

**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. 97/DB/2019

Sri Satish Kumar, aged about 51 years, s/o Sri Hari Singh, r/o 62/1, IRI Colony, Roorkee, presently working as Mistri in Administrative Division, Irrigation Research Institute, Roorkee.

.....Petitioner

vs.

1. State of Uttarakhand through Secretary, Department of Irrigation, Civil Secretariat, Subhash Road, Dehradun.
2. Superintending Engineer, Research Circle, Irrigation Research Institute, Roorkee, District-Haridwar.
3. Sri Puneet Kumar Mall, Superintending Engineer, Research Circle, Irrigation Research Institute, Roorkee, District-Haridwar.

.....Respondents

Present: Sri L.K.Maithani, Advocate, for the petitioner.
Sri V.P.Devrani, A.P.O., for the Respondents.

JUDGMENT

DATED: 31st AUGUST, 2026

Sri Arun Singh Rawat, Vice Chairman (A)

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

“i). To quash the impugned order dated 15.07.2019 and order dated 16.07.2019 along with order dated 08.08.2019 issued by the

respondent No.3, declaring the same is null and void in the eyes of law with all consequential benefits.

ii). To issue an order or direction to the of respondent No. 2 to grant the benefit of first and second promotional pay scale of promotional post JE and AE to the petitioner respectively since the date 01.09.2008 and 19.09.2013 respectively, "declaring that for the purpose of ACP the promotion of the petitioner from the post of mechanic (group D) to the post of Mistri (Group C) is not a simple promotion but a direct recruitment, thus for the benefit of ACP the required service will be count from the date of appointment/ promotion on the post of Mistri a group C post.

iii). To issue an order of direction against the respondent No. 3 to pay Rs. 10 Lakh as due to the wrong of respondent No. 3, the petitioner have been compelled to third time for his claim before the Hon'ble Tribunal, damages and compensation to the petitioner for the harassment and mental agony of the petitioner.

iv). To award the cost of petition Rs. 1,00,000/-from the respondents No. 2 or 3 as due to the wrong of the respondent No. 3, the petitioner is compelled to file the third case for his claim before the Hon'ble Tribunal.

v). 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.”

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

2.1 - The petitioner was initially appointed on the post of Beldar a group-D post on 17.11.1984 on ad hoc basis under the department and the regular appointment was given on the post vide order dated 25.02.1985. (Annexure: A 3 colly). He was promoted vide order dated 18.10.1996 on the post of mechanic of Group-D post (Annexure: A4). Thereafter he was promoted from the Group-D post of Mechanic to the group-C post of Mistri/Technician in Irrigation Department vide order dated 19.09.1997, on the basis of merit (Annexure: A 7).

2.2 The State Government vide G.O. No. 872 of dated 08.03.2011, modified/amended from time to time, had issued Assured career Progression Policy effective from 01.09.2008. By which on completion of 10 years, 16 years and 26 years of continuous satisfactory service the employee is entitled to 1st, 2nd and 3rd financial upgradation to his promotional post. The promotional post of the petitioner is Junior. Engineer (Mech.)

2.3 As per G.O. dated 08.03.2011 as amended by the G.O. dated 06.11.2013 and G.O. dated 25.02.2014 the petitioner was entitled and eligible for benefit of 1st and 2nd ACP of the promotional post of Junior Engineer (Mech.) grade pay Rs. 4600/- and Assistant Engineer grade pay Rs.5400/- since 01.09.2008 and 19.09.2013, instead, the respondent granted ACP grade pay 2400/- and grade pay 2800/- as the benefit of 1st and 2nd ACP respectively as per general pay scale/grade pay.

2.4 One of the similarly situated colleagues Sh. Ghanshyam Singh Jainer had filed W.P. No. 2561 of 1996 wherein the Hon'ble High Court of Allahabad, vide its judgment dated 27.07.1999 had held that the petitioner in that claim petition cannot be overlooked for promotion to the post of Junior Engineer (Mech.) simply on the ground that he was employed in the Irrigation Research Institute. The said judgment was not challenged by the respondents, therefore, has attained finality. But Sh. Jainer was not promoted on the ground that he did not pass the test provided under Rule 5(4) of the service Rules, 1992. This was challenged by Sh. Jainer in a W.P. No. 30311 of 2000. The Hon'ble High Court had held that the promotion to Jr. Engineer (Mech.) will be made on the basis of "Seniority subject to rejection of the unfit".

