

**BEFORE THE UTTARAKHAND PUBLIC SERVICES
TRIBUNAL, DEHRADUN**

Present: Sri V.K. Maheshwari

----- Vice Chairman (J)

&

Sri D.K. Kotia

----- Vice Chairman (A)

CLAIM PETITION NO. 51/2011

Dr. Girish Chandra Barthwal, S/o Late Shri G.N. Barthwal, R/o
Uttaranchal Linestock Development Board, Banjarawala Tea Estate,
Dehradun

.....Petitioner

VERSUS

1. Principal Secretary & Commissioner, Forest & Rural Development, Department of Animal Husbandry, Govt. of Uttarakhand Dehradaun,
2. State of Uttarakhand through Secretary, Pashupalan & Dairy Vikash, Dehradun,
3. Secretary, Animal Husbandry, Govt. of U.P, Lucknow,
4. Director, Pashupalan Vibhag, Uttarakhand, Dehradun,
5. Secretary, Public Service Commission, U.P, Allahabad
6. Dr. Anand Kumar Sacchar, Veterinary Officer, Grade-I, Sheep & Wool Development Board, Shastri Nagar, Lane No. -1, Dehradun,
7. Dr. Udai Shankar, Veterinary Officer, Grade-I, Govt., K.V. Ranikhet, District Almora,
8. Dr. Satya Swaroop, Veterinary Officer, Grade-I, Govt. Veterinary Hospital, Duggada, Pauri Garhwal,

9. Dr. Ramesh Singh Nitwal, Veterinary officer Grade-I Govt. Veterinary Hospital, Kumoun Mandal, Pithoragarh, Uttarakhand,
10. Dr. Bhupendra Singh Janpangi, Veterinary Officer, Grade-I, Govt. Veterinary Hospital, Almora Sadar, Kumoun Mandal, Uttarakhand,
11. Dr. Sapna Mishra, Anushadhi Vigyan Vibhag, Pashuchikitsa Mahavidhyalaya, Govind Ballabh Pant University, Pant Nagar, Nainital
12. Dr. Rakesh Singh Negi, Chief Veterinary Officer, Survey Chowk, Vikas Bhawan, Dehradun,
13. Dr. Harish Chandra Joshi, Chief Veterinary Officer, Narendra Nagar, Tehri Garhwal,
14. Dr. Sachindra Kumar Sharma, Project Director Sheep & Wool Prasar Sansthan, Pashulok, Rishikesh, Dehradun,
15. Dr. Sudhir Kumar Singh, Joint Director, Pashu Prajangan Prachetra, Kalsi, Dehradun,
16. Dr. Shashi Ballabh Pandey, Veterinary Officer, Grade-I, Pashu Chikitsalaya, Nainital, District Nainital,
17. Dr. Sunil Kumar Binjola, Veterinary Officer, Grade-I, Pashu Chikitsalaya, Kirtinagar, District Tehri,
18. Dr. Sunil Kumar Awasthi, Veterinary Officer, Grade-I, Pashu Chikitsalaya, Kirtinagar, District Tehri,
19. Dr. Ashish Rawat, Veterinary Officer, Grade-I, Pashupalan Nideshalay, Pashudhan Bhawan, Mothorowala Road, Dehradun,
20. Dr. Vidhyasagar Kapdi, Veterinary Officer, Grade-I, Pashupalan Nideshalay, Pashudhan Bhawan, Mothorowala Road, Dehradun,
21. Dr. Ghanshyam Joshi, Veterinary Officer, Grade-I, Govt. Pashuchikitsayala, Kalsi, District Dehradun,
22. Dr. Rajendra Mathpal, Veterinary officer, Grade-I, Pashu Prajangan Pracheta, Kalsi, District Dehradun,
23. Dr. Anuj Kumar Agarwal, Veterinary officer, Grade-I, Govt. Pashuchikitsalaya, Betalghat, District Nainital,

