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. 122/DB/2024

Ram Kishan, aged about 66 years, S/o late Sri Baktawar Singh, Retd. Senior Clerk, Divisional Workshop, Dehradun, R/o 209, Sarathi Vihar, Near Vidhan Sabha, P.O., Nehrugram, Dehradun.

………………Petitioner

versus

1. State of Uttarakhand through Secretary, Transport, Government of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Managing Director, Uttarakhand Transport Corporation, Office of the Transport Commissioner, Kulhan, Sahastradhara Road, Dehradun.
3. Divisional Manager (Technical), Uttarakhand Transport Corporation, Transport Nagar, Dehradun.

……….. Respondents

Present: Sri L.K. Maithani & Sri R.C. Raturi, Advocates,
for the Petitioner
Sri V.P. Devrani, A.P.O., for Respondent No. 1
Sri Vaibhav Jain & Sri Ramdev Sharma, Advocates
for Respondents No. 2 and 3

JUDGEMENT

DATED: AUGUST 14, 2026

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

> "(i) To issue an order or direction to the respondents to return the recovery amount of Rs. 77,363/- to the petitioner with interest as per rules from the date of retirement of the petitioner upto the date of actual payment.

(ii) To issue any other order or direction which this Court may deem fit and proper in the circumstances of case in favour of the petitioner.

(iii) To award the cost of the petition."

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

2.1 The petitioner was initially appointed on 23.05.1979 on the post of Conductor at Rural Depot, Dehradun. During the service, the benefits of 10 years pay scale, 20 years pay scale and third ACP grade pay 4300/- was given to the petitioner on 23.05.1990, 23.05.1999 and 01.01.2009 respectively.

2.2 Petitioner has retired from the service on 30.06.2018 from the post of Senior Clerk. The benefits of ACPs were given to a large number of employees of the department but on complaint/ objection of authority, an audit committee was constituted by the respondent's department for the inquiry of the benefit of ACP granted/ sanctioned to the employees of the department.

2.3 On the basis of report of audit committee, the respondent no. 3 refixed the pay of the petitioner vide office order dated 15.01.2022 showing the benefits of 20 years pay scale as wrong and changed the date of 20 years pay scale from 23.05.1999 to 23.05.2001 due to which the pay of the petitioner was reduced from Rs. 53,600/- to Rs. 52,000/- and made a recovery of Rs. 77,363/- from the retiral dues of the petitioner. Petitioner made representation against the said refixation and recovery to the respondents and thereafter, sent a legal notice dated 05.09.2024 to the respondent no. 2 but to no avail. Thus, after retirement and refixation and modification of pay and amount of gratuity and recovery of Rs. 77,363/- from the amount of gratuity of the petitioner is bad in the eyes of law and the respondents are liable to return the recovered amount with interest as per G.P.F. rate from the date of retirement upto the date of actual payment.

2.4 In view of the law laid down by the Hon'ble Apex Court in the case of State of Punjab vs. Rafiq Masih, 2015(4) SCC 334, the recovery of Rs. 77,363/- from the retiral dues of the petitioner is wrong and illegal.

2.5 The Hon'ble High Court in WPSS No. 1593/2021, Balam Singh Aswal and others vs. Managing Director and others and other connected writ petitions, passed the following order in its judgement dated 14.06.2022:

> "49. The exposition of the legal principles culled out is that an amendment having retrospective operation which has the effect of taking away the benefit already available to the employee under the existing Rule indeed would divest the employee from his vested or accrued rights and that being so, it would be held to be violative of the rights guaranteed Under Articles 14 and 16 of the Constitution.
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> 50. In the instant case, the Bank pension scheme was introduced from 1st April 1989 and options were called from the employees and those who had given their option became member of the pension scheme and accordingly pension was continuously paid to them without fail and only in the year 2010, when the Bank failed in discharging its obligations, Respondent employees approached the High Court by filing the writ petitions. The Bank later on withdrawn the scheme of pension by deleting Clause 15(ii) by an amendment dated 11th March, 2014 which was introduced with effect from 1st April, 1989 and the employees who availed the benefit of pension under the scheme, indeed their rights stood vested and accrued to them and any amendment to the contrary, which has been made with retrospective operation to take away the right accrued to the retired employee under the existing Rule certainly is not only violative of Article 14 but also of Article 21 of the Constitution. 40 51. It may also be noticed that there is a distinction between the legitimate expectation and a vested/accrued right in favour of the employees. The Rule which classifies such employee for promotional, seniority, age of retirement purposes undoubtedly operates on those who entered service before framing of the Rules but it operates in future. In a sense, it governs the future right of seniority, promotion or age of retirement of those who are already in service.
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> 52. For the sake of illustration, if a person while legitimately entering into service, has a legitimate expectation that as per the then existing scheme of rules, he may be considered for promotion after certain years of qualifying service or with the age of retirement which is being prescribed under the scheme of Rules but at a later stage, if there is any amendment made either in the scheme of promotion or the age of superannuation, it may alter other conditions of service such scheme of Rules operates in futuro. But at the same time, if the employee who had already been promoted or fixed in a particular pay scale, if that is being taken away by the impugned scheme of Rules

