BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL AT DEHRADUN

Present: Hon'ble Mr. Rajendra Singh

------ Acting Chairman

Hon'ble Mr. Arun Singh Rawat

-------Vice Chairman (A)

CLAIM PETITION NO.76/SB/2024

Smt. Pushpa Tyagi w/o late Sri Kailash Chand Tyagi, 2/48 Radhapuram Estate, NH-2, Mathura, U.P.- 281004.

…………Petitioner

vs.

1. State of Uttarakhand through Secretary, Public Works Department, Secretariat, Subhash Road, Dehradun.
2. The Engineer-in-Chief, Public Works Department, Yamuna Colony, Dehradun.
3. The Executive Engineer, Public Works Department, Provincial Division, Uttarkashi.

….……Respondents

Present: Sri L.D.Dobhal & Sri Rajkumar Galav, Advocates, for the petitioner.
Sri V.P. Devrani, A.P.O. for the State Respondents.

JUDGMENT

DATED: JULY 29, 2026

Sri Arun Singh Rawat, Vice Chairman (A)

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

> "i Direct the respondent No. 3 to pay the amount of encashment of earned leave for 45 days along with interest on the total amount of leave encashment @8% i.e rate of interest on GPF at the time of

retirement. Considering the provisions of FR 55. The amount of leave encashment comes to Rs1,42,197 & total interest @ 8% comes to Rs1,48,715 which deserve to be paid to the petitioner.

ii. Direct the Respondent no.3 to pay interest on arrears of salary of Rs11,20,185/-@8% from the due date to the actual date of payment & set a side order of respondent no.2 for recovery of interest already paid on arrears of Rs3,02,760.

iii. Direct the Respondent no.3 to pay interest for remaining period on the amount of Gratuity @8% wef the date of retirement till the date of payment & set a side order of respondent no.2 for payment of interest with w.e.f 20.05.2018.

iv. Direct the respondents for payment of compensation of Rs1,00,000/- for physical harassment & mental agony caused by way of delaying tactics in payment of due retiral benefits. as well as legal expenses incurred by the petitioner in repeated petitions.

v. Direct the respondent for any other relief as the Hon'ble Tribunal deemed fit, just and proper in the facts & circumstances of the case to meet the end of justice."

2. The brief facts of the claim petition are that the petitioner is the widow of Late Shri Kailash Chand Tyagi, who was working as an Assistant Engineer in the PWD Provincial Division, Uttarkashi. He retired from service on 31.01.2018 upon attaining the age of superannuation. However, neither his retiral benefits nor pension were released at the time of his retirement, and his suspension was also not revoked. Unfortunately, he passed away on 20.02.2018. Due to the non-payment of his retiral benefits, pension, arrears of subsistence allowance and salary, the petitioner filed Claim Petition No. 23/SB/2019 before the Tribunal in January, 2019.

2.1 Pursuant to the judgment dated 16.07.2019, Respondent No. 3 released a substantial portion of the retiral benefits, pension and arrears of salary. However, the claim relating to the balance leave encashment, co-authorization of the petitioner's disabled son in the Pension Payment Order (PPO), and interest on the delayed payment of retiral dues was not allowed.

2.2 While disbursing the retiral benefits, the Treasury Officer allegedly made an excess payment of family pension amounting to Rs. 6,67,299/- and thereafter initiated recovery of the said amount from the family pension in instalments.

2.3 Aggrieved thereby, the petitioner filed Claim Petition No. 85/SB/2020 before the Tribunal seeking inclusion of the name of her disabled son, Shri Deepak Tyagi, in the Pension Payment Order and withdrawal of the recovery proceedings. Along with the claim petition, an application for stay of the recovery proceedings was also filed, stating that the department was still liable to pay more than Rs. 5.00 lakh towards various outstanding claims, including the balance leave encashment, interest on delayed payment of salary, pension and gratuity.

2.4 The Tribunal declined to stay the recovery of the excess payment and upheld the action of the authorities. However, it directed the respondents to ensure that the name of the petitioner's disabled son was included in the pension papers by way of co-authorization in accordance with the relevant rules governing the grant of family pension.

2.5 The Tribunal also directed Respondent No. 2 to examine the petitioner's claim regarding encashment of 45 days' earned leave and payment of interest. However, while passing the order, Respondent No. 2 neither considered the submissions and documents produced by the petitioner during the hearing nor assigned any reasons for rejecting the various claims. Consequently, the order passed by Respondent No. 2 is non-speaking, arbitrary and contrary to the applicable service rules. A copy of the petitioner's representation dated 12.01.2022 containing her detailed submissions is annexed as Annexure-4.

