

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

Present: Hon'ble Mr. Justice U.C. Dhyani

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

**Claim Petition No. 23/NB/DB/2022**

1. Deepak Verma, aged about 45 years, s/o Sri Chiranji Lal Verma, presently posted as Accountant (Cash), Treasury, Pithoragarh.
2. Manoj Kumar Maleta, aged about 45 years, s/o Sri Jagdish Prasad Maleta, presently posted as Accountant (Cash), Treasury, Rudraprayag.

.....Petitioners

versus

1. State of Uttarakhand through Secretary, Finance, Government of Uttarakhand, Secretariat Complex, Subhash Road, Dehradun.
2. Director, Treasury, Pension and Entitlements, Uttarakhand, 23, Laxmi Road, Dalanwala, Dehradun.

..... Respondents

Present: Sri Shivanand Bhatt, Advocate, for the Petitioner  
Sri Kishore Kumar, A.P.O. for the Respondents

**AND**

**Claim Petition No. 31/NB/DB/2022**

Pawan Kumar, aged about 42 years, s/o Sri B.L. Makhanwal, presently posted as Accountant (Cash) Sub Treasury, Jakholi, District Rudraprayag.

.....Petitioner

versus

1. State of Uttarakhand through Secretary, Finance, Government of Uttarakhand, Secretariat Complex, Subhash Road, Dehradun.
2. Director, Treasury, Pension and Entitlements, Uttarakhand, 23, Laxmi Road, Dalanwala, Dehradun.
3. Govind Singh Manral, presently posted as Accountant (Cash), Treasury, Almora.
4. Harish Chandra Pant, presently posted as Accountant (Cash), Treasury, Pithoragarh.
5. Naresh Chandra Joshi, presently posted as Accountant (Cash), Treasury, Udham Singh Nagar.
6. Prem Chandra Pandey, presently posted as Accountant (Cash), Treasury, Bageshwar.
7. Deepak Chandra Rai, presently posted as Accountant (Cash), Treasury, Pithoragarh.
8. Harish Chandra Joshi, presently posted as Accountant (Cash), Treasury, Bageshwar.
9. Budhi Prakash Jagudi, presently posted as Accountant (Cash), Treasury, Uttarkashi.
10. Patalya Singh Negi, presently posted as Accountant (Cash), Treasury, Pauri.
11. Rajendra Prasad, presently posted as Accountant (Cash), Treasury, Pithoragarh.
12. Nandan Singh Bhakuni, presently posted as Accountant (Cash), Treasury, Champawat.
13. Karun Verma, presently posted as Accountant (Cash), Treasury, Champawat.
14. Nazakat Hussain, presently posted as Accountant (Cash), Treasury, Udham Singh Nagar.
15. Sudhir Sharma, presently posted as Accountant (Cash), Treasury, Almora.
16. Shakeel Ahmad, presently posted as Accountant (Cash), Treasury, Almora.
17. Balveer Singh Negi, presently posted as Accountant (Cash), Treasury, Tehri.

.....Respondents

Present: Sri Shivanand Bhatt, Advocate, for the Petitioners  
Sri Kishore Kumar, A.P.O.  
for the Respondents No. 1 and 2  
Sri Harish Adhikari, Advocate, for the Respondent No. 6

**Judgement**

**Dated: 04<sup>th</sup> September, 2023**

**Justice U.C. Dhyani (Oral)**

Since the factual matrix of the above noted claim petitions and law governing the field are the same, therefore, both the claim petitions are being decided together by a common judgement and order for the sake of brevity and convenience.

2. Claim Petition No. 23/NB/DB/2022, Deepak Verma and another vs. State of Uttarakhand and others, shall be the leading case.

