

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIUBUNAL
AT DEHRADUN**

Present: Hon'ble Mr. Rajendra Singh

.....Acting Chairman

Hon'ble Mr. A.S. Rawat

.....Vice Chairman (A)

CLAIM PETITION NO. 53/DB/2021

1. Bamdev Prasad Kothari (Male) Aged About 61 Years S/o Late Sri I.M. Kothari R/o Siddhpuram, Lane No.1, Behind State Bank of India, Harrawala, Dehradun (Since deceased).
- 1/1. Shanti Kothari W/o Late Bamdev Prasad Kothari, R/o Siddhpuram, Lane No.1, Behind State Bank of India, Harrawala, Dehradun.

..... **Petitioner**

versus

1. State of Uttarakhand through Secretary, Panchayati Raj, Secretariat, Dehradun.
2. State Election Commission, Uttarakhand, through its Secretary, Nirwahan Bhawan, Ladpur, Mussoorie Bypass Road, Ring Road, Dehradun.
3. Directorate of Treasury, Pension and Entitlement, Uttarakhand, 23, Laxmi Road, Dalanwala, Dehradun through its Director.

.....**Respondents**

Present: Sri Hari Mohan Bhatia, Advocate, for the Petitioner
Sri V.P. Devrani, A.P.O., for the Respondents

JUDGMENT

DATED: 26th May, 2026

This claim petition has been filed by the petitioner for following reliefs:

“(i) To set aside/quash the impugned order dated 24.09.2020.

(ii) To direct the respondents to grant/pay the pension to the petitioner on the basis of last pay drawn by the petitioner i.e. Rs.15600-39100 grade pay Rs. 6600/- from the date of retirement i.e. 31.03.2020 of the petitioner from the post of Under Secretary along with 9% interest to the petitioner till the actual payment made.

(iii) To direct the respondents to grant/pay the payment of all retiral dues which are still unpaid including the payment of leave encashment of 300 days to the petitioner on the basis of pay scale of Rs.15600-39100 grade pay Rs. 6600/-along with 9% interest to the petitioner till the actual payment made.

(iv) Issue any other relief, which this Hon'ble Court may deem fit and proper in the circumstances of the case.

(v) Cost of petition may be awarded in favour of petitioner.”

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

2.1 Petitioner joined the office of respondent no. 2 in the erstwhile State of Uttar Pradesh in the year 1997 on the post of Lower Division Assistant and after the creation of State of Uttarakhand he joined the office of respondent no. 2 on the post of Upper Division Assistant.

2.2 The petitioner was promoted on the post of Section Officer in the year 2015 and again vide order dated 07.10.2016 the petitioner was promoted on the post of Under Secretary in the office of respondent no. 2 in the pay scale of Rs. 15600-39100 grade pay Rs. 6600/- with the condition that the said promotion would be for one year or till the regular incumbent joins on the post of Under Secretary.

2.3 The petitioner worked on the post of Under Secretary and received salary on the basis of pay scale Rs. 15600-39100 grade pay Rs. 6600/- till his retirement on 31.03.2020.

2.4 Petitioner retired from the office of respondent no. 2 from the post of Under Secretary which is a Class-I Officer and after the retirement of the petitioner, he was reverted back by the impugned order dated 24.09.2020 and thereafter the respondents issued the

pension order on 11.11.2020 after about 08 months of the petitioner's retirement. Petitioner was paid the pension by the respondents on the basis of the pay scale of Rs. 9300-34800 grade pay Rs. 4800/-.

2.5 Respondent No. 2 has issued a certificate that the Petitioner has retired from the post of Under Secretary from the office of respondent no. 2 on 31.03.2020. The State Election Commissioner also issued a letter to the petitioner on the same line on 27.09.2019. After the retirement of the petitioner and also after passing the impugned order dated 24.09.2020 the respondent no. 2 wrote the letter to the Director, Treasury, Pension and Entitlement, Uttarakhand with regard to the completion of formalities for paying the pension and other retiral dues of the petitioner on the basis of Section Officer on grade pay of Section Officer i.e. Rs. 9300-34800 grade pay Rs. 4800/-.

2.6 It is a law settled by the Hon'ble Supreme Court as well as by the High Courts which is binding in view of Article 141 of the Constitution of India over the State instrumentality that the pension to the retired employee will be paid on the basis of last pay drawn by the delinquent employee who is retired from the services of the State.

2.7 The Rule 4 of the Uttar Pradesh Retirement Benefit Rules 1961, which have been adopted by the State of Uttarakhand provides for the pension, is applicable here and as per the said rule, the petitioner is entitled for pension on the basis of last pay drawn i.e. Rs. 15600-39100 grade pay Rs. 6600/-.