2.5 The Hon'ble High Court of Uttarakhand vide order dated 19.10.2011 passed in WPSS No. 86 of 2001, directed the respondents to pay the petitioner promotional pay scale as per Order dated 4.12.2000. In pursuance of above judgments and orders, respondents had allowed to Sh. Jainer the pay scale of Jr. Engr. (Mech.) Asstt. Engineer and Executive Engineer on completion of 14 years, 24 years and 26 years of continuous satisfactory service vide order dated March 2013.

2.6 In another W.P. 1575(S/S) of 2011 the Hon'ble High Court of Uttarakhand had directed the state of Uttarakhand and others to treat all the Nalkoop (Tube Well) Mistri (Technician), section Mistri and Mistri at Par. The Hon'ble High Court of Uttarakhand had also disposed of W.P. No 1187 of 2013 of petitioner in the same terms as in W.P. (S/S) No. 1575/2011.

2.7 When the benefit of promotional post of Junior Engineer (Mech.) was not given to the petitioner, as was given to Sh. Ghanshyam Singh Jainar, petitioner filed a W.P. No. 1128/SS/2013 before the Hon'ble High Court of Uttarakhand for the same benefit. The Hon'ble High Court vide its judgment dated 31.08.2013 directed the respondent to decide the representation of the petitioner.

2.8 Respondent No. 2 vide office order dated 13.11.2013, rejected the representation of the petitioner. Petitioner again requested to the respondent to allow him the benefit of ACP of promotional post of Jr. Eng., but the respondent No. 2 vide his letter dated 25.04.2016 has replied that the matter will be considered on completion of his 26 years of services.

2.9 Petitioner filed claim petition No. 25/DB/2016 before the Hon'ble Tribunal. The Hon'ble Tribunal vide its judgment dated 28.06.2018 (Annexure: A-15) directed the petitioner to file fresh representation before the respondent and directed the respondent to decide the same strictly in the light of G.O. dated 06.11.2013, by a reasoned and speaking order. But, the respondent No. 2 vide his office order dated 21.08.2018 (Annexure: A-16) rejected the representation of the petitioner and denied to grant the benefit of ACP of promotional post of Jr. Eng. (Mech.) on the wrong and illegal ground.

2.10 Thereafter, petitioner filed a claim petition No. 58/DB/2018 before the Tribunal. The Tribunal, vide judgment dated 26.04.2019 (Annexure: A-17) quashed the impugned order dated 21.08.2018 (Annexure: A-16) and directed respondent No. 3 to grant the benefit of ACP to the petitioner of promotional post.

2.11 Respondent No. 3 did not comply with the judgment dated 26.04.2019 of the Hon'ble Tribunal, instead vide order dated 15.07.2019 cancelled the benefit of 1st and 2nd ACP of the petitioner on the ground that after the appointment of petitioner on the post of Beldar, the petitioner has already got two promotions on the post of mechanic and Mistri as such the benefit of 1st and 2nd ACP was wrongly given to the petitioner and 3rd ACP will be sanctioned to the

petitioner in pay scale 5200-20200 grade pay 2400 after completion of 26 years of service. Thereafter vide second impugned order dated 15.07.2018 denied the compliance of the judgment dated 26.04.2019. Hence this petition.

3. Claim petition has been contested on behalf of respondents. Separate Counter Affidavits have been filed on behalf of respondents. C.A. on behalf of Respondents No 1 & 2 has been filed by Sri Chandra Prakash Kothiyal, Executive Engineer, Administration Division, Irrigation Research Institute, Roorkee. Sri Punit Kumar Mall, Senior Staff Officer, Office of the Engineer-in-Chief (legal cell), Irrigation Department, Uttarakhand, Dehradun, has filed C.A. on behalf of Respondent No. 3.

Although separate counter affidavits have been filed by Respondents No. 1& 2 and Respondent No.3, but they have taken a similar stand and raised common grounds to oppose the claim petition.

3.1. Ld. A.P.O., on behalf of Respondents No. 1 & 2, submitted that In all the Writ Petitions filed before the Hon'ble High Court of Allahabad, Uttar Pradesh or Hon'ble High Court of Uttarakhand, Nainital, regarding the matter granting promotion to the post of Junior Engineer (Mechanical) or granting benefit of promotional pay scale of the said post to workshop technicians under 1% promotional quota of Service Rules, 1992, the Hon'ble High Courts in each and every order passed, have laid emphasis on the fact that the candidate must have compulsorily passed the departmental eligibility examination held for recruitment to the post of Junior Engineer (Mechanical).

3.2 In claim petition 58/DB/2019, Hon'ble Tribunal passed judgment dated 26.04.2019 directing the respondent to decide the petitioner's representation for granting him promotional pay scale in terms of Uttar Pradesh Irrigation Department Mechanical Engineers (Subordinate) Service Rules, 1992, principle of 'seniority subject to rejection of unfit' and in the same manner in which similarly placed persons were given the benefit of ACP.

