

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
DEHRADUN**

Present: Hon'ble Mr. Rajendra Singh

----- Acting Chairman

Hon'ble Capt. Alok Shekhar Tiwari

----- Member (A)

WRIT PETITION NO. 386 (S/B) OF 2021

[RECLASSIFIED AND RENUMBERED AS CLAIM PETITION NO. 125/DB/2022]

Rakesh Kumar, S/o Chaitram Singh (Male aged about 64 years)

R/o A11, Shakti Nager, Kankhal, Haridwar.

.....Petitioner

Versus

1. State of Uttarakhand through Secretary, Rural Development Department, Dehradun.
2. Commissioner, Rural Development Uttarakhand at Pauri Garhwal.

.....Respondents

Present : Sri Abhishek Chamoli, Advocate for the petitioner
Sri Ved Prakash Devrani, Ld. Assistant Presenting Officer
for the respondents

JUDGMENT

DATED: 10th SEPTEMBER, 2026

Per : Capt. Alok Shekhar Tiwari, Member (A)

By means of this petition, the petitioner seeks the following reliefs:

- “1. A writ, order or direction in the nature of Certiorari quashing the impugned order dated 26.10.2020 (Annexure-13),
2. A writ, order or direction in the nature of Mandamus directing the respondents to give the

grade pay of Rs. 8700/- with relevant pay band of Promotional post, i.e., Deputy Commissioner-Training in pursuance to the GO dated 6.11.2013 (Annexure-10) and GO 2.1.2017 (Annexure-11), being governed by the "UP Rural Development Department Gazetted Officers Service Rules 1991" (Annexure-5) with Staffing Structure dated 16.6.2004 (Annexure-6),

3. *A writ, order or direction in the nature of Mandamus directing the respondents to pay the arrears accordingly of salary and post retiral dues,*
4. *to pass any other order or direction which this Court deems fit and proper,*
5. *to award cost throughout."*

2. In brief, the facts of the case are that:-

2.1. This is the first writ petition preferred by the petitioner challenging the impugned order dated 26.10.2020 passed by the Principal Secretary, Rural Development Department Dehradun with consequential relief. For the same no other petition was filed earlier or pending before any Court.

2.2. The petitioner was initially appointed as "Senior Instructor (Agriculture Engineering)" on 15.07.1980. His regularization was done on 14.05.1985. He was declared permanent in the year 1986 with effect from the year 1983. On this first appointment, petitioner was initially getting the pay scale of Rs. 570-1100/- which becomes with grade pay of Rs. 4200/- later stage.

2.3. Thereafter vide order dated 04.04.1997, petitioner has started getting promotional scale of Rs. 2200-4000/- with effect from year 1995. Then he got his first promotion as “Extension Training Officer” on 30.05.1998, which was the Class-II post, and Second Promotion as “Principal-Extension Training Centre” on 06.06.2005.

2.4. The petitioner promoted as “Principal” which is Class-I post, with the scale of Rs. 10000-325-15200/- and grade of Rs. 6600/-. This grade pay was revised later on as Rs. 7600/- vide order dated 21.05.2012 by applying 3rd ACP with effect from the year 2008. He finally retired from services on 31.12.2017.

2.5. The petitioner is from training cadre, and vide promotion order dated 06.06.2005, all five person including petitioner was promoted as “Principal” from training cadre.

2.6. As per Rule-5 (3) of the rules called “UP Rural Development Department Gazetted Officers Service Rules 1991”,

- (i) 75% posts of “Deputy Development Commissioner” shall be filled by promotion among those persons who have completed 5 years substantive service on the post of District Development Officer, and
- (ii). remaining 25% posts of “Deputy Development Commissioner” shall be filled by promotion among those persons who have completed 5 years substantive service as Principal Extension Training Center.

2.7. At the time of framing this Rules of 1991, total 07 posts of Deputy Development Commissioner were sanctioned. In the State of U.P., this proportion of 75%:25% was followed in promotional exercise.

2.8. After creation of State of Uttarakhand, the proportion of 75%:25% was not followed in promotional exercise, and all promotions were done from the Field Quota, i.e., from the post of District Development Officer quota.

2.9. Then in the year 2004, a Staffing Structure was created by the State of Uttarakhand vide GO dated 16.06.2004 of Training Cadre, in which one post of Deputy Development Commissioner (Training Center) was shown. It was having grade pay of Rs. 7600/-.

2.10. Similarly, Staffing Structure for Field Cadre was also created vide GO dated 03.05.2010 showing 08 post of Deputy Development Commissioners showing grade pay of Rs. 8700/-.

2.11. Petitioner alongwith his other 04 colleagues, who were promoted as Principal-Extension Training Center in the year 2005, got eligibility for his next Illrd promotion as Deputy Development Commissioner on 01.07.2010, i.e., recruitment year 2010-11, from their Training cadre. But it was not done by the department.

2.12. Thereafter for the field cadre, new rules called "Uttarakhand Provincial Development Services Rules 2011" were framed by the State. But regarding the Extension Training Cadre,

still Old Rules of 1991 (Annexure-5) with Staffing Pattern dated 16.06.2004 (Annexure-6) continued as applicable.

2.13. Since the new Rules of 2011 (Annexure-8) were silent about the Extension Training Cadre and there was confusion about the promotional avenues of Training cadre, hence, some colleagues of the petitioner filed Writ Petition No. 152/2012 in which vide judgment dated 07.05.2013, it was observed by the Hon'ble Division Bench that "The State has contended that in fact, the State desired to bifurcate the cadre into two: one executive branch and the other training branch alone. It has been stated that separate Rules for the training branch have not yet been made. For them only one post of Deputy Development Commissioner will be available." It is further observed by the Court that "it also appears that there is no dispute that according to the old Rules, as were applicable to the State of Uttarakhand, for Principal (Group-A), Extension Training Centers, only one post of Deputy Development Commissioner was available."

