

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
DEHRADUN**

Present: Hon'ble Mr. Rajendra Singh

----- Acting Chairman

Hon'ble Capt. Alok Shekhar Tiwari

----- Member (A)

WRIT PETITION NO. 127 (S/B) OF 2021

[RECLASSIFIED AND RENUMBERED AS CLAIM PETITION NO. 115/DB/2022]

Devendra Kumar Pachauri (Male), aged about 63 years, S/o
Late Shri Bhagwan Sharan Pachauri, R/o House No. P-4/18,
Yamuna Colony, Chakrata Road, Dehradun

.....Petitioner

Versus

1. State of Uttarakhand through Chief Secretary,
Government of Uttarakhand, Dehradun.
2. Secretary, Irrigation, Government of Uttarakhand,
Dehradun.
3. Secretary, Finance Government of Uttarakhand,
Dehradun
4. Director, Directorate of Treasury, Pension and
Entitlement, Uttarakhand, Dehradun.

.....Respondents

Present : Sri Vinay Kumar, Advocate for the petitioner and
Sri Devendra Kumar Pachauri, Petitioner in person, who
is physically present at Uttarakhand Public Services
Tribunal, Dehradun.

Sri Ved Prakash Devrani, Ld. Assistant Presenting Officer.

JUDGMENT**DATED: 29th JULY, 2026****Per : Capt. Alok Shekhar Tiwari, Member (A)**

By means of this petition, the petitioner seeks the following reliefs:

- “(i). Issue a writ, order or direction in the nature of Certiorari calling for the records and quashing the impugned Office Memorandum dated 07th December, 2020 (Annexure No. 14 to the writ petition) passed by the Secretary Irrigation, Government of Uttarakhand, whereby the Office Memorandum dated 05th October, 2015 and Government Order dated 30th August, 2017, granting selection grade to the Petitioner, has been quashed.
- (ii). Issue a writ, order or direction in the nature of Certiorari calling for the records and quashing the communication dated 04th February, 2021 (Annexure No. 15 to the Writ Petition), issued by the Director, Directorate of Treasury, Pension and Entitlement, Uttarakhand, Dehradun, whereby the department has been directed to recover a sum of Rs. 49,58,678.00/- and to accordingly provide the revised pension order in respect of the petitioner.
- (iii). Issue any suitable writ, order or direction which this Hon’ble Court may deem fit and proper in the circumstances of the case.
- (iv). Award the cost of writ petition to the petitioner.”

2. In brief, the facts of the case are that:-

2.1. The petitioner who has retired from the post of Chief Engineer Level-II, Department of Irrigation, Government of Uttarakhand on 31st December 2017, is aggrieved by the impugned Office Memorandum dated 07th December 2020 issued by the Secretary Irrigation, Department of Irrigation, Government of Uttarakhand, cancelling the order granting selection grade to the Petitioner from the year 2006, and is also aggrieved by the communication dated 04th February 2021 issued by the Director Treasury, Pension and Entitlement, Uttarakhand directing for recovery of the excess amount paid to the Petitioner and to revise the Pension order of the Petitioner in terms of the Government Order. The relief sought by the Petitioner is that the impugned Office Memorandum dated 04th February, 2021 be quashed in as much as the Petitioner was rightly sanctioned the selection grade in terms of the Government order dated 14th February 1983 and the Government order dated 11th April 1990.

2.2. The petitioner was appointed by the direct recruitment on the post of Assistant Engineer in the Irrigation Department in the then combined State of Uttar Pradesh, after facing the regular selection process. The Petitioner was appointed as Assistant Engineer vide order No. 4322/Two-89-23-C-2/144C/85-86 dated 16.10.1989. Pursuant to the appointment order dated 16th October, 1989, the Petitioner joined the services as Assistant

Engineer on 27th February 1990, in the pay scale of Rs. 2200-4000/-. The appointment order dated 16th October 1989 also contained the name of Dinesh Chandra, who was also appointed alongwith the petitioner on the post of Assistant Engineer, Dinesh Chandra joined the services on the post of Assistant Engineer on 15th December 1989.

2.3. At the relevant point of time the post of Executive Engineer, which is the next promotional post of Assistant Engineer, carried the pay scale of Rs. 3000-4500/-. In terms of the Government order the Petitioner was sanctioned the higher pay scale of Rs. 3000-4500/- on completion of 5 years of regular service. Petitioner was sanctioned higher pay scale vide order dated 01st August 1995 with effect from 27th February 1995. Similarly, Dinesh Chandra was also sanctioned the higher pay scale of Rs. 3000-4500/- with effect from 15th December 1994.

2.4. The petitioner was promoted on the post of Executive Engineer vide Order dated 10th November 2005 in the pre-revised pay scale of Rs. 3000-4500 (Revised Pay Scale Rs. 10000-15200). The petitioner joined on the promoted post of Executive Engineer on 11th November 2015. It would not be out of context to mention here that Sri Dinesh Chandra was promoted to the post of Executive Engineer on 1st August 1998 vide order dated 31st July 1998 in the pre-revised Pay Scale of Rs. 3000-4500 (Revised Pay Scale of Rs. 10000-15200). Though Sri Dinesh Chandra was

junior to the petitioner in the cadre of Assistant Engineer, but he was granted accelerated promotion on the post of Executive Engineer under the reservation quota available for Scheduled Caste candidates in promotion. Sri Dinesh Chandra was promoted to the post of Superintending Engineer on 26th November 2005 and he joined on the promoted post on 27th November 2005. Sri Dinesh Chandra was promoted on the post of Superintending Engineer in the pre-revised Pay Scale of Rs. 12000-16500 (Revised Pay Scale of Rs. 15600-39100 with Grade Pay of Rs. 7600/-).

2.5. Before proceeding further it would be necessary to point out that in the erstwhile State of Uttar Pradesh the service of the employees of the Irrigation Department was governed by the Rules known as Uttar Pradesh Engineers Services (Irrigation Department) (Group 'A') Rules 1990. Rule 5 (2) of the Service Rules of 1990 deals with appointment on the post of Superintending Engineer, Civil or Mechanical and provided that the appointment on the post of Superintending Engineer will be made from those substantively appointed Executive Engineer, who have completed 18 years of service on the first date of year of recruitment (out of which six years of service should have been on the post of Executive Engineer).

2.6. On 14th February 1983 the Finance Department of the State of Uttar Pradesh issued an Office Memorandum whereby

certain clarifications were issued regarding criteria for grant of Selection Grade. It was clarified that the Selection Grade will be admissible to the employee on the basis of his seniority in the cadre that means junior person will not be sanctioned the Selection Grade, even if he has completed the desired period, unless the senior person has completed the requisite period of service.

2.7. On 11th April 1990, the Department of Irrigation issued a Govt. Order regarding implementation of revised pay scale of different posts in the Irrigation Department as per the recommendation made by the Committee. Clause-2 dealt with the revised pay scale of the post of Superintending Engineer. The post of Superintending Engineer carried the Pay Scale of Rs. 3700-5000 and the Selection Grade of Rs. 4500-5700. It was mentioned that only those officers will be eligible for Selection Grade who have entered in 14th year of their regular service on the 1st day of July when the same becomes due. It was further provided that the determination of the number of posts in Selection Grade will be made on the basis of 15% of the number of posts of Executive Engineer and above posts and the number of posts as determined will not be more than the total number of posts of Superintending Engineer and the number of sanctioned posts of Superintending Engineer will not be increased due to sanction of the Selection Grade.

2.8. After creation of the State of Uttarakhand, the Department of Irrigation issued the Notification dated 5th June 2003 notifying the Uttarakhand Irrigation Department Engineers Services (Civil/Mechanical) Group 'A' Service Rules 2003. In terms of Rule 5 (2) of the Service Rules 2003, the post of Superintending Engineer (Civil or Mechanical) is to be filled by promotion from the substantively appointed Executive Engineer Civil and Mechanical Branch, who have completed 15 years of service on the 1st day of the selection year (which included at least six years of service rendered on the post of Executive Engineer). Appendix to Rule 4 (2) of the Service Rules gave the details of the number of posts in the Civil Cadre as well as Mechanical Cadre.

2.9. In terms of the Govt. Order dated 11th October 1990, Sri Dinesh Chandra was sanctioned the Selection Grade vide Order dated 10th April 2007 in the pre-revised Pay Scale of Rs. 14300-18300 (Revised pay Scale of Rs. 37400-67000 with Grade of Rs. 8700/-) with effect from 01st September 2006.

2.10. The petitioner who was working on the post of Executive Engineer was sanctioned the Time Scale on completion of 16 years of continuous regular service. The petitioner was sanctioned the Time Scale of the post of Superintending Engineer in the Pay Scale of Rs. 12000-16500 (Revised Pay Scale of Rs. 15600-39100 with Grade Pay of Rs. 7600/-) vide order dated 11th April 2006 w.e.f. 27.02.2006. The petitioner was granted notional

promotion on the post of Executive Engineer from the date of promotion of his junior. The petitioner was granted notional promotion on the post of Executive Engineer w.e.f. 24th February 2004 vide order dated 4th February 2013.

2.11. The petitioner was promoted on the post of Superintending Engineer in the Pay Scale of Rs. 12000-16500 (Revised Pay Scale of Rs. 15600-39100 with Grade Pay of Rs. 7600/-) vide order dated 31st May 2013. The petitioner joined on the promoted post of Superintending Engineer on 01.06.2013. the petitioner was granted notional promotion on the post of Superintending Engineer w.e.f. 24.06.2010 vide office Memorandum dated 07th December 2015.