2.6 Thereafter, the petitioner filed Claim Petition No. 29/SB/2023 before the Tribunal. The Tribunal disposed of the said claim petition vide judgment dated 04.06.2024 with the following directions:

> "(i) Respondent no.3 should be directed to send revised pension proposal to respondent no.4 for co-authorization in col.3 of pension order in the name of petitioner & her differently abled son Deepak Tyagi manually and also correct the names of petitioner's husband & his father & mobile number of the petitioner at the earliest. Respondent no.4 should be directed to issue revised PPO accordingly.

(ii) Other reliefs (Reliefs no.8 (ii), (iii), (iv), (v) & (vi) have been withdrawn by the petitioner with permission to file fresh petition in respect of such reliefs in due course, as per law."

2.7 It is the submission of the petitioner that at present the following claims are pending :

(i) Leave encashment for 45 days: Rs.1,42,197/-

(ii) Interest on leave encashment: (a) Rs.74,773/-

(b) On Rs.1,42,197/- Due on 01.02.2018, not yet paid. Delay 78 months till July 2024 = Rs.73,942/-

(c) Total interest a+b= Rs.73,942=1,48,715/-

(iii) Interest on gratuity @ 8%: Due for payment for 5 months= Rs.53,234/-

(iii) Interest on arrears of pay:

(a) Rs. 91,491/-

(b) Arrears of pay & subsistence allowance- Rs.81,874/- .

3. The claim petition has been contested on behalf of Respondents and Sri Munendra Rajpoot, Assistant Engineer, Provincial Division, PWD Uttarkashi, Uttarakhand has filed Counter Affidavit on behalf of Respondents.

3.1 It has been submitted by the respondents that the petitioner's husband deceased Kailash Chand Tyagi retired from the post of A.E on attaining the age of superannuation on 31.01.2018 from the Provincial Division PWD, Uttarkashi and thereafter he died on 20.02.2018.

3.2 It is pertinent to mention here that before retirement petitioner's husband late Kailash Chand Tyagi was on suspension on the charge of embezzlement of Govt. money amounting to Rs 1, 63,94,077/- which was levelled against him due to which the post retiral dues of the petitioner could not be disbursed for financial loss caused to the state exchequer. It is also submitted that section 12 of Uttarakhand Retirement Benefit Act, 2018 provides as hereunder :-

"12 (1) सेवा निवृत्त होने वाले ऐसे राज्य कर्मचारियों को जिनके विरुद्ध सेवानिवृत्ति के समय विभागीय, न्यायिक कार्यवाही अथवा प्रशासनाधिकरण में जांच चल रही हो अथवा किया जाना अपेक्षित हो में अनन्तिम पेंशन एवं उपादान ऐसे अनुमन्य होगी जैसे विहित की जाय।

(2) सेवा से पदच्युत व्यक्ति को पेंशन, पारिवारिक पेंशन अनुमन्य नहीं होगी।

3.3 Feeling aggrieved the petitioner filed the Claim petition bearing No.23/SB/2019, Pushpa Tyagi vs State of U.K & Ors before the Hon'ble Tribunal and the Tribunal passed the judgement on 16.07.2019. In compliance of the Tribunal's judgment dated 16.07.2019, the department paid all the post retiral admissible dues, as per rule, to the petitioner well within the time as prescribed by the Tribunal. Moreover an amount of Rs 6,67,299/- w.e.f. February 2018 to April 2019 was duly paid to the petitioner as interim pension in lump-sum.

3.4 Against the said adjustment the petitioner filed another claim petition bearing No. 85/SB/2020 Pushpa Tyagi vs State and others, which was decided by the Tribunal on 18.11.2021, seeking the following reliefs:

"A. The respondents be directed to refund the amount of Rs. 1,90,000/- deducted on the pretext of Tax at source but wrongly adjusted the same towards the recovery of provisional pension.

B. The respondents be directed not to deduct any amount in installments from the monthly family pension payable to petitioner.

C. In alternative, if the respondents are successful in deducting any amount in installments from the monthly family pension payable to petitioner, the same be directed to refund to the petitioner with interest.