2.14. Meaning thereby, it is evident and apparently clear that for the post of "Principal-Extension Training Centers", Old Rules of 1991 (Annexure-5) with Staffing Structure dated 16.06.2004 (Annexure-6) continued as applicable, and accordingly for this one sanctioned promotion post of "Deputy Commissioner" is there on which presently Mr. A.K. Rajput is working since 07.01.2020.

2.15. Now GO dated 06.11.2013 came which says "the earlier system available for the State Government Employee about ACP, those State Employees who initially appointed with Grade Pay of

Rs. 4800/- or lesser then this and where promotional post is available, grade pay and relevant pay band of Promotional post individually in form of promotional pay scale, and where promotional post is not available, next grade pay and relevant pay band individually as next pay scale according to the table given as enclose no. I in GO No. 395/XXVII (7)/2008 dated 17.10.2008, since 01.11.2013 is approved and consented for given with immediate effect by this amended system, by the Hon'ble Governor."

2.16. This GO dated 06.11.2013 further says in its Clause 3 that "employee who was getting on 01.11.2013 1st or IInd or IIIrd ACP, his pay fixation will be done in accordance to his pay band and grade pay of 1st or IInd or IIIrd promotional post as provided in Clause 2." The rest part of Clause 3 was deleted on 25.02.2014, though it was not related with the petitioner, and further this GO dated 06.11.2013 was again clarified by the GO dated 04.05.2018 by again affirming its contention.

2.17. The petitioner was initially appointed as "Senior Instructor (Agriculture Engineering)" and was getting the grade pay of Rs. 4200/- which is as per Clause-2 of GO dated 06.11.2013, less then Rs. 4800/-, and further by virtue of Old Rules of 1991 (Annexure-5) with Staffing Structure dated 16.06.2004 (Annexure-6), there is one sanctioned promotional post of "Deputy Commissioner."

2.18. As per Clause-3 of this GO, petitioner was getting his 3rd ACP vide order dated 21.05.2012 (Annexure-4) with effect from the

year 2018 which was the next grade pay of Rs. 7600/-, i.e. on the cut-off date of 01.11.2013, and he got his Second Promotion as “Principal-Extension Training Center” on 06.06.2005, and got entitlement for his IIIrd promotion to the post of Deputy Commissioner on 01.07.2010, i.e., recruitment year 2010-11, from their Training cadre. Hence, petitioner is claiming the grade pay and relevant pay band of next promotional post, i.e., Deputy Commissioner-Training.

2.19. Petitioner was getting his 3rd ACP vide order dated 21.05.2012 (Annexure-4) with effect from the year 2008 of grade pay Rs. 7600/-, which was also the grade pay of next promotional post of “Deputy Commissioner (Training Center)” created under Staffing Structure was created by the State of Uttarakhand vide GO dated 16.06.2004 of Training Cadre. Later on, in compliance of judgment (Annexure-9), by virtue of GO dated 02.11.2017 the grade pay of this post “Deputy Commissioner (Training)” was revised as Rs. 8700/- as similar to the post of Deputy Commissioner of Field cadre (Annexure-7).

2.20. Then petitioner made a representation seeking grade pay of Rs. 8700/- with arrear of relevant pay band of Promotional post, i.e., Deputy Commissioner-Training in pursuance to the GO dated 06.11.2013 (Annexure-10) and 02.01.2017 (Annexure-11), as he is governed by the “UP Rural Development Department Gazetted Officers Service Rules 1991” (Annexure-5) with Staffing Pattern dated 16.06.2004 (Annexure-6).

2.21. In the Writ Petition No. 87 (SB), vide order dated 19.03.2020, Hon'ble Court has directed the respondent/Secretary to pass the appropriate order on the issue.

2.22. On this, respondent No. 1 has passed the impugned order dated 26.10.2020 by wrongly mentioning the applicability of "Uttarakhand Provincial Development Service Rules 2011", though this rule is not at all applicable on the petitioner because he is from Training Cadre and governed by "UP Rural Development Department Gazetted Officers Service Rules 1991" (Annexure-5) with Staffing Structure dated 16.06.2004 (Annexure-6).

2.23. In the impugned order, respondent never tried to look into the judgment dated 07.05.2013 of Division Bench (Annexure-9) holding the applicability of "UP Rural Development Department Gazetted Officers Service Rules 1991" (Annexure-5) with Staffing Structure dated 16.06.2004 (Annexure-6) regarding the petitioner's training cadre.

2.24. The respondent by the impugned order, never tried to consider the applicability of GO dated 06.11.2013 (Annexure-10) which gives benefit of grade pay and relevant pay scale of Next promotional post, i.e., Deputy Commissioner-Training, and GO dated 02.01.2017 (Annexure-11) which makes grade pay of Deputy Commissioner-Training and Deputy Commissioner under filed quota equal, i.e., Rs. 8700/-

2.25. In a very vague term, impugned order dated 26.10.2010 is passed in complete arbitrary manner.

2.26. For the reasons mentioned above, the impugned order dated 26.10.2020 (Annexure-13) deserves to be quashed and accordingly respondents be directed to give the grade pay of Rs. 8700/- with relevant pay band of Promotional post, i.e., Deputy Commissioner-Training with arrears in pursuance to the GO dated 06.11.2013 (Annexure-10) and GO 02.01.2017 (Annexure-11), being governed by "UP Rural Development Department Gazetted Officers Service Rules 1991" (Annexure-5) with Staffing Structure dated 16.06.2004 (Annexure-6).

3. On 18.11.2021, Sri Pradeep Joshi, Addl. Chief Standing Counsel, State of Uttarakhand has filed Counter Affidavit on behalf of the respondent No. 2 (Commissioner, Rural Development, Uttarakhand at Pauri Garhwal) before the Hon'ble High Court of Uttarakhand at Nainital, in which it has been stated that-

3.1. The contents of paragraph no. 8 of the writ petition are not admitted as stated hence denied. In reply it is submitted that promotional exercise in the department was carried out from time to time as per the prevalent Rules namely UP Rural Development Department Gazetted Officers Service Rules, 1991 and amended in 1992 as well as UP Rural Development (Extension Training Centre) Subordinate Services Rules, 1987 and the Govt. Order issued in the year 2004 regarding reorganization of the cadre structure of the Rural Development Department. It is submitted that by the Govt.

