

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

Present: Hon'ble Mr. Ram Singh -----Vice Chairman(J)
Hon'ble Mr. Rajeev Gupta -----Vice Chairman (A)

CLAIM PETITION NO. 40/DB/2017

Ajay Pal Singh, Assistant Engineer, Uttarakhand Jal Sansthan, Maintenance Division- Dehradun, District Dehradun (Uttarakhand).

.....Petitioner

WITH

CLAIM PETITION NO. 41/DB/2017

R.K.Verma, Officiating Executive Engineer, Uttarakhand Jal Sansthan, Champawat Division- Champawat, District Champawat (Uttarakhand).

.....Petitioner

VS.

State of Uttarakhand through Principal Secretary (Peyjal), Government of Uttarakhand, Secretariat, Dehradun and 89 others.

.....Respondents

Present: Si L.K.Verma, Advocate for the petitioner.
Sri V.P.Devrani, A.P.O. for the Respondent No. 1.
Sri Deepak Singh, Advocate. for the Respondent No. 2.

WITH

CLAIM PETITION NO. 21/NB/DB/2018

Ramaa Shankar, s/o Late Mewa Lal aged about 55 years, posted in Uttarakhand Jal Sansthan as Assistant Engineer at Central Store Haldwani, District- Nainital (Uttarakhand).

.....Petitioner

VS.

State of Uttarakhand through Principal Secretary (Peyjal), Government of Uttarakhand, Secretariat, Dehradun and 87 others.

.....Respondents.

Present: Si L.K.Verma, Advocate for the petitioner.
Sri V.P.Devrani, A.P.O. for the Respondent No. 1.
Sri Vinod Tiwari and Sri Deepak Singh, Advocates for Respondents No. 2.

JUDGMENT

DATED: JANUARY 13, 2021

PER: RAJEEV GUPTA, VICE CHAIRMAN (A)

The issues involved in Claim Petition No. 40/DB/2017, 41/DB/2017 and 21/NB/DB/2018 are the same. Hence, all the claim petitions are being decided together by a common judgment. Claim Petition No. 40/DB/2017 shall be the leading case.

2. The orders of this Tribunal in these claim petitions were challenged in the Hon'ble High Court of Uttarakhand, vide Writ Petition (S/B) No. 296, 317 of 2018 and 72 (S/B) of 2020. Hon'ble High Court vide order dated 12.06.2020 set aside the orders passed by this Tribunal, leaving it open to the claim petitioners to agitate their claims before this Tribunal, including their claim that they are entitled to have the benefit of inclusion of the period of continuous officiation reckoned in determining the seniority. The subject matter of these Writ Petitions was partially covered by the order dated 12.06.2020, passed by Hon'ble High Court in writ petition (S/B) No. 264 and 344 of 2019, which were filed against the judgment and orders dated 18.03.2019 passed by this Tribunal in Claim Petition No.

42/DB/2018, K.C. Painuly vs. State of Uttarakhand & others vide which this Tribunal was directed to re-examine the applicability of the U.P. Palika and Jal Sansthan Water Works Engineering (Centralised) Service Rules, 1996, Uttarakhand Jal Sansthan Engineers Service Rules, 2011 and the Uttarakhand Government Servant Seniority Rules, 2002 and decide the inter-se seniority of the petitioner and private respondents.

3. In compliance of the orders of Hon'ble High Court in writ petition No. 264 and 344 (S/B) of 2019, the claim petition No. 42/DB/2018 has been decided by this Tribunal vide order dated 28.07.2020, with the following conclusions:

"53. The Tribunal, therefore, on the basis of above discussion, comes to the following **conclusions**:

- (i) It is the 1996 Rules which will apply to present claim petition, and not 2011 Rules.
- (ii) The 1996 Rules, speaking through Rule 26, are self contained Rules in respect of determination of seniority *inter se* between the parties.
- (iii) The Tribunal need not look into 1991 Rules or 2002 Rules for determination of seniority *inter se* between the parties.
- (iv) Contention of the private respondents and Respondent No.3 is being accepted that, had 1991 Rules been applicable to 1996 Rules, the same should have found mention in the later Rules, in the same manner in which 2011 Rules refer to 2002 Rules. Further, that the Government Rules had not been adopted by Respondent No.1 (*Dharampal Singh decision*). The Tribunal also accepts the contention of Respondent No.3 and private respondents that the Tribunal need not take recourse to Rule 46 of the 1996 Rules for determination of inter-se seniority, as the same is explicit in Rule 26 of the 1996 Rules.
- (v) While Rule 26 of the 1996 Rules, no doubt governs seniority, it does not specifically deal with 'catch-up rule'.
- (vi) Since this Tribunal finds that there is no applicability of 2002 Rules, therefore, it does not feel it necessary to delve into the applicability of either Rule 6 or Rule 7 or Rule 8 of the 2002 Rules to the instant case.
- (vii) There appears no need to give finding on contentious issue of 'single feeding cadre' and 'multiple feeding cadre'.
- (viii) This fact is under no dispute that the petitioner and private respondents, both joined services as Junior Engineers (by direct recruitment). Petitioner was senior to the private respondents in the seniority list of Junior Engineers. By virtue of Government policy of accelerated promotion, the private respondents were granted accelerated promotion as Assistant Engineers, before the petitioner could become Assistant Engineer. It is reported that during the pendency of claim petition, private respondents were also promoted as Executive Engineer. The same was, however, subject to outcome of present claim petition.

- (ix) The private respondents became senior to the petitioner in their substantive appointment as Assistant Engineer. The seniority list dated 06.07.2017 is in the teeth of present claim petition.
- (x) Constitution of India is the highest law of the land. The decisions given by Hon'ble Apex Court are binding on all Courts and Tribunals throughout the territory of India by virtue of Article 141 of the Constitution. Constitutional amendment to Article 16 (4-A) came into force *w.e.f.* 17.06.1995. It was given retrospective effect, although it received assent of Hon'ble President on 04.01.2002. The earlier amendment to the Constitution in Article 16 is known as Constitution (Seventy seventh Amendment), 1995. Later amendment is known as Constitution (Eighty fifth Amendment), 2001, which is in respect of Article 16 (4-A) empowering the State for making provision for reservation in matters of promotion with consequential seniority in favour of Scheduled Castes/ Scheduled Tribes. 1995 amendment was in respect of "in matters of promotion to any class". By virtue of 2001 amendment, the words "in matter of promotion to any class" were substituted by the words "in matters of promotion, with consequential seniority, to any class".
- (xi) In the 1996 Rules, no amendment was carried out, in respect of consequential seniority, after 2001 amendment to the Constitution. In other words, reservation in matters of promotion with consequential seniority was never introduced.
- (xii) We, therefore, take it as there is no provision for reservation in matters of promotion with consequential seniority to SCs/STs in the 1996 Rules, which is self contained subordinate legislation on the issue in hand.
- (xiii) Hon'ble Apex Court, in a catena of decisions, reference of which has been given in forgoing paragraphs of this judgment, has held that the concept of '*catch-up rule*' and '*consequential seniority*' is judicially evolved concept to control the extent of reservation. The decisions of Hon'ble Apex Court are applicable to the statutory body like Jal Sansthan as well. The same is reflected in the decision of *U.P. Power Corporation Ltd. vs. Rajesh Kumar (supra)*.
- (xiv) **In the absence of any specific provision or policy decision taken by the State Government for consequential seniority for reserved category accelerated promotees, there is no question of automatic application of Article 16 (4-A) of the Constitution.**
- (xv) For avoidance of doubt, it is made clear that the petitioner started his service journey with private respondents as Junior Engineer. Post of Junior Engineer is filled up directly through Public Service Commission. Since appointment to the post of Junior Engineer is by direct recruitment, therefore, it cannot be assumed that petitioner is a promotee and private respondents are direct recruits. Substantive appointment of the private respondents on the post of Assistant Engineer is earlier to the petitioner, because the private respondents were given accelerated promotion while getting promotion as Assistant Engineer. This Tribunal is not aware, whether their promotion was as per reservation roster point or not. Anyway, this dispute is not before us.
- (xvi) This Tribunal has examined the issues as per the directions of Hon'ble High Court, and also on Constitutional issues.
- (xvii) Private respondents, as also Uttarakhand Jal Sansthan, in their written submissions framed two issues: (1) the instant case will be governed by U.P. Palika and Jal Sansthan Water Works Engineering (Centralized) Service Rules, 1996, to which this Tribunal agrees. (2) The 1996 Rules do not deal

with '*catch-up rule*, to which also this Tribunal agrees. The second part of issue no. 2 and the written submissions of private respondents, as also of Uttarakhand Jal Sansthan is, whether in view of Rule 46 of 1996 Rules, which deals with matters for which no provision has been made in the 1996 Rules, can 2002 Rules be made applicable?