D. Suitable direction be issued to the respondents to co authorize the name of disabled son of petitioner in the pension papers".

3.5 Pursuant to the above orders all the active service dues as well as first retiral dues admissible to the deceased husband Sri K.C Tyagi (retired junior engineer) have been duly paid to the petitioner by the respondent department. There are no remaining dues, as per rule and law, of deceased K.C Tyagi, in the department till date.

3.6 So far as the question of payment of 45 days of encashment of earned leave is concerned, it is clarified that at the time of retirement there were 300 days leave available in the leave account of petitioner, out of which 288 days admissible earned leave encashment was duly paid to the petitioner well within the time, and the petitioner demanded the 45 days leave encashment during the suspension period which is not admissible as per provision of financial rules and law.

3.7 It is further submitted that so far as the question of interest on arrears of the 7th pay Commission is concerned, it is to be made clear that there is no legal provision to grant the benefit of interest on the arrears of revised pay scales of central pay commission report implementation.

3.8 It is pertinent to mention here that on the date of retirement *i.e* 31.01.2018, departmental inquiry proceedings were pending against the petitioner, due to the commission of embezzlement of the Government money, but later on the same was withdrawn by the Government after a sum of Rs 1,63,94,077/- was deposited by the petitioner in the Government head. The post retiral dues of the petitioner were disbursed after taking a sympathetic view, as such no question of interest on delayed payment of post retiral dues to the petitioner arises in the present matter. Therefore, the claim petition, based on the prayers, is not tenable and is liable to be dismissed.

4. Claim petition has been contested on behalf of respondents and Counter Affidavit has been filed.

5. Ld. Counsel for the petitioner has not filed any Rejoinder Affidavit.

6. We have heard the arguments of the Learned Counsel for the petitioner and Learned APO and perused the documents carefully, placed before the Tribunal.

7. Learned Counsel for the petitioner argued that the petitioner has been paid leave encashment for 255 days. But no interest on the leave encashment was paid for a delay of 14 months on the payment of the leave encashment amount which comes around Rs 74773/-. The demand for payment of interest on the delayed payment of leave encashment is in the

line of the judgement dated 11.9.2023 of this Tribunal in the matter of Shri Ram Verma Vs State of Uttarakhand. The petitioner's husband was sanctioned 45 days earned leave during his suspension period, whereas as per rule no leave is admissible to the employee during the suspension period. Had the leave of 45 days not been sanctioned during the suspension period, there would have been 300 days leave in the leave account of her late husband at the time of superannuation. The respondents are not only liable to pay the leave encashment amount of 45 days which comes to Rs 1,42,197/- but also the interest there upon till the date of payment.

8. The Learned counsel for the petitioner has further argued that the respondents have paid Gratuity amount of Rs 15,43,047/- on 05.09.2019 after 19 months of due date but the interest on the gratuity for 14 months only was paid (July 18 to August19). The respondents are liable to pay the interest from 20th March 2018 to 30th June 2018 for 3 more months which amounts to Rs 53,234/- at the rate of 8 percent interest. This view has been supported in the judgement dated 04.03.2022 of the Hon'ble Supreme Court rendered in the Civil Appeal No. 1686/2022, Dr A Selvaraj vs C B M College & others.

9. Learned counsel for the petitioner also argued that the petitioner's husband was not paid subsistence allowance during the suspension period and it was paid after the death of the petitioner's husband, the respondents are liable to pay the interest of Rs 81,874/- on the delayed payment of the subsistence allowance also. The arrears of 7th Pay Commission were also paid on 11.10.2018. Interest on delayed payment of interest is liable to be paid to the petitioner.

So based on the facts of the case as well as the settled legal principles, the petitioner is entitled to the interest on the leave encashment, gratuity , subsistence allowances, arrears of 7th Pay commission and the leave encashment of 45 days with interest also.

10. Learned APO argued that the petitioner has been paid leave encashment of 255 days as per the earned leave available in the leave

account of the petitioner's deceased husband on the day of superannuation. But no interest on the delayed payment of the leave encashment is admissible, so that was not paid to the petitioner. The petitioner has been paid interest on the gratuity amount from July onwards, as a disciplinary proceeding was pending against the petitioner and it was only after the embezzled amount was returned to the respondents department in respect of the petitioner, the retiral dues payable to the petitioner were processed for the payment. Therefore, the interest on the gratuity was paid after the decision on withdrawal of the disciplinary proceedings was taken.

