BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL, BENCH AT NAINITAL

Present: Hon'ble Mr. Capt. Alok Shekhar Tiwari

------ Member (A)

Claim Petition No. 47/NB/SB/2021

Pratap Ram Tamta, S/o Shri Chani Ram Tamta, R/o Bhagwati Niwas Talla Danyia, Dharanaula Road, Almora, District Almora.

…………… Petitioner

Versus

1. State of Uttarakhand through Secretary, Social Welfare, Government of Uttarakhand, Dehradun.
2. Director, Social Welfare, Uttarakhand, Haldwani.
3. District Social Welfare Officer, Almora.
4. Accountant General, Uttarakhand, Dehradun.

…………. Respondents

Present : Sri Gaurav Raj Arya, Advocate for the petitioner

Sri Kishore Kumar, A.P.O. for the respondents No. 1 to 3

Sri Rajesh Sharma, Advocate for the respondent No. 4.

J U D G M E N T

DATED : **JUNE 13th, 2025**

This claim petition has been filed seeking the following relief:-

"i. to issue order or direction directing the respondents to forthwith pay General Provident Fund (G.P.F.) to the applicant alongwith interest.

ii. to issue any other or direction, which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

iii. to award the cost of the petition in favour of the applicant."

2. In brief, the facts of the case are that the petitioner was appointed in the Department in the year 1978 and after attaining the age of superannuation, petitioner retired from service from the post of Head Assistant, in the office of District Social Welfare Officer, Almora on 31.01.2017. After the petitioner retired from services, i.e., on 31.01.2017, the District Social Welfare Officer, Almora sent a letter dated 01.02.2017 to Senior Account Officer of Accountant General, Uttarakhand to compare the General Provident Fund Account No. U/2868 of the petitioner and verification of the same may be sent back so that documents relating to release of 90% of gratuity be sent to the Directorate. The District Social Welfare Officer, Almora again sent a letter dated

07.02.2017 to the Chief Treasury Officer, Almora, wherein, it was stated that the amount of Rs. 1,36,490/- was wrongly deposited in Account Head 0250-00-102-01-02 instead of Account Head 8009-01-101-02. Therefore, he requested the Chief Treasury Officer, Almora to make necessary correction and deposit the said amount in Account Head 8009-01-101-02 Class-IV, so that the matter could be sent to the office of Accountant General for necessary action. The Senior Account Officer in the office of Accountant General (Lekha Evam Haqdari) sent a letter dated 01.05.2017 to the District Social Welfare Officer, Almora. By this letter, he mentioned the fact that the G.P.F. passbook of the petitioner was not kept upto date by the Social Welfare Department, as a result of which, a sum of Rs. 1,36,490/- is to be recovered from the petitioner. He further directed that the amount of Rs. 1,36,490/- be deposited back and the deposit Challan verified from the Treasury Officer be sent to its office. In pursuance to the above letter dated 01.05.2017, the District Social Welfare Officer, Almora issued a letter dated 08.05.2017 to the petitioner about the recovery. In this letter, the District Social Welfare Officer, Almora apprised the petitioner that since the G.P.F. passbook of the petitioner was not kept updated, as a result of which, a sum of Rs. 1,36,490/- is to be recovered from the petitioner. He directed the petitioner to deposit the said amount in his office so that the same could be deposited in Account Head 8009 State Provident Fund 01 Civil 101 G.P.F. 02 Class IV and certificate of deposit issued by Treasury Officer could be sent to the office of Accountant General. After issuance of letter dated 08.05.2017, the District Social Welfare Officer, Almora again issued a reminder dated 23.05.2017 to the petitioner, wherein, he directed the petitioner to forthwith deposit Rs. 1, 36,490/- in the office and as submitted above, the petitioner had already deposited an amount of Rs. 1, 36, 490/- in the office of District Social Welfare Officer, Almora, but, the office had deposited the said amount in a wrong Head in the Treasury. Thereafter, vide letter dated 07.02.2017 the District Social Welfare Officer, Almora requested the Chief Treasury Officer, Almora to deposit the said amount in the correct Head and give a certificate to this effect. The District Social Welfare Officer, Almora was thus aware of the deposit of Rs. 1,36,490/- by the petitioner. After receiving the above letters issued by the District Social Welfare Officer, Almora, petitioner requested the District Social Welfare Officer, Almora that the amount directed to be recovered from the applicant pursuant to order of Accountant General be deducted from his G.P.F. Account PLAN U 2868 and the remaining balance proceeds in his G.P.F. Account be paid to the applicant. The amount of Rs. 1, 36,490/, which was directed to be recovered from the petitioner was already deposited by him in the office of District Social Welfare Officer, Almora, who, by mistake had deposited the same in the wrong Head of the Treasury. The amount of Rs. 1,36,490/- was transferred in the correct Head on 29.06.2017. After transferring the amount of Rs. 1, 36, 490/- in the correct Head in the Treasury, the District Social Welfare Officer, Almora sent the certificate alongwith his covering letter dated 15.12.2017 to Senior Account Officer in the Accountant General Office, Dehradun. Even after depositing amount of Rs. 1, 36, 490/- as was directed by the Accountant General Office, the G.P.F. amount of the petitioner was not released. Petitioner moved a representation, wherein, he has requested the respondents to immediately release the amount of G.P.F. deposited in his G.P.F. Account No. PLAN U 2868. The total amount due to the petitioner in his G.P.F. Account was Rs. 6, 56, 300/- as on 06.03.2021. As per law, the Employer shall pay the amount of gratuity within 30 days from the date it becomes payable and if gratuity is not paid by the Employer within the specified period then the Employer shall pay from the date, on which, the gratuity becomes payable to the date, on which, it is paid, simple interest @ 10% per annum. Hence, this claim petition has been filed by the petitioner before the Uttarakhand Public Services Tribunal, Nainital Bench, Nainital.