Order No. 473 dated 16th June 2004 (Annexure No.-6 to the writ petition) while reorganizing the cadre structure of Training Centers, total 254 posts were sanctioned, in which there is one post of Deputy Commissioner/ Training Manager in the unrevised pay scale of Rs. 12000-16500 (revised Grade Pay of Rs. 7600/-). It is submitted that the promotional exercise in every recruitment year was carried out as per the availability of vacancies and eligibility of the personnel.

3.2. That in reply to the contents of paragraph no. 14 of the writ petition it is submitted that the petitioner preferred a Writ Petition No. 97 of 2020, "Rakesh Kumar Vs. State & Anr." seeking Grade Pay of Rs. 8700/-, which was disposed of by the Hon'ble Court vide order dated 19.03.2020 directing the respondent no. 1 to decide the representation of the petitioner within a period of one month. In compliance thereof, the representation of the petitioner was decided by the Additional Chief Secretary, Rural Development, Govt. of Uttarakhand vide Office Memo dated 26th October 2020 rejecting the claim of the petitioner on the ground that from 2011 the Uttarakhand Provincial Development Service Rules, 2011 are applicable and in the said Rules there is no provision of quota for promotion on the post of Deputy Commissioner from the Training Cadre employees. So far as granting of Grade Pay of Rs. 8700/- to Sri Ganesh Singh Khatri and Arun Kumar Rajput belonging to the Training Cadre is concerned, it is submitted that both the incumbents were promoted on the post of Deputy Commissioner consequent to the judgment and order dated 07.05.2013 passed in

WP SB No. 152 of 2012 (Annexure 9 to the writ petition) vide Office Order dated 11.08.2015 in the pay scale of Rs. 15600-39100 with grade pay of Rs. 7600/- under the promotion quota as per Rules of 1991, which comes to two posts in Training Cadre, which is evident from Annexure -11 (Page 111) to the writ petition. Subsequent to promotion of Sri Khati and Sri Rajput, the pay scale of the post of Deputy Commissioner(Training) was upgraded to Grade Pay of Rs. 8700/- vide Govt. Order dated 2nd January 2017 (Annexure-11 to the writ petition). In the case of the petitioner since no post of Deputy Commissioner (Training) was vacant, he could not be promoted on the said post and the petitioner was granted the financial upgradation under Assured Career Progression Scheme in terms of Clause 5(b)(ii) of the amended Govt. Order No. 589 dated 1st July 2013 regarding ACP, which provides that the personnel who are getting Grade Pay of Rs. 5400/- or higher Grade Pay, on completion of 26 years of service will be entitled for next higher Grade pay to the Grade Pay admissible on 2nd Higher Personal Pay Scale with the rider that the personnel has not got three promotion on direct recruitment post. Since, the petitioner was appointed on the post of Senior Assistant in the unrevised Pay Scale of Rs. 1400-2500 (Grade Pay of Rs. 4200) on 25.07.1980 and after 10 years of satisfactory service got one additional increment on 25.07.1990 and thereafter sanctioned the 1st Promotional Pay Scale on completion of 14 years of service on 01.03.1995 (Annexure-1 to the writ petition) in the Pay Scale of Rs. 2200-4000 (Grade Pay of Rs. 5400) of the post of Extension Training Officer. The petitioner was

subsequently promoted on the said post vide order dated 30th May 1998 (Annexure-2 to the writ petition) on the post of Extension Training Officer. The petitioner was thereafter promoted on the post of Principal, Extension Training Center vide order dated 6th June 2005 (Annexure 3 to the writ petition) in the pay scale of Rs. 10000-15200 (Grade Pay Rs. 6600) i.e. 2nd promotion. On completion of 26 years of services, the petitioner was granted the benefit of 3rd Financial Upgradation under ACP Scheme vide order dated 21st May 2012 in the Grade Pay of Rs. 7600/- w.e.f. 01.09.2008 (Annexure -4 to the writ petition). Thus, the petitioner has already been granted three promotion / financial upgradation under the ACP Scheme in the Grade Pay of Rs. 5400, Rs. 6600/-and Rs. 7600/-, as such, he is not entitled for the Grade Pay of Rs. 8700/-.

It is relevant to state here that the petitioner got 1st promotion on the post of Extension Training Officer, though after grant of benefit of 1st Promotional Pay Scale and 2nd promotion as Principal Training Extension Center on 06.06.2005 in the Grade Pay of Rs. 6600/-. Therefore, as per the Govt. Order dated 1st July 2013, the petitioner was sanctioned the next Financial Upgradation in the Grade Pay of Rs.7600/- w.e.f. 01.09.2008.

3.3. That the contents of paragraph nos. 17 to 26 of the writ petition has already been replied in paragraph 8 above, which need not to be reiterated. It is submitted that the Office Memo impugned dated 26.10.2020 has been passed by the competent authority taking note of all the Govt. Orders regarding Scheme of ACP

(Financial Upgradation), more particularly the Govt. Order dated 1st July 2013.

4. Rejoinder affidavit against the Counter Affidavit filed on behalf of the Respondents No. 1 & 2 has also been filed reiterating the facts mentioned in the present claim petition.

5. On 04.12.2023, Sri Ved Prakash Devrani, Learned Assistant Presenting Officer, Uttarakhand Public Services Tribunal, Dehradun has filed a Supplementary Counter Affidavit on behalf of the respondents No. 1 & 2, in which it has been stated that-

5.1. The petitioner Rakesh Kumar, now retired Acharya Extension Training Centre Pauri, was initially appointed as a Senior Instructor in Training Cadre Service in the pay band Rs. 9300-34800/- with grade pay Rs. 4200/- on 25.07.1980 in the erstwhile State of U.P.

