

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

CONTEMPT PETITION NO. C-02 /SB/2024

(Arising out of judgment dated 29.11.2022, passed in Claim petition No.114/DB/2022 & judgment dated 25.09.2023 passed in Execution Petition No. 14/DB/2023)

Manu Kumar.

.....Petitioner/applicant

vs.

Sri Hari Chandra Semwal, Secretary Irrigation, Civil Secretariat, Dehradun, Uttarakhand and another.

.....Respondents/O.Ps.

Present: Sri Piyush Tiwari(online) & Sri Uttam Singh, Advocates
for the petitioner/ applicant.
Sri V.P.Devrani, A.P.O., in assistance of the Tribunal.

JUDGMENT

DATED: FEBRUARY 14, 2024

Justice U.C.Dhyani (Oral)

Present contempt petition has been filed by the petitioner to punish the respondents for willful disobedience of order dated 29.11.2022, passed by this Tribunal in Claim Petition No. 114/DB/2020, Manu Kumar & others vs. State of Uttarakhand and others.

2. Decision rendered on 29.11.2022 by Tribunal in Claim Petition No. 114/DB/2020, Manu Kumar vs. State of Uttarakhand and others, reads as below:

“BACKDROP

Hon'ble High Court of Uttarakhand at Nainital passed an order on 14.09.2022 in WPSB No. 104 of 2022, Manu Kumar vs. State of Uttarakhand and others, by which the Writ Petition was transferred to this Tribunal. The order dated 14.09.2022 reads as under:

“The petitioner has preferred the present writ petition for the following reliefs:-

“i. Issue a writ or order in the nature of certiorari quashing 02 impugned orders dated 02.02.2022 (being Annexure17. *Colly*) passed by respondent no.3 and to quash any consequential seniority list pursuant to above order.

ii. Issue a writ or order in the nature of certiorari quashing impugned show cause notice dated 11.12.2021 (being annexure12) passed by respondent no.3.

iii. Issue a writ, order or direction in the nature of mandamus directing the respondents not to disturb the seniority list finalized vide order dated 30.12.2017 and to promote petitioner in accordance with above settled seniority list.”

The petitioner is a public servant. The Uttarakhand Public Service Tribunal has the jurisdiction to deal with the issue raised in this writ petition.

Considering the fact that the pleadings are complete, we direct the Registry to transfer the complete records of the case, along with the rejoinder affidavit, to the Tribunal, which shall be registered as a claim petition and be dealt with by the Tribunal, in accordance with law.

We request the Tribunal to endeavor to dispose of the petition at an early date. This petition stands disposed of.”

2. WPSB No. 104/2022 is, accordingly, reclassified and renumbered as Claim Petition No. 114/DB/2022. Since the reference in this Tribunal shall be of the writ petition filed before the Hon'ble High Court, but shall be dealt with as claim petition, therefore, the claim petition shall be referred to as 'petition' and petitioner shall be referred to as 'petitioner', in the body of the judgment.

WHAT HAPPENED WHEN ?

3. Facts, necessary for adjudication of present petition, as stated by the petitioner, are as follows:

3.1 The petitioner was initially appointed as Junior Clerk/ Junior Assistant in the pay scale of Rs.3050-75-3950-80-4590/- under the Dying in Harness Rules due to sudden demise of his father and joined his service on 05.12.2001. (Copy of appointment letter dated 12.11.2001 along with charge assumption report dated 05.12.2001 is enclosed as Annexure No.-1 to the petition).

3.2 In the irrigation department, there is a quota of 10% for serving employees who completed 10 years of service for the post of Junior Engineer (Civil) if he holds a diploma in Civil Engineering from any institute or University established under law or holds a diploma in Civil Engineering from Technical Education Council Uttar Pradesh or National Certificate in Civil Engineering from All India Council for Technical Education or three years diploma in civil and rural engineering by the Board of Technical Education, Uttar Pradesh in terms of Rule 5 & 8 of Uttar Pradesh Irrigation Department Civil Engineer (Subordinate) Service Rules 1992. (Copy of Rules of 1992 is filed as Annexure No.2 to the petition). For having better promotion prospects, petitioner decided to pursue 3 year Diploma course in Civil Engineering from Indira Gandhi National Open University in the year 2010, for which petitioner applied for permission in each year of diploma course which was granted *vide* letter dated 30.10.2010, 18.07.2011 & 25.07.2012. (Copy: Annexure No.-3.*Colly*). While pursuing the Diploma Course, petitioner was promoted from Junior Assistant to Senior Assistant. On completion of Diploma Certificate in Civil Engineering from Indira Gandhi Open University petitioner submitted provisional certificate to the department, which, in turn, sent for verification, the aforesaid provisional certificate *vide* letter dated 24.10.2013. Accordingly *vide* letter dated 10.12.2013 University verified the provisional certificate of the petitioner. A