3. CA/WS has been filed on behalf of the respondent No. 4 by Sri Rajesh Sharma, Advocate, in which, it has been stated that Answering Respondent is responsible only for authorization of Payment of General Provident Fund (GPF) balance. The petitioner was informed by Answering Respondent vide its letter No. FUND-4/OD-1760/2020-21/819-820 dated 05.11.2020 that his G.P.F. account has been settled with recovery of Rs. 1, 36, 490/- and no GPF dues are now pending in the petitioner's GPF account. The GPF account was finally settled with a minus balance of Rs. 1, 36, 490/-, which has been recovered from the petitioner. Therefore, this fact of case presented by the petitioner lacks merit. Hence, the present claim petition filed by the petitioner is liable to be dismissed.

4. CA/WS has also been filed on behalf of the respondent No. 2 by learned A.P.O., in which, it has been stated:-

4.1. **श्री टम्टा दिनांक 31 जनवरी, 2017 को अपनी अधिवर्षता आयु पूर्ण कर सेवानिवृत्त हुए। सेवानिवृत्ति से पूर्व उनके जी0पी0एफ0 की धनराशि के**

भुगतान किये जाने हेतु उनकी जी0पी0एफ0 पासबुक महालेखाकार (लेखा एवं हकदारी) उत्तराखण्ड, माजरा, देहरादून को प्रेषित की गयी थी। कार्यालय महालेखाकार (लेखा एवं हकदारी) उत्तराखण्ड द्वारा अपने पत्र दिनांक 01.05. 2017 के माध्यम से अवगत कराया कि अभिदाता श्री प्रताप राम टम्टा की सामान्य भविष्य निधि के प्रकरण की गणना करते समय पाया गया कि उक्त अभिदाता को 100 प्रतिशत से अधिक भुगतान पूर्व में ही किया जा चुका था, जिसके फलस्वरूप रू0 1,36,490/– की ऋणात्मक धनराशि आगणित हुई है। कार्यालय महालेखाकार (लेखा एवं हकदारी) उत्तराखण्ड द्वारा श्री प्रताप राम टम्टा के सा0भ0नि0 लेखा संख्या–प्लान यू/2868 के मिलान पर आगणित ऋणात्मक धनराशि रू0 1, 36, 490/– को शीघ्र सम्बन्धित अभिदाता से वसूल कर लेखा शीर्षक 8009–01–101–02 में जमा कर प्रमाणित प्रति उपलब्ध कराने के भी निर्देश दिये गये।

