

**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.77/NB/DB/2025

Mohan Chandra Pandey, Aged about 66 years S/o Sh Leeladhar, R/o G-12, Judge Farma, Mukhani, Haldwani, Distt.- Nainital.

.....Petitioner

Vs.

1. State of Uttarakhand through Secretary Transport, Civil Secretariat, Subhash Marg, Dehradun.
2. Managing Director, Uttarakhand Transport Corporation, 2nd Floor Parivahan Bhawan, Kulahan, Sahastradhara Road 248013, Dehradun
3. Regional Manager (Operation), Uttarakhand Transport Corporation, Nainital Region, Kathgodam, District Nainital.
4. Asstt. General Manager, Uttarakhand Transport Corporation, Kumaon Region, Kathgodam, District- Nainital.

.....Respondents

Present: Sri Piyush Tiwari, Advocate for the petitioner
Sri Kishore Kumar, A.P.O. for the Respondent no. 1
Sri Prem Kuashal, Advocate for the respondents no. 2,3 & 4

JUDGMENT

DATED: MAY 20, 2026

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

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

"i) To quash the impugned order dated 03.03.2023 & 02.05.2023 communicated vide letter dated 22.11.2024 issued by respondent no.3 being Annexure No.-1 to this claim petition.

ii) To quash the order dated 11.11.2020 so far as petitioner is concerned, passed by office of respondent no.2 being Annexure No.-2 to this claim petition or alternatively direct respondents that order is not applicable to petitioner as he has already been retired before the issuance of said order.

iii) To quash the order dated 22.09.2025 passed by respondent no. 3 being Annexure No.3 vide which the representation of the petitioner was disposed off in an illegal manner.

iv) To direct petitioner to pay the 7th Pay Commission Arrears w.e.f. 01.01.2016 as per earlier fixation without considering re-fixation order dated 03.03.2023.

v) To issue any other or further, order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

vi) Award cost of the petition."

2. The brief facts of the case are as under:-

2.1 The petitioner is a retired Assistant Transport Inspector (ATI) who retired from the respondent organization on 31.07.2018. The petitioner joined the services of the respondent corporation on 09.07 1988 as a daily wager and was regularized as Conductor on 01.04.1989. The petitioner after completing ten years of regular service, was granted Selection Grade on 01.04.1999, as per the prevailing service rules/Schemes of financial upgradation.

2.2 The State Government adopted Assured Career Progression (A.C.P) Scheme for the State employees vide order dated 08.03.2011. This scheme was applicable w.e.f. 01.01.2006 in respect of those employees whose Grade Pay was 5400/- and above and w.e.f. 01.09.2008 in respect of those employees whose Grade Pay was 4800/- and below. Under Para 1(2) of this scheme a direct appointee will get the financial upgradation in the next scale on completion of 10 years of service, 2nd financial upgradation on further completion of 08 years of service and 3rd Financial upgradation on further 8 years of service. This scheme was made applicable for public sector undertaking/corporation vide Uttarakhand Government, GO dated 30.11.2011.

2.3 The petitioner was granted Second Financial Upgradation on 01.09.2008 and 3rd Financial Upgradation on 01.04.2015. The petitioner was further promoted as a Booking Clerk in November 2015 and later as an Assistant Transport Inspector on 01.01.2017 and on 31.07.2018 the petitioner retired.

2.4 A special audit was conducted which led to a clarification issued on 11.11.2020, which has framed rules in case of punishment. The respondent corporation, without issuing prior notice or hearing, passed an impugned order on 03.03.2023, re-fixing the petitioner's pay post-retirement. A further order dated 02.05.2023 was also issued, which was also never served to the petitioner. The petitioner came to know regarding the same only through letter dated 21.11.2024. The order alleged that the petitioner had been erroneously granted excess gratuity benefits and directed a recovery of Rs. 2,04,459/-, which was deducted from his gratuity amount.

2.5 The petitioner was never informed about the re-fixation of his pay before retirement, nor was he given an opportunity to present his case. The respondents also withheld his 7th Pay Commission arrears, further exacerbating his financial distress. This fact came to his knowledge when on 02.08.2024 a sum of Rs.9,963/- has been paid to the petitioner towards 7th pay Commission arrears by crediting in his bank account. Upon learning of the recovery, the petitioner promptly on 12.08.2024, submitted a representation for reconsideration. However, the respondents failed to respond to his plea. Again, a sum of Rs.9,963/- towards 2nd Installment of 7th Pay Commission arrears was paid on 30.10.2024. Thus, a sum of Rs. 19,926/- has been paid to the petitioner.