Departmental promotion Committee was thereafter convened on 18.02.2014 (Annexure No.-4) which selected petitioner for the post of Junior Engineer (Civil). Petitioner after receiving the diploma certificate and mark sheet from University, submitted a copy of same to the department. (Copy of diploma certificate in Civil Engineering along with mark sheet is enclosed as Annexure: No.-5.Colly to the petition).

3.3 Pursuant to the recommendation of Departmental Promotion Committee, petitioner was appointed to the post of Junior Engineer (Civil) *vide* letter dated 24.02.2014(Annexure No.-6) and he was given posting to Government Workshop Division Roorkee. Petitioner was relieved on 25.02.2014 from the post of Senior Assistant and on the same day he assumed the charge at Government Workshop Division Roorkee. (Copy of charge assumption report dated 25.02.2014 is annexed as Annexure No.-7).

3.4 After appointment, a tentative seniority list was issued on 28.11.2014. This seniority list was the part-3 of the entire seniority list of Junior Engineers (Civil). The first part of seniority list of Junior Engineer (Civil) was issued upto seniority No 142. Thereafter part-2 was released from SL. No 143 to 373 and in this instant seniority list which is part 3, the seniority of 486 (SL No 1 to 486) officers were released. Petitioner was placed at SI No 142 in the said seniority list. Objection to this seniority list was invited within 01 month of publishing the list. (Copy of tentative seniority list dated 28.11.2014 is enclosed as Annexure No.-8).

3.5 After examining objection against the seniority list, the final seniority list of Junior Engineers (Civil) of irrigation department was published. Since part 1 & 2 of the seniority list were already issued, therefore part 3 of seniority list was issued and petitioner was placed at SL No 510 (Seniority list from SL No 374 to 862) in the final seniority list. (Copy of final seniority list dated 30.12.2017 is enclosed as Annexure No.-9).

3.6 Thereafter promotion order of petitioner from Junior Engineer (Civil) in level 7, Pay scale 44900-142400) to level 8 to the post of Additional Assistant Engineer (Civil) non-functional in Pay Scale Rs.47600-151100, was issued *vide* order dated 05.11.2018 (Annexure No.10), which promotion order was issued on the basis of seniority list dated 30.12.2017.Pursuant to said promotion, petitioner joined as Additional Assistant Engineer (Civil) on 06-11-2018 and his Basic pay fixed in level 8 (Pay scale 47600-151100). (Annexure No.-11).

3.7 Petitioner is now due for next promotion to the rank of Assistant Engineer (Civil) but surprisingly he received a show cause notice dated 11.12.2021 wherein he was intimated that he was selected against the vacancy year 2013-14, but on perusal of his provisional certificate, it is found that petitioner had submitted his provisional certificate on 02.09.2013 thus he is eligible for the post of Junior Engineer against the vacancy year 2014-15. Therefore, petitioner was directed to submit his reply by 18.12.2021, failing which the representation will not be considered. (Copy of show cause notice dated 11.12.2021 is enclosed as Annexure No.-12).

3.8 This action of the respondent department was taken at the behest of some direct candidate(s) who were junior to the petitioner. Such an action at this stage is uncalled for as the seniority of the petitioner has already been settled and on the basis of this seniority he has already been promoted as Additional Assistant Engineer (Civil). (Copy of representation submitted by 14 direct appointee JE (Civil) is enclosed as Annexure No.-13 to the petition). The petitioner in deep distress of mind submitted a representation on 18.12.2021 (Annexure No. 14).

3.9 Due to deep mental agony, petitioner was unable to put forth all factual as well as legal points with regard to the seniority, therefore, petitioner again submitted a supplementary representation dated 24.12.2021 (Annexure No. 15).

