of Junior Engineer in Public Works Department and joined on 26-01-1983. He was subsequently appointed on regular basis on the post of Junior Engineer in Rural Engineering Services Department (now renamed as Rural Works Department) on the recommendation of Public Service Commission, vide order dated 23-09-1986. He was relieved from Public Works Department vide order dated 19-12-1986 and he immediately joined in the Rural Works Department.

2.2 The Kumaon Mandal Vikas Nigam Ltd. forwarded the service book of the petitioner vide letter dated 11-10-1999 to the R.E.S. Department. The Respondent Department vide order dated 14-10-1999 granted the benefit of pay protection to the petitioner from 26-10-1983. All the service benefits were granted to the petitioner after treating his substantive date of appointment in the department w.e.f.

16-01-1982. Vide order dated 16-06-2010, the Respondent No. 2 granted benefit of Second Promotional Pay Scale in the Grade Pay of Rs. 6600/-w.e.f. 16-01-2006. Consequently, the pay of the petitioner was fixed in pursuance of the aforesaid order and his basic pay was fixed as Rs. 30830/-w.e.f. 01-01-2010 vide order dated 22-07-2010.

2.3 The petitioner was promoted to the post of Additional Assistant Engineer, vide order dated 28-04-2011 along with 152 persons, in which the name of the petitioner is mentioned at Sl. No. 7. Thereafter, vide order dated 06-09-2011, the petitioner was given benefit of Third ACP in the Grade Pay of Rs. 7600/- w.e.f. 01-09-2008 on completion of 26 years of service, treating his appointment w.e.f. 16-01-1982. In pursuance of the same, a consequential order dated 03-03-2012 was issued by the concerned Executive Engineer, whereby pay of the petitioner was fixed in the Grade Pay of Rs. 7600/- and his basic pay was fixed at Rs. 35,850/- as on 01-01-2012.

2.4 The petitioner was further promoted to the next higher post of Assistant Engineer (Civil) vide order dated 30-09-2014 passed by the State Government. In pursuance of the same, the petitioner joined duties on the said promoted post on 10-10-2014. The petitioner retired from the post of Assistant Engineer, Rural Works Department, Division Pithoragarh after attaining the age of superannuation, w.e.f. 31-12-2020. Even after retirement, when the petitioner's retiral dues were not paid, the petitioner submitted various representations in the matter. Ultimately, the Respondent No. 5 issued Pension Payment Order on 29-11-2021, whereby the pension to the petitioner was sanctioned and an amount of Rs. 8,10,099/- from the Gratuity amount of the petitioner has been withheld by showing it as a recovery. The retiral dues of the petitioner were paid in the month of March-April, 2022.

2.5 The petitioner submitted representation dated 10th January, 2023 to the Respondents for requesting the refund of the aforesaid withheld amount. He again submitted a representation dated 15-02-2024 to the Respondent No. 2. But no decision has been taken on

the aforesaid representations till date. The petitioner was not given any opportunity before passing alleged order of recovery/pay re-fixation/pay reduction. It is also submitted that no copy of any pay re-fixation order was ever served upon the petitioner till date.

2.6 The action of the Respondents in the matter is totally arbitrary and illegal. No opportunity for hearing was ever given to the petitioner before revising his pay etc. or before passing any recovery order/making any recovery. It is submitted that the action of the Respondents is totally against the law propounded by the Hon'ble Apex in the case of State of Punjab and others Vs. Rafiq Masih (White Washer) etc. dated 18.12.2014 reported in (2014) 2 U.D. 576 and also in (2015) 4 SCC 334 which clearly provides that under which and what circumstances the recovery can be made.

2.7 The petitioner was fully entitled for the benefit which was earlier granted to him and which was illegally and arbitrarily withdrawn by the Respondents, that too without affording any opportunity of hearing to the petitioner. It goes without saying that any order which entails evil and civil consequences to anyone, cannot be passed without prior hearing the concerned person, and the same remains always a nullity in the eyes of law, besides being void-ab-initio. The impugned order is totally illegal and arbitrary which cannot be justified in the eyes of law.