5.2. Thereafter, completion of 10 years satisfactory service, the benefit of 1 increment was granted to the petitioner on 25.07.1990 and thereafter the petitioner was granted the benefit of first promotion pay scale in grade pay Rs. 5400/- equivalent to the post of Extension Training Centre on 01.03.1995 due to stagnation of promotion. (Annexure - A-1)

5.3. Thereafter the petitioner was actually promoted on the first promotion post of Extension Training Officer on 30.05.1998 in the erstwhile State of U.P. (Annexure - A-2)

5.4. The petitioner was promoted to the second next higher promotion post of Principle Extension Training Service Cadre in the grade pay Rs. 6600/- on 06.06.2005 in present State of Uttarakhand. (Annexure - A-3)

5.5. As per the relevant provision UP Rural Development Gazetted Officer Services Rules 1991 there is 25% quota for promotion on the post of Deputy Commissioner RD in the grade pay Rs. 7600/- was available to the Principle Extension Service Training Cadre. (Annexure - A-5)

5.6. As per the relevant provision of A.C.P. G.O. No. 862 dated 08.03.2012, on completion of 26 years satisfactory service, the petitioner was given the benefit of third A.C.P. in the grade pay Rs. 7600/- as per the next slab of pay matrix table dated 17.10.2008 by the department w.e.f. 01.09.2008. Hence, from the initial recruitment post the petitioner has given the 2 actual benefit of promotion and third A.C.P. as per rule by the department; hence no claim legally is tenable and sustainable of the petitioner as per service rule.

5.7. Thereafter the rules 1991 has been superseded/overridden by the rules framed by the present State of Uttarakhand known as Uttarakhand Provincial Development Services Rules 2011 in which the 25% of service training cadre has been abolished for promotion on the post of Deputy Commissioner RD; hence the petitioner is not legally entitled to get the benefit of third A.C.P. as per the G.O. dated 06.11.2013 of the post of

promotion as the A.C.P. is only one time financial benefit and same cannot be reopened again and again as per the relevant A.C.P. G.O.

5.8. The post of Deputy Commissioner was revised into the grade pay 8700/- in place of GRADE PAY Rs. 7600/- in the Departmental Cadre Structure for PDS Cadre vide GO No. 03.05.2010 is only applicable for the Provincial Development Service Cadre.

5.9. After promulgation of U.K. Provincial Development Service Rules 2011 the post of Deputy Commissioner under Rule 5 (4) has been defined as a post of merit as follow –

“Rule 5(4) – Recruitment by promotion on the post of Chief Development Officer/Deputy Commissioner/Joint Secretary shall be made on the basis of merit.”

5.10. As per the provision of para no. 3 of A.C.P. G.O. dated 28.11.2017 the post of promotion in which the criteria for promotion is merit does not cover with the A.C.P. scheme; hence the petitioner is not legally entitled to get the benefit of 3rd A.C.P. in the grade pay of Rs. 8700/- to the post of Deputy Commissioner RD being a promotion post of merit and the benefit of grade pay of Rs. 8700/- to the post of Deputy Commissioner be granted only on actual promotion after the recommendation of DPC. (The copy of the G.O. dated 28.11.2017 is annexed in C-A-R-1)

5.11. In view of the above, it is also clarified that the benefit of upgraded grade pay of Rs. 8700/- was given to one Mr. Ganesh

Khati and other A.K. Rajput on actual promotion to the post of Deputy Commissioner RD in compliance with the Hon'ble High Court judgment order dated 07.05.2013 passed in inter-alia on the ground that they both became eligible to the post of Deputy Commissioner prior to the enforcement of the Rules 2011 and under the old rules of year 1991 the petitioner is only entitled to get the benefit of third A.C.P. in grade pay of Rs. 7600/- as per the provision of A.C.P. G.O. No. 862 dated 08.03.2012 on the basis of pay matrix table next slab from 6600 to 7600 which has already been granted to the petitioner w.e.f. 01.09.2008 vide order dated 21.05.2012. Hence the claim petition has no legal substance and same is liable to be dismissed with cost.

6. At the outset only, it is apparent that this claim petition had been filed originally before the Hon'ble High Court of Uttarakhand at Nainital as Writ Petition No. 386 (S/B) of 2021, which was relegated by the Hon'ble High Court to this Tribunal vide its order dated 12.09.2022, and the same is being adjudicated by this Tribunal in the same form, treating it as a claim petition. Therefore, the prayers put forward by the petitioner in the original writ petition, have been adjudicated upon by this Tribunal considering it as a claim petition only, notwithstanding the original prayers for issue of a writ, order or direction in the nature of certiorari/mandamus etc., which are beyond the jurisdiction of this Tribunal. For this clerical mistake, the claim petition is not being dismissed.

7. We have heard learned Counsels for the parties and perused the record carefully.

8. During the arguments, the learned Counsels for the parties have mainly reiterated the facts as submitted earlier in their written averments. However, the learned Counsel for the petitioner emphasized upon the following legal points in particular:-

(a). The central question in the instant matter is whether the benefits of the G.O. dated 06.11.2013 (Annexure-10) would be payable to the petitioner or not, in the light of the facts and law which have been raised in the writ petition/claim petition in paragraphs No. 15 to 24.

(b). The petitioner has relied upon Hon'ble High Court of Uttarakhand at Nainital's judgment dated 07.05.2013 passed in the Writ Petition No. 152 (S/B) of 2012 Dr. Ganesh Singh Khati and others Vs. State of Uttarakhand and others (Annexure-9), where the writ petition had been allowed in favour of the petitioners, who were colleagues of the petitioner, hinging mainly upon the fact as to whether 'promotional post' was available for the petitioner or not. Since it was admitted by the respondent Department also that at least one promotional post was available, therefore, the benefit was given to the petitioners. As per the learned Counsel for the petitioner the same situation existed in the

respondent-department in case of present petitioners also, however, he has been denied the benefits of the aforesaid impugned G.O. dated 06.11.2013.

