

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

Present: Sri V.K. Maheshwari

----- Vice Chairman (J)

&

Sri D.K. Kotia

----- Vice Chairman (A)

CLAIM PETITION NO. 23/DB/2014

1. Rajendra Shukla, S/o Late Sri Prabhakar Shukla, presently posted as Geologist/Deputy Director, Geology and Mining Unit, Directorate of Industries, Bhopalpani, P.O. Barasi via Raipur, District Dehradun,
2. Yashwant Singh Sajwan, S/o Late Sri K.S. Sajwan, presently posted as Geologist/Deputy Director, District Task Force, Chamoli/Rudraprayag and Pauri Garhwal, Geology and Mining Unit, Directorate of Industries, Bhopalpani, P.O. Barasi via Raipur, District Dehradun.

.....Petitioners

VERSUS

1. State of Uttarakhand through Principal Secretary, Industrial Development, Civil Secretariat, Subhash Road, Dehradun,
2. Director, Geology and Mining Unit, Directorate of Industries, Bhopalpani, P.O. Barasi via Raipur, District Dehradun,
3. Anil Kumar, Joint Director, Geology and Mining Unit, Directorate of Industries, Bhopalpani, P.O. Barasi via Raipur, District Dehradun,
4. Gangadhar Prasad, Deputy Director/Geologist, Geology and Mining Unit, Directorate of Industries, Bhopalpani, P.O. Barasi via Raipur, District Dehradun,
5. Dinesh Kumar, Deputy Director/Geologist, Zilla Task Force, Almora, Heera Dungri, Almora (near SSB Headquarters).

.....Respondents

Present: Sri V.P.Sharma, Counsel
for the petitioners
Sri Umesh Dhaundiyal, A.P.O.
for the respondents No.1 & 2
Sri J.P.Kansal, Counsel
for the respondent No. 3
Sri Chandramohan, Counsel
for the respondent no. 4

JUDGMENT

DATE: SEPTEMBER 29, 2015

DELIVERED BY SRI D.K.KOTIA, VICE CHAIRMAN (A)

1. The present claim petition has been filed for seeking the following reliefs:

“(i) To issue order or direction to the respondents no. 1 & 2 to quash the seniority list dated 11.03.2014 (Annexure A-1) along with its effect and operation also after calling the entire records.

(ii) Issue order or direction to the respondents No.1 and 2 to redraw the seniority list in view of the date of substantive appointment on the post of Assistant Geologist and keeping in view the relevant principles of seniority rules specifically by keeping in view the seniority of feeding post of the petitioners and private respondents No. 3,4 and 5 of Technical Assistant (Geology) in which the petitioners were admittedly senior to the private respondent No. 3 along with all consequential benefits.

(ii) Any other relief which the Hon’ble Court may deem fit and proper in the circumstances of the case.

(iv) To award cost of this petition to the petitioner.”

2. The relevant facts in brief are that the petitioner No.1 Shri Rajendra Shukla was initially appointed as Technical Assistant (Geology) on the basis of the recommendation of the Uttar Pradesh

Public Service Commission on 21.10.1983 (Annexure: A-2). The petitioner No. 2 Shri Yashwant Singh Sajwan was initially appointed on the post of Technical Assistant (Geology) on the basis of the recommendation of the Uttar Pradesh Public Service Commission on 07.03.1983 (Annexure: A-3).

3. Both the petitioners belong to General Category.

4. Private respondent No.3 Shri Anil Kumar was initially appointed on the post of Technical Assistant (Geology) on the basis of the recommendation of the Uttar Pradesh Public Service Commission on 08.10.1991.

5. Private respondent No. 3 belongs to Reserve Category (Scheduled Caste) and his initial appointment on the post of Technical Assistant (Geology) was under reserve quota of scheduled caste.

6. Private Respondent No. 3 was promoted from the post of Technical Assistant (Geology) to the post of 'Assistant Geologist' under reserve quota of scheduled caste on 02.07.1997 (Annexure: R-3 to the W.S. of respondent No. 3).

7. Petitioners No.1 and 2 were promoted from the post of Technical Assistant (Geology) to the post of 'Assistant Geologist' later on 15.06.2004 (Annexure: A-5).

8. Respondent No. 3 who was promoted from the post of Technical Assistant (Geology) to the post of 'Assistant Geologist' on 02.07.1997 was further promoted to the post of 'Geologist' on 23.03.2004 (Annexure: R-5 to the W.S. of respondent No. 3).

9. While petitioners No.1 and 2 were appointed on the initial post of Technical Assistant (Geology) in 1983 much earlier to the

respondent No.3 who was appointed on this post in 1991, respondent No. 3 got first promotion (to the post of 'Assistant Geologist') on 02.07.1997. Respondent No. 3 got second promotion (to the post 'Geologist') on 23.03.2004 even before the petitioners got their first promotion (to the post of 'Assistant Geologist') on 15.06.2004.

10. Petitioners got their second promotion from the post of 'Assistant Geologist' to 'Geologist' on 28.04.2010 (Annexure: A-7).