2.8 The impugned order has been passed by the respondent no. 2 on 24.09.2020 after the retirement of the petitioner as Under Secretary on 31.03.2020. It is relevant to submit here that before passing the order dated 24.09.2020 neither the respondents contemplated, any enquiry against the petitioner nor the respondents issued any show cause notice to the petitioner for providing any opportunity of hearing to the petitioner as the respondents failed to comply the principle of natural justice before passing the impugned

order dated 24.09.2020. The impugned order dated 24.09.2020 has been passed by the respondent no. 2 after about 06 months of the retirement of the petitioner from the post of Under Secretary on one hand the respondent no. 2 himself given the certificate to the petitioner that after completion of the age of superannuation the petitioner is retired from the post of Under Secretary on other hand against the settled principal of law as laid down by the Hon'ble Supreme Courts and High Courts the impugned order has been passed much after the retirement of the petitioner therefore as per the law laid down by the Hon'ble Supreme Court and High Courts without affording any opportunity of hearing to the petitioner as well as after the retirement cannot be reverted back to the lower post which is against the law therefore the impugned order is prima facie an illegal action on the part of the respondents.

2.9 Respondents also failed to make the payment of all retiral dues of the petitioner. It is also stated in the claim petition that the respondent did not make the payment of leave encashment of 300 days of the petitioner. The said action of the respondent for not paying all the retiral dues of the petitioner after about one year of the retirement shows the malafide and inaction on the part of the respondents.

3. The claim petition has been contested on behalf of the respondents. Counter affidavit has been filed on behalf of respondent no. 1 & 2 separately, mainly stating the following:

3.1 Petitioner has filed the claim Petition challenging the validity of order dated 24.09.2020 passed by the Respondent No. 2, whereby he has been reverted back to the post of Section Officer from the post of Under Secretary.

3.2 As per Rule 5(1)(d) of the Uttarakhand State Election Commission (Headquarter) Group "A" and "B" Service Rules, 2015 which gives the eligibility for the post of Under Secretary states as hereunder:

ऐसे स्थायी अनुभाग अधिकारियों में से जिन्होंने अनुभाग अधिकारी के रूप में या/ और किसी समकक्ष पद पर कम से कम पांच वर्ष की सेवा (जिसके अन्तर्गत अस्थायी सेवा भी है) की हो, शत प्रतिशत पदोन्नति द्वारा।

Since the Petitioner got a regular promotion on the post of Section Officer on 01-10-2015, he could not complete 5 years' services on the feeding cadre post (i.e. section officer) on the date of granting to him an ad-hoc promotion on the post of Under Secretary.

3.3 The term of ad-hoc promotion given to the petitioner has expired on 06.10.2017 and the ad-hoc promotion was conditional one which was willingly accepted by the Petitioner. According to the term of ad-hoc promotion, the promotion was not liable to exist for more than one year and could be cancelled at any time without giving any notice therefore Petitioner has no locus to file this claim petition challenging order dated 24-09-2020 by which the petitioner was reverted to his original post and the same has been passed strictly in accordance with law and there is no anomaly in the same. Petitioner was not eligible to get regular promotion as he did not complete the requisite years of service in the feeding cadre post. Therefore, he was rightly reverted to the original post.

3.4 Petitioner reached the age of superannuation on 31.03.2020, but due to complete lockdown owing to spread of COVID-19 pandemic, office of answering Respondent remained closed till the end of June.

3.5 Directorate of Treasury, Pension and Entitlement observed certain objections in the pension papers of the petitioner and pointed out vide letter No. 2050 dated 18.08.2020 to the State Election Commission. Directorate also fixed pension of Petitioner treating him to have retired from the post of Section Officer and in this regard letter No. 3892 dated 11.11.2020 was also issued.

3.6 All the retiral benefits including regular pension of petitioner has been determined by the Directorate of Pension vide letter No. 3892 dated 11-11-2020 and now the amount of leave encashment has also been approved on 29-07-2022.

3.7 Petitioner is not legally entitled to get the benefit of pension under his ad hoc appointment post. i.e. Under Secretary.

3.8 Identical controversy has also been raised by the similarly situated persons who have filed Writ Petition No. 1114 (S/S) of 2020, Writ Petition No. 1115 (S/S) of 2020, Writ Petition No. 1118 (S/S) of 2020 and Writ Petition No. 1121 (S/S) of 2020 before the Hon'ble High Court in which counter affidavits have already been filed by the State Election Commission. However, all these Writ Petitions are pending for consideration and efforts are being made to get the Writ Petitions decided as early as possible.