(c). Similarly, benefits of G.O. dated 02.11.2017 (Annexure-11) also accrue in favour of the petitioner; had the petitioner been promoted on the available promotional post he too would have become eligible for the pay grade of Rs. 8700/- in accordance with the G.O. dated 06.11.2013.

(d). Further, the learned Counsel for the petitioner has also drawn the attention towards detailed observation of the Tribunal dated 08.08.2023 and 07.12.2023 on the order-sheet, wherein, the Tribunal had analyzed the instant matter in a great depth and posed very definitive questions before the learned A.P.O. and had directed the respondents to file clarifications/affidavit to explain the factual position. The apparent opinion of the Tribunal in these orders was that the respondents have not been transparent enough in the case of the petitioner.

9. Learned A.P.O. emphasized upon the following points during his arguments:

(a). The petitioner's service in the respondent-Department does not fall in the executive cadre, rather it falls in the training cadre, on which the impugned G.Os.

are not applicable for accruing the benefits, as per the new rules.

(b). The grade pay of Rs. 8700/- is payable only to those promotional posts which fall in the category of merit based selection, and not merely by virtue of seniority; therefore, it is not applicable in the case of the petitioner. So far as the grant of this grade pay of Rs. 8700/- having been given to the petitioner's senior colleagues Dr. Ganesh Singh Khati and Sri A.K. Rajput is concerned it was sanctioned to them in compliance of the Hon'ble High Court's judgment dated 07.05.2013. The legal position of the pay grade of Rs. 8700/- as per the impugned G.O. is that it cannot be paid under the ACP scheme. Further, on 01.09.2008 the petitioner had already been given the 3rd ACP Rs. 7600/- which is an admitted fact.

(c). The G.O. dated 28.11.2017 will not benefit the petitioner because a merit based promotional post cannot be given to the training cadre officer as per the new rules. As such, this promotional post itself was created in the year 2011, wherein, the petitioner had already been given his 3rd ACP on 01.09.2008. Therefore, there is no question of granting pay grade of Rs. 8700/- as 3rd ACP to the petitioner with a retroactive effect.

(d). The matter of Dr. Ganesh Singh Khati and Sri A. K. Rajput is absolutely different from the instant petition because both these officers had become eligible for further promotion before the year 2011 when the new rules were promulgated. This is not the case with this petitioner.

10. Based upon the perusal of the records and arguments of the learned Counsels the Tribunal finds the following significant points of law and facts important for the disposal of this instant matter:-

(i). The Hon'ble High of Uttarakhand at Nainital has analyzed the statutory position of the matter thread bare in its judgment dated 07.05.2013 as follows:-

"IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (S/B) No. 152 of 2012

Dr. Ganesh Singh Khati and others Petitioners

Versus

State of Uttarakhand and others Respondents

Present: Mr. Bhagwat Mehra, Advocate for the petitioners.

Mr. A.S. Rawat, Additional Advocate General assisted by Mr. Vinay Kumar, Standing Counsel for the State/respondents.

JUDGMENT

Coram : Hon'ble Barin Ghosh, C.J.

Hon'ble Servesh Kumar Gupta, J.

BARIN GHOSH, C.J. (Oral)

In the year 2005, petitioners were governed by the Uttar Pradesh Rural Development Department

Gazetted Officers Service Rules, 1991, as was made by the State of Uttar Pradesh and was applied to the State of Uttarakhand by virtue of the provisions contained in the U.P. Reorganisation Act, 2000. On 6th June, 2005, each of the petitioners was promoted to the post of Principal (group "A"), Extension Training Centres. In terms of the said Rules, the posts of Deputy Development Commissioner to the extent of 25 per cent were reserved for Principals (group "A"), Extension Training Centres, who have completed five years' service as such on the first day of the year of recruitment. Petitioners having completed on 5th June, 2010 five years as Principals (group "A"), Extension Training Centres became eligible for being considered for promotion to the posts of Deputy Development Commissioner within the quota of 25 per cent specifically reserved by the said Rules for Principals (group "A"), Extension Training Centres. According to the said Rules, year of recruitment means "a period of twelve months commencing from the first day of July of a calendar year". Therefore, on 1st July, 2010 each of the petitioners became eligible for being considered for promotion to the post of Deputy Development Commissioner within 25 per cent quota reserved for Principals (group "A") Extension Training Centres. The said Rules prescribed that recruitment by promotion to the post of Deputy Development Commissioner shall be made on the basis of merit through a Selection Committee comprised of those mentioned in the said Rules. Therefore, as on 1st July, 2010, petitioners became entitled to be considered for promotion on the post of Deputy Development Commissioner on the basis of merit. It has been pleaded in the writ petition and not denied in the counter affidavit that atleast one post of Deputy Development Commissioner, which could only be filled up by Principals (group "A"), Extension Training Centres, was lying vacant since

much prior to 1st July, 2010. It is the case of the petitioners that while they were waiting for being considered for being promoted to the said available post of Deputy Development Commissioner, the State of Uttarakhand, in supersession of all previous Rules, including the Uttar Pradesh Rural Development Department Gazetted Officers Service Rules, 1991 as applicable to the State of Uttarakhand, framed new Rules called the Uttarakhand Provincial Development Service Rules, 2011, which came into effect on 27th May, 2011. It is the contention of the petitioners that in terms of the new Rules, a new post of Project Director in between District Development Officer and Deputy Development Commissioner has been created and the nomenclature of the post of Deputy Development Commissioner has been altered to Deputy Commissioner. It has been stated that Principals (group "A"), Extension Training Centres are no longer in the feeding cadre either for the post of Project Director, or for the post of Deputy Commissioner. It is the contention of the petitioners that before the new Rules came into effect they acquired the right to be considered for being promoted to the post of Deputy Development Commissioner in terms of the earlier Rules and while the said right cannot be denied to them, in law, such right is also protected by Section 74 of the U.P. Reorganisation Act, 2000. The contentions in the writ petition have not been denied in the counter affidavit filed by the State. The State has contended that, in fact, the State desired to bifurcate the cadre into two; one executive branch and the other training branch. It has been stated that the new Rules deal with executive branch alone. It has been stated that separate Rules for the training branch have not yet been made, but it will be made and for them one post of Deputy Development Commissioner will be made available. Therefore, it appears to us that the State is