3.3 It is submitted in para 8 of the C.A. filed on behalf of Respondents No. 1 & 2 that in the Departmental eligibility examination held on 22.08.2010 and 23.08.2010, though the petitioner was declared as 'passed' but his result published by the Chief Engineer and Head of the Department (Personnel Section), Irrigation Department office order dated 22.03.2014, was restrictive and was subjected to the final decision of Hon'ble Apex Court in the Special Leave Petition 9516/2014 (Civil Appeal No. 011292/2016) Uttarakhand State Vs Kirti Ballabh Upreti filed against the order dated 07.10.2013 passed by the Hon'ble High Court Uttarakhand, Nainital in the Writ Petition No. 1575/SS/2011. (Copy of the Departmental eligibility examination result dated 22.03.2014 is enclosed as Annexure No. CA-R-4).

3.4 In view of the fact that the decision of the Hon'ble Apex Court is still pending as on date, the respondents denied the petitioner's claim for grant of A.C.P., consequently, vide office order dated 16.07.2019, the grant of the promotional pay scale of Junior Engineer (Mech.) to the petitioner was withheld.

3.5 Later on the respondent decided to sanction the petitioner the promotional pay scale of Junior Engineer (Mechanical) in terms of Service Rules, 1992 and issued a modified office order dated 08.08.2019 (Annexure No. CA-R-5) whereby the petitioner was granted the ACP benefit on the basis of 26 years of service.

3.6 It is the submission made on behalf of respondents that in view of the above, it is crystal clear that the cause of action is now ceased and the judgement dated 26.04.2019 of Hon'ble Tribunal is complied with by the respondents vide respondent office order dated 08.08.2019. Hence the claim petition has no legal force. Being devoid of any legal merit, same as liable to be dismissed with an exemplary cost at very one set.

3.7. One important development that took place during the pendency of this Claim Petition needs to be noted by the Hon'ble Tribunal and the same is being brought on record. A departmental enquiry has been conducted recently against the petitioner regarding the legality of his

very first appointment in the Irrigation Department when it was found that the petitioner Sri Satish Kumar S/o Late Hari Singh has taken up appointment in the Irrigation Department on compassionate ground under U.P. Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974 after the death of his father. However, the findings of the enquiry reveals that before the appointment of the petitioner, his elder brother Sri Molhar Singh S/o Late Hari Singh had also been given appointment in the Department on compassionate ground under the same Rules, 1974 after the death of his father. Thus two dependents of a family have taken up appointment on compassionate ground under the Dying in Harness Rules, 1974, which is not admissible as per law. Though compassionate appointment can be made to a dependent of a deceased Government servant who has died in harness under Rule 5 of the said Rules but under these Rules, only one member of a "family" of a Government servant can be given employment. The departmental enquiry report (Annexure No. CA-R-6) also mentions that earlier promotions given to the petitioner were not as per rules. Clearly, in the light of aforesaid departmental enquiry report, the petitioner's appointment on the compassionate ground as well as subsequent promotions and all the consequential benefits given to him are now null and void under the Rules and consequently the instant claim petition is liable to be dismissed.

4. We have heard the arguments of the Learned Counsel for the petitioners as well as Learned APO and perused the documents brought on record.

5. Learned Counsel for the petitioner argued that the petitioner was initially appointed as Beldar (Group D post) on 17.11.1984. He was promoted on the post of Mechanic (Group D post) on 18.11.1996 and to the post of Mistry (Group C post) on 19.09.1997. He is entitled to get 1st, 2nd and 3rd ACP from the date he was promoted to the post of the Mistry as he has been promoted on merit-cum-selection basis as per Rules of 1992. Learned Counsel for the petitioner has drawn comparison of the petitioner with Sri Ghanshyam Singh Jainar, who has been given three upgradation after his promotion to the post of