4.2. कार्यालय महालेखाकार (लेखा एवं हकदारी) उत्तराखण्ड से प्राप्त निर्देशों के कम में रू0 1,36,490/– की धनराशि की वसूली सम्बन्धित से करते हुये कोषागार के माध्यम से चालान द्वारा सुसंगत लेखा शीर्षक में जमा की गइ। अतः महालेखाकर, उत्तराखण्ड, देहरादून से प्राप्त सूचनाओं एवं तथ्यों से स्पष्ट है कि श्री टम्टा के सा0भ0नि0 खाते में भुगतान हेतु कोई धनराशि अवशेष नहीं है। श्री टम्टा द्वारा महालेखाकार, उत्तराखण्ड एवं जिला समाज कल्याण अधिकारी, अल्मोड़ा द्वारा उपलब्ध कराये गये तथ्यों/सूचनाओं को नजरअन्दाज करते हुये माननीय लोक सेवा अधिकरण, उत्तराखण्ड, खण्डपीठ–नैनीताल में

उक्त दावा याचिका योजित की गई है। अतः उक्त दावा याचिका सव्यय निरस्त होने योग्य है।

4.3. **तद्विषयक शासनादेश संख्या–82 दिनांक 13 फरवरी, 2009 के पैरा–तीन के अनुसार निर्दिष्ट है कि** "अतः इस सम्बन्ध में अनुरोध है कि कृपया अपने विभाग से सम्बन्धित सेवानिवृत्त कर्मचारियों/अधिकारियों (श्रेणी घ के कर्मचारियों को छोड़कर) के सामान्य भविष्य निधि के 90 प्रतिशत भुगतान हेतु अभिदाता के पासबुक का मिलान महालेखाकार कार्यालय से छः माह पूर्व कराया जाना सुनिश्चित किया जाये, जिससे सेवानिवृत्त के दिनांक तक अभिदाता को सामान्य भविष्य निधि का 90 प्रतिशत भुगतान किया जा सके" **उक्त शासनादेश के आलोक में अभिदाता श्री प्रताप राम टम्टा की सा0भ0नि0 पासबुक मिलान हेतुं महालेखाकार (लेखा एवं हकदारी) उत्तराखण्ड, देहरादून को प्रेषित की गई थी। इस कम में महालेखाकार (लेखा एवं हकदारी) देहरादून द्वारा अपने पत्र दिनांक 01.05.2017 द्वारा अवगत कराया गया कि अभिदाता श्री टम्टा के मिलान के प्रकरण की गणना करते समय पाया गया कि विभागीय स्तर से समय–समय पर स्वीकृत किये गये अग्रिमों/प्रत्याहरणों के कारण उक्त अभिदाता को 100 प्रतिशत से अधिक का भुगतान पूर्व में ही किया जा चुका है, जिसके फलस्वरूप रू0 1,36,490/– की ऋणात्मक धनराशि आगणित हुई है।**

महालेखाकार (लेखा एवं हकदारी) उत्तराखण्ड, देहरादून द्वारा उपलब्ध कराये गये विवरण से यह स्पष्ट है कि उक्त अभिदाता को 100 प्रतिशत से अधिक भुगतान पूर्व में ही किया जा चुका है, जिसके फलस्वरूप अभिदाता के देयकों से रू0 1,36,490/– की धनराशि की वसूली कर चालान के रूप में

सम्बन्धित लेखा शीर्षक में जमा भी की गयी है। अतः याची का यह कहना कि उनको रू0 4,33,244/– का भुगतान किये जाने हेतु प्रतिवादी को निर्देशित किया जाये, आधारहीन है।

4.4. चालान की धनराशि त्रुटिपूर्ण लेखा शीर्षक में जमा होने का संज्ञान होते ही जिला समाज कल्याण अधिकारी, अल्मोड़ा द्वारा मुख्य कोषाधिकारी, अल्मोड़ा को पत्र प्रेषित कर उक्त चालान धनराशि सही लेखा शीर्षक में जमा करने हेतु पत्र प्रेषित किया गया था। उक्त पत्र के कम में मुख्य कोषाधिकारी, अल्मोड़ा द्वारा उपलब्ध कराई गई सूचना के साथ संलग्न कार्यालय महालेखाकार (लेखा एवं हकदारी) उत्तराखण्ड, के पत्र दिनांक 05.04.2018 के अनुसार "रिक्यूजीशन फॉर करेक्शन ऑफ एकाउण्टस" में प्रस्तुत लेखा संशोधन का समायोजन इस कार्यालय द्वारा वित्तीय वर्ष 2017–18 के माह 02/2018 के लेखे में कर लिया गया था।