3.10 In view of the law governing the field, petitioner once again requested that no change in his seniority may please be made and he may kindly be considered for next promotion as per the seniority list circulated *vide* order dated 30.12.2017, but no heed was paid on both of his representations and his representation was disposed of in most mechanical and cursory manner after issuing 02 orders on 02.02.2022. The representation of petitioner was disposed of without giving any reasons and reply of any contentions raised by him in the representation. In order No. 609 dated 02.02.2022, the vacancy year 2013-14 was changed to 2014-15 and petitioner's date of promotion was changed from 24.02.2014 to 01.07.2014. It was not clarified that during the period from 25.02.2014 to 31.06.2014 what will be the status of petitioner *i.e* clerical or Junior Engineer. In the other order No. 610 dated 02.02.2022, the seniority of the petitioner was placed from 510 to 859A. Thus petitioner was placed below 349 personnel, who were junior to the petitioner from the date of entry as Junior Engineer (Civil). Therefore, the order dated 02.02.2022 (Annexure No. 17) is illegal, arbitrary and bad in the eyes of law. Hence, this petition.

COUNTER- VERSION

4. Sri Mukesh Mohan, Engineer-in-Chief, Irrigation Department, Uttarakhand, Yamuna Colony, Dehradun, has filed Counter Affidavit on behalf of Respondents. Each and every material averment in the claim petition has been denied, save and except as specifically admitted. The following has been mentioned in the C.A./W.S.:

4.1 The petitioner was initially appointed on compassionate ground under Dying in Harness Rules in the department on the post of Junior Assistant on 05.12.2021. As per provisions of Uttar Pradesh Irrigation Department Civil Engineer (Subordinate) Service Rules, 1992, after rendering 10 years departmental service on a post of Group 'C' cadre and having Engineering Diploma, there is 10 percent quota for promotion on the post of Junior Engineer (Civil). After obtaining Diploma in Civil Engineering from Indira Gandhi National Open University by the petitioner, the petitioner was promoted from the post of Junior Assistant to the post of Junior Engineer (Civil) against the vacancies for the selection year 2013-14.

4.2 Consequent to promotion of the petitioner on the post of Junior Engineer (Civil), on scrutiny of the certificates of Diploma provided by the petitioner Manu Kumar, it was revealed that the said certificate had been issued on 24 September 2013, which was to be considered for the selection year 2014-15. Thus, the petitioner is entitled for being considered for promotion on the post of Junior Engineer against the selection year 2014-15, whereas the petitioner was wrongly granted promotion against the vacancies for the selection year 2013-14. Therefore, the Irrigation Department, Uttarakhand, Dehradun *vide* amended Office Memo No, 609 dated 02.02.2022, by which wrongful promotion was granted to the petitioner from the post of Junior Assistant to the post of Junior Engineer on 24.02.2014 and in place of selection year 2013-14, the amended date of promotion is ordered to be 1st July 2014 and selection year is 2014-15.

4.3 Consequently, the Office Memorandum No. 8280 dated 30.12.2017 of Engineer-in-Chief (Personnel Section-2), Irrigation Department, Uttarakhand, Dehradun, whereby the seniority of the petitioner was determined at Serial No. 510 was amended *vide* Office Memorandum No. 610 dated 02.02.2022 and his amended seniority has been determined at Serial No. 859A. After due consideration of the representations submitted by the petitioner, the order dated 02.02.2022 was issued. From perusal of the order dated 02.02.2022 it is clear that by partly amending the earlier promotion list, against the names of Junior Engineer/ Additional Assistant Engineer (Civil) mentioned at Column No. 5, in place of date and selection year of promotion from Group 'C' employees to the post of Junior Engineer (Civil), the order has been issued for granting the promotion on the post of Junior Engineer (Civil) from the date and selection year mentioned at Column No. 6. From the list it is clear that on the basis of date of appointment of the petitioner in the department and the date of promotion on the post of Junior Engineer and the selection year, as per provisions of Service Rules, the amended date and selection year has been mentioned

according to record, which is just and proper. Therefore, the present petition lacks merit and is liable to be dismissed.

5. Rejoinder Affidavit has been filed by the petitioner reiterating the facts as mentioned in the petition.

LAW GOVERNING THE FIELD

6. Ld. Counsel for the petitioner submitted that the controversy in hand is squarely covered by the various decisions rendered by Hon'ble Supreme Court and Hon'ble High Courts, a description of which is given as below:

(i) Hon'ble Supreme Court, in the decision rendered in *K.R.Mudgal and others vs. R.P. Singh and others*, (1986) 4 SCC 531, has observed that:

“2.....A Government servant who is appointed to any post ordinarily should at least after a period of 3 or 4 years of his appointment be allowed to attend to the duties attached to his post peacefully and without any sense of insecurity. It is unfortunate that in this case the officials who are appellants before this Court have been put to the necessity of defending their appointments as well as their seniority after nearly three decades. This kind of fruitless and harmful litigation should be discouraged.”

