

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

Present: Hon'ble Mr. Ram Singh

----- Vice Chairman (J)

Hon'ble Mr. A.S.Nayal

-----Member (A)

CLAIM PETITION NO. 15/NB/DB/2013

Sudesh Chandra, S/o Late Shri Om Prakash, serving as Naib Tehsildar,
Bazpur, District Udham Singh Nagar.

.....Petitioner

VERSUS

1. State of Uttarakhand through Principal Secretary, Revenue Department, Govt. of Uttarakhand, Dehradun.
2. Chairman, Board of Revenue, Uttarakhand, Dehradun.
3. Pooran Prasad S/o Not known, presently posted as Registrar Kanoongo in District Almora.
4. Indra Bahadur Mal S/o Not Known, presently posted as Registrar Kanoongo in District Pithoragarh.
5. Pitamber Dutt Joshi, S/o Not Known, presently posted as Registrar Kanoongo in District Pithoragarh.
6. Dil Singh Bhandari S/o Not Known Presently posted as Registrar Kanoongo in District Uttarkashi.
7. Janardan Prasad Gaur S/o Not Known presently posted as Registrar Kanoongo in District Pauri Garhwal.
8. Sudesh Kumar, S/o Not Known presently posted as Registrar Kanoongo in District Pithoragarh.
9. Chandan Singh Rana, S/o Not Known presently posted as Registrar Kanoongo in District Uttarkashi.

10. Mohan Lal Pant, S/o Not Known presently posted as Registrar Kanoongo in District Tehri.
11. Basi Khan, S/o Not Known presently posted as Registrar Kanoongo in District Udham Singh Nagar.
12. Yogesh Kumar Verma, S/o Not Known presently posted as Registrar Kanoongo in District Nainital.
13. Naveen Chandra Rajwar, S/o Not Known presently posted as Registrar Kanoongo in District Nainital.
14. Mahendra Pal Singh, S/o Not Known presently posted as Registrar Kanoongo in District Nainital.
15. Sunder Lal Lekhwar, S/o Not Known, presently posted as Registrar Kanoongo in District Tehri.
16. Sushil Kumar, S/o Not Known presently posted as Registrar Kanoongo in District Haridwar.
17. Kundan Singh Negi, S/o Not Known, presently posted as Registrar Kanoongo in District Naintial.
18. Prem Ballabh Nautiyal, S/o Not Known presently posted as Registrar Kanoongo in District Uttarkashi.
19. Bhuwan Chandra Joshi, S/o Not Known presently posted as Registrar Kanoongo in District Nainital.
20. Shri Shakti Prasad Uniyal, S/o Not Known presently posted as Registrar Kanoongo in District Tehri.
21. Shri Jagat Singh Dhanola, S/o Not Known, presently posted as Registrar Kanoongo, in District Tehri.
22. Shri Budhi Ram Sariyal S/o Not Known presently posted as Registrar Kanoongo in District Uttarkashi.
23. Shri Surveer Singh Rana, S/o Not Known presently posted as Registrar Kanoongo in District Dehradun.
24. Shri Prem Singh Rawat, S/o Not Known presently posted as Registrar Kanoongo in District Tehri.
25. Rajendra Kumar Sharma, S/o Not Known presently posted as Registrar Kanoongo in District Dehradun.
26. Shri Jaspal Singh Rana, S/o Not Known presently posted as Registrar Kanoongo, in District Dehradun.

27. Shri Suresh Chandra Dabral S/o Not Known presently posted as Registrar Kanoongo in District Pauri Garhwal.

28. Shri Gopal Ram S/o Not Known presently posted as Registrar Kanoongo, in District Udham Singh Nagar.

.....Respondents

Present: Sri Alok Mehra, Ld. Counsel
for the petitioner.
Sri V.P. Devrani, Ld. A.P.O.
for the Respondents No. 1 & 2
Sri S.S. Chaudhary, Ld. Counsel
for respondent No. 11.

JUDGMENT

DATED: DECEMBER 11, 2018

HON'BLE MR. RAM SINGH, VICE CHAIRMAN (J)

1. The petitioner has filed this claim petition for the following reliefs:-

"a) To quash and set aside the impugned seniority list dated 14.09.2012 (Annexure No. 1 to the compilation) issued by respondent no. 2.

b) To direct the respondent No. 2 to re-determine the seniority of the cadre of Registrar Kanoongo after taking into consideration Rule 7 of the Uttarakhand Government Servant Seniority Rules, 2002.

c) To pass any other suitable order as this Hon'ble Tribunal may deem fit and proper under the facts and circumstances of the case.

d) To award the cost of the petition in favour of the applicant."

2. Briefly, the stated facts are that after joining the post of *Patwari* on 27.03.1984, promotional exercise of the petitioner for the post of Assistant Registrar Kanoongo was undertaken in District Udham Singh Nagar in the year 2002. The petitioner exercised his option for such promotion but his claim was not considered on the ground that he is above 35 years of age. Aggrieved by this, petitioner filed a writ petition No. 870 of 2004 (S/S) before the Hon'ble High Court, which

was allowed on 16.02.2010 and the Division Bench of the Hon'ble High Court confirmed the said judgment in Special Appeal No. 22 of 2010.

