

**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. 27/NB/DB/2025

Diwan Singh Tomkyal (Male) aged about 64 years S/o Sri Dev Singh R/o Link Road, Pandy Gaon, District Pithoragarh.

.....Petitioner

Vs

1. State of Uttarakhand, through Secretary, Minor Irrigation Department, Government of Uttarakhand, Dehradun
2. Chief Engineer-cum-Head of Department, Minor Irrigation Department, Uttarakhand, Dehradun.
3. Superintendent Engineer, Minor Irrigation Department, Minor Irrigation Circle, Pithoragarh
4. Executive Engineer, Minor Irrigation Department, Minor Irrigation Division Pithoragarh, District Pithoragarh.
5. District Magistrate, Nainital, District Nainital.
6. Accountant General, A & E, Uttarakhand, Accountant General Building, Kaulagarh, Dehradun, Pin-248195.

.....Respondents

Present: Sri Bhagwat Mehra, Advocate for the Petitioner
Sri Kishore Kumar, A.P.O., for the Respondents no. 1 to 5
Sri Rajesh Sharma, Advocate for the Respondent no. 6

JUDGMENT

DATED: MAY 26, 2026

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

A. To set aside the impugned order dated 16-04-2018 issued by the Respondent No. 1, in so far as it relates to the petitioner (Annexure No. 1 to Compilation No. I).

B. To set aside the impugned order dated 16-10-2017 issued by the Respondent No. 1, in so far as it relates to the petitioner (Annexure No. 2 to Compilation No. 1).

C. To set aside the impugned order dated 30-09-2019 issued by the Respondent No. 6 (Annexure No. 3 to Compilation No. 1).

D. To declare the action of the Respondents in the matter, particularly passing of impugned orders against the petitioner, and withholding of amount of Rs. 3,78,048/- from the gratuity amount due to the petitioner, as arbitrary and illegal.

E To direct the Respondents, particularly Respondent No. 6 to forthwith release the withheld/recovered amount of Rs. 3,78,048/- to the petitioner, alongwith the interest at a rate to be specified by this Hon'ble Tribunal.

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

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

H. To allow the claim petition with cost.”

2. The petitioner was serving as Senior Accounts Officer with the State of Uttarakhand. The petitioner is aggrieved by the recovery order issued against the petitioner.

3. Earlier, the petitioner had filed a Writ Petition (S/B) No. 510 of 2019, for the above reliefs. The Hon'ble High Court vide order dated 28.09.2022, disposed of the said writ petition with the following orders:

“3) within the jurisdiction of the Uttarakhand Public Services Tribunal. The said reliefs squarely fall for consideration

4) Considering the fact that this petition is pending since the year 2019, and pleadings have been completed, we direct the Registry to transmit the complete record of the case to the Tribunal, which shall be registered as a claim petition by the Tribunal, and be dealt with accordingly.

5) Writ petition stands disposed of accordingly.”

4. After receiving the above writ petition on transfer from the Hon'ble High Court, the same was registered as Claim Petition No. 120/NB/DB/2022 by this Tribunal. The said claim petition was withdrawn by the petitioner with liberty to file fresh claim petition with better particulars. Such liberty was granted to the petitioner by this Tribunal vide order dated 08.04.2025.

5. Thereafter, present claim petition was filed by the petitioner, which came up for hearing on admission before the Tribunal. Thereafter, vide order dated 10.07.2025, the notices were issued to the respondents on admission. Learned A.P.O. filed preliminary objections/affidavit, on maintainability of the claim on behalf of respondents no. 1 to 5, in which, it has been stated as under:

5.1 The petitioner was the employee of the Accountant General Uttarakhand and was on deputation in the minor irrigation department and during his service in the year of 2007-08/2008-09 for irregularities in supply of Cement an inquiry was conducted against the petitioner (Divisional Account officer) and Mr. Amarnath Jukriya, Mr. Puran Singh Baldiya and Mr. Suresh Chandra. That after completion of the enquiry the enquiry officer vide its letter no. 4271 dated 20.12.2011 submitted his report to the government.

5.2 The aforesaid three employees are the employee of the state and the petitioner was the employee of the Accountant General, Uttarakhand, which is under the control of the Union, thus the Accountant General vide its letter dated 16.02.2012 and 02.07.2012 issued show cause notice to the petitioner and petitioner replied the show cause notice vide his reply dated 10-03-2012 and 16.07.2012 to the Senior Accountant General/ Administrator Uttarakhand, Dehradun.

