

**HIGH COURT OF UTTARANCHAL AT NAINITAL**

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b))

Description of the case.

W.P. No. 3395 (S/S) year 2001

Chandra Singh S/o Late Dan Singh

Versus

Mukhya Lekhadhikari Vibhag-Char

(Pension Anubhag) U.P. Police Allahabad and another

Approved for reporting

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~~Not approved for reporting~~

Date of decision 31.10.2003

Initial for Judge

**IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.**

Writ petition No. 3395 (S/S) of 2001

Chandra Singh S/o Late Dan Singh,

---- Petitioner

Vs.

Mukhya Lekhadhikari Vibhag-Char,  
(Pension Anubhag), U.P. Police Mukhyalaya,  
Allahabad. and another.

---- Respondents.

Mr. Ram Ji Srivastava, counsel for the petitioner.  
Mr. B.S. Verma, Learned Standing Counsel (State of U.P.)

**Dated: October 31, 2003:**

**Hon'ble Rajesh Tandon, J.**

By the present writ petition, the petitioner has prayed for the issue of a writ, order or direction in the nature of mandamus commanding the respondents to make the actual amount of pension to the petitioner, which he was getting prior to revised pension in accordance with the old calculation.

Brief facts giving rise to the writ petition are that the petitioner was Constable Driver in civil police of U.P. and he was in service for the last 26 years. The petitioner has retired on 01.04.1986 from Pithoragarh under the voluntary retirement scheme.

The grievance of the petitioner is that after taking voluntary retirement, the petitioner was getting the pension to the tune of Rs. 534/- per month. However, the petitioner has received the pension after deducting Rs. 173/- per month against the accumulated amount (Rashikaran), thus he was receiving the pension of Rs. 361/- per month. The petitioner has stated that according to the revised pay-scale which were enforced from 1.01.1986, the respondent No. 2 prepared the pension calculating the same on the pay-scale of Rs. 1175/- to the tune of Rs. 535/- per month and after deducting the accumulated amount to the tune of Rs. 173/- per month, the pension was to be paid to the petitioner to the tune of Rs. 362/- per month and the same was sent for approval.

The recommendation of revised pension payable to the petitioner was sent on 08<sup>th</sup> May 1990. However, pension has been

wrongly calculated to the extent to Rs. 482/- per month according to the revised pay-scale which was payable after deducting Rs. 173/- per month and, therefore, a sum of Rs. 309/- alone has left for the petitioner.

The petitioner has stated that according to the correct calculation and according to the revised pay-scale, the petitioner was entitled to get Rs. 362/- per month while he was already receiving Rs. 361/- per month, but instead of Rs. 362/- per month, the respondents have started making payment to the extent of Rs. 309/- per month for which he made various representations on 19.01.1992 and 01.05.1992. The petitioner has further prayed that a sum of Rs. 52/- right from 21.09.1991 may be paid to him as he is suffering loss of Rs. 52/- per month on account of revised pay-scale pension.

The petitioner has submitted that his pension may be calculated on the old pay scale, which he was getting i.e. Rs. 361/- per month and after deducting a sum of Rs. 173/- i.e. a pension of Rs. 534/-, which he was getting earlier.

Heard Sri Ram Ji Srivastava, learned counsel for the petitioner and Sri B.S. Verma, learned Standing Counsel (State of U.P.)

The grievance of the petitioner is that neither he has been paid full amount of pension on the revised pay scale nor on the old pay-scale while on the old pay-scale he is entitled for pension on Rs. 361/- per month.

The respondents have stated that they have already forwarded the necessary papers as will appear from para-4, sub paras- I & II of the counter affidavit, filed by State of Uttaranchal. In paragraph-4 the following averments have been made by the State of Uttaranchal:-

“4. That the contents of para 10 of the writ petition are not admitted in the manner stated in so far as the same relate to the matters of record. In fact the petitioner had availed the benefit of revised pay scale w.e.f. 01.01.1986 for the period till 01.04.1986 when he got voluntary retirement. In the absence of any otherwise option on the part of the petitioner his pension was computed on the revised pay scale and in this computation the petitioner incurred a loss of Rs. 52/- per months. However, the respondent No.1 vide his order-dated 08.05.1990 provided a liberty to the petitioner to opt for pension

in the old pay scale. Copy of the said order is annexed as Annexure No. C.A. 1 to this affidavit.

- (i) However, the petitioner took long time to give his option and when ultimately he gave his option to remain in the pension on the basis of the old pay scale his option was duly forwarded by the answering respondent to the respondent No. 1 vide letter No. 146/86 dated 23.11.95. Copy of the covering letter dated 23.11.95 is annexed as Annexure No. C.C. 2 to this affidavit.
- (ii) The answering respondent again sent a reminder-dated 12.09.97 to the respondent No.1 requesting that a decision may soon be taken in the matter of the petitioner. Copy of the reminder-dated 12.09.97 is annexed as Annexure No. C.A. 3 to this affidavit.”

In view of the above facts and circumstances, the petitioner is entitled for pension on the original old pay-scale which he was getting prior to the revised pay-scale.

Admittedly, the petitioner having taken voluntary retirement; the pension and other benefits cannot be denied to the petitioner.

In R. Kapur Vs. Director of Inspection (Painting and publication) Income Tax and another, reported in (1994) 6 Supreme Court Cases 589 the Apex Court after relying the judgment of the Apex Court in State of Kerala Vs. M. Madmanabhan Nair 1985 (1) S.C.C. page 429, has held as under:-

***“8. In this appeal before us the appellant urges that he would be entitled to 18% interest at least in view of judgment of this Court in State of Kerala Vs. M. Padmanabhan Nair. Relying on this ruling, it is submitted that there is unjustified culpable delay in issuing the No Demand Certificate. The Tribunal having held that DCRG cannot be withheld because of the pendency of the claim for damages should have awarded interest at the rate of 18% per annum.***

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***10. This court in M. Madmanabhan Nair case has held as under:-***

***Pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, under the decisions of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment.”***

Accordingly, the writ petition deserves to succeed. The respondents are directed to pay pensionary benefits available to the

petitioner on the old pay-scale on which the petitioner was drawing his pension within one month from the date of filing certified copy of this order. The arrears of pension may also be paid to the petitioner alongwith interest @ 6% per annum.

Consequently, the writ petition is allowed.

There will be no order as to costs.

**(Rajesh Tandon, J.)**

NCM: