

**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. 118/NB/DB/2021**

1. Manish Verma, aged about 36 years S/o Sri Uday Lal Verma R/o New Bajeti P.O. Degree College District Pithoragrah, Presently Posted as Additional Assistant Engineer (Civil) P.D. P.W.D. Almora.
2. Sandeep Prakash Dhasmana, aged about 36 years S/o Sri Harish Chandra Dhasmana R/o D-3 Village Nayagaon Chauhan P.O. Chilkiya Ramnagar District Nainital Presently Posted as Additional Assistant Engineer (Civil)C.D. P.W.D. Ramnagar District Nainital.
3. Ravindra Singh Mehra, aged about 48 years S/o Sri Bahgwan Singh Mehra r/o Housse No. 17 Prakash Enclave R.K Puram, Manpur Road Kashipur Udham Singh Nagar Uttarakhand Presently Posted as Additional Assistant Engineer (Civil)C.D. P.W.D. Kashipur District Udham Singh Nagar
4. Vinod Chandra Pandey, aged about 41 years S/o Sri Sankar Dutt Pandey r/o Near Oakland Public School Lohaghat District Champawat Presently Posted as Additional Assistant Engineer (Civil) PMGSY Division P.W.D. Pithoragrah.

.....**Petitioners**

**Vs**

1. State of Uttarakhand through Principal Secretary, Public Works Department, Uttarakhand, Dehradun.
2. Chief Engineer & Head of Department, Public Works Department, Uttarakhand, Dehradun
3. Chief Engineer Level-1, Public Works Department, Uttarakhand, Dehradun
4. Rakesh Kumar S/o Not Known Presently posted as Additional Assistant Engineer (Technical) Public Works Department Uttarakhand 9<sup>th</sup> Circle, Dehradun.

.....**Respondents**

Present: Sri N.K.Papnoi, Advocate, for the petitioners

Sri Kishore Kumar, A.P.O. for the respondents no. 1 to 3

**JUDGMENT****DATED: AUGUST 24, 2023****Mr. Rajeev Gupta, Vice Chairman(A)**

This claim petition has been filed seeking the following reliefs:

*“(i) To set aside the order dated 23-12-2020, 05-01-2021 and 24-09-2021(Contained as annexure no.1) to the extent by which the illegal and arbitrary condition of lowering the seniority of the petitioners has been mentioned or in alternate pass any appropriate orders keeping in view of the facts highlighted in the body of the petition or mould the relief appropriately.*

*(ii) To issue suitable order or direction directing the respondents to consider the case of the petitioners for absorption in the Junior Engineer (Technical) cadre and treat them as Junior Engineer (Technical) and fix their seniority in the Junior Engineer (Technical) cadre pursuant to their appointment order no. 1459/28 Vygh-Samanya/2011 dated 08-10-2011 issued by the respondent no.3 or in alternate pass any appropriate orders keeping in view of the facts highlighted in the body of the petition or mould the relief appropriately.*

*(iii) To issue any other order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case.”*

2. Brief facts, according to the claim petition, are as below:

2.1 The Uttarakhand Public Service Commission (UKPSC) issued an advertisement on 07.02.2007 for combined Junior Engineer Selection Examination-2005 for the selection of Junior Engineers in different cadres of engineering field and also for different departments of the State of Uttarakhand. The petitioners appeared in the selection process and were declared successful in the final result issued by the UKPSC on 16.05.2011, in which, the names of the petitioners were shown at sl. No. 15,14,18 & 19 respectively. In this result, total 258 candidates were declared successful.