4. Counter affidavit has also been filed on behalf of respondent no. 3. Affidavit has been filed by Sri Pankaj Tiwari, the then Director, Treasury, Pension & Entitlements, mainly stating the following:

4.1 वित्त अनुभाग-6, उत्तराखण्ड शासन, देहरादून के शासनादेश संख्या-91/XXVII(6)/2015, दिनांक 17 अप्रैल 2015 के प्रस्तर-17 के अनुसार पेंशन स्वीकृति से पूर्व पेंशन की धनराशि के निर्धारण के लिए सम्बन्धित पेंशन के सेवानिवृत्त की तिथि को अंतिम वेतन आयोग की संस्तुति के लागू होने के दिनांक से लेकर सेवानिवृत्त होने तक की सेवा में समय-समय पर उसे स्वीकृत वेतनमान, उच्च वेतनमान, संशोधित वेतनमान/ए0सी0पी0/समयमान वेतनमान/पदोन्नति वार्षिक वेतन वृद्धि एवं इन सबके फलस्वरूप निर्धारित एवं आहरित वेतन आदि की जाँच की जायेगी। इससे पूर्व के वेतन निर्धारण हेतु विभागीय अधिकारी उत्तरदायी होंगे। स्वीकर्ताधिकारी उक्त अवधियों का परीक्षण नहीं करेंगे। विभागों में नियुक्त वित्त नियंत्रक/वित्त अधिकारी/सहायक लेखाधिकारी सम्बन्धित विभाग के सभी कार्मिक के पूर्व के वेतन निर्धारण चैक किया जाना सुनिश्चित करेंगे।

4.2 राज्य निर्वाचन आयोग, उत्तराखण्ड, देहरादून के कार्यालय-ज्ञाप संख्या-628/रा0नि0आ0-1/01/2001, दिनांक 07 अक्टूबर 2016 द्वारा आदेश जारी किया कि राज्य निर्वाचन आयोग, उत्तराखण्ड में कार्यरत श्री बी0पी0 कोठारी, अनुभाग अधिकारी को जनहित में अनु सचिव के रिक्त पद पर वेतनमान रु0 15600-39100 ग्रेड वेतन 6600 पर 01 वर्ष से अनाधिक अथवा नियमित पदोन्नति होने तक अथवा किन्ही अन्य कारणवश किसी भी समय मूल पद पर प्रत्यावर्तित किये जाने के प्रतिबन्ध के साथ पूर्णतय अस्थाई तौर पद तदर्थ रूप से पदोन्नत किया जाता है।

4.3 उप सचिव, राज्य निर्वाचन आयोग, उत्तराखण्ड, देहरादून के पत्र संख्या-297/रा0नि0आ0-ले0/1659/ 2014, दिनांक 09 जुलाई 2020 द्वारा याची का पेंशन प्रकरण इस निदेशालय को प्रेषित किया।

4.4 इस निदेशालय द्वारा याची के पेंशन प्रकरण में वेतन निर्धारण के सम्बन्ध में एवं तदर्थ पदोन्नति के तारतम्य में निर्धारित किये गये वेतन के सम्बन्ध में पृच्छाएं की गई।

4.5 राज्य निर्वाचन आयोग, उत्तराखण्ड, देहरादून ने पत्र संख्या-670/रा0नि0आ0-ले0/1659/2014, दिनांक 28 अक्टूबर 2020 द्वारा पृच्छाओं का निराकरण कर प्रेषित किया।

4.6 याची को उक्त कार्यालय-ज्ञाप/आदेश की शर्तों का भली भाँति ज्ञान था कि उनकी पदोन्नति नियमित नहीं है। याची द्वारा साईबर ट्रेजरी देहरादून में स्वयं उपस्थित होकर प्रथम भुगतान समस्त औपचारिकतायें पूर्ण करने के पश्चात् दिनांक 04 दिसम्बर 2020 को पेंशन, ग्रेच्युटी एवं राशिकरण का भुगतान अपने बैंक खाते के माध्यम से प्राप्त कर लिया है।

5. Rejoinder affidavit has been filed by the petitioner reiterating the facts contained in the claim petition.

6. We have heard the arguments of the Learned Counsel for the petitioner and the Learned A.P.O. and perused the documents.

7. Learned Counsel for the petitioner argued that the petitioner was promoted on the post of the Under Secretary vide order dated 07.10.2016. He was allowed to work on the post of Under Secretary till his retirement on 31.03.2020. He has drawn the salary in the pay scale of 15600-39100 grade pay of Rs. 6600/- admissible to the Under Secretary till his retirement.