2.12. Till the date when Sri Dinesh Chandra was sanctioned the Selection Grade of Rs. 14300-18300 (Revised Pay Scale of Rs. 37400-67000 with Grade Pay of Rs. 8700/-), the petitioner and Sri Dinesh Chandra were getting the same pay scale. On sanctioning of the Selection Grade in favour of Sri Dinesh Chandra w.e.f. 1st September 2006, an anomaly occurred between the pay scale of the petitioner and Sri Dinesh Chandra. The Petitioner, who was senior to Sri Dinesh Chandra on the post of Assistant Engineer, submitted a representation on 18th September 2014 to the Secretary Irrigation, Government of Uttarakhand regarding the admissibility of the salary at par with junior to the Petitioner, Sri Dinesh Chandra. On 27th September

2014, the Chief Engineer/Head of Department issued a communication to the Additional Secretary, Irrigation, Govt. of Uttarakhand whereby the representation of the Petitioner dated 18th September 2014 was forwarded to Addl. Secretary Irrigation. In the communication dated 27th September 2014 it was stated that the petitioner and Sri Dinesh Chandra are working on the post of Superintending Engineer and their source of recruitment is also same and discharging the same responsibilities, even the Sri Dinesh Chandra is drawing higher salary than the petitioner. After giving the details of entire issue a request was made to issue necessary direction for bringing the salary of the senior employee at par with the salary of the junior employee.

2.13. Again on 06th April 2015, Petitioner submitted a representation to the Addl. Secretary Irrigation, Government of Uttarakhand regarding granting of salary to the Petitioner equivalent to the salary which is being drawn by Dinesh Chandra, who is junior to the Petitioner. In his representation Petitioner pointed out that 28th July 2009 Seniority List of the Engineers working in the Irrigation Department was issued, wherein the name of the Petitioner figured at Serial No. 99 whereas the name of Dinesh Chandra figured at Serial No. 101. It was pointed out that both Petitioner and Sri Dinesh Chandra were working on the post of Superintending Engineer (Civil), but Dinesh Chandra was drawing higher scale than Petitioner. In his representation Petitioner pointed out that Dinesh Chandra was promoted on the

post of Superintending Engineer (Pay Scale of Rs. 15600-39100 with Grade Pay of Rs. 7600/-) on 26.11.2005. Petitioner was sanctioned the pay scale Rs. 15600-39100 with Grade Pay of Rs. 7600/- on 27th February 2006, and the Petitioner was promoted on the post of Superintending Engineer on 31st May 2013. It was also highlighted that Dinesh Chandra was sanctioned Selection Grade in the pre-revised pay scale of Rs. 14300-18300 (Revised Pay Scale of Rs. 37400-67000 with Grade Pay of Rs. 8700/-), from 01st September 2006.

2.14. On the representations of the Petitioner for granting him salary at par with the salary being drawn by his junior Sri Dinesh Chandra, an opinion was sought from the Finance Department of the State. The Finance Department of the State was of the opinion that Sri Dinesh Chandra who was junior to the petitioner was promoted on the post of Superintending Engineer on 27th November 2005 and was granted the benefit of Time Scale/Selection Scale w.e.f. 1st September 2006. Taking note of the provisions of the Govt. Order dated 14.02.1983 issued by the Finance Department of then State of Uttar Pradesh, the Finance Department of the State of Uttarakhand was of the opinion that in terms of the Govt. Order dated 14th February 1983, the senior employee, i.e., petitioner should be granted the benefit of time scale pay scale from the date when the same was made admissible to his junior Sri Dinesh Chandra and that the Administrative Department should take steps for further action.

The opinion of the Finance Department was approved by the Chief Secretary of the State on 7th September 2015.

2.15. On 5th October 2015 the Secretary, Irrigation Department, Govt. of Uttarakhand issued an Office Memorandum. Perusal of the Office Memorandum shows that after taking note of the fact that Sri Dinesh Chandra was sanctioned the Selection Grade Pay Scale on 1st September 2006 and that he was promoted as Superintending Engineer by getting the benefit of reservation in promotion, whereas the senior employee, i.e., petitioner was promoted on the post of Superintending Engineer on 1st June 2013. After taking note of the Govt. Order dated 14th February 1983 and 11th April 1990, the Department took a decision to grant the benefit of the Selection Grade to the petitioner in the pay scale of Rs. 14300-18300 (Revised Pay Scale of Rs. 37400-67000 with Grade Pay of Rs. 8700/-) w.e.f. 1st September 2006.

2.16. On 30th August 2017, the Principal Secretary, Irrigation, Govt. of Uttarakhand issued a communication regarding sanctioning of the Selection Grade to the petitioner in the Pay Scale of Rs. 14300-18300 (Revised Pay Scale of Rs. 37400-67000 with Grade Pay of Rs. 8700/-). The Office Memorandum dated 05th October 2015 was modified to the extent that the petitioner was sanctioned the Selection Grade notionally from 1st September 2006 and the actual benefit was granted from 1st June

2013, when the petitioner was promoted on the post of Superintending Engineer.

2.17. The petitioner was promoted on the post of Chief Engineer, Level-2 on 7th September 2016 and retired from the same post of Chief Engineer, Level-2 on 31.12.2017 on attaining the age of superannuation. The petitioner was sanctioned the pension and other retiral dues by the respondents.

2.18. Almost one and half year, after retirement of the petitioner, the petitioner received the show-cause notice dated 3rd April, 2019 issued by the Secretary, Irrigation Department, Govt. of Uttarakhand. The show-cause notice mentioned that the petitioner has been sanctioned the selection grade vide order dated 30th August 2017. Reference was also made to the Govt. Order dated 11th April 1990 and 4th February 1983 and stated that 14 Engineers, who have retired from services and were senior to the petitioner have demanded for grant of selection grade on the ground that the same has been granted to the Petitioner. On the representation submitted by the retired employees opinion of the Finance Department was sought. The Finance Department has advised that those employees who have been wrongly sanctioned the selection grade, their pay/pension be revised in view of the Govt. Order dated 4th February 1983 and the excess amount paid be recovered.

The petitioner was show-caused as to why the excess amount paid to the petitioner due to wrong grant of selection grade to the petitioner in violation of the Govt. Order dated 4th February 1983, be not recovered from the pension of the petitioner. The petitioner was required to show-cause within 15 days by giving the reply in writing.

2.19. On 28th May 2019 the petitioner submitted his reply to the show-cause notice dated 3rd April 2019 addressed to the Secretary, Irrigation Department, Govt. of Uttarakhand. In his reply the petitioner pointed out that the issue involved pertains to the grant of the same pay scale to the senior employee in order to bring the same at par with the higher pay scale being drawn by the junior employee. The controversy does not pertain to grant of selection grade. The petitioner pointed out that he has been granted the Selection Grade from the date the same was given to the junior after obtaining the opinion of the Finance Department. The petitioner also pointed out that in terms of the Govt. Order dated 11th April 1990, the benefit of selection grade is available only to the Officers who have entered in 14th year of regular service. The Service Rules provides that only those Executive Engineer will be eligible for promotion on the post of Superintending Engineer who have rendered 15 years of service and thus, it is evident that the selection grade is not available to Superintending Engineers only. Petitioner pointed out that he was

rightly sanctioned the selection grade after obtaining the opinion of the Finance Department on the basis of the Govt. Orders.

2.20. On 7th December 2020, the Secretary, Department of Irrigation, Govt. of Uttarakhand issued an Office Memorandum, whereby the Office Memorandum dated 5th October 2015 and the Govt. Order dated 30th August 2017 were cancelled on the ground that the petitioner was wrongly sanctioned the selection grade.

2.21. The impugned Office Memorandum dated 7th December 2020 has been passed on the premise that Sri Dinesh Chandra who was junior to the petitioner was granted accelerated promotion on the post of Executive Engineer and Superintending Engineer and, therefore, the petitioner cannot compare himself with him. It was also stated that the benefit of selection grade will only be admissible to the Superintending Engineers and thirdly that when the petitioner was promoted as Superintending Engineer on 1st June 2013, the scheme of Selection Grade was abolished and the new scheme of ACP had come in place.

2.22. On 04th February, 2020, the Director, Treasury, Pension and Entitlement, Uttarakhand, Dehradun issued a communication to the Additional Director, Treasury, Pension and Entitlement, Haldwani, Nainital regarding revision of the pension of the petitioner. It was stated in the light of the directions issued vide Govt. Order dated 7th December 2020, a proposal has been received for revision of pension alongwith recovery of Rs.

49,58,678/-. The authority was directed to take notice of the letter of the Chief Engineer, Level-2 and to take appropriate action pertaining to recovery of the determined excess amount.

2.23. Pursuant to the communication dated 14th February 2021 issued by the Director, Treasury Pension and Entitlement, Uttarakhand, Dehradun, Petitioner has not yet received any communication regarding revision of the Pension of the Petitioner or re-fixation of the dues of the Petitioner.

2.24. Before proceeding further it will be necessary to mention here that, when Engineers Senior to the Petitioner represented to the Government claiming the same benefit, Principal Secretary, Irrigation issued the show-cause notice to Sri Dinesh Chandra and Sri Jaipal Singh by issuing the show-cause notice dated 27th November 2018. Sri Dinesh Chandra and Jai Pal Singh were required to show-cause as to why selection grade granted to them may not be withdrawn, as they were sanctioned the selection grade prior to the senior employees.

2.25. On 29th December, 2018 Dinesh Chandra is reply to the show-cause notice issued to him by the Principal Secretary Irrigation. Sri Jaipal Singh submitted his reply to show-cause notice on 09th January 2019. Both Dinesh Chandra and Jaipal Singh in their reply to the show-cause notice submitted that they have been granted the selection grade in terms of the provisions of the Government Order dated 11th April 1990. It was stated that,

since they were granted the selection grade in terms of the Government Order, therefore, it is wrong to contend that said person were wrongly given the benefit of selection grade.