2.2 Feeling aggrieved by the selection of 258 candidates, despite 70 vacancies, some persons approached the Hon'ble High Court of Uttarakhand by way of filing writ petition "Bal Krishna and others vs. State of Uttarakhand and others". The Hon'ble Single Judge dismissed the writ petition on the ground of locus. Feeling aggrieved by the dismissal of the writ petition, the abovementioned persons filed Special Appeal No. 83 of 2011 "Bal Krishna and others vs. State of Uttarakhand and others". The Hon'ble Division Bench of the High Court of Uttarakhand allowed the special appeal and set aside the judgment of the Hon'ble Single Judge. The Hon'ble Court in its judgment and order dated 26-05-2011 observed the following findings in paragraph no. 8 which is quoted below:

*8. It has come to our knowledge that appointments, pursuant to the recommendations already made by the Commission, have not been accorded. We, accordingly, stay the appointment of 188 of such recommendees. It is made clear that it shall be open for the State to give appointment to 70 recommendees on 70 vacancies on the basis of their merit and in accordance with the reservation policy, as was originally advertised on 7th February, 2007. The Commission is directed to publish a fresh advertisement, indicating that during the recruitment year 1st July, 2006 to 30th June, 2007, 188 vacancies cropped up. In the advertisement, it must be indicated how many of those vacancies are reserved and for whom. After completing the process of selection of those people, who would be responding to the said advertisement, the Commission shall take into account their merit along with the merit of 188 people, who have already been recommended by the Commission and, thereafter, make a final recommendation to the State for appointment. It is made clear that if, after 1st July, 2007, any further vacancy has arisen, it shall be open for the State Government to give requisition therefor to the Commission in writing, but the same should be given before publication of the advertisement as above. The advertisement, to be published, must indicate that the people, who have already been recommended, shall also be entitled to participate in the new selection process for the purpose of improving their merit. We direct the above advertisement to be published as quickly as possible, but not later than three months from the date of service of a copy of this order upon the Commission.*

2.3 Pursuant to the above direction of Hon'ble High Court, the respondent department issued appointment orders to 70 candidates on the post of Junior Engineer (Civil) and 32 candidates on the post of Junior Engineer (Technical). The petitioners had given their first choice as Junior

Engineer (Civil) and second choice as Junior Engineer (Technical). They were given appointment on the post of Junior Engineer (Technical) vide O.M. dated 08.10.2011 and in this order, the name of the petitioner no. 1 is shown at serial no. 2, the name of the petitioner no. 2 is shown at serial no. 1, the name of the petitioner no. 3 is at serial no. 4 and the name of the petitioner no. 4 at serial no. 6. Between the petitioner no.1 to 4, the name of Mr. Rakesh Kumar (respondent no.4) was also shown at serial no. 3 on the basis of his second option and merit.

2.4 It is relevant to mention here that as per the advertisement, out of 70 posts of Junior Engineer (Civil), 60 Posts of Junior Engineer (Civil) were reserved for Schedule Caste and Schedule Tribe Category and only 10 posts of Junior Engineer (Civil) were available for General Category Candidates. Against 60 posts of Junior Engineer (Civil), the State Government issued appointment orders to the reserve category candidates and for remaining 10 posts of General Category the candidates who got higher merit i.e. from serial no.1 to 10 mentioned in the final result dated 16-05-2011 were given appointment on the post of Junior Engineer (Civil). The petitioners who were mentioned at the serial no. 15, 14, 18 and 19 were given appointment on the post of Junior Engineer (Technical) as per their second choice/option. It is also relevant to mention here that in the Junior Engineer (Technical) Cadre only 19 appointments were issued against the 32 vacancies because only 19 candidates had opted for Junior Engineer (Technical) cadre. That the petitioner who have given their second choice for Junior Engineer (Technical) Cadre were issued appointment orders as per the merit.

2.5 Pursuant to the appointment orders dated 08.10.2011, the petitioners joined on the post of Junior Engineer (Technical) in different divisions. After declaration of the result by the Public Service Commission pursuant to the new selection as per the direction of the Hon'ble Court for the remaining 188 posts of Junior Engineer (Civil), the respondents issued new appointment orders dated 01.08.2013 as per the revised merit for the

remaining 188 posts and forced the petitioners to join on the post of Junior Engineer (Civil) ignoring this fact that the petitioners were earlier given appointment on the post of Junior Engineer (Technical). The petitioners being obedient employees and having no choice complied with the directions of the superior authorities by making oral protest that the petitioners, in future, if they feel that they are not satisfied in Junior Engineer (Civil) Cadre, they shall give representation for changing their cadre.