2.8 This Hon'ble Tribunal has also decided the similar controversy in various cases and few of them are Claim Petition No. 38/NB/DB of 2015 (Jagdish Chandra Sanwal Vs. State and others) which was ultimately allowed by this Tribunal vide Judgment dated 20.06.2018. The said Judgment has attained finality in the absence of any challenge and in fact has also been complied with by the State of Uttarakhand. Similar view has been taken by this Tribunal in the judgment dated 02-03-2017 passed in Claim Petition No. 05/SB/2014 (Niyamat Ali Khan Vs. Director Horticulture and others). Recently in Claim Petition No. 91/NB/DB/2020 (Ram Aasrey Sahu Vs. State of Uttarakhand and others), this Tribunal vide judgment dated 19-06-

2023 has allowed the Claim Petition. Thereafter the similar judgment was passed in the case of Raj Kumar Singh Vs. State of Uttarakhand in Claim Petition No. 58/NB/DB/2021, vide judgment dated 25-09-2023. The recent judgment on the point is judgment dated 08-08-2024 passed by this Hon'ble Tribunal narrating the entire law on the point, in Claim Petition No. 98/NB/SB/2022 (Smt. Archana Shukla Vs. State of Uttarakhand and others). All the aforesaid judgments have attained finality and have infact been complied with by the Respondents. The said judgment of Archana Shukla has further been followed by this Tribunal in the case of Sri Girish Chandra Joshi Vs. State as well as Sri Rafat Ali Khan Vs. State. The Hon'ble Apex Court in the case of Jogeshwar Sahoo and others vs. The District Judge, Cuttak and others, has again followed the earlier verdicts on the point including the judgment of Rafiq Masih (Supra), vide judgment dated 04-04-2025. This Tribunal followed the aforesaid judgments including that of Sri Jogeshwar Sahoo, in the judgment dated 17-05-2025 passed in Claim Petition No. 48/NB/DB/2024 (Prakash Chandra Tiwari Vs. State of Uttarakhand and others). The Claim Petition deserves to be allowed with cost and the impugned orders deserves to be set aside.

3. C.A./W.S. has also been filed on behalf of the respondents defending the departmental action and has contended that the petitioner has given his consent that the recovery of the excess amount paid be made from the retiral dues as he was very well aware of the wrong fixation, as such, now he is debarred from claiming the same. It has further been submitted that while scrutinizing the matter of fixation of pension of the petitioner ambiguities were detected and thus, the order of recovery was passed. There is no illegality in the impugned orders and the petition is liable to be dismissed.

4. R.A. has also 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 carefully.

6. Learned Counsel for the petitioner argued that the petitioner was *inter-alia* promoted to the next higher post of Assistant Engineer (Civil) vide order dated 30-09-2014 passed by the State Government. In pursuance of the same, the petitioner joined duties on the said promoted post on 10-10-2014. The petitioner after rendering about more than 38 years of continuous service under the Government, retired from the post of Assistant Engineer, Rural Works Department, Division Pithoragarh after attaining the age of superannuation, w.e.f. 31-12-2020. Even after retirement, when the petitioner's retiral dues were not paid, the petitioner submitted various representations in the matter. Ultimately, the Respondent No. 5 issued Pension Payment Order on 29-11-2021, whereby the pension to the petitioner was sanctioned and an amount of Rs. 8,10,099/- from the Gratuity amount of the petitioner has been withheld by showing it as a recovery. The retiral dues of the petitioner were paid in the month of March-April, 2022. The petitioner submitted various representations to the Respondents but no decision has been taken on the representations. The petitioner was not given any opportunity before passing alleged order of recovery/pay re-fixation/pay reduction. No copy of any pay re-fixation order was ever served upon the petitioner till date. The petitioner is entitled to get the amount, which is stopped/ withheld from his gratuity with interest thereon. Learned Counsel for the petitioner has also given references of the judgments passed by this Tribunal in many 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 respondents vehemently opposed the submissions of the learned counsel for petitioner and submitted that the petitioner has given his consent that the recovery of the excess amount paid be made from the retiral dues as he was very well aware of the wrong fixation, as such, now he is debarred from claiming the same. It has further been submitted that while scrutinizing the matter

of fixation of pension of the petitioner ambiguities were detected and thus, the order of recovery was passed. There is no illegality in the impugned orders and the petition is liable to be dismissed.

8. Based on the arguments of the Learned Counsels for the parties and perusal of the record, 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 department in determining the emoluments payable to him.

9. The payment of excess amount to the petitioner was not on account of any misrepresentation made by the petitioner nor was on account of any fraud committed by him. Any participation of the petitioner in the mistake committed by the employer, in extending the inadmissible 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."*

11. In this regard, 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*.

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 Vitan 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. 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 aforesated, 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.”

15. In view of the facts and the judgements of the Hon'ble Courts, it is clear that the petitioner is a retired 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. 8,10,099/- *withheld* from his gratuity amount.

ORDER

The claim petition is hereby allowed. The respondents are directed to refund the amount of Rs. 8,10,099/- to the petitioner, which was withheld from the gratuity of the petitioner within three 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)

DATE: FEBRUARY 03, 2026
DEHRADUN.
KNP