

**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. 62 OF 2012**

Ganesh Lal, S/o Late Sri Chetan Das, R/o 1-24, Nehru Colony,  
Dehradun

.....Petitioner

**VERSUS**

1. State of Uttarakhand through Secretary, Department of Rural Development, Civil Secretariat, Dehradun,
2. Principal Secretary & Commissioner, Forest & Rural Department, Govt. of Uttarakhand, Dehradun,
3. Joint Secretary & Commissioner, Forest & Rural Development Department, Govt. of Uttarakhand, Dehradun,
4. Rajendra Singh Rawat, District Development Officer, Haridwar,
5. Bharat Chandra Bhatt, Block Development Officer, Khanpur, District Haridwar,
6. Naresh Kumar, District Development Officer, Pithoragarh,
7. Sanjay Kumar Singh, District Development Officer, Dehradun,
8. Amar Singh Gunjyal, District Development Officer, Nainital,
9. Sardar Singh Sharma, District Development Officer, Tehri Garhwal,
10. Prakash Rawat, District Development Officer, Uttarkashi,

11. Ramesh Chandra Tiwari, District Development Officer, Udham Singh Nagar,
12. Hemanti Gunjyal, Block Development Officer, Jalagam Parijojna, Indira Nagar, Dehradun,
13. Anita Bisht, Block Development Officer, Champawat,
14. Shilpi Pant, Block Development Officer, Champawat,
15. Himanshu Joshi, Block Development Officer, Gram Mar, District Nainital,
16. Biram Singh, Block Development Officer, Pauri Garhwal,
17. Vivek Kumar Upadhyay, Block Development Officer, Rudrapur, Udham Singh Nagar,
18. Pradeep Kumar Pandey, Block Development Officer, Yamkeshwar, Pauri Garhwal,
19. Anand Singh, Block Development Officer, Dugadda, Pauri Garhwal,
20. Sanjeev Kumar Rai, Block Development Officer, Bahadrabad, Haridwar,
21. Ajay Singh, Block Development Officer, Kotabagh, Nainital,
22. Ashish Punetha, Block Development Officer, Ram Nagar, Nainital,
23. Sushil Mohan Dobhal, Block Development Officer, Raipur, Dehradun,
24. Pushpendra Singh, Block Development Officer, Dwarikhai, Pauri Garhwal,
25. Nalinit Ghildiyal, Block Development Officer, Kalsi, Dehradun,
26. Rama Goswami, Block Development Officer, Narsen, Haridwar,
27. Mohd. Aslam, Block Development Officer, Vikas Nagar, Dehradun,
28. Gopal Giri, Block Development Officer, Dhari, Nainital,
29. Mahesh Kumar, Block Development Officer, Sitarganj, Udham Singh Nagar,

30. Ved Prakash, Block Development Officer, Jaunpur, Tehri Garhwal,
31. Sunil Kumar, Block Development Officer, Ukhimath, Rudraparyag,
32. Vimal Kumar, Block Development Officer, Gadarpur, Udham Singh Nagar,
33. Sangeeta Arya, Block Development Officer, Block Bin, Pithoragarh
34. Mahesh Chandra Tiwari, Block Development Officer (Retired)
35. Hari Singh Adhikari, Block Development Officer, Pauri Garhwal,
36. Suryamani Bhatt, Block Development Officer (retired),
37. Kailash Ram Arya, Block Development Officer (retired.)

.....Respondents

Present: Sri M.C.Pant, Counsel  
for the petitioner

Sri Umesh Dhaundiyal, P.O  
for the respondents no. 1, 2 & 3

### **JUDGMENT**

**DATE: MARCH 09, 2015**

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

1. The petitioner has challenged the impugned seniority list dated 16.04.2012 (Annexure A-1) and also sought a further direction for redetermination of seniority of the petitioner.

2. Shorn of unnecessary details, the facts relevant for the disposal of this petition are that the after joining service as Assistant Development Officer (Statistics) on 13.03.1980, the petitioner was finally promoted to the post of Block Development Officer on 30.11.1994, but on adhoc basis. Later on, the promotion was regularized w.e.f 31.03.2011 as against vacancies accrued for the year 2000-01. There after a tentative seniority list of the cadre of BDO was issued but the petitioner's name did not figure at the right place, so the petitioner made a representation requesting to place him at appropriate place i.e. after the Bal Kishan who is placed at sl. No. 37. It is further stated that rest of the respondents are placed at sl. no. 39, Sri Rajendra Rawat, Sl. No. 41, Sri Sanjay Kumar Singh, Sl. No. 42. Sri, Naresh Kumar, Sl. No. 43, Amar Singh Gunjyal, Sl. no. 45, Sardar Singh Sharma, Sl. no. 46, Prakash Rawat, Sl. No. 49, Ramesh Chandra Tiwari, Sl. No. 51, Hemanti Gunjyal are also junior to the petitioner as they were promoted in the year 2006. However, the respondents' no. 1 to 3 did not pay any heed to the representation of the petitioner and a final seniority list was issued on 16.4.2012. In fact, the petitioner has already been adjusted against the vacancies for the selection year 2000-01 while the private respondents no. 4 to 33 belong to the selection year 2004-2005 only. The so called regularization of the petitioner on 30.03.2011 is baseless and petitioner should have been considered to have been promoted in the year 2000-01. It is further stated that the private respondents' no. 34 to 37 are senior to the petitioner and three of them have already been retired and petitioner is not claiming any relief against

them. The petitioner has therefore, prayed for quashing the impugned seniority list and further direction for redetermination of his seniority.