- (xviii) The Tribunal is in agreement with the written submission of private respondents and Uttarakhand Jal Sansthan that while framing the 1996 Rules, the issue of promotion and seniority has been covered and, therefore, reliance cannot be placed upon 2002 Rules through Rule 46 of the 1996 Rules read with the decision of Hon'ble Apex Court in Civil Appeal No. 9247/2019 Dharmandra Prasad vs. Sunil Kumar and others.
- (xix) The decision of *Akhil Bhartiya Shoshit Karmchari Sangh, through its General Secretary vs. Union of India and others, 1980(3)SLR 645*, is on different context than the present one. The decision of *ABSK Sangh* was on 'Carry Forward Rule' and on reservation to SCs/STs in promotions. Here, reservation in promotion to SCs/ STs is not under challenge. It is in respect of absence of 'consequential seniority' to SCs/STs and regaining the seniority in the cadre by general category employees. Hon'ble Apex Court has pronounced judgments, in no uncertain terms, on the concept of '*catch-up rule*' and '*consequential seniority*' subsequently.
- (xx) The true legislative intent under Article 16 (4-A) of the Constitution is to enable the State to make provision or frame Rules giving 'consequential seniority' for the 'accelerated promotion' gained, based on the Rules of Reservation. No such provision has been made in the 1996 Rules. Determination of seniority must be based on some principles which are just and fair. In the decision of *Maneka Gandhi (1978)*, Hon'ble Supreme Court had, in the absence of any Rules in the Passport Act, propounded a principle that the procedure must be *just, fair and reasonable*.
- (xxi) 'Accelerated promotion' based on the Rules of reservation, is legal. The 1996 Rules, evidently do not provide for the 'consequential seniority' for reserved category promotees at any point of time. The 'consequential seniority' for such reserved category promotees can be fixed only after there is express provision for such reserved category promotees in the State Rules. In the absence of any specific provision or policy decision taken for consequential seniority for reserved category accelerated promotees, there is no question of automatic application of Article 16(4-A) of the Constitution. '*catch-up rule*' is a judicially evolved concept to control the extent of reservation.
- (xxii) The 1996 Rules do not protect the 'consequential seniority' to the Junior Engineers who were promoted following the Rule. The claim petitioner belonging to the general category is not questioning the 'accelerated promotion' granted to the private respondents by following the Rule of reservation, but is only seeking application of the '*catch-up rule*' in the fixation of seniority in the category of Assistant Engineers.
- (xxiii) It may be noted here that protection of 'consequential seniority' conferred on the Engineers in Tamilnadu, following Rule of reservation during the year 1994, was held to be unconstitutional, which was affirmed by the Hon'ble Supreme Court. The situation is different after Constitutional amendment.
- (xxiv) After 85th Amendment, the State is duty bound to collect data, so as to assess the adequacy of representation of the SC/ST candidates in the service and based on the same, the State may frame a policy for 'consequential seniority'.

(xxv) No material is placed on record to show that the State has ever undertaken such exercise of collecting data of adequacy of representation of the SC/ST candidates.

(xxvi) In the absence of any Rule conferring 'consequential seniority' in promotional post, '*catch-up rule*' would be applicable.

(xxvii) It does not lie in the mouth of official respondents to say that the petitioner would not be entitled to the benefit of '*catch-up principle*' only because the said *principle* does not find place in 1996 Rules. One should not lose sight of the fact that the '*catch-up rule*' is judicially evolved principle. Constitutional amendment was made in the year 1995. Present Rules, governing the field, were framed in 1996. Thereafter, another Constitutional amendment was made in the year 2001, with retrospective effect. Had the intention of rule makers been to provide 'consequential seniority' to SCs/STs, they could have amended the Rules after collecting quantifiable data as per direction of the Hon'ble Supreme Court. But no material has been placed before this Tribunal to show that the same was done. The petitioner and private respondents both were initially appointed as Junior Engineers, through direct recruitment. Even if, there is no mention of '*catch-up rule*' in the Service Rules, since it is a judicially evolved principle, therefore, the denial of the same to its beneficiaries would amount to denial of protection of the Constitutional mandate (to them).

(xxviii) The provisions of Tamilnadu Highways Engineering Service Rules and U.P. Palika and Jal Sansthan Water Works Engineering (Centralized) Service Rules, 1996 may not be identical. It may not always be possible. The Courts and Tribunals are interpreters of the Constitution and the law. The philosophy of the law and the context in which certain Rules have been framed, are important. Tribunal is not a mere mason. No two cases are always alike. It is the ratio of the decision of Hon'ble Apex Court which matters, and not always the facts. Possible arguments by someone that Tamilnadu Rules and the 1996 Rules might be different, is, therefore, of no consequence.

(xxix) When there will be 'consequential seniority', '*catch-up principle*' will vanish. When there will be no 'consequential seniority', '*catch-up principle*' would automatically revive. It is inbuilt, in such a situation. For 'consequential seniority', there has to be specific or express provision, but for '*catch-up*', no specific provision is required. Regard being had to the fact that petitioner and private respondents' initial appointment was Junior Engineer, through Public Service Commission, as direct recruits, together, private respondents got 'accelerated promotion' through reservation Rule, petitioner has now been promoted as Assistant Engineer, there is no Rule for 'consequential seniority', therefore, petitioner would automatically *catch-up* with private respondents.

54. As a consequence thereof, the claim petition must succeed, riding on the Constitutional provisions.

55. In the absence of any provision for 'consequential seniority' in the U.P. Palika and Jal Sansthan Water Works Engineering (Centralized) Service Rules, 1996, the '*catch-up rule*' will be applicable, which is a judicially evolved concept to control the extent of reservation, 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. Article 16(4-A) of the Constitution of India does not automatically give 'consequential seniority' in addition to 'accelerated promotion' to the roster point promotees.

56. The claim petition is allowed. Seniority list dated 06.07.2017 (Annexure: A-1) is hereby set aside. Respondents No. 1 to 3 are directed to revise the seniority of the parties (petitioner and private respondents) by placing the name of the petitioner above the names of private respondents no. 4 to 7 in the impugned seniority list, applying the 'catch-up rule', in the U.P. Palika and Jal Sansthan Water Works Engineering (Centralized) Service Rules, 1996, as interpreted by Hon'ble Supreme Court in *S.Panneerselvam and others vs. State of Tamilnadu and others*, (2015) 10 SCC 292, as discussed above, within four months from today. No order as to costs."

4. We have heard learned Counsel for both the sides in all the three claim petitions and they agree that the issue of applying the 'catch-up rule' in respect of the petitioners regaining their seniority over private respondents who were promoted earlier at Roster points under reservation quota is identical to the issue in the Claim Petition No. 42/DB/2018. This claim petition has been decided on 28.07.2020 and the conclusions of this Tribunal have been recorded in para 3 above. Therefore, this issue of these claim petitions is covered by the judgment and order dated 28.07.2020 of this Tribunal in Claim Petition No. 42/DB/2018.

5. The Other issue in these claim petitions is regarding the inclusion of the period of continuous service rendered as Incharge Assistant Engineer in determination of the seniority. It is relevant to reproduce the earlier observations in this regard as made by this Tribunal in its earlier judgment dated 29.06.2018 passed in claim petition no. 40/DB/2017, which are as follows:-

"8.3.....The Office Order dated 01.10.2007 is reproduced below for convenience:-

“कार्यालय अधीक्षण अभियन्ता, उत्तराखण्ड जल संस्थान

95- राजपुर रोड, देहरादून-248001

E.Mail:-seurban_ujs@rediffmail.com

पत्रांक 1695/अधी.अभि. न./कार्यालय आदेश/ /2007-08 दिनांक 1-10-07

कार्यालय आदेश

दिनांक 01.10.07 को अधिशासी अभियन्ता, दक्षिण, उत्तराखण्ड जल संस्थान, देहरादून के साथ दक्षिण शाखा के अन्तर्गत धर्मपुर जोन की पेयजल व्यवस्था के सुदृढीकरण हेतु हुये गहन विचार-विमर्श के निष्कर्ष में धर्मपुर जोन हेतु सहायक अभियन्ता की तैनाती को अपरिहार्य एवं आवश्यक समझा गया है।

अतः धर्मपुर जोन के अन्तर्गत पूर्णकालिक सहायक अभियन्ता की तैनाती होने तक कार्यहित एवं पेयजल आपूर्ति हित में श्री ए.पी. सिंह, कनिष्ठ अभियन्ता जो शाखा के अन्तर्गत कनिष्ठ अभियन्ताओं में सबसे वरिष्ठ हैं को धर्मपुर जोन में प्रभारी, सहायक अभियन्ता के रूप में कार्य करने की स्वीकृति प्रदान की जाती है।

उक्त आदेश तत्काल प्रभावी होंगे।

अधीक्षण अभियन्ता
उत्तराखण्ड जल संस्थान,
देहरादून।”

8.4 The perusal of office order dated 01.10.2007 reveals that it is basically an order to assign the work. The petitioner who is a Junior Engineer has also been asked to work as In-charge Assistant Engineer in addition to his work as Junior Engineer. The petitioner, in fact, has been asked to discharge the duty as In-charge Assistant Engineer while holding the post of Junior Engineer. This is an administrative arrangement made by the Superintending Engineer of Dehradun. The petitioner has been asked to discharge the duty of higher post by giving the designation of “Incharge Assistant Engineer.” The petitioner has called this arrangement as “officiating promotion”. By whatever name it is called, it is admitted to both the parties that the arrangement vide order dated 01.10.2007 is not a “substantive appointment.” Admittedly, the substantive appointment of the petitioner was made vide order dated 09.04.2013.