also not interested to deny the right of the petitioners for being considered for promotion to the post of Deputy Commissioner. It also appears that there is no dispute that according to the old Rules, as were applicable to the State of Uttarakhand, for Principals (group "A"), Extension Training Centres, only one post of Deputy Development Commissioner was available. By the new Rules, the nomenclature of the post of Deputy Development Commissioner has been altered to Deputy Commissioner. From the counter affidavit filed by the State, it is clear that they have principally decided to preserve that post of Deputy Commissioner for being supplied on promotion only by Principals (group "A") Extension Training Centres. It appears to be the contention of the State that promotional exercise for the said post could not be taken on hand in view of the fact that the Rules in that regard have not been finalized as yet.

2. Having considered the respective submissions of the parties and taking note of the fact that the petitioners acquired, before coming into force of the new Rules, a right to be considered for being promoted to the post of Deputy Development Commissioner and there being no contention that a post of Deputy Development Commissioner, available under the old Rules, was available for Principals (group "A"), Extension Training Centres and the said post, now renamed as the post of Deputy Commissioner, is still available for Principals (group "A"), 2013:UHC:3408 4 Extension Training Centres, we direct the State Government to consider supplying the said post by promotion from amongst all eligible Principals (group "A"), Extension Training Centres in terms of the old

Rules as quickly as possible, but not later than four months from the date of service of a certified copy of this order upon respondent No.1.

(Servesh Kumar Gupta, J.)

07.05.2013

(Barin Ghosh, C.J.)

07.05.2013 ”

(ii). Similarly, this Tribunal after hearing the matter in detail on 08.08.2023 had opined and instructed the parties as follows:-

“Dated : 08.08.2023

Present : Sri Abhishek Chamoli, Advocate,
for the petitioner
Sri V. P. Devrani, A.P.O. for the
respondents

Heard arguments of learned Counsel for the parties at some length.

This Tribunal desires clarifications on the following points:

(i). The pay grade of the post of Deputy Commissioner was revised to Rs 8700/- in 2010. At that time, the principals of E.T.C. were also eligible to be promoted on the post of Deputy Commissioner and as such Deputy Commissioner was a promotional post for the petitioner as well. In compliance of the Finance Department G.O. dated 06.11.2013, the petitioner should have been sanctioned the grade pay of the post of Deputy Commissioner, which was Rs. 7600/- earlier but revised to Rs. 8700/- vide G.O. No. 572 dated 03.05.2010 as mentioned in para 4 of the impugned order dated 26.10.2020 (Annexure No. 13 to the petition). However, para 4 of this order states that the 3rd A.C.P. of the petitioner was due on 01.09.2008 and it was given to him with grade pay of Rs.

7600/-, which was the then grade pay of promotional post of Deputy Commissioner. When this grade pay had been modified to Rs. 8700/- *vide* G.O. dated 03.05.2010, this modified grade pay should have been sanctioned to the petitioner as 3rd A.C.P. *w.e.f.* 01.11.2013 according to the G.O. dated 06.11.2013. The respondent-department may clarify through an affidavit why the same was not done.

(ii). *Vide* G.O. dated 02.01.2017, Sri G. S. Khati and A. K. Rajput were given grade pay of Rs. 8700/- *w.e.f.* 11.08.2015 or from the date of taking over charge. This was done to remove the pay anomaly of the posts of Deputy Commissioner. This implies that if the posts of Deputy Commissioner for the training cadre had been available earlier, their grade pay would have been revised to Rs. 8700/- *w.e.f.* 2010 itself. The claim of the petitioner cannot be denied on the ground that this grade pay revision of Rs. 8700/- has been done in 2015. Therefore, the argument taken in para 7 of the counter affidavit filed on behalf of respondent no. 2 that Sri G. S. Khati and Sri A. K. Rajput were promoted *vide* order dated 11.08.2015 on the post of Deputy Commissioner in grade pay Rs. 7600/-, which was subsequently revised to Rs. 8700/- and hence the grade pay of Rs. 8700/- cannot be made applicable to the petitioner does not hold ground. The respondent-department may also submit clarification on this point also.

(iii). During arguments, learned A.P.O. submitted that on the posts of grade pay Rs. 8700/- and above, promotions are made on the basis of merit and such posts are excluded from consideration for the purpose of A.C.P. *vide* G.O.

dated 28.11.2017. The contention of learned Counsel for the petitioner is that according to the Service Rules of 1991, which are still applicable to the training cadre, the criteria for promotion to the post of Deputy Commissioner is seniority subject to rejection of unfit. Learned A.P.O. submits that this criterion was applicable when the grade pay of the post of Deputy Commissioner was Rs. 7600/- and when the grade pay of the post was revised to Rs. 8700/-, the criterion has been changed to seniority-cum-merit in the year 2011 itself. Parties may submit their averments in the form of affidavits on this point also.

List on 06.09.2023 for clarifications/affidavits as above.

Let a copy of this order be supplied to learned A.P.O. for onward submission to respondent-department.

