BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL AT DEHRADUN

Present: Hon'ble Mr. Rajendra Singh

……..Acting Chairman

Hon'ble Mr. A.S. Rawat

……..Vice Chairman (A)

CLAIM PETITION NO. 33/DB/2026

Sri Atul Kumar, aged about 60 years, S/o Sri Radheshyam, Retd. Senior Clerk, Uttarakhand Transport Corporation, Dehradun Depot., R/o 110, Majra, District Dehradun, Uttarakhand.

……Petitioner

versus

1. State of Uttarakhand through Secretary, Transport, Govt. of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Managing Director, Uttarakhand Transport Corporation, Office of the Transport Commissioner, Kulhan, Sahastradhara Road, Dehradun.
3. Divisional Manager (Operation), Uttarakhand Transport Corporation, Gandhi Road, Dehradun.
4. Assistant General Manager, Uttarakhand Transport Corporation, Dehradun Depot, ISBT, Dehradun.

…….. Respondents

Present: Sri L.K. Maithani & Sri R.C. Raturi, Advocates,
for the Petitioner
Sri V.P. Devrani, A.P.O., for the Respondent No. 1
Sri Vaibhav jain & Sri Ramdev Sharma, Advocates,
for respondents no. 2, 3 & 4

Judgement

Dated: 27th October, 2026

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

> "(i) To issue an order or direction to the respondents to return the recovery amount of Rs. 37,716/- to the petitioner with interest as per rules from the date of retirement of the petitioner upto the date of actual payment.
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> (ii) To issue any other order or direction which this Court may deem fit and proper in the circumstances of the case in favour of the petitioner.
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> (iii) To award the cost of the petition."

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

2.1. Petitioner was initially appointed on the post of Conductor at Hill Depot, Dehradun on 01.05.1989. During the service, the benefits of pay scale/ ACP were given to the petitioner and accordingly his pay was fixed.

2.2. Benefits of ACP were given to a large number of employees of the department but on complaint/ objection of authority, an audit committee was constituted by the respondent department for the inquiry of the benefit of ACP granted/ sanctioned to the employees of the department. On the basis of the report of the committee, the respondent No. 4 refixed the pay of the petitioner, showing the first ACP grade pay 2400/-, which was given to the petitioner in the year 2020 as wrong and cancelled the same, due to which the pay of the petitioner was reduced at low. The petitioner made representations against the refixation of the pay to the respondent, but of no avail.

2.3. Petitioner retired on 31.12.2025 from the post of Senior Clerk from Dehradun Depot, and after the retirement the respondent vide office order dated 24.01.2026 made a recovery of Rs. 37,716/- from the retrial dues of the petitioner and till date no retrial dues are paid to the petitioner. The petitioner submitted a

legal notice, which was not replied by the respondent. There was no fault, wrong or any misrepresentation on the part of the petitioner in getting the benefit of pay scale/ ACP. Thus, after retirement, the recovery from the amount of retiral dues of the petitioner is bad in the eyes of law and the respondents are liable to return the recovered amount of Rs. 37,716/- with interest as per GPF rates from the date of retirement upto the date of actual payment.

2.4. As per the judgment of Hon'ble Apex Court given in the case of State of Punjab vs. Rafiq Masih, the deduction and recovery of class IV employee after his retirement is not permissible in the eyes of law. The Hon'ble High Court in writ petition no. 1593 (S/S) of 2021, Balam Singh Aswal and others vs. Managing Director and others and other connected writ petitions passed the following orders in its judgement dated 14.06.2022:

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

right of seniority, promotion or age of retirement of those who are already in service.

52. For the sake of illustration, if a person while entering into service, has a legitimate expectation that as per the then existing scheme of rules, he may be considered for promotion after certain years of qualifying service or with the age of retirement which is being prescribed under the scheme of Rules but at a later stage, if there is any amendment made either in the scheme of promotion or the age of superannuation, it may alter other conditions of service such scheme of Rules operates in futuro. But at the same time, if the employee who had already been promoted or fixed in a particular pay scale, if that is being taken away by the impugned scheme of Rules retrospectively, that certainly will take away the vested/accrued right of the incumbent which may not be permissible and may be violative of Article 14 and 16 of the Constitution.

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

2.5. The respondent department challenged the above judgement before the Division Bench of Hon'ble High Court in Special Appeal No. 245/2022, Managing Director, Uttarakhand Transport Corporation, Dehradun vs. Ashok Kumar Saxena. The Hon'ble Court dismissed the appeal on 14.06.2022.

2.6. The matter of the petitioner is wholly covered by the above judgements and in view of the above, the petitioner is entitled to get the recovered amount from the respondents with interest. The refixation of pay and recovery from the retiral dues of the petitioner have been made without any notice and without giving any opportunity of hearing, which is violative to the principles of natural justice and rules. The respondents have failed to consider the

adverse effect of the impugned order on the livelihood and family of the petitioner.