2.26. The Petitioner has come to know that respondents have not taken any action against Dinesh Chandra and Jaipal Singh, for recovering the excess amount due to alleged wrong fixation, once they have submitted their reply to the show-cause notice.

2.27. Admittedly, the petitioner is senior to Sri Dinesh Chandra and Jaipal Singh in the cadre of Assistant Engineer, which is evident from the placement of the petitioner at Serial No. 99 in the Final Seniority of the Assistant Engineers (Civil) and Sri Dinesh Chandra was placed at Serial No. 101, below the petitioner.

2.28. Admittedly, the show-cause notice dated 03.04.2019 was issued to the petitioner after more than a year of retirement of the petitioner only for the reason that similarly situated persons demanded the same benefit which was granted to the petitioner.

2.29. The selection grade was granted to the petitioner vide Office Memorandum dated 05.10.2015 and the same has been cancelled after more than 05 years, by the impugned order passed by the respondents that too after retirement of the petitioner on 31st December 2017.

2.30. The respondents are wrong in contending that the benefit of Selection Grade (Pre-revised Pay Scale of Rs. 4500-5700) will be available only to the Superintending Engineers inasmuch as the Govt. Order dated 11.04.1990 clearly states that the benefit of Selection Grade will be available to all the officers who have entered into 14th year of their regular service.

2.31. On 01.09.2006 from when the petitioner was sanctioned the Selection Grade in the Pre-revised Pay Scale of Rs. 4500-5700, the petitioner was already working as a substantively promoted Executive Engineer and was getting the Pay Scale of Rs. 3700-5000 by way of time scale and thus, the petitioner was eligible to get the selection grade.

2.32. The orders impugned passed by the respondent cancelling the Selection Grade granted to the petitioner is not sustainable for the reason that the Govt. Order dated 11.04.1990 specifically mentions that for computing the number of posts for sanctioning the selection grade, the total number of posts from Executive Engineer and above will be taken into consideration and admittedly the petitioner was working on the post of Executive Engineer.

2.33. The order impugned dated 7th December 2020 passed by the Secretary, Irrigation is not sustainable for the reason tht the same has been passed without considering the provisions of the

Govt. Order dated 14.02.1983 on the basis of which the petitioner was sanctioned the selection grade on 05.10.2015.

2.34. The Govt. Order dated 14.02.1983 is specific wherein it states that the Selection Grade will be granted on the basis of seniority and the junior will not be sanctioned the selection grade until the senior has completed the qualifying service, which itself shows that the selection grade was required to be granted on the basis of seniority and not on the basis of holding the post of Superintending Engineer.

2.35. The Office Memorandum dated 05.10.2015, whereby the petitioner was sanctioned the selection grade, was issued by the Secretary, Irrigation after obtaining the opinion of the Finance Department of the State, which has occurred on the basis of the Govt. Order dated 14.02.1983.

2.36. The order impugned dated 07.12.2020 is not sustainable for the reason that the Finance Department of the State time and again in their File Noting have been specifically stated and reiterated that the selection grade has to be granted on the basis of the provisions of the Govt. Order dated 14.02.1983 issued by the Finance Department.

2.37. The orders impugned are not sustainable for the reason that on the representation of the petitioner for upgradation of his salary to bring at par with the salary of his junior, the

Irrigation Department time and gain sought the opinion of the Finance Department of the State and the Finance Department in its Noting dated 03.09.2015 , 25.01.2016 and 09.09.2016 has specifically stated that the petitioner is entitled for the selection grade from the date when the junior Dinesh Chandra was sanctioned the selection grade.

2.38. The order impugned dated 07.12.2020 is not sustainable for the reason that the same has been passed on the ground that the case of the petitioner cannot be compared with Sri Dinesh Chandra as Sri Dinesh Chandra was granted accelerated promotion, but the fact is that the Govt. Order dated 14.02.1983 and 11.04.1990 specifically mentions that the selection grade will be granted on the basis of seniority and that too by taking into consideration the total posts available from the post of Executive Engineer and above.

2.39. The order impugned dated 07.12.2020 is also not sustainable for the reason that the same has proceeded on the basis that the benefit of selection grade is admissible to the Superintending Engineer only, whereas the Govt. Order dated 11.04.1990 specifically mentions that the selection grade will be available to all the officers by taking into consideration the post from Executive Engineer and above.

2.40. So far as the contention of the Secretary, Irrigation that by the time the petitioner was promoted on the post of Executive Engineer, the scheme of Selection Grade was already stood abolished after implementation of the ACP Scheme, is also not sustainable for the reason that the petitioner was wrongly denied the benefit of selection grade from the date when the same was granted to his junior.

2.41. The order impugned is also not sustainable for the reason that it is arbitrary and discriminatory inasmuch as though the show-cause notice was issued to Sri Dinesh Chandra and Jaipal Singh who are also junior to the 14 incumbents who have claimed similar benefits, but no recovery order has been issued against Sri Dinesh Chandra and Jaipal Singh.

2.42. Sri Dinesh Chandra who is at Serial No. 101 in the Seniority List, Anand Singh Brijwal at Serial No. 102 and Sri Jaipal Singh at Serial No. 104 in the Seniority List and are below to the petitioner, have also been granted selection grade, but neither the selection grade granted to them have been withdrawn nor recovery order has been passed against them.

3. On 13.07.2021, counter affidavit has been filed on behalf of the respondent No. 4 by Sri Vikas Pande, Standing Counsel, High Court of Uttarakhand, in which it has been stated that the Irrigation Department, Uttarakhand Government vide its Office Orders No. 1768/II-2020-01(100)/2014 dated 07.12.2020

has revoked the office orders no. 1721/II-2015-01(100)/2014 dated 5.10.2015 and government order no. 320/II(1)-2017-01(100)/2014 dated 30.8.2017 granted the selection grade, from the date the junior to the petitioner, namely, Shri Dinesh Chandra, was granted the selection grade. The selection grade was on notional basis w.e.f. 01.09.2006 and on actual basis from 01.06.2013, i.e., from the date of actual promotion. Vide Government order dated 30.8.2017 the petitioner was granted the pay scale of Rs. 14300-400-18400 (6th Pay Commission revised pay scale Rs. 37400-67000 GP 8700/-) on notional basis from 01.09.2006 and actual w.e.f. 01.06.2013 in accordance with the provision of Government Order No. A-1328/90/27-सि-48अ/89 dated 11.4.1990 and Government Order No. 343/X-48(M)-1981 dated 14.2.1983. That vide Government Order dated 11.4.1990 the following provisions have been made with regard to the grant of selection grade/revised pay scale for the post of Superintendent Engineer only those officers would be entitled for the grant of selection grade who have completed 14 years regular service as on 1st July of the selection year and sanctioned of pay scale. According to the aforesaid provisions the petitioner was not eligible for selection grade because according to government order dated 11.4.1990 only the 15% of total post of Executive Engineers and above posts, on the basis of the seniority were entitled for selection grade, whereas on the date, i.e., 01.09.2006 the petitioner was working as Executive Engineer and, therefore,

the office orders no. 1721 dated 5.10.2015 and government order no. 320 dated 30.8.2017 were against the provision of earlier government orders issued. As per clause 5 (3) of officer orders dated 7.12.2020 it had been clear stated that according to the provisions of the Government Order dated 11.4.1990 only those Superintend Engineers would be entitled for the selection grade who have completed 14 years regular service but at that time the petitioner was not working as Superintend Engineer but as Executive Engineer. The petitioner was promoted on the post of Superintend Engineer on 01.06.2013 and at that time vide Government Order no. 395 dated 17.10.2008 the provision of selection grade were put to an end and the new scheme of Assured Career Progression (ACP) was made applicable. From the above it is clear that on the date of promotion of the petitioner on the post of Superintend Engineer the provisions of ACP were applicable and, therefore, the process would have been carried according to the provisions of the ACP and not selection grade. In-charge Chief Engineer Level-II, Irrigation Department, Almora vide its letter dated 21.1.2021, with regard to the office memorandum dated 07.12.2020 and in compliance to the letter issued by the Principal Engineer (Budget Division) (Irrigation Department) Uttarakhand dated 11.1.2021 calculated the excess payment made to the petitioner of Rs. 39,58,678/-. The Directorate vide its letter No. 5530 नि०को०पे०ह०/पेंशनअनु० (के)/2017-18 dated 04.2.2021 had directed to the Additional

Director Treasury Pension and Entitlement, Camp Office, Haldwani for necessary action as per rules to adjust the excess amount of Rs. 49,58,678/- to the petitioner. The Directorate again vide its letter dated 16.3.2021 has directed to the Additional Director, Treasury Pension and Entitlement, Camp Office, Haldwani that in place of Rs. 49,58,678/- the mention has been made for adjustment of Rs. 39,58,678/- and, therefore, the aforesaid mistake be rectified and adjustment of only 39,58,678/- be made from the petitioner. Aggrieved the petitioner filed the present writ petition No. 127/SB/2021 Devendra Kumar Pauchari Vs. State and ors and the Hon'ble Court vide its order dated 15.3.2021 stayed the recovery. Chief Engineer, Almora vide letter dated 21.1.2021 informed for adjustment of over payment has been made to the petitioner Sh. Devendra Kumar Pachauri.