7..... Satisfactory service conditions postulate that there should be no sense of uncertainty amongst the Government servants created by the writ petitions filed after several years as in this case. It is essential that any one who feels aggrieved by the seniority assigned to him should approach the court as early as possible as otherwise in addition to the creation of a sense of insecurity in the minds of the Government servants there would also be administrative complications and difficulties. Unfortunately in this case even after nearly 32 years the dispute regarding the appointment of some of the respondents to the writ petition is still lingering in this Court. In these circumstances we consider that the High Court was wrong in rejecting the preliminary objection raised on behalf of the respondents to the writ petition on the ground of laches.”

[Emphasis supplied]

(ii) In the decision rendered in *H.S. Vankani and others & State of Gujrat & others*, (2010) 4 SCC 301, Hon'ble Supreme Court in Paras 34 & 38 of the judgment, has observed as below:

“We are of the view that the Government has committed a grave error in unsettling the inter se seniority of the graduates and non- graduates which was settled as early as in the year 1982. The State Government in its letter dated 12.10.1982 had taken the view that two years' training was imparted to non-graduates of 1979-81 batch and one year training was imparted only to graduates of 1980-81 batch since candidates with lesser qualification required through training compared to the candidates with higher qualification. Due to this basic difference in the educational qualification between the 1979-81 and 1980-81 batches, the Government took a conscious decision that it was not proper to unsettle the settled seniority even if there was delay in the appointment of non-graduates. Subsequent to that decision, three gradation lists were published, recognizing the seniority of the respondents over the appellants.

38 Seniority is a civil right which has an important and vital role to play in one's service career. Future promotion of a Government servant depends either on strict seniority or on the basis of seniority-cum-merit or merit-cum-seniority etc. Seniority once settled is decisive in the upward march in one's chosen work or calling and gives certainty and assurance and boosts the morale to do quality work. It instills confidence, spreads harmony and commands respect among colleagues which is a paramount factor for good and sound administration. If the settled seniority at the instance of one's junior in service is unsettled, it may generate bitterness, resentment, hostility among the Government servants and the enthusiasm to do quality work might be lost. Such a situation may drive the parties to approach the administration for resolution of that acrimonious and poignant situation, which may consume lot of time and energy. The decision either way may drive the parties to litigative wilderness to the advantage of legal professionals both private and Government, driving the parties to acute penury. It is well known that salary they earn, may not match the litigation expenses and professional fees and may at times drive the parties to other sources of money making, including corruption. Public money is also being spent by the Government to defend their otherwise untenable stand. Further it also consumes lot of judicial time from the lowest court to the highest resulting in constant bitterness among parties at the cost of sound administration affecting public interest.

39. Courts are repeating the ratio that the seniority once settled, shall not be unsettled but the men in power often violate that ratio for extraneous reasons, which, at times calls for departmental action. Legal principles have been reiterated by this Court in Union of India and Another v. S.K. Goel and Others (2007) 14 SCC 641, T.R. Kapoor v. State of Haryana (1989) 4 SCC 71, Bimlesh Tanwar v. State of Haryana, (2003) 5 SCC 604. In view of the settled law the decisions cited by the appellants in G.P. Doval's case (supra), Prabhakar and Others case, G. Deendayalan, R.S. Ajara are not applicable to the facts of the case.”

[Emphasis supplied]

(iii) Hon'ble Supreme Court, in the decision of *Malcom Lawrence Cecil D'Souza vs. Union of India & others*, (1976) 1 SCC 599, has observed as below:

“9. Although security of service cannot be used as a shield against administrative action for lapse of a public servant, by and large one of the essential requirements of contentment and efficiency in public services is a feeling of security. It is difficult no doubt to guarantee such security in all its varied aspects, it should at least be possible, to ensure that matters like one's position in the seniority list after having been settled for once should not be liable to be reopened after lapse of many years at the instance of a party who has during the intervening period chosen to keep quiet. Raking up old matters like seniority after a long time is likely to result in administrative complications and difficulties. It would, therefore, appear to be in the interest of smoothness and efficiency of service that such matters should be given a quietus after lapse of some time.”

