

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
BENCH AT NAINITAL**

Present: Hon'ble Mr. Rajendra Singh

----- Vice Chairman (J)

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

CLAIM PETITION NO. 54/NB/DB/2020

1. Deepak Kumar (Male), aged about 39 years, S/o Shri Ramswarup, R/o 170/202, D.L. Road, Dehradun, District Dehradun.
2. Anil Kumar (Male), aged about 40 years, S/o Shri Govind Ram, R/o Village Aawla Kot, P.O. Kotabagh, District Nainital.
3. Maya Ram (Male), aged about 38 years, S/o Shri Bogiya, R/o Village Jeewangarh, P.O. Ambari, Vikasnagar, Dehradun, District Dehradun.
4. Kundan Singh (Male), aged about 40 years, S/o Late Shri Buddhi Singh, R/o Village & P.O. Gawani, Patti Kingadigad, District Pauri Garhwal.
5. Anil Kumar (Male), aged about 34 years, S/o Shri Hukum Singh, R/o C/o Master Brahamprakash, Village Akoda Kalan, P.O. Laksar, District Haridwar.
6. Muhammed Mursaleen (Male), aged about 34 years, S/o Shri Abdul Hameed, R/o Village Jeewangarh, Near Jama Masjid, P.O. Ambari District Dehradun.
7. Bhupendra Kumar (Male), aged about 37 years, S/o Shri Disaundhi Ram, R/o Village & P.O. Khedajat, Haridwar.

.....Petitioners

VERSUS

1. State of Uttarakhand through Secretary Transport, Uttarakhand Govt. Dehradun.
2. Transport Commissioner, Uttarakhand, Sahastradhara Road, Dehradun.
3. Additional Transport Commissioner, Sahastradhara Road, Dehradun.
4. Ashwani Chauhan, S/o Ramesh Chandra Chauhan, R/o ARTO Parvartan Dal, Roorkee, District Haridwar.
5. Lalit Mohan, S/o Shri Bharat Singh, R/o ARTO Office, Haridwar, District Haridwar.
6. Rakesh Joshi, S/o Shri Leeladhar Joshi, R/o RTO Office, Dehradun, District Dehradun.
7. Kailash Chandra, S/o Shri Narayan Dutt Joshi, R/o RTO Office, Almora, District Almora.

8. Sumit Kumar, S/o Pramod Kumar, R/o ARTO Office, Roorkee, District Haridwar.
9. Chandan Singh Supiyal, S/o Shri Puran Singh Supiyal, R/o RTO Parvartan Dal, Almora, District Almora.
10. Chandan Singh Dhaila, S/o Shri Govind Singh, R/o ARTO Office, Rudrapur, District Udham Singh Nagar.
11. Godhan Singh Bisht, S/o Shri Trilok Singh Bisht, R/o ARTO Parvartan Dal, Udham Singh Nagar, District Udham Singh Nagar.
12. Amod Prakash, S/o Shri Rameshwar Prasad, R/o RTO Office Pauri, District Pauri Garhwal.
13. Kapil Prasad, S/o Shiv Lal, R/o RTO Office, Dehradun, District Dehradun.
14. Narendra Pratap, S/o Shri Tilak Singh, R/o ARTO Rudraprayag, District Rudraprayag.

.....Respondents

With

CLAIM PETITION NO. 74/NB/DB/2020

1. Anant Ram Rawat, S/o Shri Guman Singh, presently posted Enforcement Constable at Phulbhatta, Kichha, District Udham Singh Nagar, R/o Village Roopou, PO. Dimou via Koti Colony, District Dehradun, Uttarakhand.
2. Rajendra Singh, S/o Shri Mahendra Singh, R/o Village Majri, P.O. Sabhawala, Tehsil Vikasnagar, Dehradun.
3. Virendra Singh, S/o Late Harpal Singh, R/o Village Medanipur Badipur, P.O. Dharmawala, Tehsil Vikasnagar, District Dehradun.
4. Pampal Kumar, S/o Shri Parmanand, R/o Village Bindu Khadak, P. O. Bhalswagaj, Tehsil Bhagwanpur, District Haridwar.
5. Prem Pal, S/o Sarjeet Singh, R/o Bullawala Markhamgrant, Doiwala, Dehradun, Uttarakhand.

.....Petitioners

VERSUS

1. State of Uttarakhand through Secretary Transport, Uttarakhand Govt. Dehradun.
2. Transport Commissioner, Uttarakhand, Sahastradhara Road, Dehradun.
3. Additional Transport Commissioner, Sahastradhara Road, Dehradun.
4. Ashwani Chauhan, S/o Ramesh Chandra Chauhan, R/o ARTO Parvartan Dal, Roorkee, District Haridwar.
5. Lalit Mohan, S/o Shri Bharat Singh, R/o ARTO Office, Haridwar, District Haridwar.