24. Dr. Ashutosh Joshi, Veterinary Officer, Grade-I, Pashu Kalyan Board, Pashu Palan Nideshayala, Pashudhan Bhawan, Mothorowala Road, Dehradun,
25. Dr. Yogesh Kumar Bhardwaj, Veterinary Officer, Grade-I, Zoo-Nainital, District Nainital,
26. Dr. K. Tribhuvan Singh, Veterinary Officer, Grade-I, Virn Farm, Pithoragarh, District Pithoragarh,
27. Dr. Abhay Kumar, Deputy Chief Veterinary Officer, Chief Veterinary Office, Pauri, District Pauri Garhwal,
28. Dr. Asim Deb, Veterinary Officer, Grade-I, D.F.S. Shyampur, Rishikesh, District Dehradun,
29. Dr. Bharat Chandra Dhaundiyal, Veterinary Officer, Grade-I, Veterinary Hospital, Gyansu, District Uttarkashi,
30. Dr. Dhires Chandra Joshi, Veterinary Officer, Grade-I, Veterinary Hospital, Sult Syaldhe, District Almora,
31. Dr. Devendra Singh Bisht, Veterinary Officer, Grade-I, C/o Chief Veterinary Officer, Haridwar, District Haridwar,
32. Dr. Raman Chopra, Deputy Medical Officer, Chief Veterinary Officer Office, Haridwar,
33. Dr. Yogesh Kumar Sharma, Veterinary Officer, Govt. Veterinary Hospital, Kashipur, District Udham Singh Nagar,
34. Dr. Ashok Kumar, Deputy Veterinary Officer, Office of Chief Veterinary Officer, Rudraprayag, District Rudraprayag,
35. Dr. Mahesh Chandra Joshi, Deputy Chief Veterinary Officer, Chief Veterinary Officer Office, Nainital,
36. Dr. Anoop Kumar Dimri, Deputy Director, Pashupalan Nideshalaya, Pashudhan Bhawan, Mothorowala Road, Dehradun,
37. Dr. Dhananjay Kumar Chandra, Veterinary Officer, Grade-I, Govt. Veterinary Hospital, Lohaghat, District Champawat,
38. Dr. S.C. Joshi, Veterinary Officer, Grade-I, Govt. Veterinary Hospital, Vikas Nagar, District Dehradun,
39. Dr. Vasundhara Gabaryal, Veterinary Officer, Grade-I, Govt. Veterinary Hospital, Bhimtal, District Nainital,

40. Dr. Narayan Singh Negi, Veterinary Officer, Grade-I, Govt. Veterinary Hospital, Doiwala, District Dehradun,
41. Dr. Harendra Kumar, Veterinary Officer, Grade-I, Govt. Veterinary Hospital, Sahaspur, District Dehradun,
42. Dr. Beenu Bhadauliya, Veterinary Officer, Grade-I, Pashupalan Nedeshalaya, Pashudhan Bhawan, Mothorowala Road, District Dehradun,
43. Dr. Yogesh Agarwal, Deputy Chief Veterinary Officer, office of Chief Veterinary Officer , Almora,
44. Dr. Daukaran Singh Kharayat, Veterinary Officer, Grade-I, Govt. Veterinary Hospital, Kanda, District Bageshwar,
45. Dr. Kaushlendra Kumar Joshi, Veterinary Officer, Grade-I, Govt. Veterinary Hospital, Dharchula, District Pithoragarh,
46. Dr. Hari Singh, Deputy Veterinary Officer, Office of Chief Veterinary Officer, Narendra Nagar, District Tehri Garhwal,
47. Dr. Ashok Prahlad Rede, Veterinary Officer, Grade-I, Govt. Sheep Prajanaan Prachetra Thalkundi Office, Veterinary Hospital, Purola, District Uttarkashi,
48. Dr. Vishal Sharma, Veterinary Officer, Grade-I, U.L.D.B. Headquarters, Dehradun,
49. Dr. Devendra Kumar Sharma, Veterinary Officer, Grade-I, Govt. Veterinary Hospital, Tanakpur, District Champawat,
50. Dr. Ashok Liladhar Bisht, Veterinary Officer, Grade-I, Sheep & Wool Vikas Board, Pashupalan Nideshayalaya, Pashudhan Bhawan, Mothorowala Road, Dehradun,
51. Dr. R.P.Singh, Veterinary Officer, Grade-I, Govt. Veterinary Hospital, Dwarahat, District Almora,
52. Dr. Rajeev Singh, Veterinary Officer, Grade-I, Govt. Veterinary Hospital, Ramnagar, District Nainital,
53. Dr. Rakesh Kumar, Veterinary Officer, Grade-I, Gausewa Commission, Pashupalan Nedeshalaya, Pashudhan Bhawan, Mothorowala Road, Dehradun,