3. Claim petition was taken up for admission on 18.04.2022. The same was found to be within time. It was admitted. Notices were issued to the respondents. Learned A.P.O., on that date, submitted that the petitioner should array those persons as party respondents over whom they claim seniority. Petitioners were directed to implead those persons above whom they claim to be senior. A week's time was granted to move amendment application. It was provided, as interim measure, that further promotions, if any, shall be subject to the final decision of the claim petition. Impleadment application was filed on behalf of the petitioners for impleading Sri Rajendra Prasad and others, as party-respondents no. 3 to 14. Amendment application was allowed. Notices were issued to the newly added respondents. None appeared for them despite service of notices (except for respondent no. 6 in connected claim petition no. 31/NB/DB/2022, Pawan Kumar vs. State of Uttarakhand and others). Service Report has been filed by the registry of the Tribunal.

4. By means of present claim petitions, the petitioners seek the following reliefs in both the cases:

"(i) Set-aside the impugned office memorandum no. 98/16(4)/ *ko. ni./ Lekhakar (Rokad)/ varishthta* 2020-21 dated 05.04.2022 issued by respondent no. 2 alongwith final seniority list of the year 2021-22 (Annexure No. 1 to the claim petition).

(ii) Direct the respondent no. 2 to include the names of the petitioners as per their seniority mentioned in the tentative list of 2018, in the impugned final list of the year 2021-22 prepared by the respondent no. 2 (Annexure No. 1 to this claim petition).

(iii) Direct the respondents not to hold DPC/ not to make any promotions pursuant to the impugned seniority list dated 05.04.2022 till the final disposal of present claim petition.

(iv) Issue any other suitable order or direction in favour of petitioners, which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.

(v) Award cost of claim petition in favour of the petitioners."

5. Brief facts, giving rise to present claim petition, are as follows.

5.1 Petitioners were initially appointed as Assistant Cashier in the Treasury and Finance Services of the erstwhile State of Uttar Pradesh. Thereafter, their services were finally allocated to the State of Uttarakhand. After completion of about five years of satisfactory services, the petitioners were given first promotion to the post of Assistant Accountant. As per the placement of seniority of the petitioners, they were entitled to get promotion on the post of Accountant *w.e.f.* 2007 but as the post of Accountants were not available therefore, in the circumstances, a G.O. dated 26.05.2000 was issued whereby it was decided that the incumbents serving as Assistant Accountant who became eligible to get promotion on the post of Accountant would be provided the benefit of pay scale of the promotional post. The aforesaid benefit of promotion was not meant as a regular promotion. Said benefits did not entitle an incumbent to claim seniority from the date of such benefit. Rather the benefit of seniority on the post of Accountant was to be seen

from the date of regular promotion. Furthermore, the said G.O. provided the method of extending benefit of grant of pay scale of the post of Accountant in the event of non-availability of the post. The said benefit was decided to be given as per the ratio of 80:20 i.e. 80% from Accountant (Cash) and 20 % from Assistant Accountant. In this regard, a G.O. was issued on 26.05.2000, in which the situation was clarified. Copy of G.O. dated 26.05.2000 has been filed as Annexure No. 2 to the claim petition.

5.2 Thereafter, the petitioners were given regular substantive promotion to the post of Accountant (copy: Annexure No. 3). Seniority list of the employees in the respondent department is governed by Uttarakhand Treasury Subordinate Grade Service Rules, 2013 and Uttarakhand Government Servants Seniority Rules, 2002 (copy of the Service Rules of 2013: Annexure No. 4).

5.3 In the year 2013, respondents issued tentative seniority list on district wise basis of the Accountants. One Sri Pawan Kumar filed his objection against the tentative seniority list of the year 2013 and said objection was registered by the department. Final seniority list was issued. Being aggrieved against the same, Sri Pawan Kumar preferred writ petition no. 1413 (S/S) of 2014 before the Hon'ble High Court, which was disposed of vide order dated 21.12.2017 by directing that the representation be decided in accordance with Uttarakhand Treasury Subordinate Grade Services (Amendment) Rules, 2013 (copy of order dated 21.12.2017: Annexure No. 5).

