

**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. 33/NB/DB/2019**

1. Satish Mamgain, aged about 32 years, S/o Shri Viashal Mani Mamgain, R/o Village Dhalwala Ward No. 1 Near Cheeni Godam, Post Muni-Ki-Reti Tehri Garhwal, Presently posted as Pharmacist at Govt. Ayurvedic Hospital, Gauna, District Almora.
2. Rakesh Kumar Rawat, aged about 32 years, S/o Sri Puran Singh, R/o Village & Post Kotkandara, Nandprayag, District Chamoli, presently posted as Pharmacist at Govt. Allopathic Hospital, Gwaldam District Chamoli.

.....**Petitioners**

**VERSUS**

1. State of Uttarakhand through its Secretary, Ayurvedic and Unani Services, Secretariat, Dehradun.
2. Director, Ayurvedic and Unani Services, Dehradun.
3. Km. Poonam Bhatt D/o Sri Anusuiya Prasad Bhatt R/o B-116, THDC Colony, Ajabpur Kalan, Dehradun.
4. Smt. Asha Chaudhary D/o Sri Surender Kumar Chaudhary R/o Village Shivpur (Near Bisht General Store) Haridwar Road, Kotdwar, District Pauri Garhwal.
5. Chandra Shekhar S/o Sri Markandey Prasad R/o 135, Nehru Gram, Rishikesh, Near Primary School, Nehrugram, Rishikesh.
6. Om Prakash Raturi S/o Dhani Ram Raturi R/o Clinic Aanjnisen Tehri Garhwal.
7. Naveen Chandra S/o Late Manohar Prasad R/o B-96, Nehru Colony, Dharampur, Dehradun.
8. Km. Neetu Panwar, D/o Sri Ranjeet Singh Panwar, R/o Pashu Palan Vibhag, Uttarkashi.
9. Smt. Aditi W/o Sri Sanjay Tewari, C/o Sri Panna Lal Shukla Kedarshray 17-Gangotri Awas, Chindowali, Dehradun.
10. Km. Rashmi Bhatt D/o Uday Prakash Bhatt R/o Govt. Inter College, Joshimath, Chamoli.

11. Smt. Sushma Tinsola W/o Sri Vimal Chandra Tinsola C/o Sri Narayan Dutt Pandey, Village Dobha Post Guptkashi, Rudraprayag.

.....Respondents

Present: Sri Hari Mohan Bhatia & Sri Kishore Rai, Advocates, for the petitioners.  
Sri Kishore Kumar, A.P.O. for the respondents No. 1 & 2  
Sri Pankaj Tangwan, Advocate  
for the Respondents No. 3,5,6 & 9.

### **JUDGMENT**

**DATED: MAY 03, 2021**

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

1. The petitioners have filed this claim petition for the following reliefs:

*“(I) Issue an order or direction to quash the Final Seniority List dated 05.03.2018/05.03.2019.*

*“(II) Issue an order or direction to the respondents to put the petitioner No.1 at serial No. 352 and the petitioner no. 2 at Sl. No. 360 of the Seniority List before the private respondents in the Final Seniority List.*

*“(III) Issue any other relief, which this Hon'ble Court may deem fit and proper in the circumstances of the case.*

*“(IV) Cost of petition may be awarded in favour of the petitioner.”*

2. Briefly stated, the petitioners and private respondents are governed by the Uttarakhand Ayurvedic and Unani Pharmacist Service Rules, 2009 (hereinafter referred to as 'Service Rules'). The private respondents and other incumbents were given appointment on 11.12.2009 on the post of Pharmacist in the respondent department. Aggrieved by the said appointment, petitioner filed a Writ Petition No. 1231 of 2009 (S/S) before the Hon'ble High Court, challenging the appointments as well as the select list, on the ground that the final select list, prepared by the respondents, was against Rule 15(5) of the above Service Rules. After hearing the matter in detail, the Hon'ble High Court allowed the writ petition of the petitioners on 03.08.2012 and quashed the resolution of the Selection Committee dated 25.11.2009 and the

select list being in contravention of Rule 15(5) of the Service Rules. Consequently, the select list of all the candidates, on the post of Pharmacist in the department was quashed and a writ of mandamus was issued commanding the respondents to publish a fresh select list in accordance with Rule 15(5) of the Service Rules and to issue appointment order accordingly.