54. Dr. Mamta Yadav, Veterinary Officer, Grade-I, Govt. Veterinary Hospital, Ranikhet, District Almora,
55. Dr. P.S.Hayanki, Veterinary Officer, Grade-I, Govt. Veterinary Hospital, Khatima, District Udham Singh Nagar,
56. Dr. D.S. Martoliya, Veterinary Officer, Grade-I, Govt. Veterinary Hospital, Haldwani, District Nainital,
57. Dr. Himanshu Pandey, Deputy Chief Veterinary Officer, Office of Chief Veterinary Officer, Uttarkashi,
58. Dr. Surendra Singh Gabriyal, Veterinary Officer, Grade-I, Govt. Veterinary Hospital, Jakhpuran, District Pithoragarh,
59. Dr.Gauri Shankar Bisht, Veterinary Officer, Grade-I, Govt. Veterinary Hospital, Nagnath Pokhri, District Chamoli, Garhwal.

.....Respondents

Present: Sri L.K.Maithani, Counsel
for the petitioner

Sri Umesh Dhaundiyal, A.P.O.
for the respondents No. 1,2 & 4
Sri M.R.Saklani, Counsel
for the respondents no. 13, 16 to 24

JUDGMENT

DATE: FEBRUARY 05, 2015

DELIVERED BY SRI V.K.MAHESHWARI, VICE CHAIRMAN (J)

1. The petitioner has prayed for the following reliefs:
 - i. Setting aside the order dated 12.3.2010 by which the representation of the petitioner was rejected,

- ii. To issue direction for treating the order of appointment dated 17.7.1992 regular and against a substantive vacancy,
- iii. Setting aside the interim seniority list dated 11.12.2008.

2. The facts arising out of the petition are that the petitioner was initially appointed to the post of Live Stock Extension officer (Pashudhan Vikas Sahayak) on 07.07.1981. His services were governed by Civil Veterinary Manual, 1936. According to the provisions contained therein, the post of Live Stock Extension officer and Veterinary Officer are equal in status and equivalent to the post of Assistant Veterinary Surgeon. Thus, rules applicable to the post of Assistant Veterinary Surgeon are applicable to the service conditions of the petitioner also.

3. In view of Rule 18(2) of Civil Veterinary Manual, 1936, on completion of five years of service on the post of Live Stock Extension officer, the petitioner was sent for the Course of BBSE and AH. The petitioner had completed this course in the year 1991. The period of the course was also counted towards service. On completion of above mentioned course, the petitioner was appointed to the post of Veterinary officer vide order dated 17.7.1992 issued by the Director. The petitioner had joined to that post on 22.8.1992. This appointment was regular and substantive.

4. The petitioner had opted hill cadre under the U.P. Hill Sub-cadres Rules, 1992. After creation of the State of Uttarakhand, the petitioner was allocated to the State of

Uttarakhand. In the year 1994, a seniority list of the Veterinary Officers was issued in which the petitioner was placed at sl. no. 63. It is further stated that respondent no. 1 had passed a promotion order of the petitioner to the post of Veterinary officer after consultation of the Public Service Commission on 16.3.2001, whereas, the petitioner had already been appointed to the post of Veterinary Officer way back in the on 17.7.1992. The subsequent order of promotion order passed on 16.3.2001 is unnecessary, illegal, and in violation of law and rules. The above fact becomes clear from the fact that petitioner was confirmed on the post of Veterinary Officer on 01.08.2000.