8.5 In the case of **Gopal Singh Gusain vs. State of Uttarakhand and others, Writ Petition No. 1037 of 2008 (S/S) decided on 31.07.2012**, the Hon’ble High Court at Nainital quoting the judgment by the Hon’ble Supreme Court in the case of **Rudra Kumar Sain and others vs. Union of India and others 2000(8) SCC 25** has held that in the light of the said decision of the Apex Court, the stop gap arrangement and *ad hoc* arrangement is one and the same. The relevant part of the Hon’ble Supreme Court in Rudra Kumar Sain (*Supra*) is as under:-

“16. The three terms “ad hoc” “stop gap” and “fortuitous” are in the frequent use in service jurisprudence.....

17.....

18.....

19. The meaning to be assigned to these terms while interpreting provisions of a Service Rule will depend on the provisions of that Rule and the context in and the purpose for which the expressions are used. The meaning of any of these terms in the context of computation of inter-se seniority of officers holding cadre post will depend on the facts and circumstances in which the appointment came to be made. For that purpose it will be necessary to look into the purpose for which the post was created and the nature of the appointment of the officer as stated in the appointment order. If the appointment order itself indicates that the post is created to meet a particular temporary contingency and for a period specified in the order, then the appointment to such a post can

be aptly described as adhoc or stop-gap. If a post is created to meet a situation which has suddenly arisen on account of happening of some event of a temporary nature then the appointment of such a post can aptly be described as fortuitous in nature. If an appointment is made to meet the contingency arising on account of delay in completing the process of regular recruitment to the post due to any reason and it is not possible to leave the post vacant till then, and to meet this contingency an appointment is made then it can appropriately be called as a stop-gap arrangement and appointment in the post as ad hoc appointment. It is not possible to lay down any straight-jacket formula nor give an exhaustive list of circumstances and situation in which such an appointment (ad hoc, fortuitous or stop-gap) can be made. As such, this discussion is not intended to enumerate the circumstances or situations in which appointments of officers can be said to come within the scope of any of these terms. It is only to indicate how the matter should be approached while dealing with the question of interse seniority of officers in the cadre.”

In the case at hand as per the description in paragraphs 8.1 and 8.4 above, the nature of “officiating promotion” of the petitioner on 01.10.2007 to work as In-charge Assistant Engineer in our view is an *ad hoc* appointment as a stop gap arrangement.

8.6 It needs to be examined whether the arrangement, made vide order dated 01.10.2007 (which has been reproduced in paragraph 8.3 of this order) by giving the designation of In-Charge Assistant Engineer to the petitioner, is in accordance with the Service Rules or not. It is admitted by the petitioner (para 4.5 of the claim petition) that before the Service Rules of 2011, the Uttar Pradesh Palika and Jal Sansthan Water Works Engineering (Centralized) Service Rules 1996 (adopted by the State of Uttarakhand in 2002) were applicable for recruitment /promotion of Assistant Engineer in Uttarakhand Jal Sansthan till 02.12.2011 when the Service Rules, 2011 came into force. **While according to the Service Rules of 1996, the appointing authority of the Assistant Engineer is the State Government, the petitioner was given the assignment of In-charge Assistant Engineer by the Superintending Engineer. Thus, the petitioner was not given the officiating promotion by the competent authority. Rule 21 of the Service Rules, 1996 prescribes conditions regarding Selection Committee, criterion, eligibility, zone of consideration, suitability etc. for promotion from the post of Junior Engineer to the post of Assistant Engineer. The petitioner has not been made In-charge Assistant Engineer in accordance with Rule 21 of the Service Rules, 1996. In fact, no provision of Rule 21 was followed when the petitioner was made In-charge A.E.** Uttarakhand Jal Sansthan made regular promotion from the post of Junior Engineer to the post of Assistant Engineer under the Service Rules, 1996 read with Rule-6 of “उत्तराखण्ड लोक सेवा आयोग (कृत्यों का परिसीमन) विनियम, 2003” in consultation with the Public Service Commission and vide Office Memorandum dated 11.03.2011, the promotion order was issued by the Principal Secretary, Department of Peya Jal, Government of Uttarakhand in respect of 26 persons for the selection year 2010-2011. Undisputedly, the

petitioner was made In-charge Assistant Engineer without consulting the Public Service Commission. **We are, therefore, of clear view that the petitioner's "officiating promotion" on the post of Assistant Engineer is de hors the Service Rules and it is on "ad hoc" basis by way of "stop gap" arrangement.**

8.7 It is also an accepted canon of service jurisprudence that the seniority of a person must be reckoned from the date he becomes a "member of the service." The Rule 2(3) of the Service Rules of 1996 defines "member of service" as under:-

“सेवा के सदस्य का तात्पर्य इस नियमावली के अधीन केन्द्रीयित सेवा के संवर्ग में किसी पद के प्रति आमेलित या नियुक्त व्यक्ति से है।”

As is clear from the description in paragraph 8.6 above, the petitioner was not made In-charge Assistant Engineer on 01.10.2007 in accordance with the Service Rules. The "officiating promotion" of the petitioner was on "ad hoc" basis by way of "stop gap" arrangement. The petitioner became "member of the service" in Assistant Engineer cadre on 09.04.2013 when he was promoted in accordance with the Service Rules. It is well settled that seniority in service is counted only when a person becomes a "member of service" after his appointment in accordance with the Service Rules. From 01.10.2007 to 09.04.2013, the petitioner's *ad hoc* promotion as stop gap arrangement was de hors the rules and since he was not a member of the service in Assistant Engineer cadre during this period, the same cannot be counted for determining his seniority in Assistant Engineer cadre.

8.8 The petitioner has contended that there were vacancies available and he was made In-charge Assistant Engineer on substantive post on 01.10.2007. He was fully eligible and suitable for promotion on that date and, therefore, he is entitled to get seniority from 01.10.2007. We do not find any force in this argument of learned counsel for the petitioner. No rule provides that a person is entitled for promotion from the date vacancies were available in promotion quota. It would also be pertinent to look at second proviso to Rule 8(3) of the Seniority Rules of 2002 which reads as under:

"Provided that--

(i).....

(ii) where appointments from any source fall short of the prescribed quota and appointment against such unfilled vacancies are made in subsequent year or years, the persons so appointed shall not get seniority of any earlier year but shall get the seniority of the year in which their appointments are made, so however, that their names shall be placed at the top followed by the names, in the cyclic order of the other appointees;

(iii)....."

It is clear from the second proviso to Rule 8(3) of the Seniority Rules of 2002 above that the seniority cannot be given from an earlier year when the promotions are made against unfilled vacancies in any subsequent year. **The issue whether a person has right to claim seniority when the vacancy arose or whether his seniority will be reckoned from the date of substantive**

appointment was considered by the Hon'ble Supreme Court in State of Uttarakhand and Another vs. Dinesh Kumar Sharma (2007) 1 SCC 683 where the set of rules were similar to the rules in the present case and the Apex Court in its judgment held that a person cannot claim seniority on promotion from the date of occurrence of the vacancy.

8.9 The first proviso to Rule 8(1) of the Seniority Rules, 2002 provides that if the appointment order specifies a particular back date of substantive appointment, that date will be deemed to be the date of order of substantive appointment and in cases where no back date is specified, the date of appointment order will be the date of substantive appointment. The first proviso to Rule 8(1) reads as under:-

“Provided that if the appointment order 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 mean the date of order.”

The petitioner was promoted to the post of Assistant Engineer on substantive basis vide order dated 09.04.2013. The perusal of “Promotion Order” dated 09.04.2013 reveals that no back date is specified in the “Promotion Order” of 09.04.2013 and, therefore, according to first proviso of Rule 8(1), the date of order of appointment 09.04.2013 will be the date of the substantive appointment of the petitioner. Thus, the petitioner cannot claim the promotion on the post of Assistant Engineer from 01.10.2007 (the back date) for the purpose of seniority.

8.10 The Rule 8(1) of the Seniority Rules of 2002 provides unambiguously that seniority must be fixed with reference to the date of substantive appointment. Substantive Appointment, in turn, has been expressly defined in Rule 4(h) of the Seniority Rules, 2002 to exclude *ad hoc* appointments and appointments which are dehors the Service Rules, and, therefore, in view of discussion in paragraphs 8.1 to 8.9 above, we reach the conclusion that the petitioner is not entitled to claim the benefit of service from 01.10.2007 (as In-charge Assistant Engineer) for reckoning the seniority. It is beyond doubt that the issue of seniority must be decided with reference to the statutory rules. We are of the view that in the light of clear and categorical rules, there cannot be a case to provide benefit of *ad hoc* service for the purpose of seniority as neither Service Rules nor Seniority Rules permit it.