3. In compliance of the above judgments, the petitioner was promoted to the post of Registrar Kanoongo on 24.04.2010. However, in the promotion order, it was mentioned that seniority amongst serving Registrar Kanoongo will be determined on the basis of their date of substantive appointment on the post of *Patwari*. The petitioner's service on the post of Registrar Kanoongo was confirmed vide order dated 25.04.2012.

4. The Chief Revenue Commissioner, Uttarakhand (Now Board of Revenue) issued a tentative seniority list of Registrar Kanoongo on 18.04.2012 and objections to it were invited within 15 days. The petitioner submitted his objection on 04.05.2012, specifically stating the facts that the feeding cadre for the post of Assistant Registrar Kanoongo is Patwari/ Lekhpal and Land Revenue Clerk, and for Registrar Kanoongo, feeding cadre was Assistant Registrar Kanoongo under the *Uttar Pradesh Avar Rajswa Lipik (Registrar Kanoongo Aur Sahayak Registrar Kanoongo) Sewa Niyamawali, 1958* (hereinafter referred to as Niyamawali of 1958) and till the enforcement of Uttarakhand Registrar Kanoongo Service Rules, 2011 (hereinafter referred to as Service Rules of 2011), the service conditions of Registrar Kanoongo were governed by the Niyamawali of 1958. The objections of the petitioner were forwarded by the District Magistrate, Udham Singh Nagar to the Chief Revenue Commissioner, Dehradun vide its letter dated 14.05.2012 but the Chief Revenue Commissioner/Board of Revenue vide its letter dated 14.09.2012 had taken an erroneous view in determining the seniority by taking into consideration the Service Rules of 2011.

5. The petitioner has also mentioned in his petition that to the contrary, the Chief Revenue Commissioner vide its letter dated

10.05.2005 refused to give the seniority to one Sri Harish Chandra Arya, Registrar Kanoongo, who claimed the seniority on the basis of his substantive appointment as *Patwari* and similarly, on 12.02.2007, the claims of several other persons, who were claiming benefit of seniority on the basis of their substantive appointment of *Patwari*, were also rejected and it was decided that in their cases, they can be granted seniority only from the date, they were working as Registrar Kanoongo. Whereas, in the case of the petitioner, a contrary view was taken.

6. The petitioner alongwith other similarly situated persons filed a writ petition No. 1368 of 2013 (S/S), Mohan Singh vs. State & others before the Hon'ble High Court for quashing the impugned seniority list dated 14.09.2012. The operation of that seniority list was stayed by the Hon'ble High Court vide its order dated 26.09.2012 and when this petition came up for hearing before the Hon'ble High Court, it was disposed of with the direction to the petitioner to approach the Uttarakhand Public Services Tribunal, maintaining *status-quo* for a period of 45 days, with liberty to the applicant to press for interim relief before the Tribunal. Thereafter, this claim petition was filed before this Tribunal for the reliefs as mentioned above.

7. Petition was opposed by the State and Board of Revenue, respondents No. 1 and 2 through learned A.P.O. Other private respondents No. 3 to 19 were also served but on behalf of some respondents, their Counsel appeared on some dates. Respondent no.11 was represented on some dates but he also did not appear on the last date of hearing. All other private respondents, including newly added respondents No. 20 to 28 did not appear and the matter was heard ex-parte against them.

8. Respondents No. 1 and 2 by filing their Counter Affidavit, opposed the claim petition and contended that as per the Niyamawali of 1958, initially, only those Patwari/Lekhpals were eligible for

promotion to the post of Assistant Registrar Kanoongo, who were less than 35 years of age and the post of Assistant Registrar Kanoongo was abolished vide order No. 722/18 (1)/2006 dated 18.10.2006 (Annexure: R-2) and thereafter, on 14.11.2011, Uttarakhand Registrar Kanoongo Niyamawali, 2011 was enforced. The respondents in Para 5 of their Counter Affidavit have themselves submitted that in compliance of the order dated 18.10.2006, the post of Assistant Registrar Kanoongo and Registrar Kanoongo were amalgamated and all the Assistant Registrar Kanoongo working on 2006 automatically became Registrar Kanoongo.

9. In compliance of the order passed by the Hon'ble High Court, the petitioner was granted promotion as Registrar Kanoongo vide order dated 23.04.2010. As per the Service Rules of 2011, the feeding cadre for the post of Registrar Kanoongo is Patwari/Lekhpal. According to Rule 13 of the Services Rules of 2011, the tentative seniority list dated 18.04.2012 was issued as per the Uttarakhand Government Servants Seniority Rules, 2002 and after inviting objections, a detailed order was passed. The judgment of the Hon'ble Single Bench of the Hon'ble High Court, relegating the matter to this Tribunal has been challenged before the Division Bench by some other persons and the respondents have contended that the petitioner cannot be heard accordingly. As the promotion order of the petitioner was issued on 23.04.2010, which was accepted by the petitioner and was not challenged in any court of law, hence, that has become final and according to that order, the seniority of Registrar Kanoongo was to be decided on the basis of substantive appointment on the post of *Lekhpal/Patwari*. Hence, as the petitioner has accepted the promotion, so he has to accept the condition attached to it and his petition is liable to be dismissed.