11. On 28.04.2010, the petitioners and respondent No. 3 both became at par as they all held the same post of 'Geologist' on that date.

12. The main contention of the petitioners in their claim petition is that after their promotion to the post of 'Geologist' on 28.04.2010, they regain their original seniority vis-à-vis respondent No.3 (which was there at the time of initial appointment on the post of Technical Assistant) according to Rule 6 of the Uttarakhand Government Servants Seniority Rules, 2002 (hereinafter referred to as Seniority Rules of 2002).

13. The petitioners have contended that in the tentative seniority list of Assistant Geologist dated 12.10.2012 issued by the Department (Annexure: A-8), they were shown junior to the respondent No. 3. They filed their objections against the tentative seniority list on 9.11.2012 and 03.12.2012 (Annexure: A-9 and A-10). The objections of the petitioners were rejected and the final seniority list of Assistant Geologists was issued by the Department of Industrial Development, Government of Uttarakhand on 11.3.2014 (Annexure: A-1, the impugned order). Hence, the claim petition.

14. A joint written statement has been filed on behalf of the State Government (respondent No. 1) and the Director, Geology and Mining, Directorate of Industries, Government of Uttarakhand (respondent No. 2) and they have opposed the claim petition. The only contention in it in a very general manner is that the final seniority list has been rightly prepared under the Uttarakhand Government Servants Seniority Rules, 2002 and, therefore, there is no force in the claim petition and the same is liable to be dismissed.

15. Private respondent No. 3 in his written statement has mainly stated that he was initially appointed on the post of Technical Assistant (Geologist) on 08.10.1991 and promoted to the post of 'Assistant Geologist' on 02.07.1997 and the petitioners were promoted to the post of 'Assistant Geologist' after nearly 7 years on 15.06.2004 and, therefore, according to Rule 8 of the Seniority Rules of 2002, respondent No. 3 is senior to the petitioners in the cadre of 'Assistant Geologist'. Respondent No. 3 has also contended that 'Explanation' to Rule 6 of the Seniority Rules of 2002 in regard to 'regaining of seniority' by the petitioners is not applicable.

16. The petitioners have filed a rejoinder affidavit and the same averments have been reiterated and elaborated which were stated in the claim petition.

17. Respondent No. 3 has also filed a supplementary written statement. It has mainly been stated in it that after the promotion of the petitioners to the post of 'Geologist' on 28.04.2010 (Annexure: A-7), a final seniority list of 'Geologists' was issued by the respondent No.1 on 17.05.2010 (Annexure: A-21 to the supplementary written statement). The names of the petitioners were not there in this seniority list of 'Geologists'. The petitioners had made representation to include their names in this seniority list. Thereafter, in the Writ Petition (S/B) No. 452 of 2012, Anil Kumar

Vs. State of Uttarakhand and another, Hon'ble Uttarakhand High Court had directed to hold the DPC on the basis of the seniority list finalized on 17.05.2010. Respondent No.3 has contended that thereafter, he was promoted from the post of 'Geologist' to the post of 'Joint Director' on 28.02.2013. The petitioners have not challenged the seniority list dated 17.05.2010 and promotion order of respondent no. 3 and, therefore, the same cannot be disturbed now.

18. Petitioners have also filed rejoinder affidavit against the supplementary written statement filed by respondent No. 3 and stated in it that the final seniority list of 'Geologists' dated 17.05.2010 was issued on the basis of the tentative seniority list of 'Geologists' dated 16.04.2010 and in this tentative seniority list the names of petitioners were not included because the petitioners were promoted on the post of the 'Geologist' on 28.04.2010.

19. Respondent No. 4 Shri Gangadhar Prasad has also filed the written statement. It has been mainly stated in the W.S. that respondent No. 4 was appointed on the post of 'Assistant Geologist' on 15.02.1999. His appointment was on the basis of direct recruitment (and not by promotion). Respondent No. 4 was directly recruited on 15.02.1999 and on that date petitioners were posted as Technical Assistant (Geology). The petitioners were promoted from the post of Technical Assistant (Geology) to the post of 'Assistant Geologist' on 15.06.2004 and, therefore, respondent No. 4 who was directly recruited on the post of 'Assistant Geologist' on 15.02.1999 is senior to the petitioners according to the Seniority Rules of 2002. Respondent No. 4 in his W.S. has also reiterated the facts which have been stated in the W.S. filed by respondent No. 3.

20. Petitioners have also filed rejoinder affidavit against the written statement filed by respondent No. 4 and in it the same facts

have been reiterated and elaborated which have been stated in the claim petition.