5.4 Thereafter, in compliance of the above order dated 21.12.2017, the respondents issued office memorandum dated 12.11.2018 by which the fresh tentative seniority list was issued in which the petitioners names figured at serial no. 4 and 17 respectively (copy of office memorandum dated 12.11.2018: Annexure No. 5).

5.5 The aforesaid placement of the petitioners in tentative seniority list was absolutely correct and was in consonance with Uttarakhand Treasury Subordinate Grade Services (Amendment) Rules, 2013 and their placement deserved to be confirmed in the final seniority list. However, instead of issuing final seniority list, the respondents again issued an office memorandum dated 18.11.2021 and circulated a further tentative seniority list of the year 2021 in which the names of the petitioners were not included (copy of office memorandum dated 18.11.2021: Annexure No. 7). Against the aforesaid tentative list issued on 18.11.2021, petitioners preferred their detailed objections (copy of objections: Annexure No. 8). Without considering the objections of the petitioners, the respondents issued impugned final seniority list in which, arbitrarily, the names of the petitioners have been excluded. This has been mentioned in para 13 of the claim petition. According to the petition, the impugned action of respondent no. 2 while issuing the impugned memorandum is illegal and arbitrary and is not sustainable in law.

5.6 As per the relevant service rules issued from time to time for the promotion to the post of Sub Treasury Officer (Cash) from the post of Accountant, a State Level seniority list should be prepared on the basis of substantive appointment (*Maulik Niyukti*) and not from the date when the promotional pay scale was granted to the employees concerned. This has been stated by the petitioners in para 15 of the petition.

5.7 Letter dated 16.08.2011 issued by the Director, Treasury & Finance and G.O. dated 23.09.2021 (para 2) also state that the substantive appointment of the Accountants promoted on the basis of the ratio of 80:20 will be treated from the date of original (substantive) promotion on the said post i.e. date of order when they were actually promoted and given the charge/ designation of the post (copies of letter issued by Director, Treasury & Finance and G.O. dated 23.09.2021: Annexure No. 9).

5.8 G.O. dated 26.05.2000 also provides that the seniority list of the Accountants should be prepared on the basis of original/ substantive promotion/ appointment on the post. While issuing the impugned final seniority list, the respondents failed to consider the objections of the petitioners against the tentative seniority list dated 18.11.2021 and also did not consider that in the earlier tentative list, which was issued in accordance with the Rules of 2013 and direction issued by the Hon'ble High Court, the petitioners were placed in their respective place of seniority but illegally the names of the petitioners have been excluded from the impugned seniority list. This has been categorically stated by the petitioners in para 18 of the petition.

5.9 Since the Accountants, who were promoted on the basis of 80:20 ratio were extended the substantive appointment/ promotion on the post of Accountant after the petitioners who were substantively appointed/ promoted prior to them but the respondents have placed such Accountants promoted on the basis of 80:20 ratio above the petitioners in the seniority list by wrongly treating them to be inducted in cadre from the date when they got promotional pay scale. However, they have been substantive/ originally promoted much later than the petitioners, therefore the petitioners are entitled to be placed above them in the seniority list. This has been mentioned in para 19 of the claim petition.

5.10 G.O. dated 26.05.2000 clearly provides that the incumbent who got the promotional scale on the basis of ratio of 80:20 will not automatically get the promotion. Rather, such incumbent will be granted the benefit of seniority only from the date when he is substantively/ originally appointed/ promoted but the respondents have violated this provision and held the Accountants promoted *via* 80: 20 ratio senior to the petitioners, who were substantively promoted prior to the said incumbents.

5.11 In para 21 of the petition, it has been mentioned that Rule 5 (d) of the Uttarakhand Treasury Subordinate Grade Services

(Amendment) Rules, 2013, clearly stipulates that for the promotion on the post of Sub Treasury Officer, only substantively appointed/promoted Accountants, who have completed their five years services will be entitled, as such the promotion is strictly to be made considering the seniority from the date of substantive/original appointment/ promotion. In the instant case, respondents have grossly violated Rule 5(d) of the Rules of 2013 and also the act of respondents is contrary to the directions issued by Hon'ble High Court in WPSS No. 1413 of 2013, Pawan Kumar vs. State and others, whereby the Hon'ble Court *vide* order dated 21.12.2017 directed the matter to be decided in accordance with the Rules of 2013.

