

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

Present: Sri V.K. Maheshwari

----- Vice Chairman (J)

&

Sri D.K. Kotia

----- Vice Chairman (A)

CLAIM PETITION NO. 23/DB/2013

Sushil Kumar Lamiyan, S/o Sri Tilak Ram R/o 85, Rajpur Road, Dehradun, Dilaram Bazar, Dehradun, Deputy Director (Statistics) Incharge in the Office of the Principal Chief Conservator of Forest, Uttarakhand, Dehradun.

.....Petitioner

VERSUS

1. State of Uttarakhand through its Principal Secretary, Forest & Environment Department, Subhash Road, Dehradun,
2. Secretary to the Govt. of Uttarakhand, Department of Forest & Environment, Anubhag-I, Civil Secretariat, Subhash Road, Dehradun,
3. Shri Dinesh Chandra Pandey, Statistical Officer, in the office of the Additional Principal Chief Conservator of Forest (Planning & Finance Management), 85, Rajpur Road, Dehradun,
4. Shri Ramesh Chandra, Statistical Officer, in the office of Principal Chief Conservator of Forest, 85, Rajpur Road, Dehradun,
5. Shir Mohan Chandra Pant, Statistical Officer in the office of Additional Principal Chief Conservator of Forest (Planning & Finance Management), 85, Rajpur Road, Dehradun.

.....Respondents

Present: Sri J.P.Kansal, Counsel
for the petitioner

Sri U.C.Dhaundiyal, A.P.O.
for the respondents no. 1& 2

Dr. Aparna Singh, Counsel
for the respondent no. 4

JUDGMENT

DATE: DECEMBER 22, 2014

DELIVERED BY SRI D.K.KOTIA, VICE CHAIRMAN (A)

1. The petitioner in this claim petition has challenged the Seniority list of the Statistical Officers and prayed to set aside the tentative Seniority list (Annexure A-1) and the final Seniority list (Annexure A-2). He has also prayed to set aside the rejection of his representation against the final Seniority list (Annexure A-3).
2. The facts in brief are that the petitioner and the respondents No. 3, 4 and 5 were initially appointed on the post of Investigator-cum-Computer and as per the seniority list of Investigator-Cum-Computer dated 25.01.1993 (Annexure CA-1), petitioner is placed at Serial number 108 below the respondents No. 3, 4 and 5. While respondents No. 3, 4 and 5 were appointed in 1981, the petitioner was appointed in 1990 on the post of Investigator-cum-Computer. The petitioner was appointed against the reserved quota for Scheduled Caste. The petitioner and respondents No. 3, 4 and 5 were promoted from the post of Investigator-cum-Computer to the post of Statistical Assistant. As per the seniority list of Statistical Assistant issued on 18.01.2000 (Annexure CA-2), the petitioner is placed at Serial number 41 below the private respondents no. 3, 4 and 5.

3. As per the Service Rules, 50 per cent post of the Statistical Officers are to be filled up by promotion from amongst the Statistical Assistants, who have put in at least 5 years continuous service, on the basis of merit in consultation with the Uttarakhand Public Service Commission. The promotion from Statistical Assistant to the post of Statistical Officer on two vacancies was taken up in 2005. One vacancy was in general category and another was in reserve category for Scheduled Caste. The petitioner was promoted to the post of Statistical Officer against the vacancy in reserve category for Scheduled Caste on 20.12.2005. The respondents No. 3, 4 and 5 were promoted on the post of Statistical Officer on 19.09.2007 when more vacancies for general category candidates became available.

4. Thereafter, tentative seniority list of Statistical Officers was issued on 08.09.2011 (Annexure: A-1) and final seniority list was issued on 05.01.2012 (Annexure A-2). In both the seniority lists, the petitioner was shown below the respondents No. 3, 4 and 5. The petitioner also gave a representation against the final seniority list which was rejected on 12.06.2013(Annexure A-3). The main grievance of the petitioner is that he was promoted to the post of Statistical Officer earlier in 2005, whereas respondents No. 3, 4 and 5 were promoted later in 2007 and therefore, the name of the petitioner should be above the respondents No. 3,4 and 5 in the seniority list of Statistical Officers.