10. The contents of the written statement were denied by the petitioner through rejoinder affidavit filed by him and it was contended that in the order dated 18.10.2006, the so called posts of Registrar

Kanoongo and Assistant Registrar Kanoongo were not legally unified. In the said Government Order, it was directed that suitable amendment be also made in the relevant service rules and such amendment was only carried out in 2011 by issuance of the Uttarakhand Registrar Kanoongo Niyamawali, 2011 and till then, the old Niyamawali of 1958 was applicable. The petitioner was promoted to the post of Registrar Kanoongo pursuant to the judgment and order of the Hon'ble High Court dated 16.02.2010 and till 14.11.2011, the services of the Registrar Kanoongo and Assistant Registrar Kanoongo were governed by the Niyamawali of 1958. Rule 7 of the said Niyamawali provides that the source of recruitment for the post of Registrar Kanoongo was Assistant Registrar Kanoongo and Supervisor Kanoongo and as such, there was not a single feeding cadre for the post of Registrar Kanoongo and being different feeding cadre, Rule 7 of the Uttarakhand Government Servants Seniority Rules, 2002 will be applicable in their case, while by wrong application of the Rules, their objections were decided. Reiterating other facts in his petition, the petitioner has prayed that his petition be allowed and the impugned seniority list dated 14.09.2012 be set aside and a direction be issued to re-determine the seniority of the cadre of Registrar Kanoongo after taking into consideration the Uttarakhand Government Servants Seniority Rules, 2002 and the old Rules of 1958 along with other consequential benefits.

11. We have heard both the sides and perused the record.

12. It is an admitted fact that the petitioner joined the services of Patwari/Lekhpal on 27.03.1984 and his promotional post was of the Assistant Registrar Kanoongo as per Niyamawali of 1958. The promotional exercise of the petitioner was undertaken in 2002 for the post of Assistant Registrar Kanoongo, wherein, his juniors were promoted on 02.03.2002 and 02.12.2003 but the claim of the petitioner was denied, only because of the reasons that he crossed the

age of 35 years. It is also admitted to both the parties that such decision was challenged by the petitioner before the Hon'ble High Court in Writ Petition No. 870/2004 (S/S) and the judgment of the Hon'ble High Court is available as Annexure: 2. All the 8 persons promoted as Assistant Registrar Kanoongo on 02.03.2002 and 02.12.2003, were junior to the petitioner as per final seniority list of the Patwari/Lekhpal. **Original Rule 8** of Niyamawali of 1958 provides that Lekhpals who were below the age of 35 years, would be eligible for promotion to the post of Assistant Registrar Kanoongo but **such rule was amended in 1962**. Admittedly, as per Niyamawali of 1958, the feeding cadre of Assistant Registrar Kanoongo is Lekpals/Revenue Clerk and for the post of Registrar Kanoongo, the feeding cadre was Assistant Registrar Kanoongo and Supervisor Kanoongo.

13. Before the Hon'ble High Court, the contention was raised that unamended Rule 8 of the Niyamawali of 1958, which was amended by a Notification dated 17.12.1962, was wrongly made applicable, because in 1962, the age limit of 35 was removed and this fact was also admitted by the state/respondents before the Hon'ble High Court. The judgment of the Hon'ble High Court is Annexure-2. After amendment of Rule 8 in the year 1962, the source of recruitment of Registrar Kanoongo was permanent Assistant Registrar Kanoongo, and the Supervisor Kanoongo. Hence, for Registrar Kanoongo, Assistant Registrar Kanoongo as well as Supervisor Kanoongo, promoted from *Lekhpal/Patwari* were the feeding cadre and the condition of 35 years of age on First January, was also removed.

14. Respondents themselves have admitted before the Hon'ble High Court that applying the unamended/old Rule and ignoring the amendment made in 1962, the petitioner's claim was denied, hence, Hon'ble High Court issued a writ of mandamus to grant promotion to the petitioner accordingly, within a period of three months. The relevant order of the Hon'ble High Court is quoted below:-

“In the light of the aforesaid, it is clear that the petitioners, being eligible and being the senior most, were denied an opportunity of being promoted on account of the respondents by not following the amendment made in Rule 8 of the Rules of 1958. This Court finds that the petitioners are entitled to a writ of mandamus. Consequently, the writ petition is allowed. A writ of mandamus is issued commanding the Collector, Udhm Singh Nagar to consider the promotion of the petitioners to the post of Assistant Registrar Kanungo and, if found eligible, as per the amended Rule 8 of the Rules of 1958, consequential orders of promotion would be passed within three months from the date of production of the certified copy of this order. In the event, the petitioners are found to be senior to the persons who had been promoted earlier, the petitioners, would accordingly be placed above the junior persons.”

This judgment was challenged in Special Appeal No. 22 of 2010 by other private respondents which was disposed of on 26.10.2010 with the following direction:-

“4. In view of the above, the instant Special Appeal is disposed of with the direction to the respondents to first consider the suitability of respondent nos. 3 and 4 in terms of the directions issued by the learned Single Judge. Thereupon, if respondent nos. 3 and 4 are found suitable, their inter-se seniority as against the appellants herein shall be determined under the prevalent statutory rules.”

15. In compliance of the orders passed by the Hon'ble High Court in above writ petition and appeal, the petitioner who was entitled for promotion from the date of their juniors, was granted promotion vide order dated 23.04.2010, which reads as under:-

“कार्यालय आदेश

रिट पिटीशन संख्या 870/04 (S/S) श्री सुरेश चन्द्र अन्य बनाम कलेक्टर (ऊधम सिंह नगर) व अन्य में पारित आदेश दिनांक 16.02.2010 व मा0 उच्च न्यायालय उत्तराखण्ड नैनीताल में दाखिल स्पेशल अपील संख्या 22/2010 मोहन सिंह एवं अन्य बनाम कलेक्टर/जिला मजिस्ट्रेट, ऊधम सिंह नगर व अन्य में पारित आदेश दिनांक 26.03.2010 तथा टिर पिटीशन संख्या 167/2010 सुदेश चन्द्र पटवारी एवं अन्य बनाम कलेक्टर/जिला

मजिस्ट्रेट, ऊधम सिंह नगर व अन्य में पारित आदेश दिनांक 02.04.2010 के क्रम में रजिस्ट्रार कानूनगो के रिक्त पद पर प्रोन्नति हेतु चयन समिति का गठन किया गया था। चयन समिति की संस्तुति दिनांक 22.04.2010 द्वारा निम्न पटवारियान को र0का0 पद पर प्रोन्नति दी गई है। प्रोन्नति के फलस्वरूप निम्न प्रकार तैनाती की जाती है।

क्रमांक	नम कर्मचारी	पद नाम	वर्तमान तहसील	प्रोन्नति के फलस्वरूप तैनाती तहसील
1.	श्री सुरेश चन्द्र	पटवारी	बाजपुर	काशीपुर
2.	श्री विजेन्द्र कुमार	पटवारी	गदरपुर	किच्छा

1- उक्त प्रोन्नति रिट याचिका सं0 167/2010 में पारित अन्तिम आदेश के अधीन होगी।

2- इनकी वरिष्ठता कार्यरत रजिस्ट्रार कानूनगो को सम्मिलित करते हुये पटवारी पद पर मौलिक नियुक्ति के आधार पर होगी।

दिनांक: 23.04.2010

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जिलाधिकारी
ऊधम सिंह नगर

कार्यालय जिलाधिकारी, ऊधम सिंह नगर

पत्र संख्या- 1090/ सात-स0भू0अ0/2010 दिनांक अप्रैल 24,2010

प्रतिलिपि निम्नांकित को अनुपालनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित।

- 1- उपजिलाधिकारी बाजपुर/काशीपुर/रूद्रपुर।
- 2- तहसीलदार काशीपुर/बाजपुर/गदरपुर/ किच्छा।
- 3- सम्बन्धित कर्मचारी श्री सुदेश चन्द्र पटवारी तह0 बाजपुर।
- 4- कार्यालय प्रति।

ह0 अस्पष्ट

अपर जिलाधिकारी
ऊधम सिंह नगर

16. The real dispute, which is before this court for consideration is, as to whether by the order dated 23.04.2010, what was granted, and, whether the condition imposed in para-2 of this order, is in compliance of the order passed by the Hon'ble High Court and whether it is as per the Rules or not. Learned counsel for the petitioner has argued that the seniority on the post of Registrar Kanoongo can be fixed only as per the prevailing Service Rules and

according to the judgment of the Hon'ble High Court, the petitioner was entitled to get his seniority above his juniors with the date when their juniors were promoted and he was denied. The petitioner has also argued that the order of promotion was issued in April 2010 and at that time, the prevalent/relevant Service Rules, was the Niyamawali of 1958 because the new Services Rules of 2011 were enforced on 14th November 2011. The petitioner was entitled for promotion in 2002 as Assistant Registrar Kanoongo and at the time of his actual promotion on the post of Registrar Kanoongo in April 2010, the concerned Service Rules were of 1958 and not the Rules of 2011. Hence, the seniority of the petitioner can only be decided according to the prevalent Service Rules i.e. Niyamawali of 1958, read with the Uttarakhand Government Servants Seniority Rules, 2002. We agree with this argument of the petitioner because it is the legal position, as well as it was the direction of Division Bench of the Hon'ble High Court in Special Appeal No. 22 of 2010 dated 26.03.2010.

17. The petitioner has raised the point that the impugned seniority list has been issued on the basis of the Rules of 2011 whereas, the seniority of the petitioner on the post of Registrar Kanoongo *and* Assistant Registrar Kanoongo can be decided according to the prevalent Service Rules i.e. Niyamawali of 1958. We agree with this contention because the petitioner's promotion was due in 2002 on the post of Assistant Registrar Kanoongo and he was denied the same on the basis of wrong cognizance of unamended rule and his right was finally decided as such by the Hon'ble High Court. The court holds that in 2010, he was promoted as Registrar Kanoongo and he became a member of the cadre of Registrar Kanoongo before the enforcement of the Service Rules of 2011, hence, his seniority on the post of Registrar Kanoongo can only be decided as per the Niyamawali of 1958, read with the Seniority Rules of 2002 and the condition (2) mentioned in the promotion order of the petitioner dated 23.04.2010 (Annexure: 4), is

invalid and has no effect in the eye of law and it cannot be considered at all, because any appointing authority has no power, imposing any condition against the rules. Even if this condition was mentioned in the promotion order, it has no meaning because the promotion order of a person and seniority of a service member can only be settled by the concerned Rules which was in the case of petitioner i.e. Niyamawali of 1958 and the Seniority Rules of 2002.

18. Accordingly, we do not agree with the argument of the respondents that, because of the reasons that the petitioner has accepted his promotion order dated 23.04.2010 hence, he has to accept the condition attached with it about settling of his seniority, written in that order because the authorities have no such powers beyond the provisions of law. For settling the seniority, we are of the view that the Niyamawali of 1958 and the Seniority Rules of 2002 are the relevant rules and the seniority of the petitioner cannot be fixed as per the Rules of 2011 because before their application, petitioner was working as Registrar Kanoongo.

19. Rule 7 of the Niyamwali of 1958 provide for source of recruitment, which is quoted as below:-

“7. भर्ती के स्रोत— रजिस्ट्रार कानूनगो की कोटि में भर्ती स्थायी सहायक रजिस्ट्रार कानूनगो की, जिनकी कम से कम तीन वर्ष की सेवा हो गई हो, पदोन्नति द्वारा की जायेगी और सहायक रजिस्ट्रार कानूनगो की कोटि में भर्ती कम से कम 6 वर्षों की सेवा वाले लेखपालों की पदोन्नति द्वारा की जायेगी।

टिप्पणी— ऐसा पर्यवेक्षक (सुपरवाइजर) कानूनगो भी जो अपनी दीर्घ आयु अथवा निर्बलता के कारण पर्यवेक्षक (सुपरवाइजर) कानूनगो के क्षेत्र में कार्य करने के लिये अनुपयुक्त हो, रजिस्ट्रार कानूनगो के पद पर नियुक्ति के लिये पात्र समझा जायेगा।”

Hence, according to Rule 7, the feeding cadre for promotion of Registrar Kanoongo was Assistant Registrar Kanoongo as well as Supervisor Kanoongo and hence, there were two sources for

promotion of Registrar Kanoong and the feeding cadre for the post of Assistant Registrar Kanoongo was *Lekhpal/Patwari* having 6 years of service as *Lekhpal*. It is an admitted fact that these Rules remained in force till the new Rules of 2011 were enforced in the Month of November, 2011.

20. The court also finds that the relevant date relating to petitioner, for deciding his seniority, in all circumstances, falls before the enforcement of the new Rules of 2011 and for the purpose of fixing the seniority, the old Rules of 1958 do not contain any provision hence, the Seniority Rules of 2002 were applicable in this case even before the enforcement of 2011 Rules. Rule 2 and 3 of the Government Servants Seniority Rules, 2002 provide as under:-

*"2- **Over-riding effect.**—These rules shall apply to all Government servants in respect of whose recruitment and conditions of service, rules may be or have been made by the Governor under the proviso to Article 309 of the Constitution.*

3. These rules shall have effect notwithstanding anything to the contrary contained in any other service rules made here to above."

Hence, the law position is very clear that the seniority of the post of Registrar Kanoongo will have to be decided as per the Uttarakhand Government Servants Seniority Rules, 2002 and for fixing the seniority, the relevant Rules are Rule 6 and 7, which are quoted below:-

"6. 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, 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.*

7. Seniority where appointment by promotion only from several feeding cadres--

Where according to the service rules, appointment 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--*Where the order of the substantive appointment in the feeding cadre specifies a particular back date with effect from which a person is substantively appointed, that date will be deemed to be the date of order of substantive appointment and, in other cases it will meant the date of issuance of the order.*

Provided that where the pay scales of the feeding cadres are different, the persons promoted from the feeding cadre having higher pay scale shall be senior to the persons promoted from the feeding cadre having lower pay scale.

Provided further that the persons appointed on the result of a subsequent selection shall be junior to the persons appointed on the result of a previous selection.

21. The crux of the matter for decision between the parties is as to what rule will apply in the case of the petitioner for deciding the seniority of Registrar Kanoongo? Admittedly, Rule-13 of the Service Rules of 2011 also provide as under:-

“13- नियम-10 के अनुसार नियुक्त रजिस्ट्रार कानूनगो अभ्यर्थियों की श्रेष्ठता क्रम सूची उनकी पोषक संवर्ग में पारस्परिक ज्येष्ठता के आधार पर उत्तराखण्ड सरकारी सेवक ज्येष्ठता के आधार पर उत्तराखण्ड सरकारी सेवक ज्येष्ठता नियमावली, 2002 के प्रावधानों के आलोक में विचार कर अवधारित की जायेगी।”

Hence, in both the cases, the relevant rules for deciding the seniority are the Seniority Rules of 2002.