21. In spite of sufficient service, respondent No. 5 did not appear and has not filed any written statement.

22. Written submissions were also filed on behalf of the petitioners and respondents No. 3 and 4.

23. We have heard learned counsel for the petitioners, learned A.P.O. for the respondents No. 1 & 2 and learned counsel on behalf of respondents No. 3 and 4. We have also perused all record carefully. **It is worthwhile to mention here that the petitioners though made respondents No. 4 and 5 as parties at later stage but they have not challenged the seniority of the respondents No. 4 and 5 (para 4.12 of the claim petition).**

24. Petitioners as well as respondents both have relied on Uttarakhand Government Servants Seniority Rules, 2002. It would be appropriate to reproduce the relevant Rules of the Seniority Rules of 2002 before the arguments of both the parties are discussed.

Rule 6: "Where according to the service rules, appointments are to be made only by promotion from a single feeding cadre, the seniority inter se of persons so appointed shall be the same as it was in the feeding cadre.

Explanation: A person senior in the feeding cadre shall even though promoted after the promotion of a person junior to him in the feeding cadre shall, in the cadre to which they are promoted, regain the seniority as it was in the feeding cadre.

Rule-7. Where according to the service rules, appointments are to be made only by promotion but from more than one feeding cadres, the seniority inter se of

persons appointed on the result of any one selection shall be determined according to the date of the order of their substantive appointment in their respective feeding cadres.

[Explanation-]”

*Rule 8 (1)- Where according to the service rules appointments are made both by promotion and by direct recruitment, the seniority of persons appointed shall, **subject to the provisions of the following sub-rules**, be determined from the date of the order of their substantive appointments and if two or more persons are appointed together, in the order in which their names are arranged in the appointment order:*

Provided.....”.

(2) The seniority inter-se of persons appointed on the result of any one selection-

(a) through direct recruitment, shall be the same as it is shown in the merit list prepared by the Commission or by the Committee, as the case may be;

(b) by promotion, shall be as determined in accordance with the principles laid down in rule 6 or rule 7, as the case may be, according as the promotion are to be made from a single feeding cadre or several feeding cadres.

(3).....]”

25. Learned counsel for the petitioners has argued that the petitioners were appointed on the post of Technical Assistant (Geology) in the year 1983 as General Category candidates. Respondent No. 3, Anil Kumar was appointed on the post of Technical Assistant (Geology) in 1991 under Reserve Category (scheduled caste). Private respondent No. 3 got accelerated promotion to the post of ‘Assistant Geologist’ under reserve quota for scheduled caste in 1997. Petitioners could get promotion to the post of ‘Assistant Geologist’ later on 15.06.2004 when the vacancies under general quota occurred. Due to accelerated promotion of

private respondent No. 3 based on roaster point to the post of 'Assistant Geologist' in 1997, he got further promotion to the post of 'Geologist' on 23.04.2004. The petitioners lagged behind due to advantage of accelerated promotion to the respondent No. 3 because of reservation quota. Finally, the petitioners were also promoted to the post of 'Geologist' on the basis of roaster point for general category on 28.04.2010. **The contention of the learned counsel for the petitioners is that on 28.04.2010, the petitioners, and private respondent No. 3 became 'at par' and due to catch up principle, provided in 'Explanation' to Rule 6 of the Seniority Rules of 2002, the petitioners regain their seniority as it was in the initial appointment on the post of Technical Assistant (Geology). It was further contended by the learned counsel for the petitioners that though the private respondent No. 3 had got 'accelerated promotion' to the post of 'Assistant Geologist' yet, he had not got the 'consequential seniority'.**

26. The counsel for the respondent No. 3 argued that Rule 8(1) of the Seniority Rules of 2002 provides that the seniority is to be determined from the date of the order of substantive appointments. Since the respondent No. 3 was appointed in substantive manner earlier to the petitioners, he is senior to the petitioners. In our view, this argument does not attract the provision made in Rule 8(1) of the Seniority Rules of 2002 in its entirety. Rule 8(1) very clearly provides that the determination of seniority from the date of the substantive appointment is subject to the provisions of the sub-rules to the Rule 8(1) i.e. Rule 8(2)(a), Rule 8(2)(b) and Rule 8(3). Rule 8(2) (b) also provides that the seniority is to be determined as per the principles laid down under Rule 6 or Rule 7. It is, therefore, clear that for determination of seniority, Rule 8(1) is to be read with and is subject to Rule 8(2), Rule 8(3), Rule 6 and Rule 7.

27. In the present case, the single feeding cadre of the petitioners and respondent No. 3 is Technical Assistant (Geologist). Petitioners are admittedly senior than that of the respondent No. 3 in this initial cadre which is a feeding cadre for onward promotions. In our view, when the petitioners were senior in the initial feeding cadre compared to the respondent No. 3 and though the petitioners got their promotion to the post of 'Geologist' after the promotion of respondent No. 3, the petitioners regain their seniority vis-à-vis respondent No. 3 w.e.f. 28.04.2010 according to 'Explanation' under Rule 6 of the Seniority Rules of 2002.