5. Petitioner as well as respondents both have relied on Uttarakhand Government Servants Seniority Rules, 2002 (for short Seniority Rules of 2002). It would be appropriate to

reproduce the relevant Rules of Seniority Rules of 2002 before the arguments of both the parties are discussed.

Rule 6: “Where according to the service rules, appointments are to be made only by promotion from a single feeding cadre, the seniority inter se of persons so appointed shall be the same as it was in the feeding cadre.

Explanation: A person senior in the feeding cadre shall even though promoted after the promotion of a person junior to him in the feeding cadre shall, in the cadre to which they are promoted, regain the seniority as it was in the feeding cadre.

Rule-7 Where according to the service rules, appointments are to be made only by promotion but from more than one feeding cadres, the seniority inter se of persons appointed on the result of any one selection shall be determined according to the date of the order of their substantive appointment in their respective feeding cadres.

[Explanation-]”

Rule 8 (1)- Where according to the service rules appointments are made both by promotion and by direct recruitment, the seniority of persons appointed shall, subject to the provisions of the following sub-rules, be determined from the date of the order of their m substantive appointments and if two or more persons are appointed together, in the order in which their names are arranged in the appointment order:

Provided.....”.

(2) The seniority inter-se of persons appointed on the result of any one selection-

(a) through direct recruitment, shall be the same as it is shown in the merit list prepared by the Commission or by the Committee, as the case may be;

(b) by promotion, shall be as determined in accordance with the principles laid down in rule 6 or rule 7, as the case may be, according as the promotion are to be made from a single feeding cadre or several feeding cadres.

(3).....]”

6. The petitioner in his claim petition has pleaded that the seniority list should have been prepared under Rule 8 (1) on the basis of date of the substantive appointment. The petitioner was substantively appointed much before the substantive appointment of the private respondents and therefore, he is senior to the respondents No. 3,4 and 5 in the cadre of Statistical Officer. It has also been stated in the claim petition that according to the Service Rules, recruitment of Statistical Officer is both by direct recruitment and by promotion and therefore, Rules 6 and 7 of the Seniority Rules of 2002 are not applicable to determine seniority of Statistical Officers.

7. Respondents no. 1 and 2 have opposed the claim petition and stated in their written statement that the seniority list has been prepared according to Seniority Rules of 2002 and the petitioner was given due opportunity to make objections against the tentative seniority list and after considering the objections raised by the petitioner, the seniority list was finalized. The representation of the petitioner against the final seniority list was also duly considered and rejected.

8. Respondent No. 4 in his written statement has mainly stated that according to Rule 8 (2) (b) and Rule 6 of the Seniority Rules of 2002, he has regained seniority and become senior to the petitioner in the seniority list of Statistical Officers.

9. None appeared on behalf of the respondents No. 3 and 5 despite sufficient service upon them. So, the petition was proceeded ex-parte against them vide order dated 01.10.2013.

10. Petitioner has filed two rejoinder affidavits against the written statement of respondents No. 1 and 2 and respondent No. 4 and reiterated the same stand taken by him in the claim petition. The petitioner and respondent No. 4 have also filed certain documents.

11. We have heard the parties and perused the record and documents carefully.

12. In the case, only question involved is as to whether the respondents No. 3, 4 and 5 are entitled to regain their position in the seniority list after their promotion to the post of Statistical Officer in 2007 or the petitioner who was promoted to the post of Statistical Officer in 2005 earlier than the respondents No. 3, 4 and 5 would be higher in the seniority list of Statistical Officers.