9.1 Principal ground on the basis of which final seniority list dated 06.07.2017 has been challenged by the petitioner is that the period of officiating promotion (01.10.2007 to 09.04.2013) should have been counted for the purpose of determining his seniority as per the judgment of the Division Bench of the Hon'ble High Court at Nainital in the matter of Rakesh Kumar Uniyal (writ petition S/B No. 42 of 2007, Rakesh Kumar Uniyal vs. Public Services Tribunal and others and writ petition S/B No. 177 of 2007, Uttarakhand Jal Sansthan vs. Public Services Tribunal and others) decided by a common order dated 01.08.2012. Learned counsel for the petitioner has pointed out paragraph 9 of the said judgment which reads as under:-

“9. At the same time, the decision of the Government of Uttar Pradesh contained in the Circular of 1990 can only be treated as prospective. It could not be treated in respect of people who have already been asked to discharge duties of a superior post. It has been declared by the Hon’ble Supreme Court that in case, a person has been asked to discharge duties of a superior post and later he is confirmed or promoted regularly in that superior post and permitted to work in that post uninterruptedly from the date of his initial appointment until the date he has been appointed permanently in the said post, the person concerned shall be entitled to count his seniority from the date he was first asked to discharge the duties of the superior post. The conclusion, therefore, would be, having regard to the facts and circumstances of the case, that the order of the Tribunal cannot be sustained. The same must go, but at the same time, Sri Uniyal will be entitled to count his seniority in the post of Assistant Engineer with effect from 5th December, 1985, inasmuch as, undisputedly he had been permitted to discharge the duties attached to the said post uninterruptedly until he was permanently promoted to the said post on 8th February, 2000.”

9.2 It would be appropriate here to narrate the case of Rakesh Kumar Uniyal in brief.

9.3 The Jal Sansthans were established at various places under the Uttar Pradesh Water Supply and Sewerage Act, 1975. Rakesh Kumar Uniyal joined as Junior Engineer on 04.05.1977 in Garhwal Jal Sansthan (after creation of the state of Uttarakhand on 09.11.2000, Garhwal and Kumaon Jal Sansthan were merged and Uttarakhand Jal Sansthan came into existence in 2002). The State Government was empowered under Section 27 A of the said Act to frame rules including the rules to prescribe the method of recruitment and conditions of service of persons appointed in Jal Sansthans. The State Government did not frame any rules until 3rd December, 1985.

9.4 On 3rd December, 1985, General Manager of the Garhwal Jal Sansthan asked Shri Uniyal to discharge the duties of Assistant Engineer by way of stop gap arrangement. In the letter, by which Shri Uniyal was asked to discharge the duties of Assistant Engineer, it was mentioned that salary of Assistant Engineer will be paid to him on the approval of the State Government. There was neither any approval, nor disapproval on the part of the Government for payment of salary of Assistant Engineer to Shri Uniyal.

9.5 In 1986, the Government of Uttar Pradesh made Rules under section 27 A of the Act of 1975. While making the said rules, no attempt was made to address the situation, as was prevalent in the case. The said Rules did also not specifically deal with seniority questions.

9.6 **In the circumstances in 1990, the Government of Uttar Pradesh issued a circular and, thereby indicated that seniority will be counted from the date the person starts getting salary in the post, for which seniority is to be determined.**

9.7 Sri Uniyal was substantively promoted to the post of Assistant Engineer on 08.02.2000. Thereafter, a seniority list of Assistant Engineer was issued by Uttarakhand Jal Sansthan in 2005 and his seniority as Assistant Engineer was fixed from 08.02.2000 i.e. the date of his substantive appointment on the post of Assistant Engineer.

9.8 Shri Uniyal approached the Tribunal for his claim for (i) seniority from 05.12.1985 and (ii) salary of Assistant Engineer from 5.12.1985 to 08.02.2000. The Tribunal though allowed salary to Shri Uniyal but rejected his claim for counting his service from 05.12.1985 for seniority purpose because the said circular of 1990 was issued after 05.12.1985 when he started discharging the duty of a superior post of A.E.

9.9. **The Hon'ble High Court vide its judgment dated 01.08.2012 did not allow the claim of Shri Uniyal for salary. Further, the Hon'ble High Court held that the circular of 1990 can be treated as prospective and it could not be applied to the persons who had already been asked to discharge duties of a superior post and the Hon'ble High Court allowed the seniority to Shri Uniyal from 05.12.1985. Observing this, the Hon'ble High Court held that *"It has been declared by the Hon'ble Supreme Court that in case, a person has been asked to discharge duties of a superior post and later he is confirmed or promoted regularly in that superior post and permitted to work in that post uninterruptedly from the date of his initial appointment until the date he has been appointed permanently in the said post, the person concerned shall be entitled to count his seniority from the date he was first asked to discharge the duties of the superior post."***

10. **Hon'ble High Court at Nainital discussed the case of Rakesh Kumar Uniyal in the case of Nandan Giri vs. State of Uttarakhand and others in writ petition S/B No. 278 of 2013 and two other connected cases and the Division Bench of the Hon'ble High Court in paragraph 21 and 22 of the judgment dated 25.06.2015 held as under:**

*"21. Then, we pass on the consideration of a Bench decision of this Court in Writ Petition (S/B) No. 42 of 2007 (Rakesh Kumar Uniyal versus Public Service Tribunal and others), decided on 01.08.2012. That is a case, no doubt, where the Tribunal has granted the relief of seniority with reference to an earlier date of ad hoc appointment. That was challenged by the employer. Salary however, payable for higher post was not given. That was challenged by the employee. Both petitions came to be decided by a common judgment. **There was, in fact, a circular involved in that case, which provided for seniority to be determined with reference to the date on which the higher pay was enjoyed by the employee but we must acknowledge that in Paragraph 9, which incidentally has been relied on by the Tribunal, it has been held as follows :-***

"9. At the same time, the decision of the Government of Uttar Pradesh contained in the Circular of 1990 can only be treated as prospective. It could not be treated in respect of people who have already been asked to discharge duties of a superior post. It has been

declared by the Hon'ble Supreme Court that in case, a person has been asked to discharge duties of a superior post and later he is confirmed or promoted regularly in that superior post and permitted to work in that post uninterruptedly from the date of his initial appointment until the date he has been appointed permanently in the said post, the person concerned shall be entitled to count his seniority from the date he was first asked to discharge the duties of the superior post. The conclusion, therefore, would be, having regard to the facts and circumstances of the case, that the order of the Tribunal cannot be sustained. The same must go, but at the same time, Sri Uniyal will be entitled to count his seniority in the post of Assistant Engineer with effect from 5th December, 1985, inasmuch as, undisputedly he had been permitted to discharge the duties attached to the said post uninterruptedly until he was permanently promoted to the said post on 8th February, 2000."

Here we must notice that the Court has proceeded to specifically refer to a circular as applicable to the facts of the case. It is also found that there is no statutory rule, which governs the situation. It is, thereafter, that the Court proceeded to hold what it has held in paragraph 9 above.

22. There is no reference to any particular judgment of the Apex Court as such. We have noticed that the question of seniority must be determined with reference to the specific rules applicable to any service. There cannot be a general principle de hors the rules."

11. In view of description in paragraphs 9 and 10 above, the case of Rakesh Kumar Uniyal is of no help to the petitioner. Hon'ble High Court at Nainital decided the case of Rakesh Kumar Uniyal on the basis of the fact that no statutory rules were in existence to govern the situation in 1985 and, therefore, Hon'ble High Court decided the matter of Rakesh Kumar Uniyal for counting the seniority from the date (05.12.1985) he was asked to discharge the duties of the superior post on the basis of general principles. In the case at hand, when the petitioner was asked to discharge the duties of the superior post, the Service Rules as well as Seniority Rules (as described in paragraph 8 of this order) were there to govern the situation and according to rule position, the petitioner cannot claim counting of his seniority for his officiating promotion from 01.10.2007 to 09.04.2013. The question of seniority must be determined with reference to the statutory rules and there cannot be a general principle de hors the rules. The case of Rakesh Kumar Uniyal is, therefore, clearly distinguishable from the present case because of the following reasons:-

- (i) There were no service/seniority rules available on 03.12.1985 when Shri Uniyal was asked to discharge the duty of a superior post.**
- (ii) The rules which were framed in 1986 did not deal with the issue of seniority.**

(iii) While the circular of 1990 which prescribed the seniority from the date the person gets salary of the superior post was prospective, Shri Uniyal was asked to discharge duty of a superior post on 03.12.1985.

(iv) Since there were no rules/circular for determining the seniority, the Hon'ble High Court decided the matter on the basis of general principle of the seniority.