2.6 The petitioners several times orally requested the authorities for change of their cadre from Civil to Technical pursuant to their earlier selection and joining pursuant to the requisition of 2005 but the respondent authorities every time only gave the assurance that when the department shall prepare the seniority list in Junior Engineer (Technical) Cadre then their case will be considered. The petitioners having no option believed on the assurance. The petitioners were very much surprised when they had knowledge of the tentative seniority list of Junior Engineer (Technical) which was issued by the department vide its letter no. 913/24 Viyagha -Sa/2016 dated 15-10- 2019 in which the similarly situated respondent no. 4, Mr. Rakesh Kumar has been shown at serial no. 3 who was also given appointment earlier on the post of Junior Engineer (Technical) along with the petitioners because in the final result dated 16-05-2011 of Junior Engineer (Civil), Mr. Rakesh Kumar was shown at serial no. 17 just above the petitioner no.3 and 4. But the respondent authorities by adopting pick and choose policy, did not change the cadre of the similarly situated person Mr. Rakesh Kumar after declaration of the result for 188 vacancies. This shows the nepotism and favoritism and also violates the article 14 and 16 to the Constitution of India.

2.7 The petitioners made representations in September 2020 to the official respondents to consider their case for absorption in the Junior Engineer (Technical) cadre and treat them as Junior Engineer (Technical) and fix their seniority in the Junior Engineer (Technical) cadre because the

petitioners earlier joined the service of Junior Engineer in Junior Engineer (Technical) Cadre as per their options and pursuant to office order no-1459/28 Vygh-Samanya/2011-dated 08-10-2011 issued by the respondent no.3. It is relevant to mention here that subsequent to the joining on the post of Junior Engineer (Technical), the petitioners were forced to join the post of Junior Engineer (Civil) by the respondent department vide office order no. 723/28 Vyagha-Samanya/13 dated 01-08-2013 after serving the department as Junior Engineer (Technical) for almost two years. The petitioners having no option and for complying the directions, had joined the services as Junior Engineer (Civil) by submitting oral objections. The petitioners came to know that the department has adopted pick choose policy when a tentative seniority list of Junior Engineer (Technical Cadre) was issued by the respondent no.2 on 18-08-2020 in which the name of Mr. Rakesh Kumar was shown at serial no. 69 and when this fact came in the knowledge of the petitioners then the petitioners immediately submitted representations to the respondent no.2 and requested that their cadre from Civil be changed to Technical in view of the fact that similarly situated person Mr. Rakesh Kumar is still discharging the duties in Technical Cadre.

2.8 When the official respondent did not decide the representations of the petitioner, the petitioners file Claim Petition no. 79/NB/DB/2020 before this Tribunal. The Tribunal vide order dated 23.11.2020 disposed of the claim petition by directing the respondents to decide the representations of the petitioners by reasoned and speaking orders. Thereafter, the respondent no. 2 vide orders dated 23.12.2020 and 05.01.2021 accepted the demands of the petitioners for absorption but deliberately put a condition that if the petitioners were absorbed in technical cadre then they shall be placed at the bottom of the seniority in technical cadre. The petitioners again submitted representations in July, 2021 and requested the respondent no.2 to remove the arbitrary condition and absorb them in technical cadre as per their initial

appointment and merit position because the person who is lower in merit position in the selection list of the UKPSC will become their senior.

