

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

**Writ Petition No. 128 of 2007 (S/B)**  
**(Old No. 34019 of 1999)**

M.N. Shukla  
S/o Shri S.D. Shukla  
R/o Mohan Niwas, Nainital.

.....Petitioner.

**Versus**

1. Presiding Officer  
State Public Services Tribunal  
Indira Bhawan, Lucknow.
  2. Commissioner-cum-Director Industries  
U.P., Kanpur.
  3. Finance Controller, Industries  
(Pension Cell Sec-28)  
Directorate of Industries  
U.P. Kanpur.
  4. Joint Director of Industries, Nainital.
- .....Respondents.

Shri Udyog Shukla, Advocate, for the petitioner.  
Shri P.C. Bisht, Brief Holder for the respondents.

**Coram: Hon'ble Prafulla C. Pant, J.**  
**Hon'ble Alok Singh, J.**

**Oral:-Hon'ble Prafulla C. Pant, J.**

By means of this writ petition, moved under Article 226 of Constitution of India, the petitioner has challenged the order dated 19.03.1999, passed by State Public Services Tribunal, Lucknow, in claim petition No. 1712 of 1996. [Initially this writ petition was filed before Allahabad High Court from where it is received by transfer under Section 35 of U.P. Reorganisation, 2000 (Central Act 29 of 2000), for its disposal].

2. Heard learned counsel for the parties and perused the record.

3. Brief facts of the case are that the petitioner was initially appointed as Junior Inspector of Accounts in the year 1960 with the Industries Department. He was promoted to the post of Senior Inspector of Accounts in the year 1963. He was further promoted in the year 1980 to the post of Chief Inspector of Accounts in the pay scale of Rs. 625-1240. Thereafter, he was posted in June, 1986, as Divisional Superintendent (gazetted post) in the pay scale of Rs. 625-1240. His pay was fixed by the Joint Director at Rs. 1100/- per month, giving him benefit of Fundamental Rule 22-B of Financial Hand Book (Part 2 to Part 4). The petitioner superannuated from service on 30.06.1994. To his utter surprise, from his gratuity Rs. 22,992/- were deducted, vide order dated 16.05.1996. He challenged the deduction of said amount from his gratuity, before State Public Services Tribunal, Lucknow, by filing claim petition No. 1712 of 1996.

4. Respondents contested the claim petition and pleaded that the petitioner was not entitled to benefit of Rule 22-B of Financial Hand Book and as such, an amount of Rs. 20,842/- was liable to be deducted. It was further pleaded that Rs. 2250/- were deducted on account of loss of water filter. It is pleaded by the respondents that since the salary of the

Chief Inspector and that of Divisional Superintendent, were same i.e. Rs. 625-1240, as such, the benefit of Rule 22-B could not have been given to the petitioner.

5. The rejoinder affidavit, filed on behalf of the petitioner shows that Joint Director, Industries, himself, has given certificate at the time of his retirement that no dues are payable by the petitioner. Copy of said certificate is annexed as annexure-5 to the rejoinder affidavit.

6. The Tribunal has not accepted the claim of the petitioner and rejected the same. However, the impugned order shows that it was passed in absence of the petitioner, mentioning that no one was present at the time of hearing on behalf of the petitioner.

7. Learned counsel for the petitioner drew attention of this Court to the case of Sahib Ram Vs. State of Haryana and others 1995 Supp (1) Supreme Court Cases Pg. 18, wherein the Apex Court has observed that where an employee was given upgraded pay scale, due to wrong construction of order, without any misrepresentation by employee, in such circumstances, salary paid to the employee cannot be recovered. In said case, the employee was not qualified to the pay scale, which was wrongly paid to him. In the present case, the petitioner was fully qualified to hold

the post of Divisional Superintendent. It is further contended that since the petitioner after being appointed as Divisional Superintendent, carried higher responsibilities, as he had to discharge functions of drawing and disbursement Officer, Rule 22-B of Financial Handbook, got attracted and it cannot be said that the Rule was not applicable to this case.

8. Relevant portion of sub-rule (1) of Rule 22B, is being reproduced below:-

**“22-B (1)** *Notwithstanding anything contained in these Rules, where a Government servant holding a post in a substantive, temporary or officiating capacity is promoted or appointed either in a substantive, temporary or officiating capacity to another post carrying duties and responsibilities of greater importance than those attached to the post held by him, his initial pay in the time-scale of the higher post shall be fixed at the stage next above the pay arrived at by notionally increasing his pay in respect of the lower post by one increment at the stage at which such pay has accrued.*

.....”

9. Having heard learned counsel for the parties, and after going through the Rule, quoted above, we are of the view that the tribunal has erred in law in dismissing the claim petition of the petitioner. It is not the case of the respondents that the petitioner

made any misrepresentation for taking benefit of Rule 22-B, quoted above. It is also not denied that after the petitioner took over the charge of Divisional Superintendent, he had to discharge powers of drawing and disbursement Officer. In such circumstances, we agree with the contention of learned counsel for the petitioner that the fixation of pay of the petitioner, even if wrongly allowed the recovery, cannot be made by the authorities, as it was not on account of fault of the petitioner.

10. For the reasons, as discussed, this writ petition is allowed. The impugned judgment and order dated 19.03.1999, passed by State Public Services Tribunal, Lucknow, is set aside, to the extent the recovery of Rs. 22,992/- from the gratuity is upheld. Said amount, if deducted, shall be paid back to the petitioner within a period of three months from the date of certified copy of this order is produced before the authority concerned.

**(Alok Singh, J.)      (Prafulla C. Pant, J.)**

**Dt:30.10.2009**

Sweta