4. On 29.11.2021, another counter affidavit has been filed on behalf of the respondents No. 1 & 2 by Sri Vikas Pande, Standing Counsel, High Court of Uttarakhand, in which it has been stated that:-

4.1. The petitioner was promoted on the post of Superintending Engineer on 01.06.2013 but on the basis of the wrong information/misrepresentation by the petitioner on 18.09.2014 the petitioner was given the benefit for which he was not entitled. The petitioner claims that one Shri Dinesh Chandra has been given certain benefits. Here, it is submitted that the Shri

Dinesh Chandra, who belongs to Schedule Case category was granted the benefit of promotion on the basis of the Reservation Policy and was promoted on the post of Executive Engineer (Pay Scale Rs. 2200-4000/-) on 31.07.1998 and thereafter, according to the provisions of the service rules, was promoted on the post of Superintending Engineer in the pay scale of Rs. 12000-16500/- (Pre-revised) on 26.11.2005, i.e., 7 years 6 months prior to the petitioner. Shri Dinesh Chandra was granted the pay scale of Rs. 46380/- with grade pay of Rs. 8700/- on 01.06.2013 whereas the petitioner was getting the pay scale of Rs. 15600-39100/- in grade pay of Rs. 7600/- (Pay Scale of Rs. 34020/-) as on 01.06.2013.

Taking into consideration the misrepresentation, the department ignored the provisions of the ACP (at that relevant point of time) and granted selection grade to petitioner in accordance with the provisions of the Government Order dated 11.4.1990 and granted the selection grade to the petitioner from the day junior to the petitioner (Shri Dinesh Chandra) was granted selection grade, i. e, on notional basis from 01.09.2006 and on actual basis from 01.06.2013 in the pay scale of Rs. 14300-400-18300/- (Revised to Rs. 37100-67000/- with grade pay of Rs. 8700/-) vide Government Order No. 1721/II-2015-07(100)2014 dated 5.10.2015 and Government Order No. 320 dated 30.8.2017.

According to the provisions of the Government Order dated 11.4.1990 only a fixed percentage of Superintending Engineer were entitled for selection grade on the basis of their

seniority. It is once again reiterated that on the date, i.e., 01.09.2006 Shri Dinesh Chandra was granted selection grade, was working on the post of Superintending Engineer whereas the petitioner was working on the post of Executive Engineer, therefore, the case of the petitioner is not covered by the provisions of the Government Order dated 11.4.1990. The extract of Government Order dated 11.4.1990 is as follows:

अधीक्षण अभियन्ता 3700—125—4700—150—5000 सलेक्शन ग्रेड 4500—150—5700	सलेक्शन ग्रेड के लिए वह ही अधिकारी पात्र होंगे जो देय वर्ष की पहली जुलाई को नियमित सेवा के 14 वें वर्ष में प्रवेश कर जायेंगे, सलेक्शन ग्रेड के पदों की संख्या का निर्धारण अधिशासी अभियन्ता एवं उसके ऊपर के पदों की कुल संख्या के आधार पर 15 प्रतिशत के अनुसार किया जायेगा। किन्तु इस प्रकार आगणित पदों की संख्या अधीक्षण अभियन्ता के कुल पदों की संख्या से अधिक न होगी किन्तु सलेक्शन ग्रेड स्वीकृत होने के फलस्वरूप अधीक्षण अभियन्ता के स्वीकृत पदों में कोई वृद्धि नहीं होगी।
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On the date of grant of selection grade to Shri Dinesh Chandra in the revised pay scale of Rs. 37400-67000/- grade pay of Rs. 8700/- total 117 posts were sanctioned above Executive Engineers. According to the provisions of the Government Order dated 11.4.1990 only 18 posts were to be granted selection grade on the basis of 15% total posts. According to the aforesaid Government Order dated 11.4.1990 only 15% posts were to be granted selection grade and accordingly 18 posts fell within that category (15% of 117). At that time, the Superintending Engineers were regularly promoted and from the remaining Executive

Engineers the petitioner was the junior most Executive Engineer and senior persons to the petitioner were in the eligibility list but according to the provisions of Government Order dated 04.02.1983 the benefits could not be given to all (including petitioner) as the Executive Engineers could not come within the seniority list. It would be relevant to point out here that if the junior incumbent belonging to reserved category is promoted and thereafter, the unreserved category candidate is promoted then the unreserved category candidate regains his seniority according to the Catch-UP rules. But the aforesaid preposition is not the same with regard to the Salary Protection Rules. There is no provision that if unreserved category candidate regains his category then he may also be entitled for salary on notional basis from the date the reserved category candidate was granted the higher salary on account of his promotion and thereafter, on the date of his promotion he be given the salary on actual basis. The aforesaid proposition of notional promotion is available only in the case where the junior employee has been given promotion on the given post but equating the salary of unreserved caste candidate with that of a reserved caste candidate who has been given promotion is higher inappropriate. The petitioner was granted the benefit of selection grade in the year 2015 on the misrepresentation of the petitioner (18.09.2014) against the provisions of Government Order dated 8.3.2011 and, therefore, was issued a show-cause notice on 03.04.2019. As the

misrepresentation/reply to the show-cause notice submitted by the petitioner was against the prevalent rules, therefore, the excess payment made to the petitioner was directed to be recovered vide order dated 7.12.2020 and the respondent No. 2 issued a recovery order dated 4.2.2021 and also corrected the fixation of pay/pension benefit admissible to the petitioner which is in accordance with law.

It is once again reiterated that on the basis of the false representation dated 18.09.2014 the petitioner pretended that he was in receipt of the wrong pay scale/grade pay (less pay scale) and acting on the representation submitted by the petitioner, the petitioner was wrongly given the selection grade of Rs. 37000-67000/- with grade pay of Rs. 8700/- w.e.f. 01.09.2006 on notional basis (the date when Shri Dinesh Chandra was granted the aforesaid pay scale) and on actual basis from 01.06.2013. Due to the aforesaid several other Engineers started demanding the same pay parity and also demanding pay parity with the Engineers of the reserved categories who have been granted higher pay scale on the basis of in reserved accelerated promotion category. A writ pending being WPSB 107/2021 Umesh Kumar Vs. State and ors was filed before the Hon'ble High Court which was transferred to the learned Public Service Tribunal and is still pending before the learned Public Service Tribunal being Claim Petition No. 27/DB/2020.

It is stated that the petitioner was initially appointed on 27.2.1990; at that time the Government Order dated 11.4.1990 was issued which was with regard to the selection grade and with regard to the anomalies which came-out as a result of pay anomalies after the recommendation of the 4th Pay Commission. The Government Order dated 11.4.1990 was with regard to the clarification issued for the Executive Engineers/Superintending Engineers of the Irrigation Department whose selection grade was due.

After the adoption of the 5th Central Pay Commission dated 01.01.1996 for the first time the provision of time scale was made applicable in place of selection grade and a Government Order dated 2.12.2000 was issued, Thereafter, the State of Uttarakhand adopted the aforesaid Government Order vide its Government Order dated 12.3.2001 and vide Government Order dated 23.08.2005 a clarification was issued. The aforesaid Government Order with regard to time scale was applicable for grant of time scale from selection grade to the Executive Engineers/Superintending Engineers at that time, who were eligible. It is once again reiterated that Shri Dinesh Chandra the then Assistant Engineer was promoted on the post of Executive Engineer on 31.7.1998 and on the date of grant of selection grade, i.e., 01.09.2006 has completed 8 years of service as Executive Engineer whereas the petitioner was promoted on the post of Executive Engineer on 10.11.2005. After 15 days of

promotion of the petitioner, Shri Dinesh Chandra had been promoted on the post of Superintending Engineer in the pay scale of Rs. 10000-325-15200 (pre-revised). The petitioner was promoted on the post of Superintending Engineer after about 7 years and 6 months, i.e., from 01.06.2013 and at that time the provision of the 6th Pay Commission were in existence (w.e.f. 01.01.2006). The provisions of the ACP were made applicable in place of time scale/selection grade vide Government Order dated 8.3.2011. The aforesaid Government Order provided for the grant of 1st, 2nd and 3rd ACP after completing 10 years, 16 years and 26 years of satisfactory and regular services. It is submitted that the petitioner was initially appointed vide order dated 16.9.1989 and submitted his joining on 27.2.1990 as Assistant Engineer and while working as Assistant Engineer also got all the benefits of time scale and selection grade and was also thereafter promoted on the post of Executive Engineer and on 01.06.2013 was promoted as Superintending Engineer. Counting 26 years (for grant of 3rd ACP) from 27.2.1990 the petitioner would have received 3rd ACP on 27.2.2016 but the petitioner was promoted before that on 07.09.2015 on the post of Chief Engineer, Level-II and thereafter retired on 31.12.2017. It is submitted that the benefit of orders dated 5.10.2015 and 30.7.2015 with regard to the selection grade have wrongly been given to the petitioner, therefore, the State vide its Office Memorandum dated 7.12.2021 and 4.02.2021 revoked/cancelled the earlier orders and correct

salary/pension fixation was done as a recovery order of Rs. 49,38,678/- was issued.

For ready reference of the Hon’ble Court, the details of the petitioner Shri Devendra Kumar Pachauri and Shri Dinesh Chandra are as follows:

	Shri Dinesh Chandra	Sri Devendra Kumar Pachauri (Petitioner)
Date of joining in the Department	1512.1989	27.2.1990
Date of retirement	In service	31.12.2017
Date of promotion to Executive Engineer	31.7.1998	10.11.2005
Date of promotion to Superintending Engineer	26.11.2005	01.06.2013
Date of promotion to Chief Engineer	Working as Chief Engineer	07.09.2015
Selection grade granted to Shri Dinesh Chandra	01.09.2006	From 01.09.2006 promotion on notional basis and from 01.06.2013 as actual basis

4.2. The contents of para 1 of the writ petition are wrong and denied. It is submitted that according to the Government Order dated 11.4.1990 only those Executive Engineers were entitled for selection grade who fall under the 15% vacancies as on the basis of the seniority in the pay scale of Rs. 3700-125-4700-150-5000. The selection grade of the aforesaid pay scale is Rs. 4500-150-5700/-. On the misrepresentation of the petitioner, the petitioner was granted the wrong pay scale vide Office Memorandum dated 5.10.2015 against the provisions of the

Government Order dated 30.5.2017. The petitioner was wrongly given the pay scale which was given to other Executive Engineers who have already been promoted being reserved category candidates. Rest of the contents have already been replied in the preceding paragraphs of this affidavit.

4.3. The contents of para 7 of the writ petition are not admitted as stated. It is submitted that the Government Order dated 14.2.1983 clarifies that the selection grade will be sanctioned to the regular employees, who have completed desired years of service in his cadre and would be admissible to the employees on the basis of the seniority in the cadre. Rest of the reply has already been given in the brief facts of this affidavit.

4.4. The contents of para 8 of the writ petition are wrong and denied. It is submitted that the petitioner was wrongly given benefit of time scale/selection grade from back date whereas at the relevant point of time the provisions of the ACP were in existence and, therefore, the Department rightly refixed the pay, pension and ordered for recovery.

4.5. In reply to the contents of para 9 of the writ petition, it is submitted that according to the rules 5 (2) of the Service Rules, 2003 only those Executive Engineers would be considered for promotion on the post of Superintending Engineer, who have completed 15 years of substantive service on the first day of the

selection year and at least 6 years of service as Executive Engineer. The date when the petitioner was granted the selection grade, i.e., 01.09.2006 the petitioner had completed only 10 months of service as Executive Engineer whereas Shri Dinesh Chandra had completed 8 years of service as Executive Engineer.

4.6. In reply to the contents of para 11 of the writ petition, it is submitted that the petitioner had been granted second promotional pay scale on 27.2.2006 on the post of Executive Engineer from this, it is clear that the petitioner would have been entitled for the 3rd ACP on 27.2.2016 whereas the petitioner was granted 3rd promotion on the post of Chief Engineer Level-II prior to that.

4.7. The contents of para 12 of the writ petition are wrong and denied. It is submitted that there is no provision for grant of notional selection grade whereas there is provision for grant of notional promotion.

4.8. The contents of para 13 & 14 of the writ petition are wrong and denied. It is submitted that Shri Dinesh Chandra was working as Superintending Engineer from 26.11.2005.

4.9. The contents of para 18 of the writ petition are wrong and denied. It is submitted that the petitioner has been granted 3

promotions and benefits of 3 pay scales and, therefore, the petitioner is not entitled for the selection grade.

4.10. The contents of para 19 of the writ petition are wrong and denied. It is submitted that following the principle of natural justice the petitioner was given show-cause notice dated 3.4.2019 and thereafter, recovery order dated 7.12.2020 and 4.12.2021 were issued and pay and pension was revised and order dated 5.10.2015 and 30.5.2017 were issued.

4.11. In reply to the contents of para 20 of the writ petition it is submitted that the reply to the show-cause notice was submitted on 3.4.2019 and as the contents of the reply were not found satisfactory, therefore, the recovery order for Rs. 49,58,620/- was issued and the salary/pension was refixed vide order dated 7.12.2020 and 4.2.2021.

4.12. The contents of para 26 & 27 of the writ petition are wrong and denied. It is submitted that the representation submitted by Shri Dinesh Chandra and Shri Jai Pal Singh, who belongs to reserved category was found satisfactory and, therefore, there was no occasion to take any further action.

4.13. The contents of para 28 of the writ petition are wrong and denied. It is submitted that Shri Dinesh Chandra although was junior to the petitioner in the service cadre but due to reservation

policy was promoted on the post of Superintending Engineer 7 years prior to the petitioner and on the post of Superintending Engineer 2 years 6 months prior to the petitioner.

4.14. The contents of para 29 & 30 of the writ petition are wrong and denied. It is submitted that there is no time-limit for revoking the wrong order. As and when the order which is wrongly and illegally comes to the notice it can be revoked forthwith.

4.15. The contents of para 31 & 32 of the writ petition are wrong and denied. It is submitted that according to the Government Order dated 11.4.1990 it has been provided that the selection grade pay scale would be admissible on the post of Superintending Engineer and Executive Engineer in a fixed percentage if all the Superintending Engineers are found working on the post then it would be admissible to the Superintending Engineer and if there is short fall in the working of Superintending Engineer then it would be given to the senior most Executive Engineers, but the petitioner did not fall within the zone of consideration as the petitioner was placed lower in the seniority list.

4.16. The contents of para 39 & 40 of the writ petition are wrong and denied. It is submitted that on 01.09.2006 the petitioner was working as Executive Engineer whereas Shri Dinesh Chandra was working as Superintending Engineer. The cadre of both of

them was different and further they belong to different categories, i.e., petitioner belongs to General category whereas Shri Dinesh Chandra belongs to reserved category. If any junior incumbent then the petitioner would have been considered then only case of the petitioner could also to be considered.

4.17. The contents of para 41 of the writ petition are wrong and denied. It is submitted that the selection grade of the petitioner was not due on 01.09.2006 because at that time the petitioner was having only 10 months of service to his credit as Executive Engineer whereas the eligibility criteria was at least 6 years service as Executive Engineer.

4.18. The content of para 42 to 45 of the writ petition it is submitted that 3 reserved class candidates namely Shri Dinesh Chandra, Shri Anand Brijwal and Shri Jai Pal Singh had been promoted prior to the petitioner on the post of Executive Engineer as well as Superintending Engineer due to the reservation policy. They were fulfilling required qualification as provided in Government Order dated 11.4.1990 and 14.2.1983 and, therefore, the reply submitted by them was found satisfactory and no further action was taken whereas the reply submitted by the petitioner was not found satisfactory and, therefore, the show- cause notice was issued to the petitioner and, therefore, the orders dated 7.12.2020 and 4.2.2021 were issued. In view thereof, the

averments made in the writ petition of the petitioner are devoid of merit and liable to be dismissed.

5. Learned Counsel for the petitioner did not file any Rejoinder Affidavits against the Counter Affidavits filed on behalf of the respondents No. 4, 1 & 2.

6. At the outset only, it is apparent that this claim petition had been filed originally before the Hon'ble High Court of Uttarakhand at Nainital as Writ Petition No. 127 (S/B) of 2021, which was relegated by the Hon'ble High Court to this Tribunal vide its order dated 16.09.2022, and the same is being adjudicated by this Tribunal in the same form, treating it as a claim petition. Therefore, the prayers put forward by the petitioner in the original writ petition, have been adjudicated upon by this Tribunal considering it as a claim petition only, notwithstanding the original prayers for issue of a writ, order or direction in the nature of certiorari/mandamus etc., which are beyond the jurisdiction of this Tribunal. For this clerical mistake, the claim petition is not being dismissed.

7. We have heard learned Counsel for the petitioner, Sri Vinay Kumar and Sri Devendra Kumar Pachauri, Petitioner in person, who is physically present at Uttarakhand Public Services Tribunal, Dehradun and Sri Ved Prakash Devrani, Ld. Assistant Presenting Officer, and perused the record carefully.

8. Learned Counsel for the petitioner has argued as follows:-

(a). The central theme of this instant claim petition is not merely the matter of recovery, but more about the eligibility of the petitioner for selection grade as stipulated in the Government Orders submitted as **Annexure Nos. 2 & 3**, which direct the respondent-department to grant the selection grade to the petitioner, if a junior officer has been granted the same earlier. The dispute of recovery is a simple corollary to the aforesaid Government Orders.

(b). The petitioner has been granted selection grade w.e.f. the year 2013, though he is entitled for the same w.e.f. the year 2006 in accordance with the Government Order No. 343/दस-48(m)-1981, dated 14.02.1983, as the petitioner's junior Sri Dinesh Chandra had been granted selection grade w.e.f. the year 2006. That Sri Dinesh Chandra was junior to the petitioner in the direct recruitment is an admitted fact on the part of the respondent-department.

(c). The petitioner superannuated on 31.12.2017, but was, later on, given a show-cause notice for recovery (**Annexure No. 12**) on 03.04.2019 and a subsequent recovery order also on 04.02.2020 (**Annexure No. 15**). Thus, it is evident that the petitioner was given a recovery notice for a huge and draconian amount of Rs. 49,58,678/- about 17 months after his

superannuation, which is impermissible to recover as per the Hon'ble Supreme Court's judgment dated 18.12.2014 passed in C. A. No. 11527 of 2014 the case of State of Punjab Vs. Rafiq Masih (White Washer)

(d). This is noteworthy that these amounts had been released to the petitioner a long time back.

(e). The attention of the Tribunal was drawn towards **Annexure No. 14**, whereby, an order has been passed on 07.12.2020 against the petitioner cancelling the Office Memorandum No. 1721/II-2015-01 (100)/2014 regarding the grant of selection grade dated 05.10.2015 and Government Order No. 320/II(1)-2017-01 (100)/2014 dated 30.08.2017. As per the petitioner's Counsel, this office memo No. 1268/II(1)/2020-01(100)/2014 dated 07.12.2020 has been issued against the petitioner maliciously without properly analysing the contention of the petitioner vis-a-vis Sri Dinesh Chandra who was junior to the petitioner. This impugned order has been issued under huge pressure and panic due to the fact that a similar relief has been claimed by 14 other Officers too after the grant of petitioner's selection grade.

(f). The learned Counsel for the petitioner has emphasized upon a scrutiny of **Annexure No. 16 & 17** and drew attention of the Tribunal that show-cause notices for recovery were also given to Sri Dinesh Chandra and Sri Jai Pal Singh, but

were later withdrawn irregularly. Thus, the respondent-department is culprit of discrimination against the petitioner in the same matter, as is evident from the documents in question.