4.5. महालेखाकार (लेखा एवं हकदारी) उत्तराखण्ड द्वारा अपने पत्र दिनांक 01.05.2017 के साथ अभिदाता के लेखे का वित्तीय वर्ष 2011–12 से 2016–17 तक का विवरण संलग्न कर प्रेषित किया गया था, जिसके अनुसार वित्तीय वर्ष 2016–17 में अभिदाता श्री टम्टा की प्रारम्भिक राशि (Opening Amount) रू0 1,23,826/– (ऋणात्मक), जमा धनराशि (Deposit Amount) शून्य, आहरण (Withdrawal) शून्य, ब्याज (Interest) रू0 13064/–ऋणात्मक था। इस प्रकार उक्त वित्तीय वर्ष में श्री टम्टा का क्लोजिंग अमाउण्ट (Closing Amount) रू0 1,36,490/–ऋणात्मक था। महालेखाकार

(लेखा एवं हकदारी) उत्तराखण्ड द्वारा उपलब्ध कराये गये विवरण से यह स्पष्ट है कि उक्त अभिदाता को 100 प्रतिशत से अधिक भुगतान किया जा चुका था, जिसके फलस्वरूप अभिदाता के देयकों से रू0 1,36,490/– की धनराशि की वसूली कर चालान के रूप में सम्बन्धित लेखा शीर्षक में जमा भी की जा चुकी है। इस सम्बन्ध में जिला समाज कल्याण अधिकारी, अल्मोड़ा द्वारा भी अपने पत्र दिनांक 23 अगस्त, 2021 द्वारा अवगत कराया गया है कि श्री टम्टा के सा0भ0नि0 संख्या प्लान यू–2868 में भुगतान हेतु कोई धनराशि शेष नहीं है। अतः याची का यह कहना कि उनको रू0 6,56,300/– का भुगतान अविलम्ब किया जाये, का कोई औचित्य नहीं है।

5. Rejoinder affidavit has also been filed reiterating the facts mentioned in the present claim petition.

6. I have heard the learned Counsels for the parties and perused the records.

7. Learned Counsel for the petitioner argued that the respondent department issued the concerned recovery letter about 03 to 04 months later after the retirement of the petitioner, which was contrary to the directions and rulings in the case of Civil Appeal No. 11527 of 2014 (Arising out of SLP (C) No. 11684 of 2012) State of Punjab & others vs. Rafiq Masih (White Washer) given on 18.12.2014 by Hon'ble Apex Court that no recovery could

be made from Class-III employees after their retirement. Again this ruling has been reiterated in the case of Civil Appeal No.………..of 2025 (Arising out of SLP (C) No. (s) 5918/2024) Jogeshwar Sahoo & others vs. The District Judge, Cuttack & others on 04.04.2025. Also that the Government of India and Government of Uttarakhand issued memos and Government Orders in this regard from time to time in the year 2014 onwards. Learned Counsel emphasized that the G.P.F. deductions from salary were continued till 2015 during which period all the anomalies regarding the closing balance of petitioner's GPF account could have been addressed, but an amount of about Rs. 1,36,000/- has been recovered from the petitioner, after his retirement. He also informed the Tribunal that the petitioner has applied to the respondents under RTI for certain documents which would fortify the petitioner's claim, therefore, no recovery should have been made from the petitioner's GPF Account post retirement.

8. Learned Counsel for the respondent No. 4, i.e., Accountant General, Uttarakhand, Dehradun during the course of his arguments apprised the Tribunal that an amount of Rs. 1,36,000/- approximately has been recovered by the respondent

department from the petitioner. He also argued that the Accountant General is only an approval authority after cross checking the concerned documents as provided by the respondent department, therefore, there is no cause of action at all against the respondent No. 4. In case, the respondent department tallies the petitioner's documents and the receipts pertaining to the petitioner's GPF account and accepts the petitioner's claim the respondent No. 4 does not have any objection to it, though legally this claim petition is barred by the Principle of Estoppel.