5. It is further pleaded that a tentative seniority list was issued in the year 2004 against which the petitioner raised objections, but of no consequences and consequently final seniority list was issued on 18.9.2006. Subsequently, a seniority list was issued in the year 2008 wherein the petitioner was again shown junior to the private respondents. In fact, the private respondent no. 6, Dr. Anand Kumar Sacchar was appointed to the post of Veterinary Officer on 27.4.1993 on temporary basis, but his services were regularized. Similarly, the private respondents no. 9 and 10, Dr. Ramesh Singh Nidwal and Dr. Bhupendra Singh Jangpangi were appointed by direct recruitment on 5.6.1996. Thus, all these respondents are junior to the petitioner as the petitioner was appointed in the year 1992 and all other respondents were appointed after 1992. The petitioner had again made representation but was rejected. But the impugned rejection of the representation of the petitioner

vide order dated 12.3.2010 and the determination of seniority is illegal and de-hors the rules, so order passed on the representation of the petitioner as well as the seniority list are liable to be quashed. Hence this petition.

6. The petition has been opposed on behalf of the respondent's no. 1 to 4 as well as respondent's no. 13 and 16 to 24. In the written statement submitted on behalf of the respondents no. 1 to 4, it has been stated that the appointment of the petitioner on 17.7.1992 to the post of Veterinary Officer purely temporary and was subject to approval by Public Service Commission and it was mentioned in the appointment order itself, that in case the petitioner is not approved by the Public Service Commission, he will be reverted back to his original post. The name of the petitioner has been approved by the Public Service Commission only on 21.11.2000 and thereafter, the petitioner has been appointed on substantive basis to the post of Veterinary Officer on 16.3.2001. So the seniority can only be fixed from the date of his regular appointment after approval by Public Service Commission. It is further stated that the petitioner was originally posted as Live Stocks Extension Officer. The post of Live Stocks Extension officer and Veterinary officer are entirely different and the petitioner is not entitled to claim the benefit available to the post of Veterinary Officer. It is further stated that after considering the objections against tentative seniority list, a final seniority list has been issued on 03.03.2009 and the petitioner has rightly been placed after considering his date of appointment as 16.3.2001. Thus, the petition is devoid of merit and is liable to be dismissed. The

similar objections have been made by the State of U.P., respondent no. 3. In the written statement filed on behalf of the respondents 13 and 16 to 24, it has also been stated that the petitioner had challenged the tentative seniority list dated 11.12.2008 by way of the claim petition no. 83/2009, Dr. G.C.Barthwal Vs. State of Uttarakhand & others. Whereas, at the time of filing the above mentioned claim petition, the final seniority list had already been declared and the petition was filed on the false and baseless reasons and now the subsequent claim petition on the same grounds is not maintainable. It is further stated that the service conditions of the parties are governed by U.P. Veterinary (Group-B) Services Rules, 1998 and under the provisions of these rules, the post of Veterinary Officer can only be filled by two sources i.e. 98 % of posts by way of direct recruitment and 2% of posts by way of promotion from the post of Live Stocks Extension Officers. The relevant extract of the said rules read as under:

“(1) पशु चिकित्सा अधिकारी [एक] अट्ठानबे प्रतिशत आयोग से सीधी भर्ती,

[दो] दो प्रतिशत मौलिक रूप से नियुक्त ऐसे पशुधन अधिकारियों में से जिन्होंने भारत में विधि द्वारा स्थापित किसी विश्वविद्यालय से पशु चिकित्सा विज्ञान और पशुपालन (बी०बी०एस०सी० और ए०एच०) में स्तानक उपाधि या सरकार द्वारा उसके समकक्ष प्राप्त किसी अन्य संस्था से उपाधि प्राप्त कर ली हो, आयोग के माध्यम से पदोन्नति—द्वारा:

परन्तु यदि भर्ती के किसी वर्ष में अपेक्षित संख्या में अर्हता प्राप्त विभागीय पशुधन प्रसार अधिकारी उक्त पदोन्नति कोटा के

प्रति उपलब्ध न हो तो ऐसी स्थिति में शेष भरे गये पदों पर भर्ती आयोग के माध्यम से सीधी भर्ती द्वारा की जायेगी।”