5.12 Impugned action of respondent no. 2, if allowed to stand, would occasion gross failure and miscarriage of justice to the petitioners.

6. It is the submission of learned Counsel for the petitioners that the petitioners have filed present claim petition by challenging arbitrary and illegal action of respondent no. 2 by which office memorandum dated 05.04.2022 whereby the final seniority list of the year 2021-22 has been issued and the names of the petitioners have wrongly been placed in the aforesaid final list while tentative list of the year 2018, the names of the petitioners figured in the list and simultaneously while issuing the seniority list, the objections of the petitioners have been rejected (copy of impugned office memorandum dated 05.04.2022 issued by respondent no. 2 along with final seniority list of the year 2021-22 has been filed as Annexure No. 1 to this claim petition. In a nutshell, the final seniority list dated 05.04.2022 issued by respondent no. 2 (Annexure No. 1) is under challenge in present claim petition.

7. Relevant documents have been filed by the petitioners in support of the averments contained in the claim petition.



8. The respondents have contested the claim petition. Respondent No. 2 has filed detailed counter affidavit along with relevant documents in support of respondents' version. C.A. has been filed by Sri Pankaj Tiwari, Director, Treasury, Pension and Entitlement, Uttarakhand, Dehradun.

9. In the detailed C.A., supported by documents, it has been mentioned, among other things, that the impugned final seniority list has rightly been issued and therefore, the claim petition is liable to be dismissed.

10. In the C.A. detailed reasons have been given, in different paragraphs, to justify the departmental action, whereby the final seniority list was issued, contrary to petitioners' version. In para 6 of the C.A., a reference of G.O. dated 23.09.2021 has been given in which detailed instructions were given as regards the seniority of Accountants of the Treasury. In sub para (2) of para 6 of the C.A., again, while giving reference of G.O. dated 23.09.2021, it has been stated that directions were issued that if any employee has objections against the seniority list, then he may file representation through senior Treasury Officer of the concerned district by 06.12.2021. An employee is not entitled to file the representation directly. Such representations were to be filed against the tentative seniority list. It has been mentioned in para 3 of the C.A. that Sri Deepak Verma and Sri Manoj Kumar filed their representations against the tentative seniority list of 2021. In para 4 of the C.A., it has been mentioned that the said representations were decided on merits on the basis of letter dated 23.09.2021 (para 3 of letter dated 18.11.2021 of the office memorandum issued by the Directorate of Treasury). In such para, it has been mentioned that the objections filed by the employees did not carry any force in view of para 3 of letter dated 23.09.2021 issued by the Directorate [Note: The objections or representations of the petitioners were not decided on merits. Instead, they were deemed to have been rejected (deemed rejection) under para 3 of the directions dated 23.09.2021 issued by the Directorate].

10.1 In subsequent paragraphs of the C.A., an effort has been made, on behalf of the respondents, to hold that the impugned order (Annexure No. 1) has rightly been issued.

11. Rejoinder affidavit thereto has been filed on behalf of the petitioners on 30.06.2022, with the affidavit of the first petitioner. In para 4 of the R.A., it has been stated that respondent no. 2 has wrongly placed the petitioners in the final seniority list and the juniors to the petitioners have been placed above. The place of the petitioners in the tentative seniority list has arbitrarily been altered. In para 5 of the R.A., it has been mentioned that the Accountants, who were appointed on the basis of 80:20 ratio, with no statutory backing, were extended the substantive appointment/ promotion as Accountant after the petitioners, who were substantively appointed/ promoted prior to them, but the respondents have placed such Accountants promoted on the basis of 80:20 ratio above the petitioners in the seniority list by wrongly treating them to be inducted in the cadre from the date when they got promotional pay scale. However, they were substantively promoted much later than the petitioners, therefore, the petitioners are entitled to be placed above them in the seniority list.