[Emphasis supplied]

(iv) Hon'ble Supreme Court in the decision rendered in *Sub-Inspector Rooplal and Another vs. Lt. Governor through Chief Secretary, Delhi & others*, (2000) 1 SCC 644, has observed that:

“Before concluding, we are constrained to observe that the role played by the respondents in this litigation is far from satisfactory. In our opinion, after laying down appropriate rules governing the service conditions of its employees, a State should only play the role of an impartial employer in the inter-se dispute between its employees. If any such dispute arises, the State should apply the rules laid down by it fairly. Still if the matter is dragged to a judicial forum, the State should confine its role to that of an amicus curiae by assisting the judicial forum to a correct decision. Once a decision is rendered by a judicial forum, thereafter the State should not further involve itself in litigation. The matter thereafter should be left to the parties concerned to agitate further, if they so desire. When a State, after the judicial forum delivers a judgment, files review petition, appeal etc. it gives an impression that it is espousing the cause of a particular group of employees against another group of its own employees, unless of course there are compelling reasons to resort to such further proceedings. In the instant case, we feel the respondent has taken more than necessary interest which is uncalled for. This act of the State has only resulted in waste of time and money of all concerned.”

[Emphasis supplied]

(v) In the decision of *Shiba Shankar Mohapatra and others v. State of Orissa and others*, (2010) 12 SCC 471, Hon'ble Supreme Court has observed as below:

“16. **The question of entertaining the petition disputing the long standing seniority filed at a belated stage is no more res integra. A Constitution Bench of this Court, in Ramchandra Shanker Deodhar & Ors. v. State of Maharashtra & Ors. AIR 1974 SC 259, considered the effect of delay in challenging the promotion and seniority list and held that any claim for seniority at a belated stage should be rejected inasmuch as it seeks to disturb the vested rights of other persons regarding seniority, rank and promotion which have accrued to them during the intervening period.** A party should approach the Court just after accrual of the cause of complaint. While deciding the said case, this Court placed reliance upon its earlier judgments, particularly in Tilokchand Motichand v. H.B. Munshi, AIR 1970 SC 898, wherein it has been observed that the principle, on which the Court proceeds in refusing relief to the petitioner on the ground of laches or delay, is that the rights, which have accrued to others by reason of delay in filing the writ petition should not be allowed to be disturbed unless there is a reasonable explanation for delay. The Court further observed as under:-

‘A party claiming fundamental rights must move the Court before others' rights come out into existence. The action of the Courts cannot harm innocent parties if their rights emerge by reason of delay on the part of person moving the court’.”

[Emphasis supplied]

(vi) Hon'ble High Court of Kerala at Ernakulam, in the decision rendered on 09.12.2010 in *WP(C) No. 4643 of 2010 (E), Nazarudeen A and others vs. State of Kerala and others*, has observed as below:

“30..... As held by the Full Bench in Pavithran's case (2009) 4 KLT:

20). A person who enjoyed a seniority position for quite a long time, is entitled to sit back and a person who slept over his rights, to rake up a stale claim, and thinker with the seniority list and demoralize other members of the service.”

(vii) Hon'ble Delhi High Court, in the decision rendered on 22.01.2018 in *WP (C) No. 3087 of 2016, Ms. Veena Kothavale vs. Union of India* and connected writ petitions, has observed as below:

“69. In the present case, the respondent nos.1 to 4 on their own unsettled their seniority list drawn up in the year 2010, which was reiterated in 2011 and 2014 and, consequently, the petitioner was left to fend for herself. In our view, the said action of respondent nos.1 to 4 was completely unjustified. If respondent no.5 had any grievance, the respondent department should not have taken sides and should have left it to respondent no.5 to approach the tribunal with his grievance with regard to fixation of the seniority, vis-à-vis the petitioner. In that situation, respondent no.5 would have had to justify his belated challenge to the seniority lists, which stood settled since 2010. However, by itself stepping into the arena, the respondent department has deprived the petitioner of her defence - which would have been available to her before the tribunal, if respondent no.5 had been driven to file the O.A. to seek his claim for seniority over the petitioner in the cadre of DLC. Such conduct of the department in taking sides in a seniority dispute between the employees has been adversely commented upon by the Supreme Court in S.I. Rooplal (supra) in para 24. The same read as under:

“24. Before concluding, we are constrained to observe that the role played by the respondents in this litigation is far from satisfactory. In our opinion, after laying down appropriate rules governing the service conditions of its employees, a State should only play the role of an impartial employer in the interse dispute between its employees. If any such dispute arises, the State should apply the rules laid down by it fairly. Still if the matter is dragged to a judicial forum, the State should confine its role to that of an amicus curiae by assisting the judicial forum to a correct decision. Once a decision is rendered by a judicial forum, thereafter the State should not further involve itself in litigation. The matter thereafter should be left to the parties concerned to agitate further, if they so desire. When a State, after the judicial forum delivers a judgment, files review petition, appeal etc. it gives an impression that it is espousing the cause of a particular group of employees against another group of its own employees, unless of course there are compelling reasons to resort to such further proceedings. In the instant case, we feel the respondent has taken more than necessary interest which is uncalled for. This act of the State has only resulted in waste of time and money of all concerned”

76. Turning to the second issue which is actually interconnected with the first issue itself, i.e. whether Respondent nos. 1 to 4 were justified in revising the already settled seniority list on the basis of a representation by Respondent no.5, the foremost factor to be considered is that there is no denial of the fact that Respondent no.5, at no point of time prior to 2014, had challenged the settled seniority position wherein he was shown below the Petitioner. The Respondent no.5 was always aware that even in the selection process for direct recruitment (in respect of vacancies for the year 2007), the Petitioner was rated more meritorious than him, and had been placed at Sl. No.1 on the selection list, whereas Respondent no.5 was only a reserve list candidate. We cannot also lose sight of the fact that, in view of well settled legal principle that an employee should not be permitted to challenge an already settled seniority position after an inordinate delay, if respondent no.5 had initiated legal proceedings to challenge the seniority list in 2015, he would have had to cross the hurdle of delay and laches, which factor has been completely ignored by the Respondent nos. 1 to 4.”

[Emphasis supplied]

INTERFACE

7. Ld. A.P.O. submitted that the facts of the present petition are different from the facts of the decisions which have been cited by Ld. Counsel for the petitioner. Ld. A.P.O. further submitted that on the date of Calendar year, i.e. 01.07.2013, the petitioner did not possess the Civil Engineering Diploma in view of Rule 5 (2) and 8(a) of the Uttar Pradesh Irrigation Department Civil Engineer (Subordinate) Service Rules, 1992 and *Uttaranchal Service of Engineers (Irrigation Department) (Group 'B') Rules, 2003*, hence the petitioner is not eligible for promotion of Junior Engineer (Civil) for the selection year 2013-2014.

8. **Having remained complacent for a good number of years, private respondents (not turned up, despite service of notices upon them) cannot turn around and say that notwithstanding their inaction, they should be kept above the petitioner in the long**

standing seniority list. The benefits which have accrued to the petitioner, cannot now be disturbed or interfered with. In other words, a settled state of affairs cannot be unsettled now. The Tribunal is of the opinion that the controversy in hand is squarely covered by the aforesaid decisions of Hon'ble Apex Court and Hon'ble High Courts. Present petition should, therefore, meet the same fate as was met by those whose seniority was already settled and the Hon'ble Courts did not interfere in the same. Order accordingly.

DIRECTION

9. The claim petition is allowed. Impugned orders dated 02.02.2022 (Annexure: 17 colly) are set aside and amendment to the seniority list pursuant to these orders is also quashed. No order as to costs.

DISCLAIMER

10. It is made clear that the Tribunal has decided present petition only on the premise that normally long standing seniority should not be unsettled. The Tribunal has not gone into other legal aspects of the case.”

3. When the judgment of the Tribunal was not complied with, petitioner filed Execution Application No. 14/DB/2023, before the Tribunal, which was disposed of, by directing the respondent department to comply with the order of the Tribunal, at the earliest. This was done *vide* order dated 25.09.2023.

4. In the meanwhile, State of Uttarakhand and others filed writ petition, being WPSB No. 462/2023 before Hon'ble High Court of Uttarakhand, which was decided by the Hon'ble Court *vide* order dated 11.12.2023, as follows:

“State of Uttarakhand has challenged judgment and order dated 29.11.2022 passed by learned Public Services Tribunal, Uttarakhand in Claim Petition No. 114/DB/2022. By the said judgment, claim petition filed by Manu Kumar (respondent no. 1 herein) was allowed and two orders passed by Engineer-in-Chief, Uttarakhand Irrigation Department were set aside. By the first order dated 02.02.2022, year of recruitment of respondent no. 1 on the post of Junior Engineer was changed from 2013-14 to 2014-15 and the date of his promotion to the post of Junior Engineer (Civil) was altered from 24.02.2014 to 01.07.2014. By the second order dated 02.02.2022, respondent no. 1 was brought down in the final seniority list of Junior Engineers, issued on 30.12.2017, from serial number 510 to serial number 859A. These two orders have been set aside by learned Tribunal. Relevant extract of the impugned judgment is reproduced below:-

“8. Having remained complacent for a good number of years, private respondents (not turned up, despite service of notices upon them) cannot turn around and say that notwithstanding their inaction, they should be kept above the petitioner in the long standing seniority list. The benefits which have accrued to the petitioner, cannot now be disturbed or interfered with. In other words, a settled state of affairs cannot be unsettled now. The Tribunal is of the opinion that the controversy in hand is squarely covered by the aforesaid decisions of Hon'ble Apex Court and Hon'ble High Courts. Present petition should, therefore, meet the same fate as was met by those whose seniority was already settled and the Hon'ble Courts did not interfere in the same. Order accordingly.