2.9 Thereafter the respondent no.2 again in arbitrary and illegal manner rejected the representations of the petitioners on 24-09-2021 and again put the same condition that after their absorption their seniority will be placed at bottom by relying on the provision contained in Rule 14(B) and 15(A) of Financial Hand Book. The aforesaid reasoning of the respondent no.2 is not correct because when the petitioners initially joined in Junior Engineer (Technical) Cadre and thereafter they were compelled to join in Civil Cadre, their counterpart is still discharging the duties in Technical cadre and thus by absorption the petitioners will get the seniority above the person who was lower in the merit position in the selection list prepared by the Public Service Commission.

2.10 At present the petitioners are discharging the duties of Additional Assistant Engineer (Civil) but the similarly situated Engineer Mr. Rakesh Kumar is discharging the duties of Additional Assistant Engineer (Technical) despite the fact that the respondent no.2 vide its order no. 723 dated 01-08-2013 has issued the appointment to Rakesh Kumar on the post of Junior Engineer (Civil) and placed him at serial no. 23 on the selection list. This shows the act of the nepotism and favoritism, thus kind indulgence of this Hon'ble Court is required in the matter.

2.11 The petitioners joined the cadre of Junior Engineer (Civil) under oral protest. The petitioners after joining the post of Junior Engineer (Civil) regularly requested the authorities for changing the cadre from Civil to Technical because in the Civil cadre the promotional avenues are in dark and the similarly situated person Mr. Rakesh Kumar, who is admittedly junior to the petitioner no.1 and 2, is continuing on the post of Junior Engineer (Technical) and will get promotion in the Technical cadre earlier to the petitioners.

2.12 It is relevant to mention that on the objections of Smt. Sangeeta Dhanik, Junior Engineer (Technical) to tentative seniority list of Junior Engineer (Technical), a committee was constituted and the committee in its recommendations dated 19-09-2019 mentioned that in the Public Service Commission's recommendation dated 24-07-2013 there is no mention of cancellation/amendment of earlier recommendation dated 26-09-2011 of the Junior Engineer Technical which shows that the earlier recommendation of the Public Service Commission for appointment on the post of Junior Engineer Technical is still in force, meaning thereby that the petitioners are still in the cadre of Junior Engineer (Technical). Thus on this ground the case of the petitioners for changing of their cadre can be considered and they may be absorbed in the Junior Engineer (Technical) Cadre by retaining their seniority on the basis of the earlier appointment/selection.

Hence the claim petition.

3. Counter Affidavit has been filed on behalf of the respondents no. 2 & 3, to which, Rejoinder Affidavit has also been filed by the petitioners. Pursuant to a query of this Tribunal, Supplementary C.A. has been filed on behalf of the respondents no. 2 & 3.

4. The C.A. of respondents no. 2 & 3 briefly states the following:

4.1 The Chief Engineer and Head of the Department, Public Works Department vide office memo no. 1459/28 व्यघ-सामान्य/2011 dated 8-10-2011 issued appointment order to the candidates selected for the post of the Junior Engineer (Technical) wherein at Serial No. 1-the name of petitioner no. 2, Mr. Sandeep Prakash Dhasmana; at Serial No. 2-name of petitioner no. 1, Mr. Manish Verma; at Serial No. 3-name of Mr. Rakesh Kumar (respondent no. 4), at Serial No. 4-name of petitioner no. 3, Mr. Ravindra Singh Mehra and at Serial No. 6-name of petitioner no. 4, Mr. Vinod Chandra Pandey are mentioned who accordingly furnished their joining before the departmental authorities.