3. Being aggrieved by the said judgment dated 03.08.2012, passed by the Hon'ble Single Judge, 200 candidates, working as Pharmacist in the department filed Special Appeal before the Division Bench of Hon'ble High Court as SPA No. 273/2012, Anshul Rawat and others vs. State of Uttarakhand and others. The Division Bench of Hon'ble High Court on 04.09.2012 affirmed the judgment dated 03.08.2012, passed by the Hon'ble Single Judge and the appeal was dismissed. The Hon'ble Division Bench also observed that this order will not prevent the applicants seeking leave to prefer appeal to take such recourse to law, as they may be advised, in the event, they are reappointed, to seek their appointment with effect from the date they were originally appointed.

4. After taking permission of the State Govt., vide G.O. No.862/XXXX/2012-02/2010 dated 25.09.2012, the respondent department issued a new merit list in pursuance of the orders passed by Hon'ble High Court on 03.08.2012 and 04.09.2012 and a new merit list was prepared, fresh appointment/reappointment orders were issued on 07.11.2012 for 238 candidates including the petitioners. In this way, the petitioners were appointed to the post of Pharmacist on 07.11.2012 along with the private respondents and other candidates. Neither in the appointment letter nor in the Government Order, permission was allowed to count previous service of the incumbents, who were working as Pharmacist since 2009, but while issuing final seniority list dated 05.03.2018, the dates of appointment of private respondents were wrongly shown w.e.f. 11.12.2009, which is contrary to the judgment of Hon'ble High Court, by which the appointment of private respondents issued in 2009 was set aside and quashed.

5. The case of the petitioners is that once the respondent department has issued the appointment orders of 238 Pharmacists afresh on 07.11.2012 and they rejoined service afresh on the post of Pharmacist in the year 2012, then the private respondents cannot be said to be appointed in the year 2009, because as per the judgment of Hon'ble High Court, their appointment made in 2009, was quashed and their services since 2009 till 2012, under law, could not be permitted now to be recounted for the purpose of seniority as well as for the purpose of promotion on the promotional post. In the judgment of Hon'ble High Court, it was not permitted to the State Govt./respondents to recount the services of private respondents as well as of other incumbents from the year 2009. Only liberty was given to the appellants, who were before the Division Bench of the Hon'ble High Court, to file an appeal, if they may be advised for seeking their appointments with effect from the date, they were originally appointed. But, after the reappointment order dated 07.11.2012, none of the private respondents as well as other incumbents came before the Tribunal or before the Hon'ble High Court, with the prayer to seek their reappointment with back date so as to recount their services from the year 2009 hence, recounting the services of the private respondents as well as other incumbents from the year 2009, is against the law.

6. As per best knowledge to the petitioners, none of the appellants out of 200 appellants, who had filed Special Appeal No. 273/2012, filed any leave to appeal for seeking their appointment with effect from the date, they were originally appointed. Hence, in such situation, the seniority list has been challenged with the contention that as per the Uttaranchal Government Servants Seniority Rules, 2002, the petitioners, including answering respondents and 238 incumbents, whose names figured in the appointment letter dated 07.11.2012, can be granted seniority as per their fresh appointment orders, in which, the names of petitioners were placed at Sl. No. 10 and 19 in the select list hence, petitioners cannot be put at the bottom of the seniority. Once the

appointment orders issued in 2009 were quashed by Hon'ble High Court vide its judgment dated 03.08.2012, with the direction to prepare fresh select list and to issue fresh appointment orders, the earlier appointment orders issued in 2009 would have no force in the eyes of law. The fresh appointment orders were issued on 07.11.2012 in pursuance to the judgment dated 03.08.2012. After a gap of three months, the State Government cannot revive the quashed appointments of private respondents and other incumbents, against the dictum of the judgment of Hon'ble High Court and as such, final seniority list, as issued by the answering respondents is completely against the law. When fresh appointment order of selected candidates was issued on 07.11.2012, the seniority of the persons can only be fixed on the basis of place of their serial number in the select list dated 07.11.2012. Hence, the petition has been filed for quashing the final seniority list dated 05.03.2018/5.03.2019 and for a direction to respondents to place the name of petitioner No. 1 at sl. no. 352 and of petitioner No. 2 at Sl. No. 360 in the seniority list, before the private respondents and for other consequential relief, as deemed proper in the circumstances of the case.

7. The petition was opposed by the State as well as private respondents, with the contention that the private respondents were appointed in the year 2009 so their seniority was rightly counted from the year 2009 whereas, petitioners were appointed in the year 2012. The order dated 03.08.2012 passed by the Hon'ble Single Judge was modified by the Division Bench vide order dated 04.09.2012 and in view of that, the services of respondents were recounted from the year 2009. Private respondents were not appointed in the year 2012 and the final seniority list has been prepared as per law. The services of all the private respondents were never discontinued; it means they were in the services since 2009. In the final seniority list, it was shown that they were originally appointed in 2009 continued in service and never rejoined in 2012. Hence, their joining shown in the final seniority list, in the year

2009, is correct and seniority list has been prepared accordingly. The petition deserves to be dismissed.

8. State respondents opposed the petition also on the ground that tentative seniority list of Pharmacist was issued on 10.09.2018 and objections were invited within 45 days. Thereafter, respondent department constituted a committee for hearing and decision of the objections. After considering the objections and recommendations of the committee, a final seniority list dated 05.03.2019 was issued. As due to typographical mistake, the date 05.03.2018 was wrongly transcribed in place of 05.03.2019 hence, the mistake was accordingly corrected. Petitioner No. 1 never objected to the tentative seniority list nor submitted any objections against the same. Petitioner No. 2 only requested for correction of his date of birth, which was corrected as per the records. Thus for issue of seniority, date of joining is applicable. In the final seniority list, the petitioners were placed as per their initial date of appointment and also as per law. Private respondents were initially appointed on 11.12.2009, but after the judgment of Hon'ble High Court, they were given reappointment vide order dated 07.11.2012 along with the petitioners. Re-appointment orders were issued to the private respondents, who were earlier appointed in 2009 and final seniority has been fixed as per their initial dates of appointment according to Seniority Rules, 2002. The initial appointment of the petitioners is 07.11.2012 whereas, private respondents and other incumbents, who were initially appointed on 11.12.2009 hence, they were granted seniority above the petitioners, on the basis of their initial appointment, which is as per law. The reappointment order was issued on 07.11.2012 on the directions of Hon'ble High Court along with the petitioners. The petitioners' claim is not sustainable and deserves to be dismissed.

9. The petitioners submitted Rejoinder Affidavit reiterating the facts of the petition and contended that once the appointment orders issued in 2009, were quashed by the Hon'ble High Court being against the Service Rules and their reappointment order was again issued in the year

2012 along with the petitioners then, the substantive appointment of petitioners as well as of private respondents and other incumbents, shall be deemed to be made on 07.11.2012. As per the Seniority Rules of 2002, private respondents cannot be given seniority above the petitioners as their initial appointments made in the year 2009 have no legal effect. Recognizing, it will be against the judgment of Hon'ble Court, by which, appointment was set aside beyond the Rules.

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

11. The petitioners by way of this petition have sought a direction to quash the final seniority list dated 05.03.2018/05.03.2019 and for a direction to the respondents to put the name of petitioner No. 1 at Sl. No. 352 and name of petitioner No. 2 at sl. No. 360 in the seniority list before the private respondents and for other necessary orders.

12. It is an admitted fact that private respondents and other incumbents were appointed in the service in 2009. The concerned Service Rules, governing the petitioners and private respondents are the Uttarakhand Ayurvedic and Unani Pharmacist Service Rules, 2009. The appointment of private respondents and other incumbents was challenged before the Hon'ble High Court in writ petition No. 1231/2009 (S/S), Satish Chandra Mamgain and Rakesh Negi vs. State of Uttarakhand & others whereby the Hon'ble Single Judge of Hon'ble High Court vide judgment dated 03.08.2012 set aside the select list and appointment of the private respondents and other incumbents being in the gross violation of Rule 15(5) of the Service Rules and a writ of mandamus was issued commanding the respondents to prepare their select list in accordance with Rule 15(5) and to issue fresh appointment orders accordingly.