2.6 Similarly situated personnel Sh. U.C. Joshi got the higher benefit of Rs.58,473 on account of 7th Pay Commission. A copy of Chart of 7th Pay Commission Arrears paid to employee of

respondent organization wherein his name is placed at SL No 20 and similarly situated personnel Kashmir Singh was paid a sum of Rs.58473/-. Similarly details of Sh. U.C.Joshi also shows that he also get 7th pay commission arrears to the tune of Rs.58,473/-. A due drawn statement of petitioners clearly shows that petitioner is in receipt of same amount at par with Sh. U.C.Joshi, but due to re-fixation of pay after retirement his pay has been illegally reduced by the respondent organization.

2.7 The petitioner is a Class-III employee and in view of the judgment of the Hon'ble Supreme Court in State of Punjab Vs Rafiq Mashih & other (2015) 4 SCC 334, no such recovery can be made from the petitioner.

2.8 Since no heed was paid on the representation of the petitioner therefore a claim petition No.11/NB/2025 has been filed before this Hon'ble Tribunal. The Hon'ble Tribunal on 01.08.2025 decided the claim petition and directed the petitioner to submit representation and also directed respondents to decide representation within 02 months. It is further directed that the petitioner, if aggrieved by the decision of the concerned respondent, will be at liberty to approach the Tribunal as per the stipulated procedure.

2.9 The representation of the petitioner was disposed of vide order dated 22.09.2025. The said representation was rejected on the ground that the petitioner had requested payment of the residual arrears amount under the 7th Central Pay Commission based on the salary he was receiving prior to the issuance of Headquarter's Letter No. 164 dated 11.11.2020. The respondents have, however, stated that as per Headquarter's Circular No. 164 dated 11.11.2020, the residual dues are to be paid to all retired and serving personnel only after pay fixation as per the revised structure prescribed in the said circular. It is further stated that the circular is still in force and that the arrears payable to the petitioner

under the 7th CPC have already been released accordingly. Consequently, no further arrears for the relevant period were deemed payable to the petitioner.

3. 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 It is submitted that the claim petition has been filed by Shri Mohan Chandra Pandey, retired Assistant Traffic Inspector, Kathgodam, who retired on 31.07.2018, in the Public Service Tribunal, Nainital, with the request to cancel the pay revision orders and to provide arrears of 7th Pay on the basis of salary before the pay revision.

3.2 In compliance with the Uttarakhand Government's instructions to conduct a special audit regarding the ACP and pay fixation in the Transport Corporation, the petitioner's pay was fixed by Office Order No. 2607 dated 03.03.2023, the concerned employee was also given an opportunity to be heard and to file objections to the pay revision. In ACP related Government Order No. 872 dated 08 March 2011 as amended by Government Order No. 313 dated 30.10.2012, and Government Order No. 589 dated 01.07.2013, there is a provision to allow the benefit of first, second and third financial upgradation only after completion of 10, 16 and 26 years of continuous and satisfactory service. Apart from this, provision has been made in paragraph 6 of Circular No. 164 dated 11.11.2020 of Transport Corporation, Headquarters that if during the liability period of ACP any employee has been punished by being reverted to the lower level or first step of his pay scale, then the ACP of such employee will be calculated for the years beyond the date of punishment. In clause 7 of the said circular, it has been provided that at the time of liability of ACP, if the annual increment of any employee is found to be withheld with future effect for one

or more years during the liability period, then the liability of ACP will be extended for double the number of years. As one increment of the petitioner was withheld without future effect in the year 1991 and was reverted to the basic pay in the year 1991 and one increment was withheld without future effect in the year 2002, the petitioner is liable for the first ACP grade pay of 2400 on 01.09.2008, the date of implementation of ACP system, and the second ACP grade pay of 2800 on 12.11.2009.