Junior Engineer (Mechanical). All the Nalkoop Mistry, Technical, Section Mistry and Mistries are at par as per the decision of the Hon'ble High Court of Uttarakhand at Nainital in WPSS No. 1575 of 2011. The petitioner submitted a representation to the respondents but they did not take any action on the representation. The petitioner filed a writ petition no. 1128 (S/S) of 2013 in the Hon'ble High Court, who directed the respondents on 31.08.2013 to take action on the representation of the petitioner. The respondents at that time submitted that they would take up the matter when the petitioner completes 26 years of service but afterwards rejected the representation of the petitioner. The petitioner filed claim petition no. 58/DB/2018 in this Tribunal and the Tribunal vide order dated 26.04.2019 directed the respondents to grant pay of Rs. 4600/- subject to the final decision of Hon'ble Apex Court in SLP No. 9516/2014, State of Uttarakhand vs. Kirti Ballabh Upreti. The respondents vide order dated 08.08.2019 granted grade pay of Rs. 4600/- to the petitioner with effect from 22.03.2014 with the condition that this upgradation will be subject to the decision of the Hon'ble Apex Court in aforesaid SLP. The aforesaid scale has been granted to the petitioner after completing more than 28 years of service. It was the fault of the respondents that they did not conduct the examination in time and held the result of the examination for almost four years. The petitioner is entitled to get the benefit of 3rd ACP from the due date. The impugned orders dated 05.07.2019, 16.07.2019 & 08.08.2019 are liable to be quashed and the claim petition is liable to be allowed.

6. Learned A.P.O. has argued that the petitioner was appointed on the post of Beldar (Group D post). He was promoted to the post of Mechanic (Group D post) and subsequently to the post of Mistry in the year 1997. He has availed two promotions and 3rd ACP could have been given to him after completing 26 years of service from the date of regular appointment or on 01.09.2008, whichever is later. The petitioner was eligible to get 3rd ACP on the promotional post of J.E. (Mechanical) only after qualifying the departmental examination, as per the recruitment rules for the aforesaid post. The petitioner was not eligible to be promoted to the post of J.E. (Mechanical) on the basis of educational qualification as required as per the services rules of 1992

but he would have been considered against one percent post of Technician who qualify the department examination. This examination was conducted in 2010, the result of which was declared in 2014 because the matter was subjudice in the Hon'ble Apex Court. So 3rd ACP was granted to the petitioner conditionally on 22.03.2014 subject to the outcome of the pending matter in the Hon'ble Apex Court.

Learned A.P.O. has further argued that the aforesaid SLP has been finally adjudicated in the year 2024 and the petitioner has been granted actual promotion to the post of J.E. (Mechanical) in the year 2023.

In view of the above, the petitioner has got three promotions from direct recruitment post of Beldar to Mechanic to Mistry and then to J.E. (Mechanical). He was granted two substantive promotions and 3rd ACP earlier and now a regular promotion on the post of J.E. (Mechanical) has been granted. He has availed three promotions/ ACP during his career. So the claim petition becomes infructuous and is liable to be dismissed.

7. Based on the arguments of the parties and the documents placed before the Tribunal, we find that the petitioner was appointed to the post of Beldar (Group D), promoted to the post of Mechanic (Group D) and subsequently to the post of Mistry (Group C) in the year 1997. He availed two promotions and as per the ACP scheme implemented in the State of Uttarakhand vide G.O. dated 08.03.2011, which was amended/ clarified in the subsequent years, the petitioner was entitled to get three financial upgradations after completing 10, 16 and 26 years of service admissible to employees, when they do not get any promotion. In this case, the petitioner got two promotions, he could have been granted 3rd ACP only, which has been granted w.e.f. 23.03.2014 vide OM dated 8/8/2019 conditionally due to pending SLP No. 9516/2014 in Hon'ble Apex Court in the matter of State of Uttarakhand and others vs. Kirti Bhallabh Upreti .

The aforesaid SLP has been finally decided by the Hon'ble Apex Court in favor of the petitioner, and he has been granted the

actual promotion to the post of the JE (Mechanical) in year 2023. So, the petitioner has been granted three promotions (earlier one ACP and two promotions), so he is not entitled to get further upgradation of scale at the level of Assistant Engineer. As the petitioner appeared in the departmental examination in 2010, his result was declared in 2014 and was granted 3rd ACP vide order dated 09.08.2019 w.e.f. 23.03.2014 because of pending SLP, after the favorable decision of the Hon'ble Apex Court the petitioner is entitled to be granted 3rd ACP after completing 26 years of service in 2011. We are not considering the further development in the matter as submitted by the respondents as that is beyond the scope of the claim petition. The claim petition is liable to allowed partly to the extent of antedating the granting of as 3rd ACP and consequential benefits w.e.f. date of completing 26 years of service.

ORDER

The claim petition is partly allowed. The respondents are directed to grant benefit of 3rd ACP to the petitioner w.e.f. date of completing 26 years of service along with consequential benefits. However, this order does not debar the respondents to take any action contrary to the decision taken by them in the departmental enquiry going against the petitioner. No order as to costs.

(RAJENDRA SINGH)
ACTING CHAIRMAN

(ARUN SINGH RAWAT)
VICE CHAIRMAN (A)

DATE: 31ST AUGUST, 2026
DEHRADUN

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