Uttarakhand State Election Commission has issued a memorandum dated 31.03.2020 regarding the retirement of the petitioner from the post of Under Secretary on 31.03.2020 and subsequently forwarded his pension papers as holding the post of Under Secretary.

Learned Counsel for the petitioner has relied upon the judgement of Hon'ble Supreme Court in **Civil Appeal No. 266 of**

2020, Shamsheer Singh Sandhu vs. Union of India and others, in which the Hon'ble Supreme Court stayed the order of reversion without issuing show cause notice and without affording any opportunity of being heard to the appellant and the appellant continued to work as I.G. rank officer until the date of superannuation. The Hon'ble Court issued the direction that retiral dues of the appellant be computed and released on the basis that he has retired from the service in the substantive rank of I.G.

Learned Counsel for the petitioner further referred the judgement of Hon'ble High Court of Patna in Civil Writ Petition No. 4737 of 2017, **Yogendra Prasad vs. Union of India and others, in which the Hon'ble Court observed that the petitioner has occupied next higher post of Senior Section Engineer for more than a decade. It was inferred that he is a regular holder of the post of Senior Section Engineer. The employee cannot be promoted on higher post on ad-hoc basis for more than a decade. Respondents were directed to extend all the service and monetary benefits from time to time during the alleged period against the post of Senior Section Engineer.**

Learned Counsel for the petitioner requested that on the basis of the facts mentioned as well as the judgement of the Hon'ble Supreme Court and High Court, the impugned order dated 24.09.2020 is liable to be set aside and the claim petition is liable to be allowed.

8. Learned A.P.O. has argued that the petitioner was promoted as Section Officer on 01.10.2015 and he was promoted on ad-hoc basis on the post of Under Secretary vide order dated 7/10/2016 for one year or till the regular promotion. He was reverted on the post of Section Officer vide order dated 24.09.2020 after the petitioner retired on 31.03.2020. The matter related to the issuing order of reversion and processing the pension related matter of the petitioner could not be taken up due to complete lockdown owing to

Covid-19 pandemic as the offices of the respondents remained totally closed till the end of June, 2020.

Learned A.P.O. further argued that Rule 5(1)(d) of Uttarakhand State Election Commission (Headquarters) Group A and B Service Rules, 2015, provides to fill up the post of Under Secretary by promotion (100%) from among the Section Officers, who have completed at least five years of service. The petitioner was not eligible for regular promotion as he did not complete required period as section officer for promotion on the post of Under Secretary. The petitioner was reverted to the post of Section Officer after his retirement and his pensionary benefits have been calculated on the basis of the grade pay Rs. 4800 admissible to the Section Officer.

Learned A.P.O. has further substantiated his argument by referring to the judgement of **Hon'ble High Court of Punjab & Haryana at Chandigarh in CWP No. 18318 of 2015 and other connected cases in the matter of Bhagwan Das and others vs. State of Punjab and others, decided on 13.07.2016**, in which the Hon'ble Court held that the petitioner must have secured promotion on the higher post in accordance with the seniority, eligibility and service record before staking claim pay of the higher post as a matter of right. The petition was accordingly dismissed.

Learned A.P.O. has further submitted that the Uttarakhand Retirement Benefits Act, 2018, is applicable to the persons who have been substantively appointed before the date of 01.10.2005 under the services of State Govt. The petitioner was appointed on ad-hoc basis on the post of Under Secretary so he is not entitled for pension of Under Secretary and his claim petition is liable to be dismissed.

9. Based on the arguments of the learned Counsel for the petitioner, learned A.P.O. and documents placed before the Tribunal, the Tribunal finds that the petitioner was promoted on the post of Under Secretary on ad-hoc basis on 07.10.2016 in the pay

scale of Rs. -15600- 39100 and grade pay Rs. 6600/- but he continued to discharge the duties of Under Secretary till his retirement on 31.03.2020. The department did not revert him to his original post before his retirement and the reversion order was issued on 24.09.2020 .

The judgements of Hon'ble Courts relied upon by the learned counsel for the petitioner are not applicable in the present case as the petitioner was not regularly promoted as well as he has not worked on ad-hoc basis on the post of Under Secretary for long period.

The petitioner was not eligible for regular promotion while he was holding the post of Under Secretary as he did not fulfil requisite service condition for promotion, so he has been rightly reverted by the respondents to his original post. Hence, the claim petition is liable to be dismissed.

Order

The claim petition is dismissed. No order as to costs.

RAJENDRA SINGH
ACTING CHAIRMAN

A.S. RAWAT
VICE CHAIRMAN (A)

DATED: 26th May, 2026
DEHRADUN
RS