> retrospectively, that certainly will take away the vested/accrued right of the incumbent which may not be permissible and may be violative of Article 14 and 16 of the Constitution.
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> 53. The judgment on which learned Counsel for the Appellant Bank has placed reliance in the case of Marathwada Gramin Bank Karamchari Sanghatana and Anr. (supra), the issue under consideration was with respect to provident fund. The Marathawada Gramin Bank had floated a provident fund scheme built on better rates of contributions than the rates mandated under the employees provident fund scheme. Hence, the better scheme of provident fund was statutorily recognized by grant of exemption Under Section 17(1). Later, Marathawada Gramin Bank discontinued its provident fund scheme for financial unviability, and reverted to rates mandated under paragraph 26 of the EPFS. The Bank later declined to exercise its voluntary contribution under Para 26 of the scheme after the exemption was declined and that came to be upheld by this Court which may not be of any assistance to learned Counsel for the Appellant in the instant case."

2.6 The respondents department challenged the above judgment before the Division Bench of Hon'ble High Court in Special Appeal No. 245/2022, Managing Director Uttarakhand Transport Corporation Dehradun and others vs. Ashok Kumar Sexana and along with others connected Special Appeals. The Hon'ble High Court decided the above appeals vide his judgment dated 04.04.2024 and passed the following orders:-

> "These appeals are being dismissed. A direction is being given to the appellant to comply with the judgment dated 14.06.2022, within the next three months."

2.7 In terms of the judgement dated 04.04.2024 of Hon'ble High Court, the Tribunal decided bunch of cases against the respondent department. The Tribunal on 29.04.2024 in claim petition no. 131/SB/2022 (WPSS No. 535/2019), Ved Prakash vs. State of Uttarakhand and others, and other connected claim petitions, passed the following order:

> "20. The above noted petitions are, accordingly, decided in terms of judgment dated 14.06.2022 passed by the Hon'ble High Court of Uttarakhand in WPSS No. 1593/2021, Balam Singh Aswal V/s Managing Director and others and connected writ petitions, which has been affirmed by the Division Bench of Hon'ble High Court on 04.04.2024 n Special Appeal No. 245/2022, Managing Director,

Uttarakhand Transport Corporation, Dehradun and others V/s Ashok Kumar Saxena and connected Special Appeals.

21. Ld. Counsel for the petitioners submitted that liberty may be granted to the petitioners to make representation(s) in respect of ancillary reliefs, which are connected with the main relief, to the appointing authority(ies) and direction be given to Respondent Corporation to decide those representations, if filed by any petitioner, as per law. Ld. Counsel for Respondent Corporation has no objection to such innocuous prayer.

22. Petitioners are given liberty to make representation(s) to the Respondent Corporation in respect of ancillary relief(s) as well as plural relief(s), if any. Respondents are hereby directed that if such representation(s) is/are filed, the same shall be decided by the Respondent Corporation, as per law, but without unreasonable delay.

………………..”

2.8 The matter of the petitioner is wholly covered by the above judgement and the petitioner is entitled to get the recovered amount from the respondent department with interest. The refixation of pay and recovery from the retiral dues of the petitioner has been made without any notice and without giving any opportunity of hearing, which is violative of principles of natural justice.

2.9 Petitioner retired from the service on 30.06.2018 and respondents recovered the amount from the retiral dues of the petitioner. The petitioner already paid income tax on the amount of pay received after getting the benefit of 20 years pay scale. Thus, recovery from the retiral dues of the petitioner is wrong and illegal. The respondents have failed to consider the adverse effect of the impugned order on the livelihood and family for which the respondents is bound to consider the same. Thus, on this account alone, the impugned order is not sustainable in the eyes of law.

3. The claim petition has been contested on behalf of the respondents. C.A. has been filed by Divisional Manager (Operation), on behalf of respondent-Corporation, denying the material averments contained in the claim petition. Relevant documents have been filed by the respondents. Counter affidavit has been filed mainly stating that:

3.1 It is denied that the respondent department made any recovery from the petitioner as stated. It is also denied that the petitioner ever made any representation before the respondent department or the petitioner ever sent any legal notice to the respondent department. Respondent Department in its audit and screening committee report found that the petitioner has been paid excess amount in ACP Grade Pay, wherein the respondent department recalculated the amount of actual amount of gratuity and made the necessary adjustment.

3.2 It is also denied that the respondent department made any modification or made any said recovery from the petitioner. Petitioner was wrongly awarded the ACP grade pay initially and after the audit report, the respondent department made necessary adjustment. It is also wrong to contend that the petitioner was not given any opportunity of hearing. The respondent department has provided petitioner and all other employees with equal opportunity of hearing.