3. The petitioner at the first instance, approached the Hon'ble High Court under Article 226 of Constitution of India, but the petition preferred by the petitioner was dismissed as withdrawn on the ground of availability of alternative remedy.

4. The petition has been opposed on behalf of respondents no. 1,2, and 3 and it has been stated that the promotion of the petitioner on 30.11.1994 was purely on adhoc basis and his promotion was regularized through the Public Service Commission only on 31.03.2011, therefore, the seniority of the petitioner could only be determined after his regular promotion and in accordance with the provisions of Uttarakhand Govt. Servants Seniority Rules, 2002, which has been done in the present case, therefore, the petition is devoid of merit and is liable to be dismissed.

5. Counters/written statements were also filed on behalf of respondent no. 27, Mohd. Aslam, and respondent no. 23, Sushil Mohan Dobhal. No other respondents appeared or filed any written statement. Similar grounds are taken by these respondents also.

6. The petitioner has also filed a rejoinder affidavit dated 01.09.2013 and the facts stated in the main petition have been reiterated. Some documents have also been filed along with the rejoinder affidavit.

7. We have heard the petitioner and learned A.P.O. appearing on behalf of respondents' no. 1, 2 and 3. Rest of the respondents did not appear or produced any evidence at the time of hearing.

8. It is clear from the material available on record that the petitioner was promoted to the post of Block Development Officer on 30.11.1994 on adhoc basis whereon he joined on 04.12.1994. His promotion to the said post was regularized on 31.03.2011 after consultation with the State Public Service Commission. It is also clear from the record that the promotion of the petitioner to the post of Block Development Officer was regularized against the vacancy arose in the selection year 2000-01. The post of Block Development Officer comes within the purview of the Uttarakhand Public Service Commission and promotion can be made after the consultation of Public Service Commission only.

9. In view of the above position of facts, the only question before us for determination is as to whether the petitioner is entitled for determination of seniority since 1994 when he was promoted on adhoc basis or from the date of accrual of vacancies for the selection year against which the petitioner was regularised or from date of his regularization in the year 2011. First of all, we think it proper to consider whether the petitioner is entitled for seniority from his initial promotion in the year 1994. It is admitted to both the parties that initial promotion of the petitioner was adhoc in nature and even the Public Service Commission was not consulted, but the petitioner was promoted in compliance of an order of the

Hon'ble High Court of Allahabad, which becomes clear from the order of promotion itself. The order of promotion of the petitioner is reproduced below to make it more clear:

‘कार्यालय आयुक्त गढ़वाल मण्डल, पौड़ी

पत्र संख्या 799/1-स्था./व्य.प./94-95 दिनांक 30.11.1994

आदेश/पदोन्नति:

श्री गणेश लाल, स्थायी सहायक विकास अधिकारी(सांख्यिकी) वर्तमान में स्थानापन्न संयुक्त खण्ड विकास अधिकारी, जनपद पौड़ी गढ़वाल की पदोन्नति मा० उच्च न्यायालय, खण्ड पीठ लखनऊ द्वारा याचिका संख्या 1988 एस.एस 1992 पर दिए गए निर्णय दिनांक 04-2-94 एवं सचिव, ग्राम्य विकास, उत्तर प्रदेश के अ.शा. पत्र संख्या 1140/38-1-137-डब्ल्यू.पी/92 दिनांक 21-3-94, संयुक्त सचिव, ग्राम्य विकास अनुभाग-1, उ०प्र० शासन के पत्रांक 4516/38-1-137 डब्ल्यू.पी/92 दिनांक 21-3-94 तथा तद्विषयक विशेष सचिव, ग्राम्य विकास अधिकारी के पद पर वेतनमान 2200-75-2800-द.रो.-100-4000 में सम्यक विचारोपरान्त कार्यभार ग्रहण करने की तिथि से करते हुए उनकी तैनाती जनपद उत्तरकाशी में की जाती है। यह पदोन्नति पूर्णतः तदर्थ आधार पर मण्डलीय व्यवस्था में स्थानापन्न रूप से श्री गणेश लाल के मामले में शासन द्वारा प्रतिनिहित किए गए अधिकारों के अर्न्तगत की जा रही हैं। यह पदोन्नति किसी भी समय बिना पूर्व सूचना के समाप्त कर उन्हें उनके मूल पद पर प्रत्यावर्तित किया जा सकता है। जनपद के अर्न्तगत श्री गणेश लाल की तैनाती जिलाधिकारी, उत्तरकाशी यथास्थिति सुनिश्चित करेंगे।”

