

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

Present: Hon'ble Mr. Rajendra Singh

-----Acting Chairman

Hon'ble Mr. A. S.Rawat

-----Vice Chairman (A)

**CLAIM PETITION NO.03/NB/DB/2025**

Parwati Devi, (Female) aged about 62 years W/o Late Netra Ballabh Bhatt R/o 158 Jaydevpur, Haripur Nayak, 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, Kathgodam, District Nainital.

.....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: MAY 19, 2026**

**Per: 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 12.07.2021, 18.11.2021 & 06.12.2023 passed by respondent No. 3 & 4 respectively (Annexure No. 1 to the compilation No.1)*

*B. To direct the respondents after calculating the gratuity according to the grade pay 2800/-, 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 petitioners.”*

2. Brief facts of the case are as under:

2.1 The petitioner was initially appointed on the post of workshop labourer on 01.01.1994 and was promoted on Technical Post of "Uphostrar" on 01.06.2007, so she is entitled for ACP benefits from the date of her appointment /promotion on the post of Uphostrar after passing the trade test. The petitioner was subsequently promoted on the post of Uphostrar-I and retired from the said post on 31.10.2023. The last salary drawn by the petitioner on the basis of grade pay Rs. 2800/-.

2.2 On 08.03.2011, the State Govt. adopted the Scheme of Assured Career Progression (A.C.P.), which was effective since 01.01.2006 for those employees who were getting Grade Pay Rs. 5400/- or more and the same was effective since 01.09.2008 for those who were getting grade pay Rs. 4800/- or less than that. According to this scheme, a government employee will get the benefit of A.C.P. after completing 10, 18 & 26 years of services.

2.3 On 06.11.2013 a G.O. was issued and according to which, if originally on grade pay of Rs. 4800/- or less than that, any promotional post is available then the employee would be entitled for financial increment on that promotional post and if there is no promotional post available then according to the G.O. dated 17.10.2008, the employee would be entitled for next higher grade pay. In the light of above G.O. dated 06.11.2013, the petitioner has drawn his last salary at the time of his retirement according to the grade pay Rs. 4200/-.

2.4 On 12.06.2019 & 19.08.2021, the petitioner was given show cause notices by the respondent No. 4 that under the arrangement of salary assessment/A.C.P., the sanctioned A.C.P. is being amended accordingly if there is any objection, then petitioner can make the representation to the respondent through proper channel, which she replied on 20.06.2019 & 15.09.2021 respectively.

2.5 The G.O. dated 22.08.2014 has not discarded the arrangement made in G.O. dated 6.11.2013. In the said G.O. dated 22.08.2014, it is merely mentioned that where the post occupied and promotional post are having same grade pay, next higher-grade pay would be sanctioned. In Fitter cadre, grade pay is not similar. In the technical cadre, there is no grade pay of Rs. 2400/-, so to grant grade pay of Rs. 2400/- in the form of 2<sup>nd</sup> A.C.P. is not legitimate which has been adopted by the respondent in the present matter.

2.6 The G.O. dated 06.11.2013 was enforced in the state of Uttarakhand after 20.06.2016 when the petitioner was getting grade pay of Rs. 2800 effective from 01.11.2013. By the G.O. dated 06.11.2013, it was reduced to Rs. 1900 by the respondent No. 4 by wrongly interpreting the G.O. dated 22.08.2014 which is only the supplement of the G.O. dated 06.11.2013 and there is nothing contrary in the said G.O. Due to the aforesaid reasons, the

petitioner's gratuity was sanctioned to the tune of Rs. 887227/- on the basis of grade pay 2800/- when the same was ought to be given to the petitioner by the respondent department.

2.7 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. The grade pay of the petitioner is reduced by wrong interpretation of the G.O. dated 22.08.2014. The said Government order has not cancelled/rejected the arrangement made in the G.O. dated 06.11.2013.

2.8 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/- According G.O. dated 6.11.2013, the petitioner's grade pay revised from Rs. 1900/- to Rs. 2800/ because in fitter/Uphostrar cadre, first promotional grade pay is Rs. 1900, second promotional grade pay Rs. 2800/- and third promotional grade pay is Rs. 4200/- and G.O. dated 22.08.2014 is only the amendment /supplement of the G.O. dated 6.11.2013.

2.9 The petitioner is entitled for his gratuity under grade pay 2800/- 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. The impugned order and show caused notice cannot be sustained in the eyes of law and the same deserves to be set aside. In view

of the above, the action of the Respondents in the matter is totally arbitrary and illegal which cannot be justified at all in the eyes of law. As having left no other option, the petitioner is now approaching this Hon'ble Tribunal with the hope of justice.

3. Claim petition has been contested on behalf of respondents no. 2, 3 & 4. Sri Manoj Durgapal, General Manager (Personnel), Uttarakhand Transport Corporation, Nainital Region, Nainital has filed C.A. with relevant documents.