(g). Further, learned Counsel for the petitioner has drawn the attention of the Tribunal towards **Annexure No. 9** also which has been obtained through R.T.I. Act, 2005 by the petitioner and which is part of the Government Secretariat Official order-sheets wherein the grant of selection grade was approved till the highest levels of the Secretariat earlier.

(h). Finally, learned Counsel for the petitioner emphasized that the selection grade had been granted earlier to the petitioner after detailed deliberations at the departmental and Government levels wherein even the Finance Department had concurred accordingly. In reality, it was not grant of selection grade to the petitioner that disturbed the respondents, rather it was representations submitted by 14 other Officers that created panic in the Respondent-Department, who had prayed for similar grant of selection grade on the basis of petitioner's case, as specifically mentioned in the show-cause notice dated 03.04.2019 to the petitioner as follows:-

“4. उक्त शासनादेश के परिपक्ष्य में यहां यह उल्लेखनीय है कि आपको दिये गये चयन श्रेणी वेतनमान की समरूपता (Parity) के आधार पर श्री आदित्य कुमार दिनकर सहित कुल 14 अभियन्ता जो कि वरिष्ठता क्रम में आपसे वरिष्ठ हैं, द्वारा अधीक्षण अभियन्ता पद पर आपको दिये गये

चयन श्रेणी वेतनमान को नजीर मानते हुये कनिष्ठ को अनुमन्य चयन श्रेणी वेतनमान की तिथि से चयन श्रेणी वेतनमान की मांग की गयी है। तदोपरान्त विभाग में सेवनिवृत्त/सेवारत कुल 14 अभियन्ताओं द्वारा उपरोक्त प्रस्तर 02 में अंकित शासनादेश की व्यवस्था के अन्तर्गत कनिष्ठ को अनुमन्य चयन श्रेणी वेतनमान की तिथि से चयन श्रेणी वेतनमान अनुमन्य कराये जाने हेतु प्रत्यावेदन प्रस्तुत किये गये हैं। उक्त के सम्बन्ध में वित्त विभाग द्वारा "जिन कार्मिकों को त्रुटिपूर्ण ढंग से सेलेक्शन ग्रेड स्वीकृत किया गया है, उनका वेतन/पेंशन शासनादेश दिनांक 04.02.1983 के क्रम में संशोधित करते हुये उनको किये गये अतिरिक्त भुगतान की वसूली की जाए" का परामर्श दिया गया है।"

9. Sri Ved Prakash Devrani, Learned Assistant Presenting Officer, Uttarakhand Public Services Tribunal, Dehradun argued as follows:-

(a). It was because of the Government Policy pertaining to the reservations in promotions that Shri Dinesh Chandra, being a Scheduled Caste officer, who was junior to the petitioner in the seniority list, got promoted twice before the petitioner. Both, the petitioner and Shri Dinesh Chandra, were Assistant Engineers together till the year 1998 when Sri Dinesh Chandra was promoted to the post of Executive Engineer on 01.08.1998 due to the Government Policy of Reservations in Promotions for SC/ST Employees. The petitioner was promoted on the post of Executive Engineer vide order dated 10.11.2005, being a General Category Officer. So, petitioner's case cannot be equated with Sri Dinesh Chandra.

(b). Shri Dinesh Chandra was further promoted to the post of Superintending Engineer on 26.11.2005 while the petitioner became Superintending Engineer vide order dated 31.05.2013, after more than 07 years. Nevertheless, both the Officers were Executive Engineers together again between dated 10.11.2005 to 26.11.2005, Dinesh Chandra being junior to the petitioner.

(c). Therefore, the petitioner's contention that Shri Dinesh Chandra was junior to him in the matter of selection grade is partly incorrect. The reservation in promotion was a constitutional mandate and, therefore, the petitioner's case cannot be equated with a reserved category officer.

(d). In the year 2012, the Hon'ble Supreme Court quashed the Rule-8A of 2007 Rules as ultra-vires. As a result, the petitioner also became a Superintending Engineer in the year 2013 equivalent to Shri Dinesh Chandra. The petitioner gave a misleading representation to the respondent-department for grant of selection grade to the petitioner from the date when it was granted to Shri Dinesh Chandra, i.e., the year 2006, since as per the petitioner Shri Dinesh Chandra was junior to the petitioner.

(e). Though in the eyes of law the contention of the petitioner was incorrect, yet the respondent-department re-determined the petitioner's salary alongwith the selection grade w.e.f. the year 2006 when it was first granted to Shri Dinesh

Chandra, who was allegedly junior to the petitioner, relying upon the documents submitted by the petitioner, and keeping in view the fact that petitioner's ACP also had become due.

(f). Nevertheless, at the time of petitioner's superannuation the Finance Department realized that the petitioner had been granted selection grade irregularly and that he was not eligible for the same at that time. Thus, the impugned recovery notice was correctly issued.

(g). In this instant claim petition, the landmark ruling of Hon'ble Supreme Court in the matter of Rafiq Masih would not be applicable due to the fact that the petitioner was a Group-II Officer, while Rafiq Masih ruling is relevant only for Group-III & IV Government Employees.

10. After having heard the learned Counsels for the parties and after having gone through the record intensively we have perceived the following points as the crux of the matter, which are significant for reaching a judicious conclusion:-

(1). The respondents have blindfoldedly sought solace in the matter pertaining to the grant of selection grade in terms of the Government Orders dated 14.02.1983 and 11.04.1990, without realizing that pretty lot of water has flown down through the Ganges between the years 1990 to 2020, wherein a new State of Uttarakhand has been carved out on 09.11.2000 Ex-UP, followed by tumultuous statutory changes in Rules and Regulations of the

executive departments. No doubt that the original shell cases of these two impugned Government Orders still exist formally, nevertheless, the contents may have got amended as per the developing needs of the nascent State. Therefore, the averments of the respondents would have to be taken with a pinch of salt in the ensuing analysis.

(2) The reservation policies in the recruitments in the Government Employment have been in place in our Country, as a Welfare State, for long, resulting into quicker promotions for the employees of the SC/ST categories as per law, and the resultant higher pay and perks also, but these policies had not been enacted mandatorily as discriminatory or detrimental to the General category employees, (except for, of course, in the fields of recruitments and promotions) particularly in the fields of remunerations, perks, pay grades, up-gradation of emoluments, and the day-to-day privileges etc. as permissible to all the employees of the same cadre as per their designations and seniority.

(3). This is not out of context here to mention that the Hon'ble Apex Court had already struck down Rule 8A in U.P. Power Corporation Limited Vs. Rajesh Kumar and others, as ultra-vires, on 27.04.2012, and again has set-aside reservation in promotions in Uttarakhand State on 07.02.2020 in Mukesh Kumar & another Vs. The State of Uttarakhand & others. So, at this

juncture, this quite naturally becomes a very important point of consideration as to whether the Respondent-Department had carried out extensive exercise of reverting back the effects of Rule-8A, w.e.f. its inception upto the year 2012-2013, as also the reservation in promotions, since it would definitely topple the apple's cart viz Seniority vs. Juniority, and the corresponding salary/pension fixation too accordingly. These deliberations MUST have been concluded between the years 2012 and 2020, and particularly so before issuing of the impugned order dated 07.12.2020.

(4). It seems appropriate to quote the judgements on the impugned matter, and the connected dimensions as follows:-

**U.P. Power Corporation Limited
Vs.
Rajesh Kumar and others**

27.04.2012

*“41. As has been indicated hereinbefore, it has been vehemently argued by the learned senior counsel for the State and the learned senior counsel for the Corporation that once the principle of reservation was made applicable to the spectrum of promotion, no fresh exercise is necessary. It is also urged that the efficiency in service is not jeopardized. Reference has been made to the Social Justice Committee Report and the chart. We need not produce the same as the said exercise was done regard being had to the population and vacancies and not to the concepts that have been evolved in **M. Nagaraj** (supra). It is one thing to think that there are statutory rules or executive instructions to grant promotion but it cannot be forgotten that they were all subject to the pronouncement by this Court in **Vir Pal Singh Chauhan** (supra) and **Ajit Singh (II)** (supra). We are of the firm view that a fresh exercise in the light of the*

*judgment of the Constitution Bench in **M. Nagaraj** (supra) is a categorical imperative. The stand that the constitutional amendments have facilitated the reservation in promotion with consequential seniority and have given the stamp of approval to the Act and the Rules cannot withstand close scrutiny inasmuch as the Constitution Bench has clearly opined that **Articles 16(4A) and 16(4B)** are enabling provisions and the State can make provisions for the same on certain basis or foundation. The conditions precedent have not been satisfied. No exercise has been undertaken. What has been argued with vehemence is that it is not necessary as the concept of reservation in promotion was already in vogue. We are unable to accept the said submission, for when the provisions of the Constitution are treated valid with certain conditions or riders, it becomes incumbent on the part of the State to appreciate and apply the test so that its amendments can be tested and withstand the scrutiny on parameters laid down therein.*

*42. In the ultimate analysis, we conclude and hold that Section 3(7) of the 1994 Act and Rule 8A of the 2007 Rules are ultra vires as they run counter to the dictum in **M. Nagaraj** (supra). Any promotion that has been given on the dictum of **Indra Sawhney** (supra) and without the aid or assistance of Section 3(7) and Rule 8A shall remain undisturbed.”*

**Mukesh Kumar & another
Vs.
The State of Uttarakhand & others**

07.02.2020

*“15. The High Court committed an error by striking down the proceeding dated 05.09.2012 by which a decision was taken not to provide reservation in promotions without giving any reasons, except stating that the said decision is contrary to the judgments of this Court in **Jarnail Singh** and **Indra Sawhney** (supra). A perusal of the proceeding dated 05.09.2012 would show that the decision taken by the State*