Sd/-

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

Sd/-

(JUSTICE U. C. DHYANI)
CHAIRMAN

(iii). The respondents, in compliance to the Tribunal's order dated 08.08.2023 filed a Supplementary Counter Affidavit on 04.12.2023, which has amply clarified the factual/statutory position upon the questions as posed by the Tribunal by its order dated 08.08.2023. The petitioner, despite having been given sufficient opportunity to file a reply/affidavit failed to submit the same before the Tribunal, instead the learned Counsel for the petitioner has filed certain loose documents

alongwith a copy of his earlier rejoinder affidavit dated 12.12.2022, wherein, no fresh averments have been submitted in response to the Supplementary Counter Affidavit dated 04.12.2023 as filed by the respondents No. 1 & 2 in compliance to the Tribunal's order dated 08.08.2023. From amongst these documents submitted by the learned Counsel for the petitioner one relevant document is noteworthy, which is the note-sheet/order-sheet of the Government Secretariat File, wherein the State Finance Department's opinion upon the petitioner's representation has been submitted in detail:-

“टीपें और आज्ञायें

वित्त (सा०नि०वे०आ०) अनुभाग-7 में टिप्पणी

अनुसचिव

कृपया गत पृष्ठ संख्या-23/24 पर अंकित प्र०वि० की टीप का अवलोकन करने का कष्ट करें।

2- जिसमें प्र०वि० द्वारा श्री राकेश सेवानिवृत्त आचार्य प्रसार प्रशिक्षण केन्द्र पौड़ी को अगस्त 2016 से सेवानिवृत्ति की तिथि 31.12.2017 तक रु० 8700/- के ग्रेड वेतन के अनुरूप वेतन में आये अन्तर का भुगतान एवं तदनुसार संशोधित पेंशन एवं पेंशन में आये अन्तर का भुगतान किये जाने संबंधी प्रस्ताव पर वित्त विभाग का परामर्श चाहा गया है।

3- प्रकरण के संबंध में वस्तुस्थिति निम्नवत् है-

1. श्री कुमार वरिष्ठ प्रशिक्षक (वेतनमान रु० 9300-34800 ग्रेड वेतन रु० 4200) के पद पर दिनांक 25.08.1980 को हुई। इनका स्थायीकरण 01.09.1983 तथा विनियमितीकरण दिनांक 14.06.1985 को हुआ।

2. प्रथम वैयक्तिक प्रोन्नत वेतनमान रू0 2200—4000 (ग्रेड वेतन रू0 5400) प्राप्त होने की तिथि दिनांक 14.05.1995 अंकित है।
3. इनकी प्रथम पदोन्नति 1998 में प्रसार प्रशिक्षण अधिकारी में हुई।
4. इनकी द्वितीय पदोन्नति 2005 में प्राचार्य के पद पर हुई।
5. प्राचार्य के पद पर ग्यारह वर्ष तीन माह की एक अवधि में श्री कुमार को कोई भी पदोन्नति प्राप्त नहीं हुई है, जबकि संबंधित कार्मिक वर्ष 2010 में ही पदोन्नति हेतु अर्ह हो गये थे।
6. मा0 न्यायालय के आदेश के क्रम में जारी शासनादेश सं0 01 दिनांक 02 जनवरी 2017 के द्वारा उपायुक्त के पद का ग्रेड पे 7600 में संशोधित का 11 अगस्त 2015 से रू0 8700/— कर दिया गया।
7. आयुक्त ग्राम्य विकास के पत्र दिनांक 04.08.2017 के द्वारा श्री राकेश कुमार की 01.11.2013 से वित्तीय स्तरान्तरण ग्रेड वेतन रू0 7600/— के स्थान पर रू0 8700/— संशोधित किये जाने के संबंध में विभाग द्वारा निर्णय लिया गया कि उत्तराखण्ड प्रादेशिक विकास सेवा नियमावली-2011 में प्रशिक्षण संवर्ग हेतु उपायुक्त पद के संदर्भ में कोई कोट प्राविधानित नहीं है तथा प्रशिक्षण संवर्ग के अन्य कार्मिक गणेश सिंह खाती एवं श्री अरुण कुमार राजपूत की पात्रता वर्ष 2015 को नियमावली से पूर्व की आंकलित की गयी है। इस प्रकार श्री खाती एवं श्री राजपूत से तुलना का आधार न तो स्वीकार्य है और न ही दिनांक 01.11.2013 को प्रभावी नियमावली में प्राविधानित व्यवस्था के अनुसार इनकी अनुमन्यता बनती है।
8. प्रकरण पर मा0 उच्च न्यायालय में योजित वाद संख्या-87/2020 एस.बी. राकेश कुमार बनाम उत्तराखण्ड राज्य में मा0 न्यायालय द्वारा दिनांक 19.03.2021 को आदेश पारित किये गये हैं कि—

Disposed of with direction to decide the representation by respondent no. 1 within one month.

9. मा० न्यायालय के आदेश के क्रम में दिनांक 10.09.2020 को अपर मुख्य सचिव, महोदया की अध्यक्षता में सुनवाई की तिथि को श्री राकेश कुमार अनुपस्थित रहे।

4— उक्त के क्रम में अवगत कराया जाना है कि श्री कुमार को वर्ष 1995 में 10 वर्ष की संतोषजनक सेवा पर प्रथम वैयक्तिक प्रोन्नत वेतनमान रु० 2200—4000 अनुमन्य किया गया। जिसके पश्चात वर्ष 1998 में उनकी प्रथम पदोन्नति प्रसार प्रशिक्षण अधिकारी के पद पर हुई तथा द्वितीय पदोन्नति प्राचार्य के पद पर दिनांक 06.06.2005 को हुई। श्री कुमार को अपर आयुक्त ग्राम्य विकास के आदेश दिनांक 21 मई 2012 के द्वारा 26 वर्ष की सेवा पर तृतीय ए०सी०पी० ग्रेड वेतन रु० 7600/— दिनांक 01.09.2008 से अनुमन्य किया गया।