22. The dispute between the petitioner and respondents is whether Rule 6 or Rule 7 of the Seniority Rules of 2002 will apply? Applying the rule 6, respondents have decided and issued the impugned seniority list. According to the Service Rules of 2011, the

feeding cadre for the post of Registrar Kanoongo is a single cadre i.e. Patwari/Lekhpals whereas, in our view, according to the relevant rules, i.e. Niyamawali of 1958, the feeding cadre for the post of Registrar Kanoongo was two; (i) Assistant Registrar Kanoongo and (ii) Supervisor Kanoongo. Learned A.P.O. has argued that because they have issued the seniority list after enforcement of new Rules of 2011 hence, according to these Rules, after amalgamation of cadre of Assistant Registrar Kanoongo and Registrar Kanoongo, the feeding cadre is single. We do not agree with this argument for the reasons mentioned hereinafter.

23. Respondents have also argued that the cadre of Registrar Kanoongo and Assistant Registrar Kanoongo were amalgamated vide order dated 18.10.2006 (Annexure: R-2). Whereas, learned counsel for the petitioner has argued that, by the said letter (Annexure: R-2) sent by the Principal Secretary, Government of Uttarakhand to the Chief Revenue Commissioner on 18.10.2006, the decision of the government to amalgamate the post, was communicated and a proposal was asked from the Board of Revenue/Chief Revenue Commissioner to move for an amendment in the concerned rules. This letter/ G.O. does not change the rule position, unless the rules were amended. The concerned letter dated 18.10.2006 is quoted below:-

“संख्या: 722/18(1)/2006

प्रेषक,

एन0एस0 नपलच्याल,
प्रमुख सचिव,
उत्तरांचल शासन।

सेवा में,

मुख्य राजस्व आयुक्त,
उत्तरांचल, देहरादून।

राजस्व विभाग

देहरादून: दिनांक 18 अक्टूबर, 2006

विषय: समता समिति उ0प्र0, 1989 की संस्तुतियों पर लिये गये निर्णयानुसार जिला कार्यालयों के भूलेख अधिष्ठान के कार्यरत सहायक रजिस्ट्रार कानूनगो/रजिस्ट्रार कानूनगो के पदों का एकीकृत।

महोदय,

उपर्युक्त विषय के सम्बन्ध में मुझे यह कहने का निदेश हुआ है कि शासन द्वारा सम्यक विचारोपरान्त रजिस्ट्रार कानूनगो एवं सहायक रजिस्ट्रार कानूनगों के पदों को एकीकृत करते हुए "रजिस्ट्रार कानूनगों" किये जाने का निर्णय लिया गया है।

2— जिन तहसीलों में दो रजिस्ट्रार कानूनगों कार्यरत होंगे, वहाँ वरिष्ठतम रजिस्ट्रार कानूनगों को "रजिस्ट्रार कानूनगों-1" एवं कनिष्ठतम रजिस्ट्रार कानूनगों को "रजिस्ट्रार कानूनगों-2" कहा जायेगा।

3— उक्तानुसार कार्यवाही सुनिश्चित करते हुए सम्बन्धित सेवा नियमावली में संशोधन का प्रस्ताव शासन को प्रेषित करने का कष्ट करें।

भवदीय,
(एन0एस0 नपलच्याल),
प्रमुख सचिव।

सख्यां एवं तददिनांक

प्रतिलिपि निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित:-

- 1— आयुक्त, गढ़वाल एवं कुमाँऊ मण्डल, उत्तरांचल।
- 2— समस्त जिलाधिकारी, उत्तरांचल।
- 3— गार्ड फाईल।

आज्ञा से,
(सुनील सिंह)
अनुसचिव।"

24. This court is of the view that vide this letter, only the intention of the Government was expressed. This letter does not amend the Service Rules (Niyamwali) of 1958 in which the cadre of Assistant Registrar Kanoongo and Registrar Kanoongo were specifically mentioned in Rule 6 and 7 and unless these Rules of 1958 were amended, this letter cannot change the cadre position. Furthermore, this letter itself clarifies that there was a need to amend the concerned rules for completion of amalgamation process and there is no evidence to show any such amendment in Niyamawali of 1958 by which these

two posts were amalgamated before the enforcement of new Rules of 2011. The court also finds that this decision of the Government was legally/finally enforced on 14th November 2011 by superseding the old Service Rules of 1958 by new Rules of 2011 and till then, as per the Niyamawali of 1958, the feeding cadre for the post of Registrar Kanoongo was Assistant Registrar Kanoongo and supervisor Kanoongo and the cadres of Assistant Registrar Kanoongo and Registrar Kanoongo were legally amalgamated only after the enforcement of 2011 Rules on 14.11.2011. Letter No. 722 dated 18.10.2006 does not change the cadre position because as per the relevant Service Rules (Niyamawali) of 1958, the feeding cadre for the post of Registrar Kanoongo till 14.11.2011, were, as mentioned in the Niyamawali of 1958.