11.1 The benefit of seniority on the post of Accountant can only be determined from the date of regular promotion i.e. an incumbent can be granted seniority when he is actually inducted in the cadre. The basic principle has not been followed by the official respondents while issuing the impugned seniority list. There is difference in giving promotional pay scale and substantive appointment on the promotional post. The petitioners were rightly placed in the tentative seniority list, which was prepared as per the mandate of Hon'ble Court and their placement in the tentative list was in accordance with the Rules of 2013.

11.2 Against the seniority list issued on 18.11.2021, the petitioners moved their detailed objections but the same were not considered by the respondents as per law. Without considering the

objections of the petitioners, official respondents issued impugned final seniority list in erroneous manner. It has clearly been mentioned in para 11 of the R.A. that the Accountants, who were promoted on the basis of ratio of 80:20 were extended the substantive appointment/ promotion on the post of Accountant, after the petitioners, who were substantively appointed/ promoted before them but the respondents have placed such Accountants promoted on the basis of 80:20 ratio above the petitioners in the seniority list by wrongly treating them to be inducted in the cadre from the date when they got promotional pay scale. However, they were substantively promoted much later than the petitioners therefore, the petitioners are entitled to be placed above them in the seniority list. The benefit of the seniority on the post of Accountant can only be determined from the date of regular promotion i.e. an incumbent can be granted seniority when he is actually inducted in the cadre. The basic principle has not been followed by the respondents while issuing the impugned seniority list. The petitioners were rightly placed in the tentative seniority list and their placement in the tentative seniority list was in accordance with the Rules of 2013.

11.3 In para 12 of the R.A., it has been stated that the respondents did not utter single word about circular dated 16.08.2011 (Annexure No. 8 of the claim petition), which states that the seniority will be given from the date when the incumbent is given charge/ designation and not from the date of grant of pay scale of such post. It has further been mentioned in such para (12) that the official respondents, on 21.06.2022, passed order of promotion on the basis of impugned seniority list (copy of order dated 21.06.2022: Annexure RA1).

12. *Vide* order dated 08.07.2022 service of notices upon private respondents no. 3 to 14 was deemed 'sufficient'. There was no representation for the private respondents. It was observed, on 01.08.2022 itself, that if the private respondents or any of them do not appear on the next date, the petition shall proceed *ex-parte*

against them. None of the private respondents have filed counter affidavit(s). Sri Harish Adikari, Advocate, appeared for respondent no. 6 in connected claim petition (31/NB/DB/2022) and stated that the private respondent no. 6 is adopting the same counter affidavit which has been filed on behalf of the official respondents.

13. It is the submission of Sri Shivanand Bhatt, learned Counsel for the petitioners that in the earlier round of litigation before the Hon'ble High Court, the Court had directed the respondents to prepare the seniority list in accordance with the Rules of 2013. Sri Bhatt further submitted that the respondents had although prepared tentative seniority list as per the Rules of 2013 but that tentative seniority list was not made final. Although it was written in the tentative seniority list prepared by the respondents that the same was in compliance of the Hon'ble Court's order but the tentative seniority list was not made absolute. Sri Bhatt also submitted that the final seniority list should have been prepared on the basis of tentative seniority list prepared by the respondents as per the directions of the Hon'ble High Court. Sri Bhatt further apprised the Tribunal that when the letter of Sri Devendra Paliwal, Additional Secretary to the Govt. in Finance Department, reached the Directorate, the Directorate not only prepared erroneous tentative seniority list but the final seniority was prepared on the basis of tentative seniority list also which is against law. Sri Bhatt also submitted that Sri Devendra Paliwal, Additional Secretary's communication is a letter sent to the Directorate, Treasury, it is not a Govt. Order. Moreover, the letter or even if it was a G.O. cannot supersede the statutory Rules or Rules framed under Article 309 of Constitution of India. It was also informed to the Bench that the Rules of 2013 have been enclosed with the petition.