3.3 Petitioner has already received his gratuity and leave encashment earlier. Now, the present claim petition is barred by the principle of estoppel and acquiescence.

3.4 The present dispute against fixation of salary has already been adjudicated by this Tribunal between the petitioner and respondent department. The present petition has been filed agitating the same facts and is not legally tenable. No recovery has been made against the petitioner and the only adjustment is made against the excess payment wrongly granted to the petitioner. The law laid down in Rafiq Masih's case is not applicable to the present dispute.

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

5. Learned Counsel for the petitioner further argued that the petitioner was appointed as Conductor on 23.05.1979. He was granted 1st, 2nd and 3rd ACP after completion of 10, 20 and 30 years of service on 23.05.1990, 23.05.1999 and 01.01.2009 and accordingly, his pay was fixed. He retired on 30.06.2018. But the audit team constituted by the department submitted a report on grant of ACP to the petitioner and other employees of the department. Based on the report of the audit committee, the respondent refixed the scale of the petitioner and he was given 2nd upgraded scale on 23.05.2001 instead of 23.05.1990. This led to reduction of his pay from Rs. 53,600 to Rs. 52,000/- and order of recovery for Rs. 77,363/-. The petitioner has already retired and the recovery of Rs. 77,363/- from him is against the law laid down by the Hon'ble Apex Court in State of Punjab vs. Rafiq Masih, (2015) 4 SCC 334. Learned Counsel for the petitioner has requested to quash the impugned recovery and pay fixed orders.

6. Learned APO argued that the petitioner has been granted ACP wrongly, when it was detected, the order was issued to correct pay fixation of the petitioner as well as recover the excess amount of Rs. 77,363/-. The petitioner cannot be given the benefit of the wrong fixation. The claim petition is liable to be dismissed.

7. Based on the arguments of the Learned Counsels for the parties and documents submitted, the Tribunal finds that the petitioner has retired on 30.06.2018. The petitioner was given monetary benefits, which was in excess of his entitlement. The monetary benefits given to the petitioner was as a result of unintentional mistake committed by the Respondent Corporation in determining the emoluments payable to him. The petitioner was also not guilty of furnishing any incorrect information, which led the Respondent Corporation to commit the mistake of making higher payments to him. In other words, the payment of higher dues to the petitioner was neither on account of any misrepresentation made by him nor on account of any fraud committed by him. Any participation

of the petitioner in the mistake committed by the employer, in extending the undeserved monetary benefit to him, is totally ruled out. The petitioner was as innocent as his employer in the wrongful determination of his inflated emoluments.

8. The department has issued the order for refixation of the pay and recovery of the excess amount after retirement. The issue was settled by the Hon'ble Apex Court in State of Punjab vs. Rafiq Masih, (2015) 4 SCC 334. Based on the decision rendered by Hon'ble Apex Court in Syed Abdul Qadir vs. State of Bihar, (2009) 3 SCC 475 and hosts of other decisions, which were cited therein including B.J. Akkara vs. Union of India, (2006) 11 SCC 709, the Hon'ble Apex Court concluded thus:

> *"18. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:*
>
> *i. Recovery from employees belonging to <u>Class-III and Class-IV service (or Group 'C' and Group 'D' service)</u>.*
> *ii. <u>Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery</u>.*
> *iii. Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.*
> *iv. Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.*
> *v. In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."*

[Emphasis supplied]

9. Reference may also be had to the decisions rendered by the Hon'ble Apex Court on 02.05.2022 in Civil Appeal No. 7115 of 2010, Thomas Daniel vs. State of Kerala & others; Civil Appeal No.

13407/2014 with Civil Appeal No. 13409 of 2015, B.Radhakrishnan vs. State of Tamil Nadu on 17.11.2015; decision rendered by Hon'ble Uttarakhand High Court on 12.04.2018 in WPSS No. 1346 of 2016 in Smt. Sara Vincent vs. State of Uttarakhand and others; decision rendered by Hon'ble Madras High Court on 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. It was held that the recovery of the excess amount is restrained in equity while the Court exercises judicial discretion to relieve the employee from hardship that will be caused if such a recovery is implemented and this view has been taken more particularly in respect of employees of lower rungs.

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

11. As far as refixation of the salary after retirement is concerned, there is no legal bar in it which has been decided by Hon’ble Apex Court in Civil Appeal No.1985 of 2022, State of Maharashtra and another vs. Madhukar Antu Patil and another on 21.03.2022, has observed that re-fixation of pay scale can be done for pension but there shall not be any recovery of the amount already paid to the retired employees.

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

13. 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. 77,363/- withheld from his gratuity amount.

ORDER

The claim petition is hereby allowed. The respondents are directed to refund the amount of Rs. 77,363/- 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	**(ARUN SINGH RAWAT)** VICE CHAIRMAN (A)

DATE: AUGUST 14, 2026.
DEHRADUN
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