So, the order of promotion itself makes it clear that it was made in compliance of the order of the Hon'ble Court, so it becomes irrelevant as to whether Public Service Commission was consulted or not. It is also clear from the record that there was no violation of any rules. It cannot be said to be only stopgap arrangement. Apart from these facts,

the another aspect which is very crucial for the matter in controversy is that the petitioner continued to hold the promoted post uninterruptedly since 1994 till his regularization in the year 2011 and in such a situation, the principle laid down by the Hon'ble Supreme Court in **Direct Recruit Class-II Engineering Officers' Association Vs. State of Maharashtra & others, (1990)2 SCC, 715** and followed in **Amarendra Kumar Mohapatra & others Vs. State of Orissa & others, (2014)4 SCC, 583**. The Hon'ble Supreme Court has laid summed up the principle as follows:

*“70. In direct Recruit case this Court reviewed and summed up the law on the subject by formulating as many as 11 propositions out of which Propositions A and B stated in para 47 of the decision in the following words are relevant for our purposes:*

*“47. To sum up, we hold that:*

- (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 stopgap arrangement, the officiation in such post cannot be taken into account for considering the seniority.*

- (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 regularisation of his service in accordance with the rules, the period of officiating service will be counted.”*

Apart from the above cases, the Hon'ble Supreme Court has followed the same principle in Rudra Kumar Sain and others Vs. Union of India & others, 2000, SCC (L&S)1055.

*“20.In service jurisprudence, a person who possesses the requisite qualification for being appointed to a particular post and then he is appointed with the approval and consultation of the appropriate authority and continues in the post for a fairly long period, then such an appointment cannot be held to be “stopgap or fortuitous or purely ad hoc”. In this view of the matter, the reasoning and basis on which the appointment of the promotes in the Delhi Higher Judicial Service in the case in hand was held by the High Court to be “fortuitous/ad hoc/stopgap” are wholly erroneous and, therefore, exclusion of those appointees to have their continuous length of service for seniority is erroneous.”*

10. This Tribunal has also issued a direction for counting the period of adhoc promotion, if the promotion is not de hors the rules. To counter the above proposition of law the respondents relied upon the judgment of the Hon'ble Supreme Court in State of Uttaranchal & others Vs. Dinesh Kumar Sharma, 2007(1) SCC(L&S)594. We have gone through the above judgments carefully, but in that case the matter in controversy was entirely different. In that case the question

was as to whether the substantive appointed can be reckoned from the date of accrual of the vacancies, which is not a question in the present case. In the present case, the question is as to whether the period for which the petitioner served on promoted post, but on adhoc basis, can be counted for the purpose of seniority or not. As the controversy in the present case is entirely different, so we are of the view the principle laid down in the above case is not applicable in the present case.

11. On the basis of the above discussion, we are of the clear view that the petitioner is entitled to reckon his seniority from the date of his initial promotion in the year 1994 irrespective of the fact of his promotion on adhoc basis.

12. Though it is not necessary in view of the above findings, even than we would like to consider as to whether the petitioner is entitled to reckon his seniority from the year of the accrual of the vacancies against which the petitioner was promoted. At the time of accrual of the vacancies, the petitioner was already working on the promoted post. The situation would have been different, had the petitioner been promoted subsequent to the accrual of the vacancies. In that situation, the petitioner would have been entitled to his seniority only from the date of his actual promotion. But in the present case, the petitioner was working on the promoted post even at the time when the vacancies had accrued. The petitioner has been promoted on regular basis against these vacancies. The petitioner has been promoted on regular basis for the vacancies accrued in the selection year 2000-01,

therefore, the petitioner is entitled for his seniority from that year also. But as the petitioner is entitled for seniority from the date of his initial promotion, he should be given seniority from that date.

13. The respondents' no. 1 & 2 have reckoned the seniority of the petitioner with effect from the year 2011, which cannot be said to be proper and justified by any stretch of imagination.

14. On the basis of the above discussion, we are of the considered view that the petitioner is entitled for reckoning his seniority from the date of his initial promotion in the year 1994 and not from his regularization in the year 2011. The petition, therefore, deserves to succeed.

### **ORDER**

The claim petition is hereby allowed. The petitioner is entitled for reckoning his seniority from the date of his initial promotion. The respondents are directed to modify the impugned seniority list dated 16.04.2012 (Annexure A-1) accordingly within a period of four months from today. No order as to costs.

Sd/-

Sd/-

**D.K.KOTIA**  
VICE CHAIRMAN (A)

**V.K.MAHESHWARI**  
VICE CHAIRMAN (J)

DATE: MARCH 09, 2015  
DEHRADUN  
KNP