14. Sri Bhatt, learned Counsel for the petitioner therefore submitted that a direction be given to the respondents to prepare the seniority list on the basis of Rules of 2013, which was the direction of Hon'ble High Court also. Instead of preparing the

seniority list on the basis of the directions of the Hon'ble Court, the respondents have prepared the seniority list on the basis of a letter written by the Additional Secretary to the Govt., which is contrary to law. Sri Bhatt also submitted that the Rules of 2013 provide that seniority list of the Accountants is to be prepared on the basis of dates of substantive appointment of such Accountants. If this rule is to be followed then the petitioners are senior to the private respondents, who have although been served with the notices but have not contested the claim petition except respondent no. 6, who is represented by Sri Harish Adhikari, Advocate who submitted that he is adopting the same C.A. which has been filed by the official respondents in *Pawan Kumar's claim petition*. Sri Bhatt also apprised the Tribunal that the Rules of 2013 were amended in the year 2015 and they are, in fact, the rules governing the field. Learned Counsel for the petitioner, therefore, prayed that the respondents be directed to prepare the seniority list on the basis of the Rules of 2013, which exercise was done by the official respondents earlier by preparing the tentative seniority list, but that was never made final. Instead, they took a u-turn by preparing tentative seniority list on the basis of a letter written by Additional Secretary, Finance, to the Director, Treasury. Not only the tentative seniority list was prepared, the final seniority list was also prepared on the basis of such illegal tentative seniority list, which is under challenge in the claim petition. Sri Bhatt, learned Counsel for the petitioner, therefore, submitted that impugned seniority list (Annexure No. 1) should be set aside by directing the respondents to prepare the seniority list on the basis of the Rules of 2013.

15. Learned A.P.O., on the other hand, submitted that he is adopting the same line of arguments which is advanced by the department while filing the counter affidavit. Every effort has been made in the C.A. filed by the official respondents to justify the departmental action, which is under challenge in present claim petition.

16. Since private respondent no. 6 has adopted the same W.S., which has been filed on behalf of the official respondents, therefore, the Tribunal observes that Sri Adhikari adopted the same line of arguments which has been taken by the official respondents in their C.A., which has been echoed by learned A.P.O. before the Tribunal.

### **MANDATE OF THE HON'BLE HIGH COURT**

17. The decision rendered by Hon'ble High Court of Uttarakhand on 21.12.2017 in WPSS No. 1413 of 2014, Pawan Kumar vs. State of Uttarakhand and others, is reproduced herein below for convenience:

“Mr. Shivanand Bhatt, Advocate for the petitioner.

Mr. Tej Singh Bisht, Dy. Advocate General with Mr. Devesh Ghildiyal, Brief Holder for the respondent State.

By means of present writ petition, the petitioner seeks following reliefs, among others:

(i) Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 26.08.2014 (Annexure 5) and impugned final seniority list (Annexure 6) so far it ignores the regular promotion extended to the petitioner on the post of Accountant w.e.f. 25.06.2008.

(ii) Issue a writ, order or direction in the nature of mandamus directing the respondents to place the petitioner in the seniority list considering his regular promotion on the post of Accountant w.e.f. 25.06.2008 and deal the matter of seniority of petitioner in accordance with Uttarakhand Treasury Subordinate Service Grade Service Rules 2013 and Uttarakhand Government Servant Seniority Rules, 2002.

After arguing the writ petition at some length, learned counsel for the petitioner confined his prayer only to the extent that his representation may kindly be directed to be decided by respondent no. 2, as per rules contained in Uttarakhand Treasury Subordinate Grade Services (Amendment) Rules, 2013, at an early date.

The prayer made by learned counsel for the petitioner is worth accepting.

Learned counsel for the respondent State has no objection to such an innocuous prayer.

Writ petition is disposed of by directing respondent no. 2 to decide the representation, to be filed by the petitioner, in accordance with law,

as per rules contained in Uttarakhand Treasury Subordinate Grade Services (Amendment) Rules, 2013, within a period of four weeks of presentation of certified copy of this Order along with a copy of such representation.