25. The court holds that the seniority of the Registrar Kanoongo, promoted upto 14.11.2011 will be settled as per the Niyamawali of 1958, read with Rule 7 of the Seniority Rules of 2002 and all those persons, will rank senior to those Registrar Kanoongos, who were promoted after the enforcement of Service Rules of 2011 on 14.11.2011 and the seniority of the later, will be fixed as per the Service Rules of 2011 and Rule 6 of the Seniority Rules of 2002.

26. Learned counsel for the petitioner also argued that as per his legal right and as per the judgment of the Hon'ble High Court in writ petition, the petitioner was entitled for promotion for the post of Assistant Registrar Kanoongo w.e.f. 02.03.2002. The court agree with this argument and also observe that in the tentative seniority list, prepared on 18.04.2012, the name of the petitioner was mentioned at sl. No. 52 and in column no. 9, the date of promotion of the petitioner on the post of Assistant Registrar Kanoongo/ Registrar Kanoongo has been shown as 02.03.2002. As per the decision made by the Hon'ble High Court, a right vested with the petitioner for entitlement to be

promoted on the post of Assistant Registrar Kanoongo w.e.f. 02.03.2002, the date his juniors were promoted.

27. In the tentative seniority list, as the date of promotion of the petitioner on the post of Assistant Registrar Kanoongo was mentioned by the respondents themselves, as 02.03.2002 hence, it is an admission by the respondents that the petitioner was promoted as Assistant Registrar Kanoongo in 2002. He fulfills all the conditions for promotion, and condition which was not there in the Rules, were applied and he was denied promotion at that time, for which, a mandamus was issued by the Hon'ble High Court. This court decides that the respondents cannot argue the matter in the manner that as they have given him promotion as Registrar Kanoongo on 23.04.2010 with a condition to fix his seniority on the basis of date of their date of appointment as *Lekhpals/Patwaris* hence, he is bound by this condition. **This court holds that in view of the rules, this condition has no meaning.**

28. We hold that the letter dated 18.10.2006 does not amalgamate/change the cadre of Registrar Kanoongo and Assistant Registrar Kanoongo, but even if, the interpretation of the respondents is accepted, and as per para-5 of the written statement of the respondents No.1 & 2, if the cadre of Assistant Registrar Kanoongo is supposed to be amalgamated with the cadre of Registrar Kanoongo then w.e.f. 18.10.2006, the petitioner automatically became Registrar Kanoongo. The respondents in para 5 of the written statement have stated as under:-

“5. यह कि इस नियमावली के नियम 4 में शासनादेश 18 अक्टूबर 2006 को यथा संशोधित कर सहायक रजिस्ट्रार कानूनगो के पदों का संविलियन रजिस्ट्रार कानूनगो में कर एकीकृत संवर्ग घोषित किया गया । फलस्वरूप वर्ष 2002 में सहायक रजिस्ट्रार कानूनगो पद पर प्रोन्नत कार्मिक स्वयमेव रजिस्ट्रार कानूनगो बन गये।”

29. The court is of the view that the respondents cannot argue the matter and cannot apply the rules in different way in case of the similarly situated persons. In his petition, the petitioner has cited the example of some persons who were not granted seniority on the basis of the feeding cadre of *Patwari* but very surprisingly, the principle was adversely applied in the case of the petitioner. Hence, even if the contention of the respondents about amalgamation of the cadre w.e.f. 18.10.2006 is accepted, then according to their own contention in para 5 of their Written Statement, the petitioner automatically became Registrar Kanoongo on 18.10.2006,

30. But this court is of the view that, the legal position is different because the amalgamation of these cadres was legally enforced only after the enforcement of the rules of 2011. The respondents have argued that in Rule 4 of the Rules of 2011, a note was also attached that both these posts were amalgamated. The court is of the view that if this note is presumed to amalgamate the cadre with back date, before the application of 2011 Rules (although it is not so), then the petitioner who was legally entitled and got promotion as Assistant Registrar Kanoongo w.e.f. 02.03.2002 then, he automatically became Registrar Kanoongo w.e.f. 18.10.2006 but in view of the court, the cadres were not amalgamated in this way.

31. In all circumstances, either considering amalgamation of the cadre or the promotion order issued by the respondents in 2010, the petitioner became Registrar Kanoongo before the enforcement of Service Rules of 2011 and for deciding seniority of the petitioner *vis-à-vis* other Registrar Kanoongo, the Rule 7 of the Seniority Rules of 2002 and Niyamawali of 1958 will be applied and accordingly, the seniority of the post of Registrar Kanoongo will be determined from the date of their substantive appointment, in their respective feeding cadres and the feeding cadre for the post of Registrar Kanoongo till November 2011 was the Assistant Registrar Kanoongo, the Supervisor Kanoongo.