9. Learned A.P.O. appearing for the respondents No. 1 to 3 very emphatically argued that this is not a case of recovery from a group-'C' employee post retirement. In realty this is simply an act of tallying and making adjustments of the net GPF amounts, deducted from the petitioner's salary during his service period, against any previous loans, temporary withdrawals or permanent withdrawals made by the petitioner from his GPF account during his service period. Therefore, this departmental notice of recovery is not a process of recovery as per the legal definition. Therefore, the two landmark rulings relied upon by the petitioner will not be applicable in this case. Learned A.P.O. pointed out that the

Accountant General's office has correctly mentioned that the mistake has been made by the respondent department while making the final tallies and calculations. In case, the respondent department makes a re-calculation based upon petitioner's documentary evidence and accepts the claim, then the State does not have any stakes involved in this.

10. The Tribunal has gone through all the documentary evidences, rulings and pleadings available on file and has concluded that this matter is absolutely based upon the documents related to GPF deductions from the petitioner's salary, the loans, temporary withdrawals, or permanent withdrawals from the GPF account of the petitioner during the course of his service and the back payment of those amounts by the petitioner as per the rules. Learned A.P.O. is right in mentioning that this entire exercise of balancing the account for credits and debits by the respondent department does not fall under the definition of recovery. Therefore, the rulings as relied upon by the petitioner's Counsel do not apply in this instant matter. Learned Counsel for the respondent No. 4 Accountant General, Uttarakhand, Dehradun also is right when he says that there is no cause of action against the

respondent No. 4 because it is only the final approving authority after cross-checking the documents and payment recommendations forwarded by the respondent department in the case of each retiring employee.

11. It would be appropriate for this Tribunal to replicate here the crux of Hon'ble Apex Court's directions dated 18.12.2014, as such, in the maters of recovery from Government employees:-

> "12. 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 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."

It is noticeable here that Hon'ble Apex Court has not meant to cover the G.P.F. account anomalies and the process of balancing the credits and debits in the G.P.F. account of the retiring employee under the definition of recovery.

12. Having concluded as aforesaid this is aptly clear before the Tribunal that there are no legal complications involved in this

instant case except for re-comparing and re-calculating the entire credits and debits of the petitioner's GPF account. As the learned Counsel for the respondent No. 4 and the learned A.P.O, have rightly hinted during the course of their arguments, there is a high probability of the respondent department having made mistakes in its calculations. Therefore, it would be pragmatic to direct the respondent department to undergo the calculation exercise once again based solely upon the documentary evidences as provided by the petitioner and those available with the respondent department. Thus, it would be fair to provide an opportunity to the petitioner to file a fresh representation alongwith all the documentary evidences available with him before the respondent No. 2 including those documents, which he receives from the respondent departments under RTI within a period of 60 days from the pronouncement of this judgment. The respondent No. 2 in turn will decide the petitioner's representation within a period of 60 days from the date of submission of a fresh representation by the petitioner. Thereafter, on the resultant recommendation of the respondent No. 2, the respondent No 4 will positively conclude the matter, within a period of 30 days.

ORDER

The claim petition is partly allowed with a direction to the petitioner to submit a fresh representation alongwith all the documentary evidence available with him before the respondent No. 2 including those documents which he receives from the respondent departments under RTI within a period of 60 days from the pronouncement of the judgment. The respondent No. 2, in turn, will decide the petitioner's representation within a period of 60 days from the date of submission of a fresh representation by the petitioner alongwith a certified copy of this judgment. Thereafter, on the resultant recommendation of the respondent No. 2, the respondent No 4 will positively conclude the matter, within time frame of 30 days.

Furthermore, in case this mandated exercise manifests that there was no fault of the petitioner in this instant matter, and that there has been a grave dereliction of duty in maintaining the petitioner's G.P.F. passbook, and other relevant records, then not only the interest charged on the recovered amount would be refunded back to the petitioner, but also the respondents would be liable to pay the simple rate of interest on petitioner's pending amounts, if any, in the G.P.F. account under question.

Apart from the aforementioned exercise, the respondent No. 1 is advised to institute a departmental enquiry in this instant matter, and fix accountability of the responsible officers or employees of the respondent department, who were supposed to maintain the relevant documents and records in this instant case, as the same not only falls under the category of financial irregularity, but also smacks of an attempt towards embezzlement of public money.

(Capt. Alok Shekhar Tiwari)
Member (A)

DATE: **JUNE 13th, 2025**
NAINITAL
BK