28. The counsel for the respondent No. 3 has also contended that Rule 8(2) and consequently Rule 8(2)(a) and Rule 8(2)(b) apply only to determine inter-se seniority of persons on the result of any one selection and the present case is not of one selection but of different selections as the respondent No. 3 was promoted in 1997 and 2004 and the petitioners were promoted in 2004 and 2010 and, therefore, Rule 6 of the Seniority Rules of 2002 is not applicable. It is difficult to agree with this contention. We would like to emphasize that the "Explanation" to Rule 6 lays down the principle regarding determination of seniority when juniors in feeding cadre are promoted earlier than that of the seniors in the feeding cadre. "Explanation" makes it mandatory to restore the seniority as it was in the feeding cadre. The "Explanation" to Rule 6 clearly establishes the supremacy of the seniority in the feeding cadre irrespective of the date or time of promotion. The 'Explanation' to Rule 6 lays down the principle of 'catch up' and it invariably deals with the promotions made earlier and later at different points of time.

29. Learned counsel for the respondent No. 3 has also contended that the appointment on the post of 'Assistant Geologist' is made (admittedly) by direct recruitment as well as by promotion. He has further contended that Rule 6 of the Seniority Rules of 2002

is applicable only when appointments are made only by promotion. Since the prescribed mode of appointment to the cadre of 'Assistant Geologist' is direct recruitment as well as promotion, he has argued that Rule 6 of the Seniority Rules of 2002 is not applicable. After a careful perusal of Rule 6 and Rule 8 of the Seniority Rules of 2002, we are of the view that Rule 8 (and its sub-rules) and Rule 6 (and its 'Explanation') when read together makes the position clear. Rule 8(1) deals with the determination of seniority when appointments are made both by promotion and by direct recruitment. Rule 8(1) also makes it clear that fixation of seniority is subject of Sub-rules (2) and (3) of Rule 8. Sub-rule 2(a) provides inter-se seniority of persons appointed by direct recruitment and Sub-rule 2(b) provides inter-se seniority of persons appointed by promotion. Sub-rule 2(b) clearly provides that inter-se seniority of those appointed by promotion is to be determined in accordance with the principles laid down in Rule 6 or Rule 7, as the case may be, according as the promotions are to be made from a single feeding cadre or several feeding cadres. In the present case, the promotions are to be made from a single cadre and, therefore, the seniority is to be determined as per the principles laid down under Rule 6. We, therefore, do not agree with the contention of the learned counsel for the respondent No. 3 that Rule 6 of the Seniority Rules of 2002 is not applicable. We are of the view that Rule 6, 'Explanation' to Rule 6, Rule 8(1), Rule 8(2)(b) of the Seniority Rules of 2002 combined together lead us to conclude that the Rule 6 (and its Explanation) of the Seniority Rules of 2002 is applicable in the case in hand.

30. The issue relating to seniority of reserved category candidates and general candidates has been dealt with by the Hon'ble High Court at Nainital and the Hon'ble Supreme Court in a number of cases. We would like to take the help of some of these cases for the present case.

31. **The Constitutional Bench of the Hon'ble Supreme Court in Ajit Singh and Ors Vs. State of Punjab and Ors, (1999)7 SCC, 209 has held as under:**

“(b) Statutory rule of seniority cannot be delinked and applied to roster-point promotions:

*53. As stated above in Ajit Singh, the promotion rule in Rule 7(1) proviso (iii) and the seniority Rule in Rule 9 under the 1976 Rules for Class III form a single scheme and are interlinked. In other words, only in case the officers have reached the level of Superintendents Grade II(Level 3) in the manner mentioned in the Rule 7(1) proviso (iii) by competition between the Assistants (Level 2) and on consideration of their cases on the basis of seniority-cum-merit, can the seniority Rule in Rule 9 relating to continuous officiation in the post of Superintendent Grade II (Level 3) be applied. Here there is a roster in Ajit Singh for promotion from Level 1 to Level 2 and from Level 2 to Level 3. The consequence is that in the case of roster point promotees, the said candidates who get promoted as Superintendents Grade II (Level 3) as per the roster - having not been promoted as per Rule 7(1) proviso (iii) of the 1976 Rules i.e. upon consideration with their cases on the basis of seniority-cum-merit at the Assistant level (Level 2), - they cannot rely upon Rule 9 of the 1976 Rules dealing with seniority from the date of "continuous officiation" as Superintendents Grade II(Level 3). **It is not permissible to delink the seniority Rule from the recruitment Rule based on equal opportunity and apply it to promotions made on the basis of the roster which promotions are made outside the equal opportunity principle.**”*

32. The Constitutional Bench in above case conforming the judgment of Vir Pal (Union of India and others Vs. Virpal Singh

Chauhan, 1995 (6) SCC, 684) held that the seniority in the initial level panel is to be reflected from stage to stage for promotion purpose and the reserved candidates cannot count their seniority on the basis of roster point promotion. The relevant paragraphs 65 and 66 of the judgment are reproduced below:

“65. It is argued by the reserved candidates that Virpal was not correctly decided because in Virpal, the Court went by a printed Brochure and committed a factual mistake in thinking that the circular of the Railways itself required the panel seniority at the initial level to be reflected at higher levels. The same point was raised by the Indian Railways in its intervention applications IAs 10-12/98. It was argued that in Virpal the Court erred in not noticing the full text of the Circular dated 31.8.82 which, showed that, as per para 319 of the Railway Establishment Code, Vol. I, panels were required to be prepared at each level.”