5.3 The office of the Accountant General Uttarakhand vide letter dated 22.08.2012 awarded him the punishment of censure. The aforesaid punishment was communicated to the petitioner by the answering department. Thereafter, the Accountant General

Uttarakhand vide its letter dated 18.07.2019 pursuant to the order no. 324 dated 16.04.2018 of Principal Secretary Minor Irrigation Uttarakhand issued show cause notice for recovery of the amount of Rs. 3,78,048/- and again vide order dated 28.08.2019 issued letter to the petitioner. The petitioner vide reply dated 03.09.2019 submitted his representation to the Accountant General.

5.4 The Accountant General Uttarakhand Dehradun vide letter dated 30.09.2019 passed the order for recovery of Rs. 3,78,048/-and pursuant to the recovery order the District Magistrate, Pithoragarh sent the same to the District Magistrate, Nainital for recovery of the said amount. The District Magistrate Nainital directed the Tehsildar, Haldwani to recover the aforesaid amount pursuant to the said order vide order dated 01.01.2012. The petitioner approached the Hon'ble High Court of Uttarakhand by way of filing writ petition no. 510/2019 (SB) against the recovery order. The Hon'ble High Court passed the interim order which is as follows:

"2.Suffice it, in such circumstances, to direct the respondents to retain Rs. 3,78,048/- with them pending disposal of this writ petition; and to release the balance retiral benefits due to the petitioner with utmost expedition and, in any event, within one month from the date of production of a certified copy of this order.

3. Stay Application No. 14600 of 2019 stands disposed of."

5.5 The Hon'ble High Court vide its order dated 28-09-2022 disposed of the writ petition directing the registry to transmit the complete record of the case to the Tribunal, which shall be registered as a claim petition by the Tribunal, and be dealt with accordingly. The matter was transferred to this Hon'ble Tribunal and the counsel for the petitioner on 08-04-2025 made a prayer to withdraw the claim petition with liberty to file a fresh. The petitioner has filed the present claim petition stating in paragraph no.2 of the claim petition that the Hon'ble Tribunal has the jurisdiction to hear the claim petition.

6. C.A./W.S. has also been filed on behalf of the respondent no. 6, stating therein that the order of recovery dated 30.09.2019 for the recovery of amount of Rs. 3,78,048/- from the petitioner was passed by the answering respondent after due consideration of the facts and findings mentioned in the order dated 16.10.2017 and 16.04.2018 and the clarification submitted by the petitioner on 03.09.2019. The petitioner was directed to deposit the amount within 10 days, failing which the same will be recovered from his salary and retiral dues on his retirement on superannuation on 31.10.2019. However, the recoverable amount due for recovery has been withheld in compliance with the order passed by Hon'ble High Court of Uttarakhand dated 05.11.2019.

7. It is the submission of learned Counsel for the petitioner that earlier, he approached the Hon'ble High Court by filing a Writ Petition (S/B) No. 510 of 2019, for the above reliefs, which was transferred to this Tribunal vide order dated 28.09.2022 of the Hon'ble High Court, treating the same as claim petition no. 120/NB/DB/2022 before this Tribunal, which was later on withdrawn by the petitioner to file fresh claim petition with better particulars which was granted by this Tribunal vide order dated 08.04.2025. He prayed that time spent by the petitioner, choosing wrong forum, may be condoned. The petitioner may make such prayer/submission regarding delay before the appropriate forum.

8. In view of the above, it is clear that the office of the Accountant General Uttarakhand vide letter dated 22.08.2012 awarded the punishment of censure, which was communicated to the petitioner by the State respondent. Thereafter, the Accountant General Uttarakhand vide its letter dated 18.07.2019 pursuant to the order no. 324 dated 16.04.2018 of Principal Secretary Minor Irrigation Uttarakhand issued show cause notice for recovery of the amount of Rs. 3,78,048/- and again vide order dated 28.08.2019 issued letter to the petitioner.

9. Section 2(b) of the U.P. Public Services Tribunal Act, 1976 (Now Uttarakhand Public Service Tribunal Act) defines the “public servant”, which is quoted here below:

2(b) "Public Servant" means every person in the service or pay of-

(i) the State Government; or

(ii) a local authority not being a Cantonment Board; or

(iii) any other corporation owned or controlled by the State Government (Including any company as defined in section 3 of the Companies Act, 1956 in which not less than fifty percent of paid up share capital is held by the State Government) but does not include-

(1) a person in the pay or service of any other company; or

(2) a member of the All India Services or other Central Services;

10. The petitioner is the employee of the Accountant General and is under the control of the Central Govt. and a member of Central Services, therefore, as per Section 2(b)(iii)(2) of the U.P. Public Services Tribunal Act, 1976 (Now Uttarakhand Public Services Tribunal Act), the claim petition is not maintainable before this Tribunal. Accordingly, the claim petition is returned to the petitioner, at the admission stage, to file the same before the appropriate forum.

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

(RAJENDRA SINGH)
ACTING CHAIRMAN

DATE: MAY 26, 2026
DEHRADUN.
KNP