3.3 Upon retirement, the petitioner's gratuity was calculated at Rs. 8,27,069, which has been paid to the petitioner. The petitioner's leave encashment amount was calculated at Rs. 4,94,340/- which has also been paid to the petitioner. However, in compliance of findings of special audit of the Transport Corporation's ACP and pay fixation, the petitioner's pay was revised by Office Order No. 2607, dated 03/03/2023. After the revision, the erroneous ACP 4200 payable to the petitioner was reduced. Since the retirement dues of the petitioner were paid to the petitioner before the pay revision, no deduction has been made from the dues of the petitioner and the arrears of 7th Pay Commission in the year 2024, which has been calculated at Rs. 19926/- have been paid to the petitioner. The petitioner is not entitled to get any reliefs, and the claim petition is liable to be dismissed.

4. R.A. has also been filed on behalf of the petitioner denying the contentions made by the respondents in the C.A./W.S. and as reiterated the averments made in the claim petition.

5. Heard the learned Counsel for the parties and perused the record.

6. It has been argued on behalf of the petitioner that the petitioner has already been retired from service on 31.07.2018 and the respondent cannot re-fix the pay based on any further circular/G.O. and the order dated 11.11.2020 cannot be made

applicable retrospectively from an ante date. While promoting, this punishment was not taken into consideration as petitioner is not within the currency of punishment therefore, same rule is applied in ACP. Further as per the Hon'ble Supreme Court Judgment in State of Punjab vs. Rafique Mashih any recovery after retirement is impermissible under Service Law.

6.1 The punishment given on 27.12.1990 and 12.11.1991 were effective for a period of one year and 6 months respectively. The petitioner was not under currency of punishment on the date of eligibility of first financial upgradation on 01.04.1999. The ACP scheme commenced in the state of Uttarakhand w.e.f. 01.09.2008, prior to that financial upgradation were given under the scheme of time scale, wherein 02 upgradations for promotional post were given. The special audit is carried out in terms of UTC HQRs circular dated 11.11.2020, but it cannot be made effective retrospectively in respect of those who has already been retired.

6.2 The petitioner has completed more than 29 years of service, he is entitled to ACP on completion of 10, 16 and 26 years of service. The act of respondent by applying wrong interpretation of rules and recovering the amount from petitioner is against the order passed by Hon'ble Supreme Court in State of Punjab vs. Rafiq Masih (2015) 4 SCC 334.

6.3 The intention of recovery from the petitioner is to stop the payment of arrears of 7th Pay Commission applicable w.e.f. 01.01.2016. the petitioner further submits that the identical issue has already been adjudicated by the Hon'ble High Court of Uttarakhand in WPSS No. 1593 of 2021, Balam Singh Aswal vs. State of Uttarakhand & Others, decided on 14.06.2022 along with a batch of connected petitions. The Special Appeals preferred against the said judgment were also dismissed vide common judgment and order dated 04.04.2024 passed in Special Appeal No. 245 of 2022, M.D. Uttarakhand Transport Corporation vs.

Ashok Kumar Saxena & Others, thereby upholding the entitlement of similarly placed employees. In the judgment, it has been stated that employee who retired between November 2020 to July 2021 was considered and it was decided as per last para of above order in respect of those personnel that the retiral benefit will be calculated on the Pay which employee is getting on the date of superannuation. Learned Counsel for the petitioner also relied upon the Judgment passed in Special Appeal No 241/2022 titled Uttarakhand Transport Corporation Vs Balam Singh Aswal vide letter dated 07.04.2025. As the petitioner has already retired on 31.07.2018 and this order was issued pursuant to Judgment passed in above special appeal, the petitioner is also entitled to said relief. The petitioner was promoted as per prevailing rules of promotion and therefore, he cannot be deprived of the ACP benefits because the same sets of rules are applicable for financial upgradation under ACP. The claim petition is liable to be allowed.

7. Learned Counsel for the respondents argued that the petitioner's pay was fixed by Office Order No. 2607 dated 03.03.2023. The petitioner was given an opportunity to be heard, to file objections to the pay revision. In ACP related Government Order No. 872 dated 08 March 2011 as amended by Government Order No. 313 dated 30.10.2012 and Government Order No. 589 dated 01.07.2013, there is a provision to allow the benefit of first, second and third financial upgradation only after completion of 10, 16 and 26 years of continuous and satisfactory service.