3.1 It is submitted that the matter of wrong fixation of ACP due to which the amount of the salary of the employees of the same footing are differing and one Shri Narendra Pal, Senior Clerk posted at ISBT, Delhi has given the application to DGM (Operation) that his date of appointment and the date of appointment of Sri Bhupendra Kumar Kohli is the same but he is getting less salary to Sri Bhupendra Kumar Kohli. On his letter the Deputy General Manager, ISBT Delhi has written the letter dated 20-08-2019 to the Headquarter stating therein that on perusal of service book of both the employees reveals that there may be irregularity in the determination of pay of other employees posted at ISBT Delhi, so it will be better to scrutinize/inquire the service book of each of the employee posted at ISBT Delhi. On the above-mentioned application, the Finance Controller vide letter dated 22-08-2019 constituted a committee consisting of Sri Mukesh Singh DGM (Technical), Sri Netram DGM (Operation) and Sri Rajeev Kumar, Assistant Account Officer to a conduct an inquiry and give the report after scrutiny of the service books of all the employees at ISBT, Delhi as per the Government orders and Rules. In the inquiry report dated 12.09.2019 it was found that out of 33 employees, there is difference in pay of 12 employees who have been granted the benefit of ACP despite the effective period of punishment was going on.

3.2 On the abovementioned inquiry, the matter was placed

before the Managing Director and the Managing Director vide its letter dated 18-09-2019 requested to the government to constitute a special audit team of the government officials to scrutinize the benefit of ACP and the determination of Salary of 3395 employee of the corporation. On the said request the Deputy Director (Accounts/ Audit) constituted the audit team of three persons vide letter dated 03-12-2019 and they started the audit of all the 3395 employees of the corporation. But due to Covid-19 the said work could not be completed then the Managing Director vide letter dated 14-09-2020 again requested the government and the same has been accepted and vide letter dated 19-08-2020 again an audit team has been constituted. The audit team has indicated the shortcoming while granting the ACP and thereafter the Finance Controller of the Corporation vide letter dated 11-09-2020 has directed each region to conduct the proper inquiry/audit of all the above-mentioned employees in their region.

3.3 Presently the work of amendment of ACP of 3028 employees of the Corporation has been completed in which the salary of 1011 employees has been reduced and salary of 316 employees has been increased and it was found that there are no anomalies in grant of ACP to 1701 employees of the corporation.

3.4 After the amendment of ACP and the determination of pay scale, the total amount which was excessive, has been paid to these employees is of Rs. 24.35 crores and presently there is an amount of Rs. 29.80 Lakhs, which has been reduced per month in the budget of Corporation.

3.5 Regarding the wrong fixation of salary and re-fixation of salary of the retired employee is going on after which the amendment/ scrutiny of ACP of 999 retired employees has been completed, out of which the salary of 435 employees has been reduced and the salary of 33 employees has been increased and there are no anomalies found while granting the benefit of ACP to

531 employees and as such the amount of Rs. 7 crores have to be recovered from these retired employees. The Uttarakhand Transport Corporation themselves have taken the initiative to conduct an inquiry on the grant of ACP and determination of Salary of the employees of the corporation.

3.6 The Government of Uttarakhand issued the notification which has subsequently been amended by G.O. and the Corporation is bound to implement the G.O. The benefit of ACP has been given to the employees of the Corporation on the basis of the G.Os. which has subsequently been amended. The first Government Order No. 872 dated 08-03-2011 regarding the grant of ACP has been issued by the government and the government continuously issued various government orders for correction/ amendment/ explanation of government orders for the grant of ACP in the 8 years and those Government Order No. 10 dated 07-04-2011, Government Order No. 65 dated 04-08-2011, Government Order No. 313 dated 30-10-2012, Government Order No. 589 dated 01-07-2013, Government Order No. 770 dated 06-11-2013, Government Order No. 212 dated 22-08-2014, Government Order No. 257 dated 13-11-2014 and Government Order No. 65 dated 09-03-2019. All these Government Orders are explanation of earlier Government Orders and some of the Government Orders were not received in the office of the corporation within time due to which the anomalies exist in some pay/grade pay and the grant of ACP and determination of salary of the employee concerned.

3.7 The petitioner was appointed on the post of Labour (Mazdoor) on 01-01-1994 in the revised pay scale Rs.1800/- and was given 1<sup>st</sup> promotion on the post of Upholster Grade-II on 01-06-2007 in the same Grade pay of Rs. 1800/-. In the amended order of granting of ACP, the earlier ACP which was granted on 01-01-2009 of 1<sup>st</sup> Finance Grade pay Rs.1900/- and the 2<sup>nd</sup>

financial Grade pay Rs.2400/- granted on 01.01.2010, has been amended and the petitioner was granted the benefit of 1<sup>st</sup> Grade pay of Rs. 1900/- from 01-01-2010 and the higher grade of Rs. 2800/- which was given on 01.11.2013 has been cancelled and under MACPS the 3<sup>rd</sup> MACP Grade pay Rs. 2000/- has been given from 01.01.2021.