7. It was further stated that in the year 1992, the petitioner was appointed by the Director, while the appointing authority of the Veterinary officer is the Govt. only. Thus, the appointment of the petitioner was in violation of the rules. It is further stated that the Public Service Commission, U.P. has approved the name of 39 Live Stocks Extension Officers, who had passed B.V.S.C. and AH degree only on 21.11.2000. Out of these 39, only four including the petitioner were working in the State of Uttarakhand and on approval from the Public Service Commission, the petitioner was promoted on 16.3.2001 and his seniority has been determined from that date. There is no illegality in the determination of seniority. The petition is devoid of merit and is liable to be dismissed.

8. In response to the W.S. on behalf of respondent's no. 1 to 4, a rejoinder affidavit has been filed. A separate rejoinder affidavit has also been filed in response to the counter of the respondent nos. 13 and 16 to 24. The facts stated in the main petition have been reiterated in the rejoinder affidavits. Numbers of documents have also been filed on behalf of the parties.

9. No counter affidavit has been filed on behalf of the rest of the respondents. Hence, the petition proceeded ex-parte against these respondents.

10. We have heard both the parties at length and perused the material available on record carefully.

11. First of all, a preliminary objection has been raised on behalf of the respondents that the petitioner had challenged the tentative seniority list by way of claim petition no. 83/2009, Dr. G.C. Barthwal Vs. State of Uttarakhand & others. The Tribunal in that petition has directed the respondents to consider the objections of the petitioner and to issue the final seniority list as soon as possible. The direction issued in that petition is quoted below

“Heard learned counsel for the petitioner on the point of admission.

Petitioner has filed this petition challenging the interim seniority list dated 11.12.2008 prepared by the animal husbandry department of the state of Uttarakhand. The petitioner has filed the objection against the interim seniority list. The respondents are seized of that objection. We hope after deciding the objection against the interim seniority list, the final seniority list will be prepared very expeditiously. While preparing final seniority list, the respondents shall duly consider points raised in the objection filed by the petitioner.

With these observations the claim petition is finally disposed off at the stage of admission. ”

In this regard, the provisions contained in the first proviso of Section-5 of the Uttarakhand Public Services Tribunal Act, 1976 are relevant as these prescribes that principles of res-judicata are applicable in the proceedings conducted under the

above mentioned Act. The relevant extract is quoted below;

“Provided that where, in respect of the subject matter of a reference, a competent court has already passed a decree or order or issued a writ or direction, and such decree, order, writ or direction has become final, the principle of res-judicata shall apply”

Keeping in view the abovementioned provisions and the observation made by the Tribunal makes it clear that only a direction for finalization of the seniority was issued. The matter in dispute was not determined on merits. In the present petition, the petitioner has challenged the seniority issued after the direction by this Tribunal, so the principle of res-judicata is not attracted in the present from any stretch of imagination. So we do not find any force in the contention of the respondents.

12. Before taking other points, it is appropriate to consider the rules which are applicable to the present case as there is dispute between the parties as to which rules are applicable in the present case. According to the respondents, the rules titled as U.P. Veterinary (Group-B) Services Rules, 1998 are applicable, whereas according to the petitioner the Civil Veterinary Manual, 1936 were applicable before the enforcement of the 1998 rules. We have gone through both these rules carefully. As the rules of 1998 came into force in the year 1998, these will be applicable since their enforcement and not retrospectively. Apart from it, it was

obligatory upon the respondents to point out as to which rules were applicable before the 1998 rules but respondents failed to mention as to which rules were applicable before the rules of 1998 came into force, where as the petitioner has very categorically argued that before the rules of 1998, the Civil Veterinary Manual 1936 was applicable as regards to the service conditions of the post of veterinary officers are concerned. So, we come to the conclusion that before the 1998 Rules came into force, the Civil Veterinary Manual of 1936 was applicable for governing the service conditions of the Veterinary Officers. In this context, it has further been argued on behalf of the respondents that only 2% posts of Veterinary officers are to be filled by promotion from the Livestock Extension Officers and 98% posts are to be filled by direct recruitment. It's true that this provision is contained in rule 5 of the 1998 rules but not in the civil veterinary Manual, 1936. From the other angle also, we have carefully considered the aforesaid contention but do not find any force in it as there is no controversy among the parties as regard to the respective quota for recruitment to the post of veterinary officer by different sources is concerned.