“66. We have examined Virpal closely in the light of the above objection. In our view, the above criticism is wholly unjustified and is based upon a wrong mixing up of the separate conclusions arrived at in Virpal in regard to two different sets of employees. As stated earlier, the Court was there concerned with posts of Railway Guards and also with posts of Station Masters. The former (i.e. Guard posts) were posts governed by the rule of seniority-cum-suitability. In other words, for Guards, seniority would govern subject to omission of those found unsuitable for promotion. On the other hand, Station Masters' posts were governed by selection at every level of promotion. The learned Judge, Justice Jeevan Reddy, while dealing initially with the promotions of Guards (See P.702 of SCC) from C Grade to B, from B to A, and from A to Special Grade A pointed out that the seniority-cum-fitness rule

applicable in their cases resulted in the seniority at the Level of Guard C in the initial panel being reflected from stage to stage, subject to fitness. When the learned Judge came to discuss the issues relating to Station Masters, (See SCC P. 711) where merit and selection were involved, the learned Judge stated that separate panels were to be prepared at every level and also that those in an earlier panel would be senior to those in a latter panel. In either situation, it was laid down that the reserved candidates could not count their 'seniority' on the basis of roster point promotion. Learned Additional Solicitor General, Sri C.S. Vaidyanathan, attempted to argue that what the Court said in paras 25, 26 was wrong as it assumed that seniority at Level I would get reflected in the levels higher up and what is stated in paras 46, 47 in regard to one previous panel having priority over a later panel would apply in all cases, even to Guards referred to in paras 25, 26. The said contention, in our view, is based on a mixing up of the cases of Station Masters and Guards who were governed by different rules of promotion. We are satisfied that there is no factual mistake committed in the judgment in Virpal. In fact, subsequent to Virpal, the Railways accepted the judgment and issued an order on 28.2.1997 both in regard to non-selection and selection posts. The point raised in the IAs by the Railways is therefore liable to be rejected. We shall refer to these IAs again in our separate judgment relating to individual cases.”

33. The constitutional Bench in above case has also held the principle of catch up thus:-

“80. We, therefore, hold that the roster point promotees (reserved category) cannot count their seniority in the promoted category from the date of their continuous officiation in the promoted post, vis-a-vis the general

candidates who were senior to them in the lower category and who were later promoted. On the other hand, the senior general candidate at the lower level, if he reaches the promotional level later but before the further promotion of the reserved candidate he will have to be treated as senior, at the promotional level, to the reserved candidate even if the reserved candidate was earlier promoted to that level.....”

“81. During the discussion under this "catch-up" point-for purposes of convenience, - we take the example of the cadres in Ajit Singh i.e. there is roster point promotion for reserved candidates for promotion from Level 1 to Level 2 and from Level 2 to Level 3. There is no roster for promotion from Level 3 to Level 4.

“82. Now, as stated earlier, the counsel for the general candidates argued for acceptance of two catch-up rules.”

Extreme 'catch-up' rule:

“83. So far as the extreme contention of the general candidates that at Level 3, the roster candidate must wait at Level 3 - before being promoted to Level 4 - till the last senior general candidate at Level 1 reached Level 3, - we reject the same in as much as that will not amount to a reasonable balancing of the rights of the candidates in the two groups. Nor do we accept that posts must be kept vacant and no promotions of the roster candidates be made.”

Other Catch-up rule:

“84. As accepted in Virpal, we hold that in case any senior general candidate at Level 2 (Assistant) reaches Level 3 (Superintendent Grade II) before the reserved candidate (roster point promotee) at Level 3 goes further

up to Level 4 in that case the seniority at Level 3 has to be modified by placing such a general candidate above the roster promotee, reflecting their inter se seniority at Level 2. Further promotion to Level 4 must be on the basis of such a modified seniority at Level 3, namely, that the senior general candidate of Level 2 will remain senior also at Level 3 to the reserved candidate, even if the latter had reached Level 3 earlier and remained there when the senior general candidate reached that Level 3. In cases where the reserved candidate has gone upto Level 4 ignoring the seniority of the senior general candidate at Level 3, seniority at Level 4 has to be refixed (when the senior general candidate is promoted to Level 4) on the basis of when the time of reserved candidate for promotion to Level 4 would have come, if the case of the senior general candidates was considered at Level 3 in due time. To the above extent, we accept the first part of the contention of the learned Counsel for the general candidates. Such a procedure in our view will properly balance the rights of the reserved candidates and the fundamental rights guaranteed under Article 16(1) to the general candidates.”

34. The Constitutional Bench in above case has also held that as a result of catch up principle, the seniority list is required to be amended. The paragraphs 85 and 86 of the judgment are reproduced below:

“85. One of the objections raised before us and which appealed to the Full Bench in Jaswant Singh's case was that this 'catch up' principle would lead to frequent alteration of the seniority list at Level 3. We do not find any difficulty in this behalf. The seniority list at Level 3 would have only to be merely amended

whenever the senior general candidate reaches Level 3.”