4.2 Pursuant to the recommendation as issued vide letter no. 106/12/ ई0-02(जे0ई0) 2011-12 dated 24-7-2013 by the Uttarakhand Public Service Commission for selection on the post of Junior Engineer (Civil) which was received vide letter no. 1691/11(1)/13-131 (अधि0) 06 टी0सी0 dated 31-7-2013 issued by the Government; the Chief Engineer & Head of the Department vide letter no. 723/28 व्यघ-सामान्य/13 dated 1-8-2013 issued appointment letter to the selected candidates for the post of Junior Engineer (Civil) wherein at Serial No. 18-name of petitioner no. 2, Mr. Sandeep Prakash Dhasmana; at Serial No. 19-name of petitioner no. 1, Mr. Manish Verma; at Serial No. 23-name of Mr. Rakesh Kumar (respondent no. 4); at Serial No. 24-name of petitioner no. 3, Mr. Ravindra Singh Mehra and at Serial No. 29-name of petitioner no. 4, Mr. Vinod Chandra Pandey are mentioned. Except Mr. Rakesh Kumar (whose name was mentioned at Serial No. 23) all the other selected candidates gave their joining to the authority concerned for the post of Junior Engineer (Civil).

4.3 The petitioners in their representations submitted in September/October, 2020 requested for providing seniority of the year 2011 on the post of Junior Engineer (Technical) [now Additional Assistant Engineer (Technical)] from the post of Junior Engineer (Civil) in Public Works Department before and after Mr. Rakesh Kumar, Additional Assistant Engineer (Technical) mentioned in the said seniority list of the year 2011, to the Chief Engineer and Head of the Department, Public Works Department, Dehradun. The aforesaid representations were considered and decided as per rules by the Chief Engineer & Head of the Department, P. W.D. vide letter dated 23-12-2020 mentioning therein that:-

“कनिष्ठ अभियन्ता (सिविल) के नियुक्ति के आदेशों के कम में आप द्वारा कनिष्ठ अभियन्ता (सिविल) के पद पर अपनी योगदान आख्या नहीं की जानी थी । चूँकि आप वर्ष 2013 में कनिष्ठ अभियन्ता (सिविल) के पद पर योगदान दिये जाने के फलस्वरूप वर्तमान में अपर सहायक अभियन्ता (सिविल) के पद पर योगदान दिये जाने के फलस्वरूप वर्तमान

में अपर सहायक अभियन्ता (सिविल) के पद तैनात हैं अतः ऐसी स्थिति में वर्ष 2011 से समान्तर मानते हुए कनिष्ठ अभियन्ता (प्राविधिक) के पद पर ज्येष्ठता प्रदान किया जाना सम्भव नहीं है। यदि उपरोक्त तथ्यों के दृष्टिगत आप कनिष्ठ अभियन्ता (प्राविधिक) के पद पर परिवर्तन के इच्छुक हैं तो आपके द्वारा अनुरोध पत्र नये सिरे से प्रस्तुत किया जाना होगा। उक्त के सम्बन्ध में यह भी उल्लेख किया जाना है कि कनिष्ठ अभियन्ता (प्राविधिक) के पद पर परिवर्तन करने के उपरान्त आपकी ज्येष्ठता वर्तमान समय में कार्यरत कार्मिकों से कनिष्ठतम निर्धारित की जायेगी।

अतः उपरोक्तानुसार आपके प्रत्यावेदनों का निस्तारण किया जाता है।

4.4 Pursuant to the order dated 23.11.2020 of this Tribunal, the petitioners' representations submitted in December, 2020 were decided by the Chief Engineer and HOD, PWD vide letter dated 05.01.2021 by a reasoned and speaking order. The petitioners have not been pressurized for joining on the post of Junior Engineer (Civil), but contrary to this, they joined on the post of Junior Engineer (Civil) while remaining on the post of Junior Engineer (Technical) as per their own wish. In case the petitioners were interested to remain on the post of Junior Engineer (Technical), then they were free not to furnish their joining report on the post of Junior Engineer (Civil) likely similarly situated employee Mr. Rakesh Kumar, Junior Engineer (Technical). As such the contentions of the petitioners to the effect that they were pressurized for furnishing their joining on the post of Junior Engineer (Civil) are made only to get undue benefit from the Tribunal.