12. In the case of **Nandan Giri vs. State of Uttarakhand and others (supra)**, the Hon'ble High Court at Nainital in the similar set of Rules (as in the present case) has also held that no benefit for seniority can be given with reference to an earlier date on the basis of the ad hoc promotion. The paragraph 18 of the said judgment reads as under:

“18. We would think that there are even other insuperable obstacles in the path of the applicants claiming the benefit of ad hoc service for reckoning the seniority. In the first place, we notice that the applicants when they were given ad hoc promotions in the year 2007 were not given such promotions after consultation with the Public Service Commission, which was the requirement under the Rules. Therefore, this was a case of an ad hoc promotion which was given de hors the statutory rules. On this short ground itself, no benefit could have been derived in the form of a claim for seniority with reference to an earlier date on the basis of the ad hoc promotion. That apart, as we have already noted, seniority is a principle which is to be determined with reference to Rule 22 which provides unambiguously that seniority must be fixed with reference to the date of substantive appointment. Substantive appointment, in turn, has been expressly defined in Rule 3(l) of the 1983 Rules to exclude ad hoc appointments.”

13. Learned counsel for the respondents has also submitted that admittedly, the petitioner accepted the substantive promotion given to him on 09.04.2013. Admittedly, the order of promotions dated 09.04.2013 was not challenged. Nor there is any challenge to either the Service Rules or the Seniority Rules. Hon'ble High Court at Nainital, in the case of Nandan Giri (supra) where the facts, circumstances and the sets of Rules were similar to the present case in hand, has also observed as under:-

“We may incidentally also notice that the applicants did not even challenge the orders of promotions to the extent that they were not given retrospective dates in terms of the rules applicable and accepting the date 27.08.2010, as the date of substantive appointment, they could not possibly claim seniority with reference to ad hoc service.”

14.1 Learned counsel for the petitioner has placed heavy reliance on the judgment of the Constitution Bench of the Hon'ble Supreme Court in **Direct Recruit Class II Engineering Officers' Association vs. State of Maharashtra (1990)2 SCC 715** and contended that the service of the petitioner (as In-charge Engineer) from 01.10.2007 till the date of substantive

appointment (09.04.2013) must be taken into consideration for the purpose of fixing the seniority of the petitioner.

14.2 The propositions laid down by the Constitution Bench in the aforesaid case are set out in Paragraph 47 of the judgment. We are concerned with only Conclusions (A) and (B) which read as follows:-

“(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. **The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop gap arrangement, the officiation in such posts cannot be taken into account for considering the seniority.**

(B) If the initial appointment is not made by following the procedure laid down by the rules but appointee continues in the post uninterruptedly till the regularization of his service in accordance with the rules, the period of officiating service will be counted.”

14.3 The contention of learned counsel for the petitioner is that the case of the petitioner is covered by the conclusion (B) above of the said judgment of the Hon’ble Supreme Court and, therefore, the petitioner is entitled for counting his service as In-charge Assistant Engineer for seniority purpose from 01.10.2007 to 09.04.2013.

14.4 We, however, cannot agree with the contention of learned counsel for the petitioner. In our considered opinion, the case of the petitioner is not covered by the conclusion (B) of the said judgment.

14.5 The case of the petitioner falls within the corollary in conclusion (A) as the initial appointment of the petitioner on 01.10.2007 is only ad hoc and not according to rules made only as a stop gap arrangement as described in preceding paragraphs and, therefore, the officiating promotion of the petitioner on the post of Assistant Engineer from 01.10.2007 to 09.04.2013 cannot be taken into account for counting the seniority.

15. Counsel for the petitioner has also referred the following case laws in support of his case for counting the period of “officiating promotion” for the purpose of seniority:-

- 1) Baleshwar Dass and others vs. State of U.P. & others (1980)4 Supreme Court Cases, 226,
- 2) G.P. Doval and others vs. Chief Secretary, Government of U.P. & others (1984) 4 Supreme Court Cases 329.
- 3) Delhi Water Supply and Sewage Disposal Committee and others vs. R.K. Kashyap and others, 1989 Supp (1) SCC, 194.
- 4) Keshav Deo and another vs. State of U.P. and others, AIR 1999 Supreme Court, 44.
- 5) L.Chandra Kishore Singh vs. State of Manipur (1999)8, SCC, 287.
- 6) Chandra Prakash and others vs. State of U.P. and another (2002) 4 SCC, 234.

- 7) Chief Commissioner of Income Tax and others vs. V. Subba Rao and others , 2004 SCC (L&S)201,
- 8) Virendra Kumar Verma vs. The State of Uttaranchal and others, 2005(1) U.D., 351.
- 9) Hansa Dutt Pandey & others vs. State of Uttarakhand & others, 2011 (2) U.D., 354.
- 10) Rakesh Kumar Dixit vs. State of Uttarakhand & others, decided by Hon'ble High Court of Uttarakhand on 27.02.2012.
- 11) Rakesh Kumar Uniyal vs. State of Uttarakhand & others, Decided by Hon'ble High Court of Uttarakhand on 01.08.2012.
- 12) Sisir Kumar Ghosh vs. State of W.B., 2018 SCC Online Cal 348.
- 13) Dr. P.C. Agarwal and others vs. State of U.P. another (1993)1 UPLBEC, 718.
- 14) Rajbir Singh and others vs. Union of India and others, AIR 1991 Supreme Court, 518.

We have gone through the above cases and are of the opinion that the facts, circumstances and set of rules in these cases are entirely different compared to the case in hand and, therefore, these case-laws are not applicable in the present case and these are of no help to the petitioner.

16. **For the reasons stated in paragraphs 6 to 15 of this order, we hold that the period of "officiating promotion" of the petitioner as Assistant Engineer from 01.10.2007 to 09.04.2013 cannot be counted for the purpose of determining the seniority of Assistant Engineers."**

6. Petitioner in claim petition No. 41/DB/2017, was appointed Incharge Assistant Engineer vide Office Order dated 18.05.2010, which is reproduced as below:-

“कार्यालय अधिशासी अभियन्ता, उत्तराखण्ड जल संस्थान पिथौरागढ़।
कार्यालय आदेश

एतद् द्वारा मुख्य महाप्रबन्धक महोदय उत्तराखण्ड जल संस्थान देहरादून से प्राप्त निर्देशों के अनुपालन में निम्न अभियन्ताओं के कार्य दायित्वों में निम्न प्रकार संशोधन किया जाता है।

क्रम स०	नाम	पदनाम	पूर्व दायित्व	वर्तमान दायित्व
1	श्री यू०सी० पाल	कनिष्ठ अभियन्ता	कनिष्ठ अभियन्ता कनालीछीना, प्रभारी सहायक अभियन्ता कनालीछीना एवं मूनाकोट विकास खण्ड	प्रभारी सहायक अभियन्ता मुख्यालय एवं प्रभारी सहायक अभियन्ता मूनाकोट
2	श्री आर०के०वर्मा०	कनिष्ठ अभियन्ता	कनिष्ठ अभियन्ता स्वैप कार्यक्रम व कनिष्ठ अभियन्ता कनालीछीना	कनिष्ठ अभियन्ता कनालीछीना, प्रभारी सहायक अभियन्ता कनालीछीना एवं प्रभारी सहायक अभियन्ता स्वैप

उक्त आदेश तत्काल प्रभाव से लागू होंगे। किसी भी कनिष्ठ अभियन्ता को प्रभारी सहायक अभियन्ता के पद पर कार्य का कोई अतिरिक्त अनुभव व अन्य तत्सम्बन्धी लाभ अनुमन्य नहीं होगा।

(डी०के० मिश्रा)
अधिसासी अभियन्ता

पृ०स० 1275 कनि० अवर अभि०/18 दिनांक 18/05/2010”

7. The relevant part of this Tribunal’s observation on this issue in its earlier judgment dated 29.06.2018 in Claim Petition No. 41/DB/2018 is the same as stated above in para 5 in case of Claim Petition No. 40/DB/2017 except for corresponding change in the relevant dates.

8. The relevant part of the observation on this issue in this Tribunal’s earlier judgment dated 18.09.2019 in claim petition No.21/NB/DB/2018 is as follows:-

“4. As per the contention of the petitioner, he was assigned the work of Assistant Engineer, in officiating capacity on 22.12.2008 in Bageshwar Division. His work as officiating Assistant Engineer was also reviewed vide order dated 05.07.2012 and 19.07.2012, when he was formerly appointed Assistant Engineer in officiating capacity. After review of his performance as incharge Assistant Engineer, on 17.08.2013 “the petitioner was directed to work as Assistant Engineer till the regular arrangement of the division was to be made and since 2008, petitioner continued working as Assistant Engineer” till his final promotion on the post of Assistant Engineer, was made on 30.06.2014.

5.....

6.....

7Respondent No. 2 opposed the petition on the ground.....

The petitioner was not promoted as Assistant Engineer in 2008 rather a simple ad-hoc arrangement was made and he is not entitled for any seniority on that basis. The petitioner has wrongly claimed the benefit of Rule 6 of the Uttaranchal Government Servants Seniority Rules, 2002. The objections against the tentative seniority list were not valid and the seniority was finalized following the due process of law and rules. The petitioner was promoted on the post of Assistant Engineer only in 2014 and assigning the duties of Assistant Engineer in 2008, in addition to his duties of Junior Engineer, was a stopgap arrangement to look after the day-today work and it was not a promotion.