“86. Learned senior counsel Sri K. Parasaran and Sri Raju Ramachandran then adverted to a situation which according to them might create serious problems if a senior general candidate is to be treated as senior at the promotional level if he reaches that level before the roster promotee goes further up. The example given refers to cases where after the roster point promotee (reserved candidate) reaches the promotional level, there is direct recruitment or recruitment by transfer at that promotional level. Counsels submit that, if a senior general candidate is thereafter promoted and placed above the reserved candidate, can he become senior to the direct recruit and transferee? We do not find any anomaly. The direct recruit or transferee who has no grievance against the reserved candidate who was already there can have no grievance against a senior general candidate who has a superior claim, in law, against the reserved candidate.”

35. Hon’ble High Court at Nainital has in an elaborate but in a very lucid manner has dealt with the Rule 6 (and its Explanation) of the Seniority Rules of 2002 and has explained the principle of catch up. **Hon’ble High Court at Nainital in Writ Petition (S/B) No. 153 of 2012, Bhajan Singh Vs. State of Uttarakhand and others, decided on 09.08.2012 has held as under:**

“8. There appears to be no dispute that, by Notification dated 13th August, 2002, respondent Authority adopted The Uttaranchal Government Servants Seniority Rules, 2002. Therefore, in the matter of determining the seniority of employees of the respondent Authority, one is to look

only at The Uttaranchal Government Servants Seniority Rules, 2002.

9. Rule 6 of the said Rules is as follows:

“Seniority where appointment by promotion only from a single feeding cadre – Where according to the service rules, appointments are to be made only by promotion from a single feeding cadre, seniority inter se of persons so appointed shall be the same as it was in the feeding cadre.

Explanation. – A person senior in the feeding cadre shall even though promoted after the promotion of a person junior to him in the feeding cadre shall, in the cadre to which they are promoted, regain the seniority as it was in the feeding cadre.”

“10. There appears to be no dispute that, on 8th February, 2005, petitioner was promoted to the post of Chief Engineer Level II; at the same time, there is no dispute that the petitioner was promoted to the post of Superintending Engineer on 4th July, 2002. It was, accordingly, submitted by the learned counsel for the petitioner that the seniority of the petitioner in the post of Chief Engineer Level II shall be deemed to be from 4th July, 2002. It was contended that, even according to the respondents, no Chief Engineer Level II had seniority from any day prior to 4th July, 2002. Alternatively, it was submitted that the person, who has been selected, was promoted to the post of Superintending Engineer only on 30th June, 2008 and the petitioner left the cadre of Superintending Engineer on 8th February, 2005. Under the circumstances, the person, who has been selected, cannot claim to be senior to the petitioner and, if his claim of seniority is accepted, the same will permit extreme catch-up, which is not permissible, as propounded by the Hon’ble Supreme Court in the case of Ajit Singh and others (II) vs. State of Punjab and others, reported in (1999) 7 SCC 209.

“ 11. In the instant case, Rules, which are not under challenge, give direction for determination of seniority. As aforesaid, according to the Rules, the seniority in the feeding cadre is the seniority in the promotional cadre. The Explanation to the Rules makes it clear that the person would regain his seniority as it was in the feeding cadre no sooner he is promoted, although such promotion has been effected after juniors to him have been promoted. In such circumstances, on the first blush, it appears that the submission of the learned counsel for the petitioner is correct, as the petitioner would get seniority in the post of Chief Engineer Level II w.e.f. 4th July, 2002 and he, accordingly, should be adjudged the senior most as, admittedly, under the Rules, no one else could get such seniority. **However, the calculation in the instant case is being made from the reverse. That cannot be made. It has to be made from the beginning.** Person, who has been selected, was appointed as Assistant Engineer on 15th October, 1977. He was promoted to the post of Executive Engineer on 7th November, 2000. Insofar as his seniority in the post of Executive Engineer is concerned, having regard to the Rules governing the field, his date of promotion loses significance. He, according to the Rules, should be deemed to be having his seniority in the post of Executive Engineer, though promoted on 7th November, 2000, from 15th October, 1977. The said person was promoted to the post of Superintending Engineer on 30th June, 2008. Having regard to the mandate of the Rules, his date of promotion goes in oblivion. He, in the post of Superintending Engineer, must be deemed to be having seniority w.e.f. 15th October, 1977. Similarly, the said person was promoted to the post of Chief Engineer Level II on 20th January, 2011 and, again, at this time, the date of promotion should be ignored for the purpose of seniority and, in accordance with the mandate of the Rules, his

seniority in the post of Chief Engineer Level II must be counted from 15th October, 1977, as that was his seniority in the feeding cadre. Petitioner having been appointed as Assistant Engineer only on 13th September, 1984, his seniority, in accordance with the Rules, for the post of Chief Engineer Level II, can be counted only from 13th September, 1984 and not prior thereto. In the circumstances, on and from 20th January, 2011, until when the person selected was promoted to the post of Chief Engineer Level II, it must be deemed that, for the said post, he had seniority from 15th October, 1977; whereas, at the same time, the seniority of the petitioner, though he was promoted to the post of Chief Engineer Level II on 8th February, 2005, shall be counted from 13th September, 1984. In the circumstances, it cannot be contended that, in accordance with the Rules, it was the petitioner, who was senior to the person, who had been selected and, as such, the selection impugned is interferable.

