BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
BENCH AT NAINITAL

Present: Hon'ble Mr. Rajendra Singh

……..Acting Chairman

Hon'ble Mr. A.S.Rawat

…….Vice Chairman (A)

CLAIM PETITION NO. 144/NB/DB/2022

Mukul Kumar Pant, aged about 60 years, s/o Late Shri Harish Chandra Pant, r/o Astha Vihar, Phase 15 A/Ward 9, Damuwadhunga, Haldwani, District Nainital.

………Petitioner

vs.

1. State of Uttarakhand through Principal Secretary (Transport) Govt. of Uttarakhand, Dehradun.
2. Uttarakhand Transport Corporation through its Managing Director, Head Office, 117 Indira Nagar, Dehradun.
3. Finance Secretary, State of Uttarakhand, Dehradun.
4. Finance Controller, Uttarakhand Transport Corporation, Dehradun.
5. General Manager (Administration), Uttarakhand Transport Corporation, District Nainital.

……..Respondents

Present: Sri M.C.Pant, Advocate for the Petitioner
Sri Kishore Kumar, A.P.O., for the Respondents no. 1 & 3
Sri Prem Kaushal, Advocate for the respondents no. 2, 4 & 5

JUDGMENT

DATED: MAY 29, 2026

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

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

(i). To declare the impugned order dated 05.08.2022 as contained to Annexure No. by which a sum of Rs. 7,53,936.00(Rupees Seven Lakh fifty three thousand nine hundred thirty six) is deducted from the gratuity of the Petitioner is per se illegal, arbitrary, irrational and against the law in league with the order dated 04.07.2022, 10.06.2021 and 11.11.2020 by which the Respondents have illegally altered the ACP benefits of the Petitioner in the name of re-fixation of A.C.P. and quash the same long with its effect and operation after calling the entire records from the Respondents keeping in view the facts highlighted in the body of the Petition and further to direct the Respondents to refund the amount of Rs. 7,53,936.00 (Rupees Seven Lakh fifty three thousand nine hundred thirty six) to the Petitioner together with 18% interest thereon or to mould the relief appropriately by safeguarding the interest of the Applicant.

(ii) To declare the impugned office order dated 22.08.2022 along with order dated 18.07.2011 and 23.12.2009 (as contained to Annexure No. 5(Colly) as illegal, irrational, unjust and arbitrary and quash the same along with its effect and operation also and to restore the annual increment of the Petitioner which was stopped for one year and to grant all benefit and consequential benefit of pay and re-fixation of pay A.C.P. along with arrears had it been the impugned orders were never in existence keeping in view the facts highlighted in the body of the application or to mould the relief appropriately by safeguarding the interest of the applicant.

(iii) To issue any other suitable order or direction to award damages and compensation to applicant such amount which may be quantify this Hon'ble Court and same may be recovered from the respondents or any relief which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

(iv) To award the cost of the petition to the petitioner.

2. Brief facts giving rise to the claim petition are as follows:

2.1 The petitioner was appointed as Assistant Manager in the respondent corporation on 14.08.1990. He was promoted to the post of Divisional Manager (Technical).

2.2 The benefit of 1st and 2nd ACP was given to him in due course in the year 2009. When the petitioner was working as Divisional Manager (Technical), Kathgodam, there was some delay in auction of vehicles, for which, the petitioner was wrongly given punishment of stoppage of one increment for one year *vide* order dated 23.12.2009.

2.3 The Chairman of the Corporation rejected his departmental appeal *vide* letter dated 18.07.2011. Similarly placed person Sri Dhirendra Srivastava was although given the same punishment, but in appeal, his punishment was reduced to Censure Entry, which act of the Chairman of the Corporation is discriminatory towards the petitioner.

2.4 The respondent issued an office order dated 10.06.2021, whereby his pay fixation was done pursuant to Corporation's letter dated 11.11.2020, whereby 3rd ACP was given to the petitioner *w.e.f.* 14.08.2016 was declared as wrong and observed that it should be in 2018 as MACP and pay of the petitioner was reduced from 12,800/- to Rs. 10900/- *vide* office order dated 04.07.2022 and *vide* office order dated 04.07.2022 pay scale of the petitioner was refixed. The petitioner retired on 30.04.2022.