9. The claim petition is allowed. Impugned orders dated 02.02.2022 (Annexure: 17 colly) are set aside and amendment to the seniority list pursuant to these orders is also quashed. No order as to costs.

10. It is made clear that the Tribunal has decided present petition only on the premise that normally long standing seniority should not be unsettled. The Tribunal has not gone into other legal aspects of the case.”

2. Learned State Counsel contended that respondent no. 1 was appointed as Junior Clerk in Uttarakhand Irrigation Department in the year 2001, however, he acquired necessary qualification i.e. Diploma in Civil Engineering during recruitment year 2013-14, therefore, he could not have been promoted as Junior Engineer w.e.f. 24.02.2014, in view of provision contained in Rule 5(2) of U.P. Irrigation Department Civil Engineer (Subordinate) Service Rules, 1992, which provides that only such Group-C employees, who have completed ten years of service and who possess necessary educational qualification for appointment as Junior Engineer on the first day of year of recruitment, shall be considered for promotion. He submits that recruitment year means a period of twelve months commencing from the first day of July of a calendar year, therefore, respondent no. 1 could have been considered for promotion as Junior Engineer, only during recruitment year 2014-15. Thus, he submits that the competent authority was justified in changing the year of recruitment and the date of promotion of respondent no. 1, therefore, consequent revision, in the seniority list by the Appointing Authority, could not have been interfered with by learned Tribunal.

3. Learned counsel for respondent no. 1 contended that the date of promotion of his client could not have been interfered with, based on a complaint made by some Junior Engineers appointed by direct recruitment, especially, when such complaint was made seven years after promotion of respondent no. 1. He further submitted that seniority list was finalized by the competent authority after considering objections received from members of service in respect of tentative seniority list, therefore, interference with the final seniority list by the Engineer-in-Chief is unwarranted and illegal. He also contended that the final seniority list issued by competent authority on 30.12.2017 was not challenged by complainants before any judicial forum, therefore, Engineer-in-Chief could not have reviewed the seniority list after its finalization.

4. It is not in dispute that respondent no. 1 has been promoted as Additional Assistant Engineer w.e.f. 05.11.2018 based on his ranking in final seniority list, issued on 30.12.2017. This indicates that seniority list issued in 2017 was treated as final and promotions were made based on said seniority list.

5. Learned Tribunal has allowed the claim petition filed by respondent no. 1 and set aside the orders dated 02.02.2022, by holding that settled seniority cannot be unsettled after long lapse of time.

6. It is settled position in law that belated challenge to promotion/seniority has to be rejected, as it seeks to disturb the vested right of other persons regarding seniority, rank and promotion, which have accrued to them during the intervening period. In the case of Shiba Shankar Mohapatra and others v. State of Orissa and others, (2010) 12 SCC 471, Hon’ble Supreme Court has held as under:-

“18. The question of entertaining the petition disputing the long-standing seniority filed at a belated stage is no more res integra. A Constitution Bench of this Court, in Ramchandra Shankar Deodhar v. State of Maharashtra (1974) 1 SCC 317 considered the effect of delay in challenging the promotion and seniority list and held that any claim for seniority at a belated stage should be rejected inasmuch as it seeks to disturb the vested rights of other persons regarding seniority, rank and promotion which have accrued to them during the intervening period. A party should approach the court just after accrual of the cause of complaint. While deciding the said case, this Court placed reliance upon its earlier judgments, particularly in Tilokchand Motichand v. H.B. Munshi [(1969) 1 SCC 110] ,

wherein it has been observed that the principle on which the court proceeds in refusing relief to the petitioner on the ground of laches or delay, is that the rights, which have accrued to others by reason of delay in filing the writ petition should not be allowed to be disturbed unless there is a reasonable explanation for delay. The Court further observed as under :

“7. ... The party claiming fundamental rights must move the Court before other rights come into existence. The action of courts cannot harm innocent parties if their rights emerge by reason of delay on the part of the person moving the Court.”