Needless to say that the decision so taken shall be communicated to the petitioner.”

## **PART COMPLIANCE**

18. Learned Counsel for the petitioner submitted that the tentative seniority list was issued in compliance of the orders of the Hon'ble Court. It is also the submission of Sri Bhatt that although tentative seniority list was issued in compliance of the orders of the Hon'ble Court, but final seniority list was not issued thereafter.

## **RESPONDENT DEPARTMENT TAKING U-TURN**

19. The respondent no. 2 has prepared the final seniority list on the basis of letter dated 23.09.2021 issued by Additional Secretary to the Govt. in Finance Department. It is submitted on behalf of respondent no. 2 that respondent no. 2 had no option but to follow the directions issued by respondent no. 1. In reply, learned Counsel for the petitioner submitted that the Rules of 2013 govern the field and therefore, instead of relying upon any letter etc. the official respondents ought to have followed the directions of Hon'ble High Court and the statutory Rules made in this behalf, known as Uttarakhand Treasury Subordinate Grade Service (Amendment) Rules, 2013.

## **RULE POSITION**

20. The Uttarakhand Treasury Subordinate Grade Service (Amendment) Rules, 2013 govern the field. It clearly provides that promotion to the post of Assistant Treasury Officer/ A.T.O. (cash) shall be done from amongst those substantively appointed Accountants/ Accountants (cash) (dead cadre), who have completed at least five years on such post on the first date of the year of recruitment, on the basis of seniority subject to rejection of unfit.

## **FOLLOW UP AND SUBSEQUENT U-TURN**

21. It is thus clear that the Hon'ble High Court *vide* order dated 21.12.2017 directed respondent no. 2 to decide the representation of the petitioner in accordance with law as per Rules contained in Uttarakhand Treasury Subordinate Grade Service (Amendment) Rules, 2013. The same was followed by the respondent department by preparing tentative seniority list but the respondent department took u-turn by deciding the objections/representations of the petitioners in the light of letter dated 23.09.2021 of the Additional Secretary to the Govt. in the Finance Department.

## **INFERENCE**

22. It, therefore, follows that the order of the Hon'ble High Court was not followed by the respondent department in letter and spirit while deciding the seniority of the petitioners *vis-a-vis* private respondents. The same should have been complied with by them. A perusal of office memorandum dated 05.04.2022 (Annexure No. 1) will reveal that the objections/representations of the petitioners have been decided by an *omnibus* order and by simply taking the stand that their objections are not sustainable in the light of letter dated 23.09.2021 of the Additional Secretary to the Govt. in the Finance Department. The same is not proper. A reasoned and speaking order ought to have been passed by the respondents in the light of the Rules of 2013, which was the mandate of Hon'ble High Court, and not on the basis of any extraneous material. It is a trite law that so long as the statutory rules or the Rules framed under Article 309 of Constitution of India hold the field, decision cannot be taken on any material which is extraneous to such Rules. The respondent department has, therefore, committed illegality in not complying with the orders of the Court and not deciding the seniority of the petitioners *vis-a-vis* private respondents in the light of the Rules of 2013, which was the mandate of the Hon'ble Court. Further, the objections of the



petitioners have been dealt with cursorily by an *omnibus* order in a mechanical way. The impugned order, therefore, is liable to be set aside on this ground alone.

23. In other words, the office memorandum dated 05.04.2022 (Annexure No. 1) issued by respondent no. 2 is liable to be set aside on this basis alone. It is, accordingly, set aside.