2.5 The petitioner made representation which was rejected *vide* office order dated 02.02.2022 in a cursory manner. The petitioner filed a revision against the impugned appellate order dated 18.07.2011, but his revision was too rejected. The petitioner has mentioned the mode of determination of amount of gratuity u/s 7 of the Payment of Gratuity Act, 1972. Section 3A provides for interest for delayed payment of gratuity. In para 4.18. there is mention of the decision rendered by the Hon'ble Supreme Court in State of Punjab vs. Rafiq Masih and other (2015) 4 SCC 334.

2.6 The submission of learned Counsel for the petitioner is that the benefit of higher pay scale was given to the petitioner during his service tenure, it is not on account of any misrepresentation made by the petitioner, but it was paid to the petitioner by the authorities of the Department for which the petitioner cannot be held at fault for such a long period, he might have genuinely believed that he is entitled to such scale of pay and recovery of excess payment from his pension or post retiral benefits would cause undue hardship to him and in the circumstances, the amount already paid during his service tenure cannot be recovered from his pension now. The excess payment, if any, was made to him by respondents and not on the basis fraud on the part of the petitioner. Learned Counsel for the petitioner therefore, submitted that recovery of Rs. 7,53,936/- from the petitioner is highly improper and against the constitutional mandate.

3. C.A. has been filed by Sri Manoj Kumar Durgapal, Assistant General Manager (Personnel), Uttarakhand Transport Corporation, Nainital Region, Nainital. In the C.A., withholding of one increment for one year was justified, as petitioner failed to provide Surplus Vehicle Report (SVR) of the vehicles. No financial loss caused to the petitioner, inasmuch as, in case of stoppage of one increment for one year like petitioner's, it was given to him and was restored after completion of one year. Moreover, the said order has attained finality, which has been challenged before this Tribunal belatedly. The payment of gratuity has rightly been made to the petitioner. The petitioner retired as Group-A officer.

4. R.A. has also been filed on behalf of the petitioner reiterating the averments made in the claim petition.

5. We have heard learned Counsel for the parties and perused the record carefully.

6. Learned Counsel for the petitioner argued that the respondents without giving any proper opportunity of hearing or consideration to the reply of the petitioner, rejected his

representation and ordered to refix his pay by reducing his MACP benefit and to give color to their actions, passed the order of recovery from gratuity of the petitioner after his retirement and recovered the same without any notice or opportunity of hearing. It is further argued that the recovery after retirement from the gratuity is impermissible as per the provisions of Payments of Gratuity Act. The respondents being a statutory corporation under State Government are bound to comply with the same. Moreover, the respondents are liable to pay interest upon the same. The benefit of higher pay scale was given to the petitioner during his service tenure, is not on account of any misrepresentation or fraud made by the petitioner, but it was paid to the petitioner by the authorities of the Department for which the petitioner cannot be held at fault for such a long period. The excess payment, if any, was made to him by respondents and not on the basis fraud on the part of the petitioner. Thus, the act of the respondents is arbitrary, illegal and against the provisions of law and also against the judgment of the Hon'ble Apex Court passed in the case of State of Punjab vs. Rafiq Masih & other (2015)4SCC 334. The relief no. (ii) is not pressed by learned Counsel for the petitioner and he has submitted that he will file separate claim petition for this relief, if required.

7. It has been argued on behalf of the contesting respondents that after the Audit, in compliance of headquarter letter no. 164 dated 11.11.2020, the amendment in ACP/ pay fixation of the employees of the corporation, and excess payment made pursuant to wrongful grant of ACP/pay fixation were ordered to be recovered and at the every stage, the petitioner has been provided full opportunity of hearing and his representation has rightly been rejected. It has further been argued that the case law referred by petitioner is not applicable in his case. The petitioner was serving/retired as Grade-A Officer.

8. Based on the arguments of the Learned Counsels for the parties and perusal of the record, we find that the petitioner was given monetary benefit, which was in excess of his entitlement. The monetary benefits given was consequent upon mistakes committed by the respondent department in determining the emoluments payable to him.