13. The judgment of Hon'ble Single Judge was challenged before the Division Bench in Special Appeal No. 273/2012, which was decided vide order dated 04.09.2012 and the judgment of Hon'ble Single Judge was confirmed. However, a liberty was allowed to the appellant that they may

take such recourse of law and to seek their appointment w.e.f. the date of their original appointment, if they are reappointed. It is the case of the petitioners that private respondents were not reappointed from back date and after cancellation of their appointment, the reappointment process was again started. After taking permission from the Government vide order dated 25.09.2012 (Annexure:5), fresh appointment order dated 07.11.2012 (Annexure:4) was issued, in which, petitioners as well as private respondents and other incumbents were given appointment by placing their names in the select list according to their merit. In the appointment order, the name of the petitioner No. 1 was placed at Sl. No. 10 and of petitioner No. 2 was placed at Sl. No. 19 in the list, comprising the petitioners as well as and private respondents and other incumbents.

14. The case of the petitioners is that the appointment of private respondents and other incumbents made in 2009 was set aside and cancelled by Hon'ble High Court, *ultra vires* the Rules, they were given fresh appointment on 07.11.2012 along with the petitioners after a gap of more than three months. In such circumstances, the appointment of private respondents cannot be treated from back date, because there was no such mention in the appointment order. In the order of the appointment, private respondents and other incumbents were not given appointment from back date. Hence, the appointment of petitioners and of private respondents for the purpose of seniority, will be considered as per order dated 07.11.2012 and on that basis only, the seniority could be settled.

15. We hold the substance in the argument of petitioners, because of the fact that once the appointment made in 2009 was declared illegal and was set aside by Hon'ble High Court, that appointment order of private respondents lost its importance and it cannot be considered for the purpose of settling the seniority. However, the private respondents and the Government was allowed the liberty by the Division Bench, to give them appointment with back date, which was not done vide order dated 07.11.2012. Private respondents had never taken any legal steps to

seek their appointment with back date. Hence, the date of appointment of the petitioners and of private respondents and other incumbents to the claim petition will be treated from the date of appointment order issued on 07.11.2012 and that too in accordance with the seniority of their serial numbers mentioned in the appointment order. In the appointment order dated 07.11.2012, the name of petitioner no.1 figured at sl. No. 10 and of petitioner no. 2 figured at sl. No. 19 amongst the private respondents and other incumbents.

16. The law on this point is very clear. As Rule 20 of the concerned Service Rules provides that the seniority of the persons appointed to the service shall be settled as per the Uttarakhand Government Servants Seniority Rules, 2002. As per Rule 5 of the Seniority Rules of 2002, the seniority of the persons directly appointed on the result of any one selection, should be the same as it is shown in the merit list prepared by the Commission or Committee, as the case may be. Rule 5 of the seniority rules of 2002 reads as under:

***“5. Seniority where appointment by direct recruitment only--***

*Where according to the service rules appointments are to be made only by the direct recruitment the seniority inter se of the persons appointed on the result of any one selection, shall be the same as it is shown in the merit list prepared by the commission or the committee, as the case may be :*

*Provided that a candidate recruited directly may lose his seniority, if he fails to join without valid reasons when vacancy is offered to him, the decision of the appointing authority as to the validity of reasons, shall be final:*

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

***Explanation--****Where in the same year separate selection for regular and emergency recruitment, are made, the selection for regular recruitment shall be deemed to be previous selection.”*

17. A joint reading of Rule 20 of the Service Rules and Rule 5 of the Seniority Rules of 2002 makes it is very clear that the seniority between the employees shall be determined from the date of their initial appointments, which was obviously made vide order dated 07.11.2012 and their inter-se seniority can only be fixed as per the merit, fixed in the

initial appointment order. It is very much clear that neither in the G.O. of the Government dated 25.09.2012 (permitting the HOD to issue fresh appointment order) nor in the appointment/reappointment order dated 07.11.2012, the appointment of private respondents was given effect from back date i.e. from the date, they were originally appointed in 2009. Hence, the petitioners as well as private respondents and other incumbents shall be deemed to be appointed in service vide order dated 07.11.2012, on the result of one selection and their inter-se seniority could be determined only on the basis of their merit list, prepared by the Committee. The respondents have not settled the seniority as per that criteria and putting the persons appointed in 2009 above the petitioners, is illegal, because the appointment order issued in 2009 was already set aside by the Hon'ble High Court hence, that appointment order cannot be considered by the respondents while fixing the seniority of the persons of the cadre. Hence, we are of the view that the impugned seniority list, issued by the respondents is against the provisions of law and is liable to be set aside.