3.8 The petitioner retired from the service of the Corporation on 31.10.2023 and after her retirement, the amount of gratuity calculated in favor of the petitioner was to the tune of Rs.8,87,227/-, and due to wrongful fixation of salary and an amount of Rs. 4,43,329/- has been paid in excess to the petitioner which has been adjusted from the amount of gratuity and as such as amount of Rs. 4,43,898/- has been paid to the petitioner through cheque no. 184159 dated 23/01/2024. The amount of leave encashment has been calculated to the tune of Rs. 5,12,620/-in favour of the petitioner, which has been paid to her.

3.9 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. Vide order dated 17-07-2021, the petitioner was given opportunity of hearing, to give the objection against the order dated 12-07-2021. The petitioner has given the objection on 31-07-2021 and thereafter, vide order dated 19-08-2021, the salary fixation order dated 12-07-2021 was finalized and the petitioner was further given an opportunity to represent to the General Manager (Administration), if she was still aggrieved by the salary fixation order. Against which, the petitioner had made the representation dated 16-09-2021 before the General Manager (Administration) and the same has been rejected vide speaking order dated 18-11-2021 and on the basis of abovementioned orders, the order dated 06-12-2023 has been passed for recovery of the excess amount paid to the petitioner due to wrong fixation of ACP.

3.10 Further, it is stated that the judgment dated 17-08-2022 in the Claim petition no. 27/NB/SB/2021 in the matter of 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 the learned Counsel for the parties and perused the record.

6 Learned Counsel for the petitioner argued that the petitioner has retired from service after attaining the age of superannuation on 31.10.2023. The G.O. dated 06.11.2013 was enforced in the state of Uttarakhand after 20.06.2016 when the petitioner was getting grade pay Rs. 2800 which was made effective from 01.11.2013 but it was reduced to 1900 by the order of the respondent No. 4 by wrongly interpreting the G.O. dated 22.08.2014 which is only the supplement of the G.O. dated 06.11.2013 and there is nothing contrary in the said G.O. Due to the aforesaid reasons, the petitioner's gratuity was sanctioned to the tune of Rs. 8,87,227/- on the basis of grade pay Rs. 2800/- 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 2800/-, 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. Vide order dated 17.07.2021, the petitioner was given opportunity of hearing for objection against the order dated 12.07.2021, which the petitioner replied on 31-07-2021 and thereafter, vide order dated 19-08-2021, the salary fixation order dated 12-07-2021 was finalized and the petitioner was further given an opportunity to represent to the General Manager (Administration), if she was still aggrieved by the salary fixation order. Against which, the petitioner had made the representation dated 16.09.2021 before the General Manager (Administration) and the same has been rejected vide speaking order dated 18.11.2021 and on the basis of abovementioned orders, the order dated 06-12-2023 has been passed for recovery of the excess amount paid to the petitioner due to wrong fixation of ACP. There is no illegality in the order dated 06.12.2023 and the claim petition has no force and same is liable to be dismissed. Learned A.P.O. also agrees to the arguments of learned Counsel for the contesting respondents.

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 her entitlement. The monetary benefits given was consequent upon mistakes committed by the Respondent Corporation in

determining the emoluments payable to her. She 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 her. In other words, the payment of higher dues to the petitioner was neither on account of any misrepresentation made by her nor was it on account of any fraud committed by her. 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 her 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. It was held that the recovery of the excess amount is restrained in equity while the Court exercises judicial discretion to relieve the employee from hardship that will be caused if such a recovery is implemented and this view has been taken more particularly in respect of employees of lower rungs.

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 her 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 paid the amount of gratuity calculated Rs. 8,87,227 on the basis of the last pay drawn and Rs.4,43,329/- deducted from her gratuity amount, which is liable to be refunded to the petitioner. The impugned order dated 06.12.2023 is liable to be quashed. The Tribunal does not find any reason to interfere in the orders dated 12.07.2021 & 18.11.2021 passed by the respondents. Hence, the claim petition is liable to be partly allowed.

### **ORDER**

The claim petition is hereby partly allowed. The impugned order dated 06.12.2023 is hereby quashed. The respondents are directed to release the amount of Rs. 4,43,329/-, which was deducted from the gratuity of the petitioner, within three months of presenting the certified copy of the judgement. No order as to costs.

**(RAJENDRA SINGH)**  
ACTING CHAIRMAN

**(A.S.RAWAT)**  
VICE CHAIRMAN (A)

*DATED: MAY 19, 2026*  
*DEHRADUN*  
*KNP*