8. It is also contended that such type of arrangements are usually made from time to time as per the exigency of administrative need of the department. There is no provision to make officiating promotion on the post of Assistant Engineer in the Jal Sansthan.....

9. The petitioner by way of rejoinder affidavit, reiterated the facts of his petition and denied the contention of the Counter Affidavit and cited various case laws laid down by the Hon’ble Supreme Court and Hon’ble High Court. The petitioner also claimed that the officiating services rendered by him were

uninterrupted since 2008, till his final promotion in 2014 hence, this period should be counted for the purpose of his seniority.....

10.....

11.....

12.....

13.....

14. The petitioner was granted officiating promotion as incharge Assistant Engineer on 22.12.2008 and he was assigned such duty in addition to his duties as Junior Engineer, Bageshwar Division. His cadre was finally allocated to Uttarakhand on 27.02.2012 and petitioner continued to perform his duty of Officiating Assistant Engineer alongwith his own post. His performance as Incharge Assistant Engineer was also reviewed vide order dated 05.7.2012, 19.07.2012 and again on 17.08.2013. He was specifically ordered to work as incharge Assistant Engineer. It is the contention of the petitioner that since assigning him the officiating work of Assistant Engineer on 22.12.2008, he continued to perform such duties uninterruptedly till 30.06.2014 when he was regularly promoted in Assistant Engineer cadre. In such circumstances, the petitioner has contended that in view of the various judgments of the Hon'ble High Court and Hon'ble Supreme Court, all his officiating period as Assistant Engineer starting from 2008, till his regular promotion in 2014 will also be counted for the purpose of his seniority. The petitioner has cited the following case laws:-

- (i) Baleshwar Das and others vs. State of U.P. & others (1980)4 SCC, 226.
- (ii) P.G.Doal and others vs. Chief Secretary, Govt. of U.P. & others (1984)4 SCC, 229.
- (iii) Delhi Water Supply and Sewerage Disposal Committee & others vs. R.K.Kashyap & others, 1989 Supp (1) SCC, 194.
- (iv) The Director Recruits Class-II Engineering Officers Association & others vs. State of Maharashtra & others, AIR 1990 Supreme Court, 1607.
- (v) Rajbir Singh and others vs. Union of India & Ors, AIR 1991 Supreme Court 518.
- (vi) Dr. P.C.Agarwal and Ors vs. State of U.P. & Ors (1993) 1 UPLBEC 218.
- (vii) Keshav Deo and another vs. State of U.P. & others, AIR 1999 Supreme Court, 44.
- (viii) L.Chandra Kishore Singh & ors vs. State of Manipur & ors (1999)8 SCC, 287.
- (ix) Chandra Prakash and others vs. U.P. & Anr. (2002) 4 SCC, 234.
- (x) Chief Commissioner of Income Tax & ors vs. V.Subha Rao & ors, 2004 SCC (L&S)201.
- (xi) Virendra Kumar Verma vs. the State of Uttarakhand & ors. 2005 (1) U.D. 351.
- (xii) Hansa Datta Pandey & ors vs. State of Uttarakhand & ors, 2011 (2) U.D. 354.
- (xiii) Sisir Kumar Ghosh vs. State of West Bengal & ors. 2018 SCC Online Call 348.
- (xiv) B.K.Pavitra & ors vs. UOI & ors (2017)4 SCC 620.
- (xv) S.Panneer Selvam & Ors vs. Govt. of T.Nadu & Ors (2015) 10 SCC, 292.

15. We find that the contention of the petitioner is fully supported by the law laid down by the Hon'ble Courts in the judgments cited above and it is specifically clear that the petitioner who performed the duties of Assistant Engineer continuously from 2008 uninterruptedly, his length of such service will be counted for the purpose of seniority. In view of the judgment of the Hon'ble Apex Court and also the judgment of the Hon'ble High Court of Uttarakhand, passed in Virendra Kumar Verma vs. The State of Uttaranchal and others, 2005 (1) U.D., 351 and in Hansa Dutt Pandey & others vs. State of Uttarakhand & others, 2011 (2) 354, it was specifically laid that where an irregular appointment is regularized, in the absence of a contrary provision in the Rules, the regularization would relate back to the date of original appointment, provided the irregular appointee uninterruptedly

continued such service till his regularization. Even in the cases of probation or officiating appointments, followed by confirmation thereof, unless there is a contrary rule, the service rendered as officiating appointment or probation cannot be ignored for determining the place in the seniority list. (1990) 2 SCC, 715 and (2010)6 SCC, 791 were also relied upon by the Hon'ble High Court.

16. Hence, this court finds that the petitioner is entitled for counting his complete length of service starting from the year 2008 for granting seniority to him in the cadre of Assistant Engineer, whereas, in the seniority list issued on 06.07.2017, he has been denied such benefits. To this extent, the plea of the petitioner deserves to be allowed."

9. The contrary finding in the earlier judgment of this Tribunal in Claim Petition No. 21/NB/DB/2018 on the issue of inclusion of the period of continuous service as Incharge Assistant Engineer as compared to the findings of this Tribunal in the other two claim petitions has necessitated the re-examination of this issue.

10. The relevant orders and correspondences by which petitioner in Claim Petition No. 21/NB/DB/2018 was made Incharge Assistant Engineer and continued as such till his substantive promotion are annexed as Annexure A3, A4 and A5 to this Claim Petition, which are reproduced below:-

“कार्यालय अधिशासी अभियन्ता, उत्तराखण्ड जल संस्थान , शाखा बागेश्वर।

कार्यालय- आदेश

अधीक्षण अभियन्ता, उत्तराखण्ड जल संस्थान , अल्मोड़ा वृत्त अल्मोड़ा के अनुमोदन 05.12.2008 के क्रम में शाखा बागेश्वर में किसी सहायक अभियन्ता की तैनाती न होने के कारण विभागीय कार्यों को सुचारु रूप से सम्पादित करने के लिए शाखा में कार्यरत वरिष्ठतम् कनिष्ठ अभियन्ता श्री रमाशंकर विश्वकर्मा अग्रिम आदेशों तक अपनी ईकाई के कनिष्ठ अभियन्ता के दायित्वों के साथ-साथ कनिष्ठ अभियन्ता ईकाई बागेश्वर नगरीय, बागेश्वर ग्रामीण प्रथम/द्वितीय एवं वर्क सुपरवाइजर द्वारा अनुरक्षित ईकाईयों के लिए प्रभारी अभियन्ता के रूप में कार्य करेंगे तथा शाखा के अन्तर्गत समस्त ईकाईकयों की सूचना संकलन आदि का कार्य मुख्य लिपिक एवं अन्य कनिष्ठ अभियन्ताओं से मिलकर करेंगे। कनिष्ठ अभियन्ता ईकाई खरेहीपट्टी, गरुड़ एवं कपकोट अग्रिम आदेशों तक सीधे अधोहस्ताक्षरी के नियन्त्रण में कार्य करेंगे इस अतिरिक्त कार्य हेतु श्री विश्वकर्मा को कोई अतिरिक्त वेतन/भत्ता अथवा वरिष्ठता सम्बन्धी कोई लाभ अनुमन्य नहीं होगा एवं श्री विश्वकर्मा द्वारा भविष्य में कोई दावा सहायक अभियन्ता पद हेतु मान्य नहीं होगा।

यह आदेश तत्काल प्रभाव से प्रभावी होंगे।

(एस0के0तिवारी)
अधिशासी अभियन्ता

पृ0प0सं0:-1996/कार्यालय आदेश /31 दिनांक 22/12/2008

प्रतिलिपि:- निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित:-.....।”

“प्रेषक,

अधिशाली अभियन्ता,
उत्तराखण्ड जल संस्थान,
शाखा बागेश्वर।

सेवा में,

अधीक्षण अभियन्ता,
उत्तराखण्ड जल संस्थान,
वृत्त अल्मोड़ा।

पत्रांक/ अधि0-01 12-13 दिनांक 3.7.2011

विषय – सहायक अभियन्ता की तैनाती के संबंध में।

महोदय,

उपरोक्त विषयक मुख्य महाप्रबन्धक महोदय उत्तराखण्ड जल संस्थान देहरादून के कार्यालय आदेश सं0 1826/ कार्मिक /02/पी0एफ0 अभियन्ता/55/2011-12 दिनांक 29.06.2012 एवं महाप्रबन्धक, उत्तराखण्ड जल संस्थान, नैनीताल के कार्यालय पत्र सं0 2408/अधि0अधि0/74 दिनांक 30.06.2012 के अनुपालन में श्री पी0एस0 गड्डिया प्रभारी अधिशाली अभियन्ता के दिनांक 30.06.2012 की अपराहन में सेवानिवृत्त होने के फलस्वरूप अधोहस्ताक्षरी द्वारा तद्दिनांक की अपराहन में ही शाखा अल्मोड़ा के साथ-साथ अधिशाली अभियन्ता, शाखा बागेश्वर का कार्यभार ग्रहण किया गया है।