“12. It is true that, on 30th June, 2008, when the person selected was promoted to the post of Superintending Engineer, petitioner was already holding the post of Chief Engineer Level II and, accordingly, the person selected could not be compared with the petitioner. But the question is, until when? It is true that, until 19th January, 2011, the person so selected could not be compared with the petitioner, but the moment, on 20th January, 2011, the person selected became Chief Engineer Level II, he acquired a right to be compared with another Chief Engineer Level II and, accordingly, with the petitioner too. At that stage, as aforesaid, in terms of the mandate of the Rules, whereas the seniority in the post of Chief Engineer Level II of that person was to be counted from 15th October, 1977, the seniority of the petitioner in the post of Chief Engineer Level II was to be counted from 13th September, 1984. In those

circumstances, the person selected should be deemed to be senior to the petitioner.

“13. The submission that permitting the person selected for promotion to catch-up the petitioner at the stage of Chief Engineer Level II would be a rule of extreme catch-up, is not acceptable. In the judgment of the Hon’ble Supreme Court, referred to above, a question of the nature, as is being considered here, was not considered. The Hon’ble Supreme Court had no occasion to pronounce that, despite the Rules providing for determination of adjudgment of seniority, without interfering with the Rules, any other method can be adopted for the purpose of adjudging seniority. In the instant case, if the consideration of the petitioner for promotion was made before 19th January, 2011, then the petitioner could not be compared with the person who has been selected. But the fact remains, the selection in the instant case took place after 20th January, 2011, when the person selected for the post of Chief Engineer Level II, in accordance with the Rules, acquired seniority w.e.f. 15th October, 1977; whereas, petitioner acquired such seniority w.e.f. 13th September, 1984.”

36. The above judgment of the Hon’ble High Court was set aside by the Hon’ble Supreme Court on 27.08.2013, Bhajan Singh Vs. State of Uttarakhand & others (2013)14 SCC, 32 but on a different ground. The Hon’ble Supreme Court did not interfere with the finding of the Hon’ble High Court at Nainital with regard to Rule 6 (and its Explanation) of the Seniority Rules of 2002 and the catch up principle as decided by the Hon’ble High Court at Nainital.

37. **Hon’ble Apex Court in the matter of Ajit Singh Januja & Ors Vs. State of Punjab & Ors, AIR 1996 SC, 1189 has held as under:**

“We respectfully concur with the view in Union of India vs. Virpal Singh Chauhan, (supra) that seniority between the reserved category candidates and general candidates in the promoted category shall continue to be governed by their panel position i.e. with reference to their inter se seniority in the lower grade. The rule of reservation gives accelerated promotion, but it does not give the accelerated consequential seniority’. If a Scheduled Caste/Scheduled Tribe candidate is promoted earlier because of the rule of reservation/roster and his senior belonging to the general category candidate is promoted later to that higher grade the general category candidate shall regain his seniority over such earlier promoted scheduled caste/tribe candidate.

As already pointed out above that when a scheduled caste/tribe candidate is promoted earlier by applying the rule of reservation/roster against a post reserved for such scheduled caste/tribe candidate, in this process he does not supersede his seniors belonging to the general category. In this process there was no occasion to examine the merit of such scheduled caste/tribe candidate vis-a-vis his seniors belonging to the general category. As such it will be only rational, just and proper to hold that when the general category candidate is promoted later from the lower grade to the higher grade, he will be considered senior to a candidate belonging to the scheduled caste/tribe who had been given accelerated promotion against the post reserved for him. Whenever a question arises for filling up a post reserved for scheduled caste/tribe candidate in still higher grade then such candidate belonging to scheduled caste/tribe shall be promoted first but when the consideration is in respect of promotion against the general category post in still higher grade then the general category candidate

who has been promoted later shall be considered senior and his case shall be considered first for promotion applying either principle of seniority cum merit or merit cum seniority. If this rule and procedure is not applied then result will be that majority of the posts in the higher grade shall be held at one stage by persons who have not only entered in service on basis of reservation and roster but have excluded the general category candidates from being promoted to the posts reserved for general category candidates merely on the ground of their initial accelerated promotions. This will not be consistent with the requirement or the spirit of Article 16(4) or Article 335 of the Constitution.”