4.5 As per the Lien Rules, the petitioners had an opportunity up till 02 years for returning back to the post of Junior Engineer (Technical), however, the petitioners at the relevant point of time under said Lien Rules have not furnished any application for returning back to the post of Junior Engineer (Technical). It is further submitted that prior to giving their joining on the new post of Junior Engineer (Civil), the petitioners neither submitted their resignation nor made request regarding grant of seniority on the basis of their lien on the previous post of Junior Engineer

(Technical). After a lapse of about 07 years, neither the petitioners have any lien on their previous post of Junior Engineer (Technical) nor it is possible to grant seniority to the petitioners as per the services rendered by them on the previous post of Junior Engineer (Technical). The seniority of the petitioners has been determined as per their joining over the new post of Junior Engineer (Civil) which, as per law is just and proper. As the petitioners had given their joining on the post of Junior Engineer (Civil), as such their lien on the post of Junior Engineer (Technical) automatically came to end.

4.6 Pursuant to the representations furnished by the petitioners in July 2021, the Chief Engineer & Head of the Department, Public Works Department Establishment, Group-D vide letter dated 24.09.2021 directed that:-

“आपके द्वारा पूर्व में प्रस्तुत किये गये प्रत्यावेदन क्रमशः दिनांक 18.09.2020 एवं 21.10.2020 दिनांक 10.09.2020, 20.10.2020, दिनांक 11.09.2020, 23.10.2020 एवं दिनांक 15.09.2020, 21.10.2020 जो कि कनिष्ठ अभियन्ता (प्राविधिक ) के पद पर वर्ष 2011 में ज्येष्ठता निर्धारण तथा तदनुसार अपर सहायक अभियन्ता (प्राविधिक) के पद पर प्रदान किये जाने हेतु किये गये अनुरोध के क्रम में प्रमुख अभियन्ता एवं विभागाध्यक्ष लो०नि०वि० के पत्र सं० 732/24 व्यध-सामान्य/16 दिनांक 23.12.2016 द्वारा आपके द्वारा प्रस्तुत प्रत्यावेदनों का बिन्दुवार निस्तारण किया गया है । आपके उपरोक्त सन्दर्भ में अंकित प्रत्योवेदन जो कि कनिष्ठ अभियन्ता (प्राविधिक) के पद पर ज्येष्ठता के निर्धारण के सम्बन्ध में है में ऐसे किसी नवीन तथ्यों का उल्लेख नहीं किया गया है तथा प्रत्यावेदन में उल्लिखित तथ्य वहीं हैं जो पूर्व प्रत्यावेदनों में उल्लेख किये गये थे। उक्त के अतिरिक्त यह भी अवगत कराना है कि कनिष्ठ अभियन्ता (सिविल) से कनिष्ठ अभियन्ता (प्राविधिक) के पद पर पुनः ज्येष्ठता निर्धारण हेतु वित्तीय नियम संग्रह के नियम 14 (ख) एवं नियम 15 (क) के प्राविधानों के अन्तर्गत लियन परिवर्तन किये जाने के पश्चात ही ज्येष्ठता निर्धारण किया जाना सम्भव होगा।

इस प्रकार आपके द्वारा प्रस्तुत प्रत्यावेदन पत्र क्रमशः 21.07.2021, प्रत्यावेदन दिनांक 22.07.2021 प्रत्यावेदन दिनांक 21.07.2021 तथा प्रत्यावेदन दिनांक 23.7. 2021 ग्राह्य योग्य नहीं होने के कारण कनिष्ठ अभियन्ता प्राविधिक की अंतिम ज्येष्ठता सूची में अंकित श्री राकेश कुमार, कनिष्ठ अभियन्ता (प्राविधिक) जो कि वर्तमान में अपर सहायक अभियन्ता (प्राविधिक) के पद पर कार्यरत हैं, से उपर एवं उनके उपरान्त ज्येष्ठता निर्धारण किया जाना सम्भव नहीं है ।”

5. The petitioners in their Rejoinder Affidavit, besides reiterating certain averments to the claim petition have mainly stated the following:

5.1 The respondents cannot disturb the undisputed accepted seniority by their arbitrary decision. The petitioners from the date of first appointment, possess all the qualification and right on the post of Junior Engineer (Technical) and they cannot be deprived of the same merely on the basis that they have given joining report on the post of Junior Engineer (Civil).