18. We are also of the view that the seniority could only be settled as per serial number and merit of the persons, mentioned in their fresh appointment order dated 07.11.2012, because the substantive appointment of the petitioners as well as private respondents and other incumbents shall be deemed to be made vide order dated 07.11.2012 and, therefore, their seniority can only be fixed on the basis of such fresh order of substantive appointment. Unless the private respondents were given initial appointment with back date, they cannot be treated appointed in 2009, in contravention of the order of Hon'ble High Court. Neither the State respondent nor the private respondents had exercised the liberty granted to them by the Division Bench of Hon'ble High Court for seeking and getting fresh appointment from the date, they were originally appointed. Hence, without getting the appointment effective from back date, the private respondents cannot be treated to be appointed in 2009, prior to the appointment of the petitioners.

19. Learned A.P.O. has argued that other persons affected by the seniority list, were not impleaded as party to this claim petition whereas, learned Counsel for the petitioners has argued that they impleaded all the persons, who were directly affected by the claim petition. All other incumbents mentioned in the seniority list were also informed to become a party to the petition, if they so desire and a notice to this effect through HOD was also issued to appear before the court and put their part. We find that the HOD had circulated this information to all the persons mentioned in the impugned seniority list and information to this effect was also submitted before the Court hence, it cannot be said that other incumbents directly affected by the petition were not impleaded. They were afforded the opportunity of hearing. Even otherwise when the State respondent has decided their seniority against the rules, then, the petitioners can be heard directly on this point, because the state respondent are presumed to follow the concerned Service Rules as well as the Seniority Rules, 2002. The impugned seniority list was settled against the Service Rules as well as Seniority Rules.

20. Learned A.P.O. has raised objection that tentative seniority list was issued and no objections were raised against the same and now, the petitioners cannot raise their objections in this case. We find no force in this argument, because of the reasons that respondent No. 2 also raised an objection to settle the seniority as per the order of the Court but his objection was not considered mentioning the fact that order of Hon'ble High Court was only about the preparation of the merit list and for the purpose of seniority, the date of appointment is to be seen. This fact is proved by Annexure: 1, in which at Sl. No. 80, the objections of Rakesh Kumar Rawat was disposed of in this manner and the final seniority list (*Parpatra-II*) was issued. The names of the petitioners were placed at sl. No. 663 and 664 in the seniority list whereas, their names should have figured at Sl. No. 352 and 360 just below Ms. Deepa Saini and Km. Poonam Bhatt respectively.

21. We agree with the argument of the petitioners and find that the names of the petitioners in the final seniority list was not placed as per their place in the substantive appointment and by treating the initial appointment of the private respondents in 2009, an error has been committed in settling the seniority. As the petitioners as well as private respondents and other incumbents were initially appointed to the service under the Rules vide order dated 07.11.2012 hence, their seniority can only be fixed in accordance with the merit settled therein and in this way, the petition deserves to be allowed, granting the reliefs to the petitioners sought in their petition. Following order is hereby passed.

### **ORDER**

The claim petition is allowed. The impugned seniority list dated 05.03.2018/05.03.2019 is hereby set aside.

The state respondents are directed to settle the seniority of the petitioners as well as of private respondents and other incumbents afresh, in accordance with their merit fixed in their initial appointment order dated 07.11.2012, within a period of three months from the date of production of certified copy of this judgment.

No order as to costs.

Sd/-

**(A.S.NAYAL)**  
MEMBER (A)

Sd/-

**(RAM SINGH)**  
VICE CHAIRMAN (J)

*DATE: MAY 03, 2021*  
*NAINITAL*  
*KNP*