13. The crucial issue involved in this petition is as to whether the appointment of the petitioner in the year 1992 was regular in nature and intent or it was merely a temporary arrangement. Second controversy is as to whether the seniority of the petitioner is to be determined since his appointment made in the year 1992 but the second controversy depends upon the result of the first controversy. The petitioner has vehemently contented that his promotion

in 1992 was made against a substantive vacancy and the petitioner was also eligible for promotion. It was regular in nature. Before promotion he was also sent for the required training. So there is no point to treat his promotion to be temporary and his seniority should be assessed from the date of his initial appointment in the year 1992 on the post of veterinary officer. On the other hand, it has been contended on behalf of the respondents that the appointment of the petitioner made in 1992 was simply on temporary basis. In support of it, it has been stated that the essential condition for appointment was the consultation with the Public Service Commission. The appointment of the petitioner made in 1992 was not done after consultation with the Public Service Commission; therefore, the petitioner cannot claim seniority from that date. It has further been stated that the name of the petitioner was approved by the Uttar Pradesh Public Service Commission on 21.11.2000 and for the vacancies of the year 1999-2000 and thereafter, his promotion was made on 16.3.2001. So, the seniority is to be fixed after this promotion, which was regular in nature. In the light of these rival contentions, we have to see as to what was the nature of the promotion of the petitioner made in the year 1992 and for this purpose the order of appointment in the year 1992 is relevant, which is quoted below:

“ कार्यालय आदेश

लोक सेवा आयोग, उत्तर प्रदेश द्वारा अनुमोदित होने तक श्री जगदीश नारायण तथा गिरीश चन्द्र वड़थवाल, पशुधन अधिकारी को गोविन्द बल्लभ पन्त, कृषि एवं प्रौद्योगिक विश्व विद्यालय, पन्त नगर, नैनीताल से बी०बी०एस०सी० एण्ड ए०एच० परीक्षा वर्ष

1991 में उत्तीर्ण कर लेने पर पशुचिकित्साधिकारी के पद पर शासनादेश सं० 1471/12-प-92, दिनांक 15.7.92 में उल्लिखित शर्तों एवं प्रतिबन्धों के अधीन रू० 2200-4000- के वेतनमान में समय-समय पर प्रदत्त मंहगाई भत्ता तथा अन्य अनुमन्य भत्तों सहित पूर्णतया अस्थायी रूप से नियुक्त किये जाने को स्वीकृति राज्यपाल महोदय ने सहर्ष प्रदान कर दी है। उन्हें लोक सेवा आयोग द्वारा अनुमोदित न होने की दशा में उनके मूल पद पशुधन प्रसार अधिकारी पर प्रत्यावर्तित कर दिया जायेगा। श्री जगदीश नारायण को पशुचिकित्साधिकारी, हरपुरबदहट, गोरखपुर तथा श्री गिरीश चन्द्र वड़थवाल को मुन्शियारी, पिथौरागढ़ के पद पर पदस्थ किया जाता है।’

The above mentioned order makes it clear that the petitioner was appointed on temporary basis but it was kept subject to the approval by Public Service Commission. Mere use of word ‘temporary’ does not mean that the appointment was adhoc, irregular or illegal. Generally a person is appointed on temporary basis at the initial stage but it does not mean that his appointment becomes illegal or irregular. In fact the petitioner was eligible for appointment as he had undergone the required training. It has also been contented by the petitioner that the post was also vacant and the petitioner was appointed against the vacant post. We have carefully gone through the order of the appointment cited above. We are of the view that the use of word ‘temporary’ does not make the appointment of the petitioner illegal, irregular or a stop-gap arrangement. The only condition, which is relevant, was approval by Public Service Commission which has also been done. Once the approval is done by the Public