5.2 Vide appointment letter dated 08.10.2011, the petitioners were selected on the post of Junior Engineer (Technical) and in compliance of the same, they had assumed the charge of Junior Engineer (Technical). Surprisingly, for the new selection on the remaining 188 posts of Junior Engineer (Civil) according to the directions of Hon’ble High Court, the official respondent forced the petitioners to join on the post of Junior Engineer (Civil).

5.3 The petitioners had joined properly on the post of Junior Engineer (Technical) according to the O.M. dated 08.10.2011 and continuously for two years had given their services on the post of Junior Engineer (Technical) without any complaint. After the declaration of the result in 2013, on the basis of the merit and first option, the petitioners were forced to join on the post of Junior Engineer/Additional Assistant Engineer (Civil) after relieving them from the post of Junior Engineer/Additional Assistant Engineer (Technical), while similarly placed

Sri Rakesh Kumar(respondent no. 4) did not join on the post of Junior Engineer/Additional Assistant Engineer (Civil), no action has been taken against him and his position has been given as such, which is cheating and grave injustice to the petitioners. Presently when the posts of Junior Engineer/Additional Assistant Engineer (Technical) are vacant in the department and the petitioners after having been initially appointed on those posts when they are representing to be kept on the vacant posts of Junior Engineer/Additional Assistant Engineer (Technical), the decision of the official respondents to lower them their seniority is obviously illegal and unjustified. The respondents have not considered the ill-effect on the seniority and future of the petitioners.

6. In the Supplementary C.A., the respondents no. 2 & 3 have mainly stated the following:

6.1 The petitioners and respondent no. 4 had earlier been selected on the post of Junior Engineer (Technical) in the joint Junior Engineer Selection Examination-2005 in 2011 and they had joined on the post of Junior Engineer (Technical) at that time. According to the Joint Junior Engineer Selection Examination-2011, the petitioners and respondent no. 4 were selected on the post of Junior Engineer (Civil) in 2013, according to which, the appointment orders of the selected candidates on the post of Junior Engineer (Civil) were issued vide letter dated 01.08.2013. This letter dated 01.08.2013 of the Chief Engineer and HOD, Public Works Department was not binding. The statement of the petitioners that they were forced to join on the post of Junior Engineer (Civil) from the post of Junior Engineer (Technical) is baseless and is given to mislead the Tribunal. If the aforesaid appointment order was binding, the respondent no. 4 would also have submitted his joining report on the post of Junor Engineer (Civil). It is to submit before the Tribunal that the petitioners have joined on the post of Junior Engineer (Civil) on their own will, seeing their benefit on the post of Junior Engineer (Civil). The petitioners have been promoted from the post of Junior Engineer (Civil) to the post of Additional Assistant

Engineer (Civil) and are presently working on the post of Additional Assistant Engineer (Civil).

6.2 It is to submit before the Tribunal that final seniority list of Junior Engineer (Technical) Cadre has been issued in the year 2019 in which, the name of respondent no. 4 figures. Similarly, the final seniority list of Junior Engineer (Civil) Cadre has been issued in 2019 in which the names of the petitioners are there, according to the seniority received from the UKPSC. Different cadres have separate seniority lists. The petitioners after being selected on the post of Junior Engineer (Civil) on the basis of joint Junior Engineer Selection Examination-2011 and after relinquishing the post of Junior Engineer (Technical) and joining on the post of Junior Engineer (Civil) are working as such since the year 2013, have been included in the seniority list of Junior Engineer (Civil) while the respondent no. 4 has been working on the post of Junior Engineer (Technical) on the basis of Joint Junior Assistant Selection Examination 2005 and, therefore, his seniority has been shown under the seniority list of Junior Engineer (Technical). The petitioners do not retain any lien on the post of Junior Engineer (Technical). If they want now to change to the post of Junior Engineer (Technical) then only after the change of lien according to the provisions of Rule 14 (B) and Rule 15(A) of the Financial Hand Book, it shall be possible to fix their seniority. It has further been stated the claim petition has been filed on baseless and misleading facts and deserves to be dismissed.