6. Rakesh Joshi, S/o Shri Leeladhar Joshi, R/o RTO Office, Dehradun, District Dehradun.
7. Kailash Chandra, S/o Shri Narayan Dutt Joshi, R/o RTO Office, Almora, District Almora.
8. Sumit Kumar, S/o Pramod Kumar, R/o ARTO Office, Roorkee, District Haridwar.
9. Chandan Singh Supiyal, S/o Shri Puran Singh Supiyal, R/o RTO Parvartan Dal, Almora, District Almora.
10. Chandan Singh Dhaila, S/o Shri Govind Singh, R/o ARTO Office, Rudrapur, District Udham Singh Nagar.
11. Godhan Singh Bisht, S/o Shri Trilok Singh Bisht, R/o ARTO Parvartan Dal, Udham Singh Nagar, District Udham Singh Nagar.
12. Amod Prakash, S/o Shri Rameshwar Prasad, R/o RTO Office Pauri, District Pauri Garhwal.
13. Kapil Prasad, S/o Shiv Lal, R/o RTO Office, Dehradun, District Dehradun.
14. Narendra Pratap, S/o Shri Tilak Singh, R/o ARTO Rudraprayag, District Rudraprayag.

.....Respondents

Present: Sri D. S. Mehta, Advocate for the petitioners
 Sri Kishore Kumar, Ld. A.P.O. for the respondents No. 1 to 3
 Sri N. K. Papnoi, Advocate for the respondents No. 4 to 14

JUDGMENT

DATE: NOVEMBER 21, 2022

HON'BLE MR. RAJEEV GUPTA, VICE CHAIRMAN (A) (Oral)

Both these claim petitions are similar and have been filed seeking the following reliefs:-

- “a). To quash the impugned order dated 13.08.2020 and seniority list dated 13.08.2020 (Annexure No. 1 & 2) by respondent authority with its effect and operation.
- b). To issue an order or direction to the respondents to issue a fresh seniority list and determine the seniority of the petitioners on the basis of their date of appointment and date of joining on the post of Enforcement constable and also direct to place the petitioners above to the private respondents who have been appointed on the basis of waiting list and joined their service in the year 2010, 2013 and 2014

and accordingly refix the seniority of petitioners viz-a-viz private respondents.

- c) To issue any other suitable order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.
- d) To award the cost of the petition to the petitioners."

2. In the claim petitions, counter affidavits and rejoinder affidavits have been filed.

3. We have heard learned Counsel for the parties and perused the record.

4. The petitioners and private respondents were selected through a common selection. The private respondents were from the waiting list of the same selection process whose orders were issued subsequently, while the petitioners joined their services in November 2009 and the private respondents joined their services in 2010 and later. The petitioners are claiming seniority above the private respondents on the basis of their date of joining being earlier while the impugned seniority list dated 13.08.2020 shows them junior to the private respondents.

5. It has been pointed by the learned Counsel for the private respondents that the private respondents have obtained higher marks than the petitioners in the same selection process. Due to the reservation of posts for SC/ST category, the petitioners, despite having obtained lower marks, were kept in the list of selected candidates in the SC/ST category while the private respondents were kept in the waiting list. When some vacancies remained unfilled due to non-joining of the selected candidates, appointments were made from the waiting list and thus respondents were appointed later. The private respondents had higher marks in the same selection process and it is only on the basis of marks obtained in the selection process that the impugned seniority list dated 13.08.2020 has been made. All the objections of the petitioners have been dealt with in the impugned office order dated 13.08.2020 issued by office of Transport Commissioner vide which the seniority list has been finalized.

6. Learned Counsel for the petitioners argued that four private respondents were wrongly appointed and on the basis of the order of SC/ST Commission their services were terminated, against which they approached the Hon'ble High Court which observed that their services were terminated without issuing any show-cause notice and they were required to be given reasonable hearing before termination of service and their termination orders were quashed and set aside. Subsequently, official respondents have given appointment to these

four private respondents without any hearing and have placed them above the petitioners. The Tribunal observes that the appointment of these respondents being illegal has not been challenged in these claim petitions and therefore, the Tribunal is not required to adjudicate on this issue.

7. Learned Counsel for the petitioners also argued that in the year 2017, the department has issued a seniority of certain persons (not including the petitioners and the private respondents), which has been prepared strictly according to roster and according to the date of joining and similar process should have been followed in the instant case as well.

8. Learned A.P.O. appearing for the respondents No. 1 to 3 and learned Counsel for the private respondents No. 4 to 14 argued that Rule 5 of Uttarakhand Government Servants Seniority Rules, 2002 (hereinafter referred as “Rules of 2002”) provides that when appointments are made through direct recruitment, then inter-se seniority of persons appointed on the result of any one selection shall be the same as it is shown in the merit list prepared by the Commission or the Committee. As per the merit list prepared by the Selection Committee, the private respondents have correctly been placed above the petitioners in the impugned seniority list dated 13.08.2020.

9. The Tribunal observes that it is undisputed that the private respondents had got higher marks than the petitioners and they have been selected on the basis of same advertisement and same selection process. The official respondents before issuing the impugned seniority list dated 13.08.2020 (Annexure No. 1 to the claim petition) have given due opportunity of hearing to 19 Enforcement Constables who had submitted their representations against interim seniority list and then upheld the seniority given according to the marks obtained in the selection process as prescribed in Rule 5 of Rules of 2002.

10. In view of the above, there is no force in these claim petitions which are hereby dismissed. No orders as to costs.

A copy of this judgment be kept in the files of Claim petition No. 54/NB/DB/2020 and Claim Petition No. 74/NB/DB/2020.

(RAJENDRA SINGH)
VICE CHAIRMAN (J)

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

DATE: NOVEMBER 21, 2022
NAINITAL