Service Commission, the appointment will be effective from the date of appointment and not from any subsequent date or time. This condition reveals that in case of rejection of the candidature of the petitioner by the Public Service Commission, he would have been reverted back to his initial post, but in case of approval his approval by the Public service Commission, his appointment will remain effective from the date it was initially made. So, we can infer that on approval by the Public Service Commission, the appointment of the petitioner will be treated as regular from the date of initial appointment on the post of veterinary officer. There was no other condition for the reversion of the petitioner. In this regard, it has also been contended on behalf of the respondents that the name of the petitioner has been approved by the Public Service Commission for the vacancies accrued in the year 1999-2000, so he can be treated to be appointed from that year and not from earlier period but we do not find any weight in the contention of the respondents. As the petitioner had already been appointed on 17.7.1992 then what is the point of approving him against the vacancy for the year 1999-2000. It is also not clear when the name of the petitioner was sent to the Public Service Commission. It is also pertinent to mention that the petitioner had already opted for the hill cadre which was a separate cadre and his name should have been considered by the Public Service Commission against the vacancies accrued in hill cadre, which is not done. On this ground

also, the observation of the Public Service Commission becomes meaningless.

14. Apart from the approval of the name of the petitioner by the Public Service Commission, it is also important that the petitioner was confirmed on the post of Veterinary officer w.e.f. 01.08.2000. If we treat the petitioner was appointed on 16.03.2001 then what is the point of his confirmation on the post of Veterinary Officer on 01.08.2000. The confirmation of the petitioner on 01.08.2000 also makes it clear that the appointment of the petitioner on 17.07.1992 was regular and not merely a temporary arrangement. Had it not been so than what was the point to confirm the petitioner to that post. Moreover, it is not permissible to confirm an employee on any post unless he actually holds it. Is it possible to confirm any person to any post without his appointment or promotion to that post. Hence the confirmation of the petitioner on 01.08.2000 also supports the version of the petitioner.

15. It has also been contented that the appointment of the petitioner in 1992 was made the Director while the appointing authority is the Government. The contention raised on behalf of the respondents does not carry and weight as the order of appointment dated 17.7.1992 reveals that the petitioner was appointed under the orders of the Governor and not by the Director. Therefore, there is no deficiency or irregularity in the appointment of the petitioner on 17.7.1992.

16. One more aspect is also important in this case that the petitioner had regularly and interruptedly worked on the post of the veterinary officer since 1992. The Constitutional Bench of the Hon'ble Supreme Court in **Direct Recruit Class II Engineering Officers Association vs. State of Maharashtra and others (1990)2 SCC, 715** has laid down the following principles of law:

“(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.

The corollary of the above rule is that where the initial appointment is only adhoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account.

(B). If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularization of his service in accordance with the rules, the period of officiating service will be counted.

(C) When the appointments are made from more than one source, it is permissible to fix the ratio for recruitment from the different sources, and if rules are framed in this regard, they must ordinarily be followed strictly.”

The same principle has been followed by the Hon'ble Supreme Court in its latest judgment in **Amarendra Kumar Mohapatra & others Vs. State of Orissa & others, (2014)4, SCC, 583.**

17. Keeping in view of the above principles of law also, the petitioner is entitled for determination of his seniority from the date of his initial appointment.

18. On the basis of the above discussion, we are clear of the view that the petitioner was appointed on regular basis on 17.7.1992 on the post of Veterinary Officer and therefore, his seniority is to be determined from that date. Consequently, the order passed on the representation of the petitioner is liable to be quashed a direction is required to be issued to the respondents no. 1 to 4 for redetermination of seniority of the petitioner accordingly.

ORDER

The petition is allowed. The impugned order dated 12.3.2010 passed on the representation of the petitioner is hereby quashed. The respondents no. 1, 2 & 4 are directed to re-determine the seniority of the petitioner within a period of six months from today treating his appointment on 17.7.1992 on the post of Veterinary Officer. No order as to costs.

Sd/-

D.K.KOTIA
VICE CHAIRMAN (A)

Sd/-

V.K.MAHESHWARI
VICE CHAIRMAN (J)

DATED: FEBRUARY 05, 2015
DEHRADUN

KNP