11. Petitioner's husband was paid subsistence allowance after his death as the same was due and was payable after the disciplinary proceedings against him were dropped. There is no provision to pay interest on the arrears of 7th Pay Commission.

In view of the above the petitioner is not entitled to payment of any amount as claimed in the claim petition, all the dues of the petitioner have been settled by the respondent department. Hence the claim petition is liable to be dismissed.

12. Based on the arguments of the parties and the documents placed before the Tribunal, the Tribunal finds that the petitioner's husband retired on 31.1.2028 and he was under suspension on the day of superannuation and departmental proceedings for embezzlement of Rs 1,63,94,077/- was pending against him. Due to the pending disciplinary proceeding the retiral dues could not be disbursed. In the meantime, the husband of the petitioner died on 20.2.2018, the amount involved in the embezzlement was returned to the respondent department and the departmental proceedings against petitioner's husband was withdrawn. The petitioner was sanctioned gratuity on 05.09.2019 and interest on the same was paid on 09.12.2019 w.e.f. July 2018 to August 2019, leave encashment of 255 days on 23.03.2019, arrears of 7th CPC on 11.10.2018 and interest thereon, on 04.01.2021. Accordingly, the petitioner was paid the interest on the delayed payment gratuity for 14 months from July 2018 to August 2019 however as

per the memo No 305 dated 24.2.2022 of Principal Chief Engineer PWD , the interest was to be paid from 21.5.2018 till the date of payment. So, the petitioner is entitled to get the interest on the delayed payment of gratuity from 21st May, 2018 to 20th Jun 2018 also.

13. Similarly, the petitioner has been paid a leave encashment of Rs 8,01,138/- for 255 days of unutilized leave, but no interest has been paid for the delay in the payment of leave encashment. Although there is no rule to pay interest on the delayed payment of leave encashment, but the statutory provisions exist as per the decisions of Hon'ble Courts. The Uttarakhand Public Services Tribunal has ordered on 29.12.2023 payment of interest on the delayed payment of leave encashment in the claim petition No 64/SB/2022 in the matter of Jaypal Singh Barthwal vs State of Uttarakhand and Others. Relevant portion of the decision dated 29.12.2023 reads as under:

> "(ii) Interest on delayed payment on amount of leave encashment i.e. Rs. 6,65,730/- as per prevalent G.P.F. rates from the date of retirement i.e. 30.09.2020 till the date of actual payment i.e. 27.05.2022, as per G.O. dated 10.08.2004, issued by the Govt. of Uttarakhand
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> (iii) Interest on balance amount of gratuity and leave encashment i.e. Rs. 2,21,515/- from the date of retirement i.e. 30.09.2020 till the date of actual payment i.e. 01.05.2023, as per G.O. dated 10.08.2004, issued by the Govt. of Uttarakhand."

14. The respondent department did not include 45 days of earned leave in the unitized leave as this 45 days' leave was sanctioned to the petitioner's deceased husband during the suspension period, which was against the rule. As per Fundamental Rule 55 of the Financial Hand Book Volume II, leave may not be granted to a Government Servant under suspension. So, the petitioner is also entitled to the leave encashment of 45 days along with the interest till the date of payment of leave encashment amount.

15. The petitioner is also entitled to be paid the interest of Rs 81,874/- on the delayed payment of the subsistence allowance as it was not paid by the respondent department in time. However no interest is payable

on the delayed payment of arrears of 7th Pay Commission as there is no provision to pay interest on delayed payment of arrears of 7th Pay Commission.

16. In view of the above, the claim petition is liable to be allowed. The petitioner is entitled to the payment of interest on amount of gratuity for the month of May and June 2018; interest on the delayed payment of leave encashment of 255 days; payment of leave encashment for 45 days along with the interest till the date of payment and interest on the delayed payment of subsistence allowance of suspension period of the husband of the petitioner.

ORDER

Claim petition is allowed. The respondent department is directed to pay interest for the month of May and June 2018, on the amount of delayed payment of gratuity; interest on the delayed payment of leave encashment of 255 days; payment of leave encashment for 45 days along with the interest till the date of actual payment and interest on the delayed payment of subsistence allowance of suspension period of the husband of the petitioner. No order as to cost.

(RAJENDRA SINGH)
ACTING CHAIRMAN

(ARUN SINGH RAWAT)
VICE CHAIRMAN (A)

DATE: JULY 29, 2026.

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