13. The counsel for the petitioner argued that Rule 8(1) of the Seniority Rules of 2002 provides that the seniority is to be determined from the date of the order of substantive appointments. Since the petitioner was appointed in substantive manner in 2005 and the respondents No. 3, 4 and 5 were appointed in substantive manner in 2007 therefore, the petitioner

should be senior as compared to respondents No. 3,4 and 5 in the seniority list of Statistical Officers. In our view, this argument does not appreciate the provision made in Rule 8(1) of the Seniority Rules of 2002 in its entirety. Rule 8(1) very clearly provides that the determination of seniority from the date of the substantive appointment is subject to the provisions of the sub-rules to the Rule 8(1) i.e. Rule 8(2)(a), Rule 8(2)(b) and Rule 8(3). Rule 8(2) (b) also provides that the seniority is to be determined as per the principles laid down under Rule 6 or Rule 7. It is therefore, clear that for determination of seniority, Rule 8(1) is to be read with and is subject to Rule 8(2), Rule 8(3), Rule 6 and Rule 7.

14. In the present case, the single feeding cadre of the petitioner and respondents No. 3, 4 and 5 is Investigator-cum-Computer. Respondents No. 3, 4 and 5 are admittedly senior than that of the petitioner in seniority list in the feeding cadre. After the promotion from Investigator-cum-Computer to the post of Statistical Assistant, the inter-se seniority among them also remains the same i.e. respondents No. 3,4 and 5 are senior in the list of Statistical Assistants than that of the petitioner. After that the petitioner was promoted to the post of Statistical Officer under reserved quota for Scheduled Caste in 2005 and respondents No. 3,4 and 5 were promoted to the post of Statistical Officer in 2007 when vacancies of general quota became available. In our view, under these circumstances, when respondents No. 3, 4 and 5 who were senior in the feeding cadre and though their promotion to the post of Statistical officer was made after the promotion of the petitioner (who was junior in the feeding cadre), respondents No. 3,4 and 5 regain their seniority as it was in the feeding cadre

according to “Explanation” given under Rule 6 of the Seniority Rule of 2002.

15. A careful reading of “Explanation” to Rule 6 makes it clear that in case promotion of a person senior in the feeding cadre is made after the promotion of a junior in the feeding cadre, the date of promotion loses its significance and the seniority is regained by the person senior in the feeding cadre in spite of his promotion after the promotion of a person junior to him in the feeding cadre. Thus, in the present case, respondents No. 3, 4 and 5 are entitled to regain their seniority after their promotion to the post of Statistical Officer as they were senior to the petitioner in the feeding cadre.

16. The counsel for the petitioner has also contended that Rule 8(2) and consequently Rule 8(2)(a) and Rule 8(2)(b) apply only to determine inter-se seniority of persons on the result of any one selection and the present case is not of one selection but of different selections as the petitioner was promoted in 2005 and respondents No. 3,4 and 5 were promoted in the selection of 2007 and therefore, Rule 6 of the Seniority Rules of 2002 is not applicable. It is difficult to agree with this contention. We would like to emphasize that the “Explanation” to Rule 6 lays down the principle regarding determination of seniority when juniors in feeding cadre are promoted earlier than the seniors in the feeding cadre. “Explanation” makes it mandatory to restore the seniority as it was in the feeding cadre. The “Explanation” to Rule 6 clearly establishes the supremacy of the seniority in the feeding cadre irrespective of the date or time of promotion.

17. On behalf of the petitioner, following cases have also been referred in support of his contention.

1. Pawan Pratap Singh Vs. Reevan Singh, Supreme Court, 2011(2) SLR, 21,
2. Amarjeet Singh Vs. Devi Ratan, 2010, SCLJ,,710,
3. Uttaranchal Forest Rangers' Association & others Vs. State of U.P. & others ALJ-2007(1) Supreme Court, pg. 1.

We have gone through the cases cited but the controversy in above cases was entirely different from that of the present case, therefore, no benefit can be extended to the petitioner on the basis of these cases.

18. On the basis of the above discussion, we are of the view that the seniority list of the Statistical Officers notified on 05.01.2012 has been drawn in accordance with the Uttarakhand Government Servant Seniority Rules, 2002 and therefore, no interference is called for in the impugned order, so the claim petition has no force and is liable to be dismissed.

ORDER

The Petition is dismissed. No order as to costs.

Sd/-

V.K.MAHESHWARI
VICE CHAIRMAN (J)

Sd/-

D.K.KOTIA
VICE CHAIRMAN (A)

DATE: DECEMBER 22, 2014
DEHRADUN

KNP