Government was by way of implementation of the judgment of the High Court of Uttarakhand in **Vinod Prakash Nautiyal** (supra) by which Section 3(7) of the 1994 Act, relating to the provision of reservation in promotion, was struck down. By its judgment dated 10.07.2012 in **Vinod Prakash Nautiyal** (supra), the High Court declared Section 3 (7) of the 1994 Act as contrary to the law laid down by this Court in **M. Nagaraj** (supra). There was a further declaration that no promotion can be given by the State of Uttarakhand by taking recourse to Section 3 (7) of the 1994 Act. However, the State Government was given liberty to bring out another legislation in accordance with the mandate of the Constitution of India, by following the judgment in **M. Nagaraj** (supra). This Court dismissed the SLP filed against the said judgment. At this juncture, it is relevant to mention that certain notifications were issued after the formation of the State of Uttarakhand by which reservation in promotion to public posts as provided in the State of Uttar Pradesh was adapted with certain modifications. As stated above, the Government of Uttarakhand appointed a Committee for collection of quantifiable data pertaining to the adequacy or inadequacy of representation of the members of Scheduled Castes and Scheduled Tribes in public services in the State. The Committee submitted its report, according to which the representation of Scheduled Castes and Scheduled Tribes is inadequate. The State Cabinet approved the recommendation of the Committee on 12.04.2012. Ultimately, the State Government by a proceeding dated 05.09.2012 decided to set aside all previous Government orders relating to reservation in promotions to Government services in the State. As the Government is not bound to provide reservation in promotions, we are of the opinion that there is no justifiable reason for the High Court to have declared the proceeding dated 05.09.2012 as illegal.

16. The direction that was issued to the State Government to collect quantifiable data pertaining to the adequacy or inadequacy of representation of persons belonging to Scheduled Castes and Scheduled Tribes in Government services is the subject matter of challenge in some appeals before us. In view of the law laid down by this Court, there is no

doubt that the State Government is not bound to make reservations. There is no fundamental right which inheres in an individual to claim reservation in promotions. No mandamus can be issued by the Court directing the State Government to provide reservations. It is abundantly clear from the judgments of this Court in **Indra Sawhney**, **Ajit Singh (II)**, **M. Nagaraj** and **Jarnail Singh** (supra) that Article 16 (4) and 16 (4-A) are enabling provisions and the collection of quantifiable data showing inadequacy of representation of Scheduled Castes and Scheduled Tribes in public service is a sine qua non for providing reservations in promotions. The data to be collected by the State Government is only to justify reservation to be made in the matter of appointment or promotion to public posts, according to Article 16 (4) and 16 (4-A) of the Constitution. As such, collection of data regarding the inadequate representation of members of the Scheduled Castes and Scheduled Tribes, as noted above, is a pre requisite for providing reservations, and is not required when the State Government decided not to provide reservations. Not being bound to provide reservations in promotions, the State is not required to justify its decision on the basis of quantifiable data, showing that there is adequate representation of members of the Scheduled Castes and Scheduled Tribes in State services. Even if the underrepresentation of Scheduled Castes and Scheduled Tribes in public services is brought to the notice of this Court, no mandamus can be issued by this Court to the State Government to provide reservation in light of the law laid down by this Court in **C.A. Rajendran** (supra) and **Suresh Chand Gautam** (supra). Therefore, the direction given by the High Court that the State Government should first collect data regarding the adequacy or inadequacy of representation of Scheduled Castes and Scheduled Tribes in Government services on the basis of which the State Government should take a decision whether or not to provide reservation in promotion is contrary to the law laid down by this Court and is accordingly set aside. Yet another direction given by the High Court in its judgment dated 15.07.2019, directing that all future vacancies that are to be filled up by promotion in the posts of Assistant Engineer, should only be from the members of

Scheduled Castes and Scheduled Tribes, is wholly unjustifiable and is hence set aside.”

11. Needless to say here that in the light of the conclusions of the Hon'ble Apex Court in these two matters the Respondent-Department would have to burn its midnight oils and to sit with appropriate Officers of Law Department, Personnel Department and Finance Department to stream line the resultant seniority list after removal of the reservations in promotion, if any, in the State of Uttarakhand in accordance with the directions as spelt-out by the Hon'ble Supreme Court. Corollary to the Government averments in Mukesh Kumar case decided on 07.02.2020, there seems to be a high probability that many executive departments (including the Respondent Department) may have been awarding promotions to Reserved Category Officers without actually computing the real statistical positions and vacancies. This puts a question mark upon the entire existing promotional pyramid!

12. Further, the Respondent-Department seems to have got mixed-up in the interpretation and application of the Government Order No. 343/दस-48(m)-1981, dated 14.02.1983, Government Order No अ-1320|1|/90-27-रि-8 dated 11.04.1990, Uttar Pradesh Engineering Services (Irrigation Department) (Group-A) Rules, 1990 and Uttaranchal Irrigation Department Engineering Services (Civil/Mechanical) (Group-'A') Service

Rules-2003 to which the respondents have relied upon in refuting the claims of the petitioner in their averments as submitted in the Counter Affidavit/Written Statement. There is definitely an element of misinterpretation, non-jointness and incompatibility between these core-guidelines, when applied together in this case.

13. Quite surprisingly the petitioner, as well as the respondents, have interpreted the provisions and guidelines of these Government Orders/Rules each to its own convenience, absolutely juxtaposed to each other's version, viz-

(A). The Government Order dated 14.02.1983 mandatorily directs, **"However, the selection grade will be admissible to the employee on the basis of his seniority in the cadre that means the junior person will not be sanctioned the selection grade scale, even if he has completed the desired period, unless the senior person has completed the requisite period of service."**

Despite this crystal clear direction, where, there is no proviso for, or categorization of reserved category employees or about, pay scale, or about designation etc., how could the Respondent-Department give selection grade to petitioner's junior and decline the same to the petitioner later on? There is specific reliance upon seniority only in this Cardinal Principle.

(B). In the Government Order No अ-1320|1|/90-27-सिं-8 dated 11.04.1990 it is clearly mentioned in the remarks column that only those Officers would be eligible to the grant of selection grade whose regular service has entered into its 14th year on the 1st of July of the promotion year. The Irrigation Department, as well as the Finance Department have interpreted the same as **“fourteen completed years”**. We fail to understand at this Tribunal as to what might have caused this difference of translation in the official jargon!

(C). Similarly, the Rule-5 (2) of the Uttaranchal Irrigation Department Engineering Services (Civil/Mechanical) (Group-‘A’) Service Rules-2003 read as under, as the petitioner has pointed out-

“Rule-5 (2)- अधीक्षण अभियन्ता सिविल या यांत्रिक-यथास्थिति सिविल या यांत्रिक शाखा में मौलिक रूप से नियुक्त ऐसे अधिशासी अभियन्ताओं जिन्होंने भर्ती के वर्ष के प्रथम दिवस को 15 वर्ष की सेवा (जिसमें अधिशासी अभियन्ता के रूप में कम से कम छः वर्ष की सेवा भी सम्मिलित हो) पूरी कर ली हो, में से पदोन्नति द्वारा”

This provision appears to be in contradiction to the provision of eligibility as mentioned in the Government Order No अ-1320|1|/90-27-सिं-8 dated 11.04.1990 remark column, meaning thereby, that this eligibility remark for selection grade does not seem to be meant for Superintending Engineer exclusively. Learned Counsel for the petitioner has emphatically pointed out

during his argument that grant of selection grade was permissible originally to the Executive Engineers also, however, later on the misinterpretation of this Government Order has excluded the Executive Engineer cadre from this facility.

(D). **Annexures No. 9, 10 & 11** of the claim petition very clearly established the fact that on the basis of the petitioner's representation dated 18.09.2014 for equalizing the petitioner's pay structure with that of petitioner's junior Sri Dinesh Chandra the Irrigation Department and the Finance Department found it appropriate on the basis of Government Order dated 14.02.1983 and got it finalized on 05.10.2015. Later on, by an order dated 30.08.2017 a clarification has been issued that the selection grade has been granted to the petitioner on notional basis since 01.09.2006 and on actual basis from 01.06.2013, which seems to have been issued as an afterthought. The departmental file on this matter at the Government Secretariat was got approved upto the highest level as appears from the **Annexure No. 9**.

(E). Apparently, some afterthought seems to have emerged after issue of Office Memorandum No. 1721/II-2015-01(100)/2014 dated 05.10.2015, which compelled the respondent-department to issue the aforementioned clarification dated 30.08.2017, just four months prior to the superannuation of the petitioner. If nothing else, this throws a bad light upon the

functioning of the respondent-department even in such crucial financial matter of a Group-‘A’ Officer.

(F). This is important to take note of that while the respondent-departments were enthusiastic in finalizing the grant of selection grade to the petitioner on the basis of his representation dated 18.09.2014, the new system of ACP had already been introduced in the State of Uttarakhand, nevertheless, both the executive departments ignored the consideration of granting ACP to the petitioner and preferred the grant of selection grade to him, as is evident from the Counter Affidavits/written statements of the respondents as follows:-

“Taking into consideration the misrepresentation, the department ignored the provisions of the ACP (at that relevant point of time) and granted selection grade to petitioner in accordance with the provisions of the Government Order dated 11.4.1990 and granted the selection grade to the petitioner from the day junior to the petitioner (Shri Dinesh Chandra) was granted selection grade, i. e, on notional basis from 01.09.2006 and on actual basis from 01.06.2013 in the pay scale of Rs. 14300-400-18300/- (Revised to Rs. 37100-67000/- with grade pay of Rs. 8700/-) vide Government Order No. 1721/II-2015-07(100)2014 dated 5.10.2015 and Government Order No. 320 dated 30.8.2017.”