7. Similar view has been expressed by Hon'ble Supreme Court in the case of Malcom Lawrence Cecil D'Souza v. Union of India, (1976) 1 SCC 599, where it is held that raking up old matters like seniority after a long time is likely to result in administrative complications and difficulties. It would, therefore, appear to be in the interest of smoothness and efficiency of service that such matters should be given a quietus after lapse of some time.

8. In the case of H.S. Vankani and others v. State of Gujarat & others, (2010) 4 SCC 301, Hon'ble Supreme Court has sounded a word of caution against unsettling the settled seniority list. In the case of K.R. Mudgal and Others v. R.P. Singh and Others, (1986) 4 SCC 531, has held as under:-

“2....A Government servant who is appointed to any post ordinarily should at least after a period of 3 or 4 years of his appointment be allowed to attend to the duties attached to his post peacefully and without any sense of insecurity. It is unfortunate that in this case the officials who are appellants before this Court have been put to the necessity of defending their appointments as well as their seniority after nearly three decades. This kind of fruitless and harmful litigation should be discouraged.

7....Satisfactory service conditions postulate that there should be no sense of uncertainty amongst the government servants created by the writ petitions filed after several years as in this case. It is essential that anyone who feels aggrieved by the seniority assigned to him should approach the court as early as possible as otherwise in addition to the creation of a sense of insecurity in the minds of the government servants there would also be administrative complications and difficulties. Unfortunately in this case even after nearly 32 years the dispute regarding the appointment of some of the respondents to the writ petition is still lingering in this Court. In these circumstances we consider that the High Court was wrong in rejecting the preliminary objection raised on behalf of the respondents to the writ petition on the ground of laches.”

[Emphasis supplied]”

9. In view of the aforesaid legal position, the view taken by learned Tribunal that settled seniority could not have been unsettled, cannot be faulted. Even otherwise also, while finalizing seniority list, Appointing Authority exercises the power available to him under Uttarakhand Government Servant Seniority Rules, 2002. Rule 9 of the said Rules is extracted below:-

“9. Preparation of seniority list – (1) As soon as may be after appointments are made to a service, the appointing authority shall prepare a tentative seniority list of the persons appointed substantively to the service in accordance with the provisions of these rules.

(2) The tentative seniority list shall be circulated amongst the persons concerned inviting objections, by a notice of reasonable period, which shall not be less than seven days from the date of circulation of the tentative seniority list.

(3) No objections against the vires or validity of these rules shall be entertainable.

(4) The appointing authority shall, after disposing of the objection by a reasoned order, issue a final seniority list.

(5) It shall not be necessary to prepare a seniority list of the cadre to which appointments are made only by promotion from a single feeding cadre.”

10. A conjoint reading of sub-rules (1) (2) & (3) of Rule 9 of the Seniority Rules indicates that before finalizing a seniority list, the Appointing Authority has to consider and decide the objections received against tentative seniority list. Thus, the Appointing Authority performs quasi judicial function.

11. It is settled position in law that a statutory authority, exercising quasi judicial function, cannot review his order in the absence of any enabling provision in the statute. The Seniority Rules, 2002 do not contain any enabling provision for review. Thus, the Engineer-in-Chief, who had finalized the seniority list in 2017, could not have exercised power of review for unsettling the settled seniority list. Thus, the only remedy available to persons aggrieved by final seniority list was to approach the competent judicial forum.

12. For the reasons recorded and in view of the legal position as discussed hereinabove, this Court does not find any reason to interfere with the impugned judgment rendered by learned Tribunal. Accordingly, writ petition fails and is dismissed. No order as to costs.”

5. Rule 50 of the Uttar Pradesh Public Services (Tribunal) Rules, 1992, reads as under:

“50. Initiation of proceedings.—(1) Any petition, information or motion for action being taken under the Contempt shall, in the first instance, be placed before the Chairman.

(2) The Chairman or the Vice-Chairman or such other Members as may be designated by him of this purpose, shall determine the expediency or propriety of taking action under the Contempt Act.”

[Emphasis supplied]

6. Having considered the above noted facts, the Tribunal, at this stage, does not deem it expedient or proper to take action against the respondents/ opposite parties under the Contempt of Courts Act, 1971, but, at the same time, reiterates its order dated 29.11.2022, passed in Claim Petition No. 114/DB/2022, which has been affirmed by Hon’ble High Court of Uttarakhand in its order dated 11.12.2023, passed in WPSB No.462/2023, with the expectation that the same shall be complied with by the respondents after due process, but without unreasonable delay.

7. The contempt petition thus stands disposed of, at the admission stage. No order as to costs.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: FEBRUARY 14, 2024
DEHRADUN