7.1 There is provision in paragraph 6 of Circular No. 164 dated 11.11.2020 of Transport Corporation, Headquarters that if during the liability period of ACP any employee has been punished by being reverted to the lower level or first step of his pay scale, then the ACP of such employee will be calculated for the years beyond the date of punishment. In clause 7 of the said circular, it has been provided that at the time of liability of ACP, if the annual increment of any employee is found to be withheld with future effect

for one or more years during the liability period, then the liability of ACP will be extended for double the number of years. As one increment of the petitioner was withheld without future effect in the year 1991 and was reverted to the basic pay in the year 1991 and one increment was withheld without future effect in the year 2002, the petitioner is liable for the first ACP grade pay of Rs. 2400 on 01.09.2008, the date of implementation of ACP system, and the second ACP grade pay of Rs. 2800 on 12.11.2009.

7.2 Upon retirement, the petitioner's gratuity was calculated at Rs. 8,27,069, and paid to the petitioner. The petitioner's encashment amount was calculated at Rs. 4,94,340/- which has also been paid to the petitioner. In compliance of observations of special audit, the petitioner's pay was revised by Office Order No. 2607, dated 03.03.2023. After the revision, the erroneous ACP 4200 payable to the petitioner was reduced. Since the retiral dues of the petitioner were paid to the petitioner before the pay revision, no deduction has been made from the dues of the petitioner and the arrears of the seventh pay scale calculated at Rs. 19,926/-, have been paid to the petitioner. The petitioner is not entitled to get any reliefs, and the claim petition is liable to be dismissed.

8. Based on the arguments of the Learned Counsels for the parties and documents submitted the tribunal finds that the petitioner was given monetary benefits, which was in excess of his entitlement. The monetary benefits given to the petitioner was as a result of unintentional mistakes committed by the Respondent Corporation in determining the emoluments payable to him. The petitioner was also 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 neither on account of any misrepresentation made by him nor 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 his employer in the wrongful determination of his inflated emoluments.

9. 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]

10. 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; 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 in Smt. Sara Vincent vs. State of Uttarakhand and others; decision rendered by Hon'ble Madras High Court on 01.06.2019 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.

11. However, there is no embargo on the respondent department to 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].

12. Hon'ble Supreme Court, in the decision rendered in Civil Appeal No.1985 of 2022, the State of Maharashtra and other vs. Madhukar Antu Patil and others 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.

13. Learned Counsel for the petitioner has also sought relief for paying the 7th Pay Commission Arrears w.e.f. 01.01.2016 as per earlier fixation without considering re-fixation order dated 03.03.2023. In this regard, he has relied upon the judgment of Hon'ble High Court of Uttarakhand in WPSS No. 1593 of 2021, Balam Singh Aswal vs. State of Uttarakhand & Others, decided on 14.06.2022 along with a batch of connected petitions. The Special Appeals preferred against the said judgment were also dismissed vide common judgment and order dated 04.04.2024 passed in Special Appeal No. 245 of 2022, M.D. Uttarakhand Transport Corporation vs. Ashok Kumar Saxena & Others, thereby upholding the entitlement of similarly placed employees. In the judgment, it

has been stated that employee, who retired between November 2020 to July 2021, it was decided that the retiral benefit will be calculated on the pay which employee is getting on the date of superannuation. The petitioner has already retired on 31.07.2018 and his retiral dues were settled before November 2020 and this order of the Hon'ble High Court in the Special Appeal No. 241 of 2022 is not applicable in this case, as it is applicable in the case of the employees who retired between November 2020 to July 2021.

14. The excess payment of gratuity Rs. 60,867/- and the excess payment of salary of Rs 1,43,592/- (Total Rs. 2,04,459/-) cannot be recovered from him, as the petitioner is already retired. However, the petitioner cannot be considered for payment of arrears as paid to other employees as pleaded by the petitioner

15. There is no bar in refixation of the last pay of the petitioner, which has led to excess payment of the gratuity etc. The claim petition is liable to be partly allowed to the extent of quashing the order dated 02.05.2023 related to the recovery of the amount of Rs 2,04,459/- (Two Lakh Four Thousand Four Hundred Fifty Nine only). The Tribunal does not find any reason to interfere in the order/letters dated 03.03.2023, 21.11.2024, 22.09.2025 and order dated 11.11.2024.

ORDER

The claim petition is partly allowed. The order dated 02.05.2023 related to the recovery of Rs 2,04,459/- is hereby quashed. No order as to costs.

(RAJENDRA SINGH)
ACTING CHAIRMAN

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

DATED: MAY 20, 2026
DEHRADUN
KNP