Surprisingly at this juncture, even the Finance Department did not raise any objection to the grant of selection grade to the petitioner and facilitated the same.

(G). This is noteworthy here that the petitioner's junior Sri Dinesh Chandra had been granted the selection grade w.e.f. the year 2006 (as Superintending Engineer in 2005), after completion of fourteen years of regular service in 2004 and, therefore, the petitioner too was granted the same from the year 2006 on notional basis. Further, it is important to note that the petitioner had been promoted earlier as a notional Executive Engineer on 24.02.2004 and as a notional Superintending Engineer on 24.06.2010.

(H). This is very pertinent to notice here that after the Hon'ble Apex Court's pronouncements dated 27.04.2012 and 07.02.2020, and in the light of 1991 Seniority Rules, Sri Dinesh Chandra will always remain junior to the petitioner, even after availing faster promotions twice. This ultimate seniority of the petitioner cannot be ignored for grant of selection grade to the petitioner.

(I). With a turn of events the petitioner was given a show-cause notice No. 121/II(1)-2019-01(100)/2014 dated 03.04.2019, for receiving excess amounts than permissible to him on the basis of the selection grade, as to why the surplus amounts should not

be recovered from the petitioner. This notice has been issued to the petitioner after 17 months from his superannuation. The petitioner replied to the aforesaid notice in detail and represented that the grant of selection grade to him was as per the rules and recovery of the same, or reduction in his pension would be in violation of the directions as given by the Hon'ble Apex Court on this subject matter.

“उक्त के कम में यह भी अवगतनीय है कि माननीय उच्चतम न्यायालय द्वारा सिविल अपील संख्या-11527 of 2014 (Arising out of SLP (c) No. 11684 of 2014, State of Punjab and others vs. Rafiq Masih दिनांक 18 दिसम्बर, 2014 में मा0 उच्चतम न्यायालय द्वारा पारित निर्णय के प्रस्तर-12 में स्पष्ट किया गया है कि “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 impressible in law:

(ii) Recovery from retired employee, or employees who are due to retire within one year, of the order of recovery.”

सिविल रिट याचिका-5262/2008 सुनील कुमार सिंघल बनाम प्रमुख सचिव, सिंचाई विभाग, उत्तर प्रदेश एवं अन्य में मा0 उच्च न्यायालय द्वारा निम्नलिखित आदेश पारित किये गये हैं।

“10.- For the aforesaid reasons, we quash the impugned judgment delivered by the High Court and direct the respondents not to recover any amount of salary which had been paid to the appellant in pursuance of some mistake committed in pay fixation in 1986. The amount of pension shall also not be reduced and the appellant shall be paid pension as fixed earlier at the time of his retirement. It is pertinent to note that the Government had frame such a policy under its G.O. dated 16th January, 2007 and therefore, the respondent authorities could not have taken a different view in the matter of re-fixing pension of the appellant.”

(J). Despite the petitioner's reply an office memorandum No. 1268/II(1)/2020-01(100)/2014 dated 07.12.2020 was issued by the respondent-department cancelling the alleged irregular grant of selection grade to the petitioner.

(K). The petitioner in his reply dated 28.05.2019 has also furnished the following information, which is significant in deciding the matter of recovery against the petitioner as follows:-

“इसी कम में सूचनीय है मुख्य अभियन्ता एवं विभागाध्यक्ष, सि०वि० द्वारा दिनांक 31.05.2006 को आदेश निर्गत कर अधोहस्ताक्षरी की अधीक्षण अभियन्ता (बजट) के पद पर द्वैतकार्यभार के रूप में नियुक्ति/पदस्थापना कर दी गयी, जिसके कम में अधोहस्ताक्षरी द्वारा दिनांक 01.06.2006 से दिनांक 31.12.2009 तक अधीक्षण अभियन्ता (बजट) के पद का कार्य लगभग 3 वर्ष 6 माह तक किया गया, पुनः द्वैतकार्यभार के रूप में अधोहस्ताक्षरी की पदस्थापना अधीक्षण अभियन्ता

(कार्मिक) के पद पर की गई, उक्त पद पर माह फरवरी, 2010 से अगस्त 2012 तक कार्य सम्पादन किया गया। मु0अ0 एवं विभागाध्यक्ष सिं0वि0 द्वारा पुनः आदेश निर्गत कर अधीक्षण अभियन्ता (बजट) के पद पर नियुक्ति कर देने के क्रम में अधोहस्ताक्षरी द्वारा अधीक्षण अभियन्ता (बजट) के पद पर अगस्त 2012 से जून 2013 तक कार्य किया गया। इस प्रकार अधोहस्ताक्षरी द्वारा दिनांक 01.06.2006 से लगभग लगातार दिनांक 01.06.2013 तक अधीक्षण अभियन्ता (बजट/कार्मिक) के पद के कर्तव्य दायित्वों का निर्वहन द्वैतकार्यभार के रूप में किया गया।

14. On the basis of the aforesaid significant observations, the Tribunal has reached conclusion as follows:-

(I). Due to the policy of reservation in promotion Sri Dinesh Chandra was promoted twice before the petitioner, though he was junior to the petitioner in seniority, because he was an SC reserved category Officer.

(II). After the two landmark judgments by the Hon'ble Apex Court dated 27.04.2012 and 07.02.2020, as discussed above in the context of the State of Uttarakhand, it was imperative for the respondent-department to workout the actual seniority of the petitioner before passing the impugned order dated 07.12.2020 against the petitioner, keeping in mind that the Hon'ble Apex Court' order dated 07.02.2020 was already in place and probably altering the mutual seniority of the petitioner as compared to other SC category Officers, particularly with Sri Dinesh Chandra. This Tribunal is of the firm opinion that the instant matter of granting

selection grade to the petitioner or otherwise, and the process of recovery of the alleged excess amount paid to the petitioner was all subject to a sincere exercise by the Respondent-Department about petitioner's actual seniority before issuing the order dated 07.12.2020. As such, he had been earlier awarded a notional seniority of Executive Engineer w.e.f. 24.04.2004 and of Superintending Engineer w.e.f. 24.06.2010.

(III). The Tribunal finds it highly inappropriate on the part of the Respondent-Departments, to blame the petitioner for this fiasco related to the alleged irregularity in granting the selection grade to the petitioner, though the Respondent-Departments themselves had made all the detailed deliberations on the petitioner's representation and had got approvals of the proposed selection grade at the highest levels of the Government accepting the petitioner's representation in accordance with law. Putting the onus of irregularity, if any, upon the petitioner, is unbecoming on the part of the Respondent-Departments.

(IV). Further, the surplus paid amounts to be recovered from the petitioner have been varying between Rs. 39,000,00/- to 49,000,00/- (approximately) in different reports and calculations, and even in the Counter Affidavit/Written Statement. This manifests the callousness of the Respondent-Departments in finalizing an important calculation, in spite of the fact that every penny paid to the petitioner is recorded in the documents.

(V). Once again, as has been adversely observed by this Tribunal in the earlier Paragraphs, the Respondent-Departments have grossly misinterpreted the Rules/Government Orders of 1983, 1990 and 2003, all read together, in deciding the matter of selection grade in the case of the petitioner.

(VI). This is also pretty much evident that the Respondent-Departments developed cold feet, once a group of 14 Officers also claimed their selection grade to be granted based upon the same parameters as that of the petitioner. It is quite obvious that the Office Memorandum dated 30.08.2017, the show-cause notice dated 03.04.2019 and the Office Memorandum issued on 07.12.2020 cancelling the prior orders dated 05.10.2015 and 30.08.2017 were issued under pressure and duress, that too after a substantial lapse of time period after the impugned payment of the alleged surplus amounts and subsequent superannuation of the petitioner, which is impermissible as per the established law.

(VII). So far as the question of recovery is concerned, this Tribunal has delved deep into the Rafiq Masih ruling spelt out by the Hon'ble Apex Court and has realized that despite the petitioner being a Group-'A' Officer this proposed recovery is impermissible as this does not pass the litmus test of Rafiq Masih parameters of sub-paragraph 12 (ii), (iii) & (iv). So, the respondents are legally barred from recovery of this amount from the petitioner.

(VIII). So far as the legality of the impugned orders dated 07.12.2020 & 04.02.2021 is concerned, they do not withstand the scrutiny of facts, rules and established law as discussed earlier by this Tribunal in its detailed analysis. The conduct of the Respondent-Department has not been found above the board in this entire matter.

(IX). So far as the representations of 14 other senior Officers are concerned, the Respondent-Departments may be advised to decide these representations not on the basis of this Tribunal's finding in this instant claim petition, but after detailed deliberations and inputs added in the light of the this Tribunal's observations in the earlier Paragraphs.

ORDER

Accordingly, the claim petition is allowed. The impugned Office Memorandum dated 07th December, 2020 (**Annexure No. 14** to the writ (claim) petition) passed by the Secretary Irrigation, Government of Uttarakhand, whereby the Office Memorandum dated 05th October, 2015 and Government Order dated 30th August, 2017, granting selection grade to the Petitioner had been quashed, and the communication dated 04th February, 2021 (**Annexure No. 15** to the writ (claim) petition), issued by the Director, Directorate of Treasury, Pension and Entitlement, Uttarakhand, Dehradun, whereby, the department had been directed to recover a sum of Rs. 49,58,678.00/- are

hereby quashed. The Respondents are directed to accordingly provide the revised pension order in respect of the petitioner. No order as to costs.

(CAPT. ALOK SHEKHAR TIWARI)
Member (A)

(RAJENDRA SINGH)
Acting Chairman
(Virtual)

DATED: 29th JULY, 2026
NAINITAL

BK