24. The petitioners have also made a prayer to direct the respondent no. 2 to include the name of the petitioners as per their seniority mentioned in the tentative seniority list of 2018 in the impugned final seniority list of year 2021-22 prepared by respondent no. 1 and also the direct respondents not to hold DPC or not to make any promotion pursuant to the impugned seniority list dated 05.04.2022 till the final disposal of present claim petition. It has been informed to the Tribunal that the private respondents have been issued promotion orders. The Tribunal had ordered, while admitting the claim petition, that future promotions, if any, shall be subject to final decision of present claim petition. Since the Tribunal has set aside the impugned office memorandum dated 05.04.2022 and has directed the respondent no. 2 to prepare the final seniority list of the petitioners *vis-a-vis* private respondents in the light of directions of the Hon'ble High Court and in the light of the Rules of 2013 therefore, the promotions thus made by the respondents are set aside.

25. Apart from the above, the petitioners have a case on merits as well.

26. It has been clarified in G.O. dated 26.05.2000 (Annexure No. 2) that the *inter se* seniority of the beneficiaries of 80:20 proposition and the Accountants (direct recruits) shall be done on the basis of their substantive appointment. In such G.O. dated 26.05.2000, it has been made clear, in the penultimate paragraph of the G.O., that the seniority shall be determined only on the basis of the dates of substantive appointment and not on the basis

of anything else. It has also been clarified in such G.O. that although the benefit is being given by propounding ratio of 80:20 but the beneficiaries of 80:20 will not *suo motu* be deemed to have been given substantive appointment from such date. In other words, the seniority shall be determined only from the date of substantive appointment and not on the basis of anything else. This has been mentioned in Rule 5(d) of the Rules of 2013 also. There is no dispute about it. When the tentative seniority list was issued in compliance of the orders of the Hon'ble High Court, the department took correct stand by placing the petitioners above the private respondents but then, as has been mentioned earlier, that the respondent no. 2 was guided by the letter dated 23.09.2021 of the Additional Secretary to the Govt. in the Finance Department and forgot to follow the directions of the Hon'ble High Court.

27. In letter dated 16.08.2011 (Annexure No. 8) which has been issued by Director, Treasury and Finance Service to District Magistrate, Champawat, it has been mentioned that in spite of giving benefit of pay scale in 80:20 ratio, the employees shall be deemed to be given substantive appointment only when they will be given promotion as per the relevant service rules. This has further been clarified in G.O. dated 16.08.2011 that the seniority will be counted only from the date of substantive appointment of the employees. It appears that the subsequent letter dated 23.09.2021 has created some confusion thereby depriving the petitioners from the seniority which ought to have been given to them *vis-a-vis* private respondents, but as has been directed by the Tribunal above that *inter se* seniority of the employees has to be determined by the department and the matter has already been referred back to them for doing so. The Tribunal has observed these reasons so that the same may be kept in mind by the respondent department while dealing with the representations/objections of the petitioners/ other objectors and preparing the final seniority list of the petitioners *vis-a-vis* private respondents.

28. It may be reiterated, at the cost of repetition, that the representations/ objections of the petitioners have been dealt with mechanically, by passing an *omnibus* order, in most cursory manner by not following the directions of Hon'ble Court who had directed the respondents to prepare the seniority list in accordance with the Uttarakhand Treasury Subordinate Grade Service (Amendment) Rules, 2013. The impugned seniority list has not been prepared by the official respondents as per the directions of the Hon'ble Court and is, therefore, liable to be set aside, and is, accordingly, set aside, on this ground alone, with the direction to the official respondents to deal with the objections/ representations of the petitioners, which they have already filed, by reasoned and speaking order as per the mandate of the Hon'ble High Court to decide the *inter se* seniority of the petitioners and private respondents in the light of the Rules of 2013.

29. The claim petition thus stands disposed of. No order as to costs.

30. Let a copy of this judgement be placed in the file of Claim Petition No. 31/NB/DB/2022, Pawan Kumar vs. State of Uttarakhand and others.

**(RAJEEV GUPTA)**  
VICE CHAIRMAN (A)  
*[Virtually from New Delhi]*

**(JUSTICE U.C.DHYANI)**  
CHAIRMAN  
*[Virtually from Dehradun]*

DATE: 04<sup>th</sup> September, 2023  
DEHRADUN  
RS