5— उल्लेखनीय है कि उ०प्र० की अधिसूचना सं—2278 दिनांक 03 दिसम्बर 2003 के द्वारा उपायुक्त के 02 पद उत्तराखण्ड राज्य को आवंटित थे। शासनादेश सं—610 दिनांक 24 जून 2005 के द्वारा उपायुक्त के पूर्व से सृजित 03 पदों में से एक पद को समाप्त करते हुये उपायुक्त के 02 पद सृजित किये गये। उक्त शासनादेश को दिनांक 24 जून 2005 को पुनर्गठित करते हुये शासनादेश सं—572 दिनांक 03 मई 2010 के द्वारा उपायुक्त कार्यक्रम/प्रशासन के 02 पद वेतनमान रु० 37400—67000 ग्रेड वेतन 8700 सृजित किये गये।

6— वित्त विभाग के शासनादेश 06 नवम्बर 2013 के द्वारा 4800 ग्रेड वेतन या उससे न्यून पाने वाले मौलिक रूप से नियुक्त राज्य कर्मचारियों के लिए जहां पदोन्नति का पद उपलब्ध है, वहां पदोन्नति के पद का ग्रेड वेतन एवं सुसंगत वेतन बैंड वैयक्तिक रूप से प्रोन्नतीय वेतनमान के रूप में तथा जहां पदोन्नति का पद उपलब्ध नहीं है, वहां शासनादेश

सं-395 दिनांक 17 अक्टूबर 2008 के संलग्नक-1 में उपलब्ध तालिका के अनुसार अगला ग्रेड वेतन एवं सुसंगत वेतन बैण्ड वैयक्तिक रूप अगले वेतनमान के रूप में दिनांक 01 नवम्बर 2013 से संशोधित व्यवस्था के अन्तर्गत तत्काल प्रभाव से अनुमन्य किये जाने की व्यवस्था की गयी है। प्रश्नगत प्रकरण में श्री कुमार को 26 वर्ष की सेवा पर स्क्रीनिंग कमेटी की संस्तुति पर तृतीय ए0सी0पी0 ग्रेड वेतन रू0 7600/- दिनांक 01.09.2008 में अनुमन्य की गयी, जो अगली पदोन्नति के पद उपायुक्त के तत्समय ग्रेड वेतन के समान है। जबकि उपायुक्त का वेतनमान शासनादेश दिनांक 03 मई 2010 के द्वारा रू0 37400-67000 ग्रेड वेतन 8700 संशोधित हुआ है।

7- ए0सी0पी0 संबंधी शासनादेश संख्या-589 दिनांक 01 जुलाई, 2013 के बिन्दु संख्या- 5 (ख) 11 के अनुसार ग्रेड वेतन रू0 5400 अथवा उससे उच्च ग्रेड वेतन के कार्मिक को 26 वर्ष की सेवावधि पूर्ण करने पर द्वितीय उच्च वैयक्तिक वेतनमान के सादृश्य प्राप्त हो रहे ग्रेड वेतन से अगला उच्च ग्रेड वेतन इस प्रतिबन्ध के अधीन अनुमन्य होगा कि उसे सीधी भर्ती के पद के सापेक्ष तीन पदोन्नतियां प्राप्त न हुई हों। अतः श्री राकेश कुमार को ग्रेड वेतन 8700 अनुमन्य किये जाने का कोई आधार/औचित्य प्रतीत नहीं होता है। पत्रावली प्र0वि0 को उक्तानुसार प्रत्यावेदन निस्तारित किये जाने का परामर्श देना चाहें।

उपरोक्त परामर्श सहित पत्रावली प्र0वि0 को वापिस करना चाहें। कृपया वापिस करने से पूर्व पत्रावली सचिव महोदय का अवलोकित करना चाहें।

ह0/-
29/9
(अरुणेन्द्र सिंह चौहान)
अपर सचिव
वित्त
उत्तराखण्ड शासन"

This note-sheet/order-sheet explains in detail the statutory position of the impugned G.Os., relied upon by the petitioner in his favour, by the Finance Department. Also it is the important here to take note of the Paragraph No. 3 (9) 'मा० न्यायालय के आदेश के क्रम में दिनांक 10.09.2020 को अपर मुख्य सचिव, महोदय की अध्यक्षता में सुनवाई की तिथि को श्री राकेश कुमार अनुपस्थित रहे।'।

11. From the perusal of the entire factual and statutory position this is evident that the petitioner wants parity with the case of Dr. Ganesh Singh Khatri and Sri A. K. Rajput on the grounds that they too were officers in the training cadre, had been Principals in the training institutes, and had been given the pay grade of Rs. 8700/- in accordance with the impugned G.Os. Nevertheless, there are three important points which differentiate the petitioner's position from them are as follows:-

(A). Hon'ble High Court in its judgment dated 07.05.2013 had allowed the petition of Dr. Khatri and Mr. Rajput chiefly due to the fact that these two officers had become eligible for their further promotion before the year 2011 when the new set of rules was promulgated; and therefore, their cases were allowed in accordance with the old rules. The case of present petitioner does not fall under the domain of the old rules.

(B). The 3rd ACP of pay grade of Rs 7600/- had been granted to the petitioner on 01.09.2008 when the

promotional pay grade of Rs. 8700/- was not even in existence.

(C). The pay grade of Rs 8700/- is meant for those promotional posts, which are to be filled in by the concept of merit-cum-seniority, i.e., 'Seniority subject to the rejection of the unfit'. This pay grade of Rs. 8700/- was granted to Dr. Ganesh Singh Khati and Sr. A. K. Rajput in compliance with the Hon'ble High Court's order dated 07.05.2013, and not as a general rule.

(D). The alleged promotional post is not available to the Training Cadre Officers as per the new rules, under whose domain the petitioner's case lies.

12. The petitioner has failed to establish his claim. Therefore, the petition does not hold water and deserves to be dismissed.

ORDER

Accordingly, the claim petition is hereby dismissed. No orders as to costs.

(CAPT. ALOK SHEKHAR TIWARI)
Member (A)

(RAJENDRA SINGH)
Acting Chairman
(Virtual)

DATED: 10th SEPTEMBER, 2026
NAINITAL
BK