3. The claim petition has been contested on behalf of the respondents. C.A. has been filed by Sri Suresh Singh Chauhan, Divisional Manager (Operation), Uttarakhand Transport Corporation, Dehradun. Counter affidavit has been filed mainly stating that:

3.1. Petitioner in order to drive wrongful gains has alleged false and frivolous grounds, which holds no consequences to the present dispute. The present dispute against fixation of salary has already been adjudicated by this Tribunal between the petitioner and the respondent and not the petitioner is agitating same facts, which is not legally tenable.

3.2. The reliance placed by the petitioner on the judgement of State of Punjab and others vs. Rafiq Masih, 2015 4 SCC 334 is wholly misplaced and inapplicable to the facts of the present case, Moreover in the judgement of Rafiq Masih (Supra), it has been observed that:

> “But where the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or where the error is detected or corrected within a short time of wrong payment, courts will not grant relief against recovery."

3.3. Moreover, the Hon'ble Supreme Court in Madhukar Antu Patil & Another vs. State of Maharashtra & Another, Civil Appeal No. 1985 of 2022, has categorically held that it is a settled proposition of law that correct pay fixation can be carried out whenever the error comes to the knowledge of the Department, and consequential adjustment/recovery of erroneous payments is legally permissible.

4. Rejoinder affidavit has been filed by learned Counsel for the petitioner reiterating the facts contained in the claim petition and denying the material averments contained in the counter affidavit.

5. We have heard the learned Counsel for the petitioner, learned Counsel for the respondent department & learned A.P.O. and perused the documents placed before the Tribunal.

6. Learned counsel of the petitioner argued that the petitioner was appointed as Conductor on 01.05.1989. He was given benefit of ACP and his pay was fixed accordingly. On the basis of the report of the committee which was set up by the department to inquire into the benefit of ACP granted to the employees of the department. The grade pay of the petitioner was reduced to the lowest. The recovery of Rs. 37,716/- after the retirement from the retiral dues is against the law settled by the Hon'ble Apex Court in the **State of Punjab vs. Rafiq Masih, (2015) 4 SCC 334**. In view of the facts of the case, the impugned order dated 24.01.2026 is liable to be quashed and the claim petition is liable to be allowed.

7. Learned Counsel for the respondent department argued that petitioner has been wrongly given ACP, which was noticed by the audit team. The respondents calculated this excess payment received by the petitioner which is not a legal entitlement under law and is result of erroneous grant of higher grade pay to the petitioner. The excess amount has been recovered from his retiral dues. The recovery order dated 24.01.2026 against the petitioner is as per Rules. Learned A.P.O. agrees with the contention of learned Counsel for the respondent department. So, the claim petition filed by the petitioner is liable to be dismissed.

8. Based on the arguments of the parties and the documents placed before the Tribunal, we find that the petitioner has been given erroneous benefit of grant of higher grade pay. The petitioner has not been alleged to have misrepresented the facts to get the benefits. The monetary benefits have been given wrongly by the respondent department. The excess payment paid to the petitioner cannot be recovered as per the law settled by the Hon'ble Apex Court in **State of Punjab vs. Rafiq Masih, (2015) 4 SCC 334**. Based on the decision rendered by Hon'ble Apex Court in Syed Abdul Qadir vs. State of Bihar, (2009) 3 SCC 475 and hosts of other

decisions, which were cited therein including B.J. Akkara vs. Union of India, (2006) 11 SCC 709, the Hon'ble Apex Court concluded thus:

> *"18. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:*
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> *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."*
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> *[Emphasis supplied]*

9. Reference may also be had to the decisions rendered by the Hon'ble Apex Court on 02.05.2022 in **Civil Appeal No. 7115 of 2010, Thomas Daniel vs. State of Kerala & others**, & in **Civil Appeal No. 13407/2014 with Civil Appeal No. 13409 of 2015, B.Radhakrishnan vs. State of Tamil Nadu** on 17.11.2015, decision rendered by Hon'ble Uttarakhand High Court on 12.04.2018 in **WPSS No. 1346 of 2016, Smt. Sara Vincent vs. State of Uttarakhand and others**, and decision rendered by Hon'ble Madras High Court on 019.06.2019 in **WP(MD) No. 23541/2015 and M.P. (MD) No. 1 of 2015, M.Janki vs. The District Treasury Officer and another**. It was held that the recovery of the excess amount is restrained in equity while the Court exercises judicial discretion to relieve the employee from hardship that will be caused if such a recovery is implemented and this view has been taken more particularly in respect of employees of lower rungs.

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

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

12. In view of the above, the impugned order dated 24.01.2026 is liable to be quashed to the extent of recovery of Rs. 37,716/- and the petitioner is entitled to get the refund of Rs. 37,716/- recovered from the retiral dues of the petitioner. Hence, the claim petition is liable to be allowed.

ORDER

The claim petition is partly allowed to the extent of recovery. The impugned order dated 24.01.2026 is quashed. The respondents are ordered to refund the amount of Rs. 37,716/- to the petitioner within two months of receipt of certified copy of this order. No order as to costs.

(RAJENDRA SINGH)
ACTING CHAIRMAN

(ARUN SINGH RAWAT)
VICE CHAIRMAN (A)

DATE: 27TH OCTOBER, 2026
DEHRADUN

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