Hence, according to this, the petitioner will rank senior to those Registrar Kanoongos who were junior to him in the cadre of Assistant Registrar Kanoongo and will also rank senior to all the Registrar Kanoongo appointed after the enforcement of Service Rules of 2011.

32. Learned A.P.O. on behalf of the respondents has also argued that they issued the seniority list in the year 2012 and that can only be issued as per the new Rules of 2011. According to them, as per the new Rules of 2011, the feeding cadre for the post of Registrar Kanoongo is single i.e. *Lekhpal/Patwari*. This court finds that this interpretation cannot be made applicable to this case because there is second proviso to Rule-7 of the Seniority Rules of 2002 which clearly mentioned that “persons appointed on the result of subsequent selection, shall be junior to the persons appointed on the result of a previous selection”. The concerned Rules for fixing the seniority, will be the Rules applicable on the date when the persons come in that cadre. When the petitioner was promoted in 2010 after the order of the Hon’ble High court, according to which, he was entitled for promotion as Assistant Registrar Kanoongo with back date, and promotion of petitioner as Registrar Kanoongo was also made in 2010, before the enforcement of the Rules of 2011, hence, for fixing his seniority in the cadre of Registrar Kanoongo, Rules of 2011 will not be applicable as at the date of his promotion as Registrar Kanoongo, according to the concerned Niyamawali of 1958, the feeding cadre was not *Lekhpal/Patwari*, but it was Assistant Registrar Kanoongo and Supervisor Kanoongo.

33. As per Rule 13 of the Service Rules of 2011, for the persons appointed as Registrar Kanoongo under Rule 10 of the Rules of 2011, the seniority will be decided according to their seniority in the feeding cadre, as per Seniority Rules of 2002. A joint reading of Rule 10 and 13 of the New Service Rules of 2011, make it clear that treating *Patwari/Lekhpal* as feeding cadre of Registrar Kanoongo, the persons

will be appointed under Rule 10 of the Service Rules of 2011 and treating them promoted from a single cadre, their seniority will be decided.

34. The appointment of the petitioner as Registrar Kanoongo was never made under Rule 10 of the Service Rules of 2011 and he was appointed/promoted as Registrar Kanoongo in 2010, before the enforcement of the Service Rules of 2011 and the concerned Rules were Niyamawali of 1958, in which the feeding cadre for Registrar Kanoongo was not *Patwari/Lekhpal*, but it was Assistant Registrar Kanoongo and Supervisor Kanoongo, hence the principle applied by the respondents for deciding the seniority, was totally wrong.

35. By comparing the qualification for becoming a Registrar Kanoongo in the old Rules and new rules, it is clear that in the Rules of 1958, a person should have six years of service as *Patwari* and then three years of service as Assistant Registrar Kanoongo, (total 9 years of service was the minimum qualifying experience) and in the new Service Rules of 2011, for becoming Registrar Kanoongo, a person must have at least 10 years of service of *Patwari*. So a parity has been maintained about the experience of service for promotion as Registrar Kanoongo. However, in the old Rules, the *Patwari* was entitled to become Registrar Kanoongo after passing two steps.

36. Hence, it is clear that in 2010, when the promotion order of the petitioner was issued for the post of Registrar Kanoongo, the Service Rules of 2011 were not in existence and para-2 of the promotion order of the petitioner dated 23.04.2010 (Annexure: 4), imposing a condition of fixing seniority of Registrar Kanoongo on the basis of gradation list of the post of *Patwari* was not only against the Rules but it was against the order of the Hon'ble High Court and the Seniority Rules of 2002. The respondents in para 17 of their Counter Affidavit itself have admitted that the petitioner was promoted on

24.04.2010 w.e.f. 02.03.2002. The other contention of the respondents that the feeding cadre for the post of Registrar Kanoongo was made the *Lekhpal/Patwari* at the time of promotion of petitioner is not correct because the Niyamawali of 1958 was not amended by that time. The order passed by the respondents on 24.04.2010 will have the effect that the petitioner became Assistant Registrar Kanoongo on 02.3.2002 and Registrar Kanoongo on 24.04.2010 and his seniority will be fixed as per rules.

37. In all the circumstances, the seniority list dated 14.09.2012 issued by the respondents is not as per law and deserves to be set aside and the petitioner is entitled for the seniority above the persons, junior to him in the cadre of Assistant Registrar Kanoongo and applying the Niyamawali of 1958 and Rule 7 of the Seniority Rules of 2002, the seniority of the persons needs to be re-determined. The petition succeeds and the following order is hereby passed.

ORDER

The claim petition is allowed. The impugned order dated 14.09.2012 (Annexure: A1) issued by the respondent No. 2 is hereby set aside and cancelled. Respondent No. 2 is directed to re-determine the seniority of the Registrar Kanoongo, taking into consideration the Niyamawali of 1958 and Rule 7 of the Uttarakhand Government Servants Seniority Rules, 2002, within a period of three months from the date of presentation of the certified copy of this order. No order as to costs.

(A.S.NAYAL)
MEMBER (A)

(RAM SINGH)
VICE CHAIRMAN (J)

DATE: DECEMBER 11, 2018
NAINITAL

KNP