7. After hearing learned Counsel for the parties and perusal of the record, the Tribunal observes the following:-

(i) The first choice/option of the petitioners was for the post of Junior Engineer (Civil) and the second choice/option was for the post of Junior Engineer (Technical). According to the appointment order dated 08.10.2011, they were posted as Junior Engineer (Technical) on the basis of their second choice/option. The case of the respondent no. 4 is also

similar. According to the appointment order dated 01.08.2013, the petitioners as well as respondent no. 4 were again posted as Junior Engineer (Civil) as their first choice (option) was for Junior Engineer (Civil) and they could not get the post of Junior Engineer (Civil) earlier because of the limited numbers of vacancies of the post of Junior Engineer (Civil). The petitioners pursuant to the appointment orders dated 01.08.2013 joined on the post of Junior Engineer (Civil) but respondent no. 4 did not do so and continued to work on the post of Junior Engineer (Technical).

(ii) There was no pressure on the petitioners to join on the post of Junior Engineer (Civil) and they could have chosen to continue on the post of Junior Engineer (Technical) as was done by the respondent no. 4. Their alleged oral protest to the posting as Junior Engineer (Civil) is not believable as they never gave any written representations regarding the same till the year 2020 and in between they have also been promoted to the post of Additional Assistant Engineer (Civil). There is no written request or representation from their side to retain their lien in the Junior Engineer (Technical) cadre, nor they have demanded to be promoted as Additional Assistant Engineer (Technical) when such promotions were being made. Therefore, the Tribunal holds that the petitioners joined on the post of Junior Engineer (Civil) according to their own will and the civil cadre was their first choice and option right from the beginning.

(iii) In the UKPSC result declared in May, 2011, had the petitioners been further higher in merit, they would have been posted as Junior Engineer (Civil) in the year 2011 itself on the basis of their first choice/option and the occasion of their joining in the technical cadre for some time would not have arisen at all. Even then, the contention of the petitioners about better promotional avenues for the technical cadre would have remained the same, meaning thereby, that persons simultaneously appointed in the technical cadre like respondent no. 4 will get earlier promotion than the persons appointed in the Civil Cadre, though their merit position,

according to the UKPSC result could have been lower as compared to the appointees in the Civil Cadre.

(iv) The Tribunal holds that the petitioners voluntarily, without any pressure, gave up the technical cadre and joined the Civil Cadre. Different cadres have different seniority lists and on the basis of having worked earlier in the Technical Cadre between 2011-2013, the petitioner cannot claim to have maintained any lien in the technical cadre. The official respondents are still willing to allow them to join in the technical cadre. Such option is understandably available to the other Junior Engineers (Civil) also who may want to join the technical cadre subject to the number of vacancies in the technical cadre. Apart from the provisions of the Financial Hand Book, natural justice also requires that such persons who are allowed to willingly change their cadre should be placed below in the seniority list to the persons who are already working in that cadre.

8. In view of the above, the Tribunal finds no infirmity in the impugned orders and holds that the petitioners are not entitled to any reliefs.

9. The claim petition is, accordingly dismissed. No order as to costs.

**(RAJENDRA SINGH)**  
VICE CHAIRMAN(J)

**(RAJEEV GUPTA)**  
VICE CHAIRMAN (A)

*DATE: AUGUST 24, 2023*

*DEHRADUN*

*KNP*