9. The payment of excess amount to the petitioner was neither on account of any misrepresentation made by the petitioner nor any fraud committed by him. Any participation of the petitioner in the mistake committed by the employer, in extending the inadmissible monetary benefit to him, is totally ruled out. The petitioner was as innocent as their employer, in the wrongful determination of his inflated emoluments.

10. The issue was settled by the Hon'ble Apex Court in State of Punjab vs. Rafiq Masih, (2015) 4 SCC 334 based on the decision rendered by Hon'ble Apex Court in *Syed Abdul Qadir vs. State of Bihar, (2009) 3 SCC 475* and hosts of other decisions, which were cited therein including *B.J. Akkara vs. Union of India, (2006) 11 SCC 709*, the Hon'ble Apex Court concluded thus:

> *"18. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:*
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> *(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).*
>
> *(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.*
>
> *(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.*

> (iv) *Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.*
>
> (v) *In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."*

11. In this regard, reference may also be had to the decisions rendered by the Hon'ble Apex Court on 02.05.2022 in Civil Appeal No. 7115 of 2010, *Thomas Daniel vs. State of Kerala & others*, & in Civil Appeal No. 13407/2014 with Civil Appeal No. 13409 of 2015, *B.Radhakrishnan vs. State of Tamil Nadu* on 17.11.2015, decision rendered by Hon'ble Uttarakhand High Court on 12.04.2018 in WPSS No. 1346 of 2016, *Smt. Sara Vincent vs. State of Uttarakhand and others*, and decision rendered by Hon'ble Madras High Court on 019.06.2019 in WP(MD) No. 23541/2015 and M.P. (MD) No. 1 of 2015, *M. Janki vs. The District Treasury Officer and another*.

12. There is, however, no embargo on the respondent department against correct fixation of pay after retirement, as per the decision rendered by Hon'ble High Court of Judicature at Allahabad on 17.12.2018 in Writ-A No. 26639/2018*, Smt. Hasina Begum vs. Purvanchal Vidyut Vitran Nigam Ltd, Prayagraj and 02 others [Citation-2018: AHC:204373].*

13. Hon’ble Supreme Court, in the decision rendered in Civil Appeal No.1985 of 2022, the *State of Maharashtra and another vs. Madhukar Antu Patil and another*, on 21.03.2022, has observed that, on re-fixation of pay scale and pension, there shall not be any recovery of the amount already paid to the retired employees.

14. Hon'ble Supreme Court in the decision rendered in *Jogeshwar Sahoo and others vs. the District Judge, Cuttack & others*, in civil appeal, arising out of SLP (C) No. 5918/2024, observed as follows:

> *"…..7. The issue falling for our consideration is not about the legality of the retrospective promotion and the financial benefit granted to the appellants on 10.05.2017. The issue for consideration is whether recovery of the amount extended to the appellants while they were in service is justified after their retirement and that too without affording any opportunity of hearing.*
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> *…………*
>
> *9. This Court has consistently taken the view that if the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee or if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous, such excess payments of emoluments or allowances are not recoverable. It is held that such relief against the recovery is not because of any right of the employee but in equity, exercising judicial discretion to provide relief to the employee from the hardship that will be caused if the recovery is ordered.*
>
> *………*
>
> *12. For the aforestated, we are of the considered view that the appeal deserves to be allowed. Accordingly, we allow the appeal and set aside the order of the High Court and in consequence the orders dated 12.09.2023 and 08.09.2023 by which the appellants were directed to deposit the excess drawn arrears are set aside."*

15. In view of the facts and the judgements of the Hon'ble Courts, it is clear that the petitioner is a retired employee and recovery made from him would be iniquitous or harsh to such an extent that it would far outweigh the equitable balance of employers' right to recover. This case is covered under the

guidelines laid down by the judgement of Hon'ble Apex Court in State of Punjab vs. Rafiq Masih, (2015). The petitioner is liable to be refunded the amount of Rs. 7,53,936/- withheld from his gratuity amount.

ORDER

The claim petition is hereby allowed to the extent of recovery from gratuity. The respondents are directed to refund the amount of Rs. 7,53,936/- to the petitioner, which was withheld from the gratuity of the petitioner within three months of presenting the certified copy of the judgement. No order as to costs.

(RAJENDRA SINGH)
ACTING CHAIRMAN

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

DATE: MAY 29, 2026
DEHRADUN.
KNP