38. Admittedly, Government of Uttarakhand has never provided consequential seniority to the reserved category employees as a result of accelerated promotion based on roster point by any rules/policy. In a very recent judgment of the Hon'ble Supreme Court, the catch up principle has been clarified in this context. **Hon'ble Apex Court in Civil Appeal No. 6631-6632 of 2015 (arising out of SLP (Civil) Nos. 8366-8367 of 2012), S. Panneer Selvam & Ors Vs. Government of Tamil Nadu & Ors along with other Appeals, decided on 27.08.2015 has held as under:**

“35. In the absence of any provision for consequential seniority in the rules, the ‘catch up rule’ will be applicable and the roster-point reserved category promotees cannot count their seniority in the promoted category from the date of their promotion and the senior general candidates if later reach the promotional level, general candidates will regain their seniority. The Division Bench appears to have proceeded on an erroneous footing that Article 16 (4A) of the Constitution of India automatically gives the consequential seniority in addition to accelerated

promotion to the roster-point promotees and the judgment of the Division Bench cannot be sustained.”

39. It has been contended on behalf of the respondent No. 3 that once the seniority is settled, it cannot be disturbed. As the seniority of the parties is settled so it should not be disturbed. The Constitutional bench of the Hon'ble Supreme Court has held as described in paragraph 34 of this order, the seniority list is required to be amended to give effect of the catch up principle. So, we do not find any force in this argument.

40. Learned counsel for the respondent No. 3 has also contended that seniority lists were finalized and issued many times between 2004-2010 but the petitioners have not challenged the same and, therefore, the claim petition is time barred. We cannot agree with this contention. The petitioners have challenged the seniority list dated 11.03.2014 (Annexure: A-1, the impugned order) which has been issued by the Department of Industries, Government of Uttarakhand and as a result all previous seniority list issued by the State respondents before this date are of no value and they all stand superseded by this latest seniority list of 11.03.2014. Therefore, we are of the clear view that the claim petition is not time barred.

41. Respondent No. 3 has also referred to the judgment of Hon'ble High Court at Nainital, passed in writ petition No. 452 of 2012, Anil Kumar Versus State of Uttarakhand and another, decided on 18.12.2012 (Annexure: R-7 to the w.s. of respondent No. 3). The Hon'ble High court issued the direction, while allowing the writ petition to hold the DPC on the basis of the seniority list finalized on 17th May, 2010. The contention of the learned counsel for the respondent No. 3 is that the seniority list has already been finalized on 17.05.2010 by the order of the Hon'ble High Court. We find that the contention of the learned counsel in this respect is misconceived. The seniority list which has been challenged by the

petitioners is dated 11.3.2014 which is the seniority list of the 'Assistant Geologist'. The seniority list dated 17.05.2010 pertains to the post of 'Geologist'. Moreover, the petitioners were not given any opportunity to raise objection in respect of the seniority list finalized on 17.05.2010. In any case, the issue of Rule 6 (and its Explanation) of the Seniority Rules of 2002 was not before the Hon'ble High Court for adjudication.

42. Following cases have also been referred on behalf of the respondent No. 3 in support of his contentions:

- (i) Uttaranchal Forest Rangers Association and others Vs. State of U.P. and others, Supreme Court of India, 2007(1) SLR, 99.
- (ii) Akhil Bhartiya Soshit Karmchari Sangh Versus Union of India, (1996)6SCC, 65.
- (iii) Rajendra Pratap Singh Yadav and others Versus State of U.P. and others, Supreme Court of India, Civil Appeal No. 4949 of 2011.
- (iv) Shiba Shankar Mohapatra and others Versus State of Orissa and others, 2009(6)SLR, 483.
- (v) Amarjeet Singh and others Versus Devi Ratan and others, 2010, SCLJ, 710.
- (vi) State of Uttaranchal and another Versus Shiv Charan Singh Bhandari and others, 2012-13 SCLJ, 874.

We have gone through the cases cited on behalf of respondent No. 3, but the controversy in these cases was entirely different from that of the present case, therefore, no benefit can be extended to the respondent No. 3 on the basis of the principles laid down in these cases.

43. On the basis of the above discussion, we are of the definite opinion that the impugned seniority list has not been drawn according to the Uttarakhand Government Servants Seniority Rules,

2002, therefore, it cannot be upheld and is liable to be quashed and it is also appropriate to direct the respondents No. 1 and 2 to redraw a fresh seniority list in accordance with the observations made in the judgment, but after affording opportunity to all the respective and affected parties.

ORDER

The petition is allowed. The impugned seniority list (Annexure: A-1) is hereby quashed. The respondents No. 1 and 2 are directed to redraw the seniority of the parties in accordance with Rule-6 (and its Explanation) of the Uttarakhand Government Servants Seniority Rules, 2002 and observations made in the body of the judgment within a period of four months from today after affording opportunity of objections to all concerned parties. The petitioners shall also be granted all consequential benefit, if any, accrued to them. No order as to costs.

V.K.MAHESHWARI
VICE CHAIRMAN (J)

D.K.KOTI
VICE CHAIRMAN (A)

DATE: SEPTEMBER 29, 2015
DEHRADUN

KNP