उल्लेखनीय है कि शाखा बागेश्वर के अन्तर्गत सहायक अभियन्ता के 02 पर स्वीकृत हैं जिनके सापेक्ष 01 पद पर श्री प्रियदर्शन सिंह रावत(सहायक अभियन्ता) की तैनाती लोक सेवा आयोग द्वारा की गयी है । श्री रावत विगत दिनों से अवकाश पूर्ण करने के पश्चात भी शाखा में अनुपस्थित चल रहे हैं तथा शेष 01 पद (सहा0अभि0) वर्तमान में रिक्त है। अतः कृपया रिक्त पद (सहा0अभि0) की तैनाती शीघ्र किये जाने हेतु आवश्यक कार्यवाही करने की कृपा करेंगे।

शाखा बागेश्वर के अन्तर्गत पेयजल सम्बन्धी विभिन्न समस्याओं के त्वरित निराकरण एवं स्थानीय बैठकों में प्रतिभाग किये जाने हेतु शाखा में कार्यरत वरिष्ठ कनिष्ठ अभियन्ता श्री रमाशंकर विश्वकर्मा नितान्त अस्थायी व्यवस्था के अन्तर्गत अपने कार्यों के साथ-साथ प्रभारी सहायक अभियन्ता शाखा बागेश्वर का कार्य देखेंगे।

सादर सूचनार्थ प्रेषित।

भवदीय

(ए0के0 सक्सेना)
अधिशाली अभियन्ता”

“कार्यालय अधीक्षण अभियन्ता उत्तराखण्ड जल संस्थान, वृत्त- अल्मोड़ा।

पत्रांक 669/अधि0 2/05 दिनांक 12.07.12

अधिशाली अभियन्ता,
उत्तराखण्ड जल संस्थान,
बागेश्वर,

विषय- शाखा बागेश्वर में अस्थाई रूप से सहायक अभियन्ता के दायित्वों के निर्वहन के सम्बन्ध में।

उपरोक्त विषयक आपके पत्रांक मैमो/अधि02/12-13, दिनांक 03.07.12 के क्रम में शाखा बागेश्वर में वर्तमान की स्थिति के अनुसार कोई नियमित सहायक अभियन्ता न होने की स्थिति में अस्थाई रूप से कार्य संचालन की व्यवस्था की दृष्टिकोण से आप द्वारा प्रेषित प्रस्ताव को अग्रिम आदेशों तक इस प्रतिबन्ध के साथ अनुमोदित किया जा

रहा है कि सम्बन्धित को उक्त कार्य हेतु किसी प्रकार का कोई लाभ देय नहीं होगा और न ही कोई वरिष्ठता प्रभावित होगी। उक्त नितान्त अस्थाई व्यवस्था नियमित सहायक अभियन्ता की तैनाती होने के उपरान्त स्वतः समाप्त हो जायेगी।

(जे0आर0 गुप्ता)
अधीक्षण अभियन्ता

“कार्यालय अधिशासी अभियन्ता,
उत्तराखण्ड जल संस्थान, शाखा बागेश्वर।

कार्यालय- आदेश

एतद्वारा शाखा बागेश्वर के कार्यालय पत्रांक मैमो/अधि02/2012-13 दिनांक 12.07.2012 के द्वारा प्रेषित प्रस्ताव पर अधीक्षण अभियन्ता महोदय, उत्तराखण्ड जल संस्थान, वृत्त अल्मोड़ा द्वारा अपने कार्यालय शाखा पत्रांक-669/अधि002/05 दिनांक 12/07/2012 के द्वारा अनुमोदन प्रदान कर दिये जाने के उपरान्त शाखा कार्यालय बागेश्वर अन्तर्गत कार्यरत श्री रमाशंकर विश्वकर्मा (कनिष्ठ अभियन्ता) की तैनाती प्रभारी सहायक अभियन्ता के रूप में की जाती है। उक्त व्यवस्था पूर्णतः अस्थायी होगी। जो कि नियमित सहायक अभियन्ता की उपस्थिति/तैनाती के पश्चात् स्वतः ही समाप्त हो जायेगी।

अतः उपरोक्त कार्य हेतु श्री विश्वकर्मा, कनिष्ठ अभियन्ता को किसी प्रकार का अतिरिक्त लाभ देस नहीं होगा एवं न ही इस व्यवस्था से कोई वरिष्ठता प्रभावित होगी।

यह आदेश तत्काल प्रभाव से लागू होंगे।

(ए0के0 सक्सेना)
अधिशासी अभियन्ता

पत्रांक 1543/कार्यालय आदेश /4: दिनांक 19 जुलाई, 2012

प्रतिलिपि-

“कार्यालय अधिशासी अभियन्ता, उत्तराखण्ड जल संस्थान, शाखा बागेश्वर

कार्यालय आदेश

एतद्वारा सचिव प्रशासन उत्तराखण्ड जल संस्थान, देहरादून के कार्यालय आदेश सं0 2629/कार्मिक /01 पी0एफ0(अभि.) /55/2013-14, दिनांक 22.07.2013 द्वारा श्री प्रियदर्शन सिंह रावत सहायक अभियन्ता की दिनांक 15.04.2013 से योगदान आख्या स्वीकार किये जाने एवं उनके द्वारा शाखा कार्यालय में उपस्थित हो जाने के फलस्वरूप कार्य हित एवं विभागीय हित में शाखा कार्यालय के आदेश सं0 548/कार्या. आदेश /10 दिनांक 21.04.2013 में आंशिक संशोधन करते हुए अग्रिम ओदशों तक निम्नानुसार व्यवस्था दी जाती है।

1. श्री प्रियदर्शन सिंह रावत:-विकास खण्ड कपकोट, बागेश्वर विकास खण्ड के काण्डा क्षेत्र, विभागीय वाहन वाटर टैंकर संबंधी कार्य एवं सहायक अभियन्ता (शाखा मुख्यालय) के कार्यों के साथ-साथ श्री रावत को सहायक लोक सूचना अधिकारी नामित किया जाता है। श्री रावत द्वारा सूचना अधिकार अधिनियम 2005 के अन्तर्गत प्राप्त समस्त आवेदनों का अनुश्रवण करते हुए समायान्तर्गत निस्तारण सुनिश्चित किया जायेगा।
2. श्री अभिषेक वर्मा, सहायक अभियन्ता:-बागेश्वर नगरीय व श्री विजय कुमार टम्टा के कार्य क्षेत्रान्तर्गत ग्रामीण क्षेत्र एवं विकास खण्ड गरूड़ का समस्त कार्य क्षेत्र।

3. श्री आर0एस0 विश्वकर्मा (प्रभारी)सहायक अभियन्ता:-सैक्टर प्रोग्राम से संबंधित समस्त कार्य (स्वैप इन्चार्ज) विकास खण्ड बागेश्वर की खरेहीपट्टी क्षेत्र की समस्त पेयजल योजनाओं से संबंधित क्षेत्र, दोफाड़ व धारी क्षेत्र के कार्य।

यह आदेश तत्काल प्रभाव से लागू होंगे।

(संजीव मिश्र)
अधिशासी अभियन्ता

पत्रांक 1636/कार्यालय आदेश /43 दिनांक 17.08.2013

प्रतिलिपि-

11. It is clear from the above that the petitioner was assigned additional work of Assistant Engineer vide order dated 22.12.2008 of the Executive Engineer in which it was clearly mentioned that for this additional work, no additional pay/allowance or any benefit regarding seniority will be permissible to the petitioner and any claim in future by the petitioner for the post of Assistant Engineer will not be acceptable. Vide letter dated 03.07.2011, the Executive Engineer proposed to the Superintending Engineer that for quick disposal of various problems regarding drinking water in Bageshwar Branch and for participating in local meetings, Sri Rama Shankar Vishwakarma (Petitioner), Senior Junior Engineer working in the Branch will look after the work of Incharge Assistant Engineer, Bageshwar Branch in addition to his duties under an absolutely temporary arrangement. This proposal was approved by the Superintending Engineer vide his letter dated 12.07.2012 till further orders with the restriction that the petitioner will not be entitled to any benefit for this work nor will any seniority be affected. The aforesaid absolutely temporary arrangement will end on its own after the joining of the regular Assistant Engineer. Consequent to this approval, orders were issued by the Executive Engineer accordingly on 19.07.2012. The order of the Executive Engineer dated 17.08.2013 is about distribution of work till further orders in which petitioner has again been shown as Incharge Assistant Engineer.

12. It is clear from the above that the assignment of the additional work of Assistant Engineer to the claim petitioner in Claim Petition No. 21/NB/DB/2018 was of the same nature as the assignment of work to the

claim petitioners in Claim Petitions No. 40/DB/2018 and 41/DB/2018. In all three cases, such assignment of additional work of Incharge Assistant Engineer continued till their substantive appointments as Assistant Engineer. We agree with the observations made in Claim Petitions No. 40/DB/2018 and 41/DB/2018 that in all these cases, the assignment of additional charge of Assistant Engineer was on 'ad hoc' basis by way of 'stop gap arrangement'. In its earlier judgment dated 18.09.2019 passed in Claim Petition No. 21/NB/DB/2018, the Tribunal has not appreciated the fact that neither the petitioner was granted officiating promotion as Incharge Assistant Engineer dated 12.12.2008 nor it was a case of irregular appointment, which was regularized subsequently.

13. This Tribunal in its earlier judgment dated 18.09.2019 in Claim Petition No. 21/NB/DB/2021 proceeded on the assumption that the petitioner therein was granted officiating promotion as Incharge Assistant Engineer on 22.12.2008 and since assignment of the officiating work of Assistant Engineer on 22.12.2008, he continued to perform such duties uninterruptedly till 30.06.2014 when he was regularly promoted in Assistant Engineer cadre. The Tribunal at that time wrongly equated it with a case of regularization of irregular appointment or confirmation of officiating appointment, while there was no appointment of any sort of the petitioner to the post of Assistant Engineer. The Executive Engineer and the Superintending Engineer were not at all empowered to make any sort of appointment to the post of Assistant Engineer nor have they done it. In their orders/ correspondences, assignment of the additional work as Incharge Assistant Engineer in addition to the other work of Junior Engineer has been clearly stated to be without any additional pay/allowance or benefit regarding seniority and without creating any claim of the petitioner for the post of Assistant Engineer. In these orders, this assignment of additional work has been clearly stated to be till further orders or as under absolutely temporary arrangement.

14. In all these three claim petitions, the issue of counting the previous continuous service rendered as Incharge Assistant Engineer before regular appointment as Assistant Engineer is similar. It has been analyzed in great detail in the earlier judgments of this Tribunal in Claim Petition Nos. 40/DB/2018 and 41/DB/2018. This analysis has been reproduced in para 5 of this judgment. In addition, we would also like to refer to para 13 of the judgment of the Constitutional Bench of the Hon'ble Supreme Court in Direct Recruit Class II Engineering Officer's Association vs. State of Maharashtra and others (1990) 2 SSC 715, which reads as below:

“When the cases were taken up for hearing before us, it was faintly suggested that the principle laid down in Patwardhan's case was unsound and fit to be over-ruled, but no attempt was made to substantiate the plea. We were taken through the judgment by the learned counsel for the parties more than once and we are in complete agreement with the ratio decidendi, that the period of continuous officiation by a government servant, after his appointment by following the rules applicable for substantive appointments, has to be taken into account for determining his seniority; and seniority cannot be determined on the sole test of confirmation, for, as was pointed out, confirmation is one of the inglorious uncertainties of government service depending neither on efficiency of the incumbant nor on the availability of substantive vacancies. The principle for deciding inter se seniority has to conform to the principles of equality spelt out by articles 14 and 16. If an appointment is made by way of stop-gap arrangement, without considering the claims of all the eligible available persons and without following the rules of appointment, the experience on such appointment cannot be equated with the experience of a regular appointee, because of the qualitative difference in the appointment. To equate the two would be to treat two unequals as equal which would violate the equality clause. But if the appointment is made after considering the claims of all eligible candidates and the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules made for regular substantive appointments, there is no reason to exclude the officiating service for purpose of seniority. Same will be the position if the initial appointment itself is made in accordance with the rules applicable to substantive appointments as in the present case. To hold otherwise will be discriminatory and arbitrary. This principle has been followed in innumerable cases and has been further elaborated by this Court in several judgments including those in Baleshwar Dass v. State of U.P. and others, [1981] 1 SCR 449, and Delhi Water Supply and Sewage Disposal Committee and others v. R.K. Kashyap and others, [1989] Supp. 1 SCC 194, with which we are in agreement. In Narender Chadha and others v. Union of India and others, [1986] 1 SCR 211, the officers were promoted al- though without following the procedure prescribed under the rules, but they continuously worked for long periods of nearly 15-20 years on the posts without being reverted. The period of their continuous officiation was directed to be counted for seniority as it was held that any other view would be

arbitrary and violative of Articles 14 and 16. There is considerable force in this view also. We, therefore, confirm the principle of counting towards seniority the period of continuous officiation following an appointment made in accordance with the rules prescribed for regular substantive appointments in the service”

[Emphasis supplied]

15. The above clearly spells the difference between an appointment made by way of stop gap arrangement, without considering the claims of the eligible available persons and without following the rules of appointment as compared to the case where the appointment is made after considering the claims of all eligible candidates and the appointee continues in the post uninterruptedly till the regularization of his service in accordance with the rules made for regular substantive appointments. In the first case, the Hon’ble Apex Court has held that the experience of such appointment cannot be equated with the experience of a regular appointee, because of the qualitative difference in the appointment. In the second case, the Hon’ble Apex Court finds no reason to exclude the officiating service for the purpose of seniority. This is reflected in the conclusions (A) and (B) of paragraph 47 of this judgment which have been referred to in the earlier judgments of this Tribunal in Claim Petition no. 40/DB/2018 and 41/DB/2018 and mentioned in para 5 above.

16. The Appointing Authority of the post of Assistant Engineer is the Government according to the service rules and in any exercise of promotion from the post of Junior Engineer to the post of Assistant Engineer, whether adhoc or officiating or regular, the claims of all the eligible available Junior Engineers would be considered by the Government/Appointing Authority. Had it been such a case of adhoc or officiating promotion, which would have continued till regular promotion, then the concerned promotees would have been covered by the conclusion (B) of Para 47 of the above judgment of the Hon’ble Apex Court. Adhoc arrangement made in the case of the petitioners in these claim petitions by the Executive Engineer/Superintending Engineer have neither considered the claims of all the eligible Junior Engineers in the State, as their jurisdiction was confined

only to their division/circle, nor have they done even the slightest sort of any promotional exercise. Therefore, we hold that even if the assignment of additional work of Incharge Assistant Engineer is deemed to be some sort of appointment, it is covered under the corollary to the conclusion A of Para 47 of the above judgment of Hon'ble Apex Court. The other case-laws submitted by the petitioners for counting the period of assignment of additional charge of Incharge Assistant Engineer for the purpose of seniority are of no help to the petitioners as the facts, circumstances and sets of rules therein are different compared to the case of petitioners and therefore, these case laws are not applicable in the case of the petitioners.

17. We may further add that if such adhoc arrangements are counted for the purpose of seniority, it would lead to chaos, as other Junior Engineers of the State who might not have got the opportunity of assignment of additional work of Incharge Assistant Engineer in other divisions/circles despite their being senior to the petitioners would lag behind in seniority for no fault of their own.

18. In view of the above, we hold that the petitioners are not entitled to the relief of counting their earlier period of working as Incharge Assistant Engineer towards their seniority. However, they are entitled to regain their seniority over private respondents who were promoted earlier at roster points under reservation quota as stated in para 4 of this judgment. The seniority list dated 06.07.2017 has already been set aside by the judgment and order dated 28.07.2020 in Claim Petition No. 42/DB/2018, K.C.Painuli vs. State of Uttarakhand & others and 'catch-up' rule as stated that judgment, will be applicable in the case of the petitioners also.

19. The petitioner in claim petition No. 41/DB/2017, had also sought the additional following relief:

"1.) Issue an order or direction in the nature of certiorari by quashing the impugned orders dated 8th August 2017 (Annexure: A4 (Colly) to the claim petition) vide which the officiating appointment as In-charge Executive Engineer of the private respondent No. 30 has been made without properly considering the seniority of the petitioner as Assistant Engineer working in the Department of Uttarakhand Jal

Sansthan since the date of his officiating promotion to the post of Assistant Engineer i.e. 18.05.2010 in continuation to his regular promotion on 9.4.2013 and thereafter his working as Officiating Executive Engineer since 27.09.2014 to till date uninterruptedly at Pithoragarh and Champawat Divisions of Uttarakhand Jal Sansthan contained as Annexure: A-8 (Colly), Annexure: A-9 (Colly), Annexure: A-7 (Colly) & Annexure: A-6 (Colly) to the claim petition.”

This Tribunal in its earlier judgment dated 29.06.2018 at para 17.4 had held that the O.M. dated 08.08.2017 is a transfer/posting order and according to Section 4 of the U.P. Public Services Tribunal Act, 1976 (as applicable in Uttarakhand), it is beyond jurisdiction of the Tribunal to adjudicate upon grievances of employees related to transfers and postings. We reiterate the same.

20. In view of the above, following order is hereby passed:

ORDER

The claim petitions are partly allowed. As the impugned seniority list dated 06.07.2017 has already been set aside vide judgment and order dated 28.07.2020 in claim petition No. 42/DB/2018, accordingly, by applying the catch-up rule as enunciated in that judgment, the respondents No. 1 & 2 are directed to revise the seniority of the petitioners vis-à-vis respective private respondents promoted earlier on roster points under reservation quota within four months from today. The rest of the reliefs claimed in the petitions are denied.

No order as to costs.

The copy of this judgment be also kept in the file of Claim Petitions No. 41/DB/2017 and 21/NB/DB/2018.

(RAM SINGH)
VICE CHAIRMAN (J)

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

DATE: JANUARY 13, 2021
DEHRADUN