

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

Present: Hon'ble Mr. Justice U.C.Dhyani

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

CLAIM PETITION NO. 12/DB/2021

Vijay Pal Singh, Presently posted as Bill Clerk, Collectorate, Haridwar,
Uttarakhand.

.....Petitioner

vs.

1. The State of Uttarakhand through Secretary, Revenue, Civil Secretariat,
Govt. of Uttarakhand,, Dehradun.
2. Chief Revenue Commissioner, Uttarakhand, Dehradun.
3. District Magistrate, Haridwar.

.....Respondents

Present: Sri B.B.Naithani, Advocate, for the petitioner.
Sri V.P.Devrani, A.P.O., for respondents.

JUDGMENT

DATED: JULY 18, 2022

Justice U.C.Dhyani (Oral)

By means of present claim petition, petitioner seeks the following reliefs:

“(1). That this Hon'ble Tribunal may be pleased to direct the respondent no.3 (District Magistrate, Haridwar) to undertake the proceeding to consider the case of the petitioner for the purpose of promotion on higher post according to the existing seniority list dated 13.07.2006 (Annexure:. A-3) and under said Service Rules, 1980 (Annexure: A-2).

(2) That Hon'ble Tribunal may further be pleased to direct the respondent no.3 to complete the above required proceeding within reasonable time as deem suitable by this Hon'ble Tribunal.

(3) That this Hon'ble Tribunal may be pleased to pass any order or direction which it deems fit and proper under the circumstances of the case.

(4) That this Hon'ble Tribunal may be pleased to award a suitable cost of the petition.”

2. Facts, giving rise to the present claim petition, are as follows:

PETITIONER'S VERSION

2.1 The petitioner was initially appointed as Lower Division Clerk in the Collectorate Office of District Muzaffarnaar in undivided State of U.P. on 23.01.1991. He was transferred to the Collectorate Office in District Saharanpur, on 07.06.1994.

2.2 After the State of Uttarakhand came into existence, a seniority list dated 13.07.2006 of Clerical staff was issued in the Collectorate of District Haridwar under Rule 22 of the U.P. District Offices (Collectorates) Ministerial Service Rules, 1980. The name of the petitioner was placed at Sl. No. 35 in the said seniority list. (Copy of the seniority list dated 13.07.2006 is enclosed as Annexure: A-3 to the claim petition). On the basis of the said seniority list, the petitioner was granted pay equivalent to the pay of junior to the petitioner, namely, Sri Rajbir Singh, *vide* order dated 22/25.02.2010 (Annexure: A-4). In the year 2013, another seniority list of Clerical staff in Collectorate Office of District Haridwar dated 02.9.2013 was issued afresh *dehors* the provision of Rule 22 of the Service Rules, 1980, ignoring the seniority list dated 13.07.2006. Copy of the seniority list dated 02.09.2013 is annexed as Annexure: A-5 to the claim petition. In the seniority list dated 02.09.2013, petitioner was placed at Sl. No. 50 and petitioner's juniors in the seniority list dated 13.07.2006, were placed above the petitioner in the seniority list dated 02.09.2013.

2.3 The seniority list dated 02.09.2013 was issued by the department under the directions of Hon'ble High Court of Uttarakhand, passed on 09.05.2013 in W.P. No. 1536/2006 (S/S) Sri Mahesh Chandra Sharma &

others vs. State of Uttarakhand. The order dated 09.05.2013 was set aside by Hon'ble High Court of Uttarakhand on 04.12.2013, passed in Special Appeal No. 268/2013, Rishi Pal Saini vs. State of Uttarakhand & others (Copy: Annexure- A 6). In view of the order of Hon'ble Court dated 04.12.2013, the seniority list dated 02.09.2013 has become *otiose* and is liable to be treated as non-existent.

2.4 As per the information provided by respondent no.3 *vide* letter No. 1522/(45) *Sahayak Saha.(Lok Suchana)* 2017-18 dated 27.06.2017 under Right to Information Act, 2005, no other seniority list of Clerical staff of the Collectorate, District Haridwar has been released so far. (Copy of letter dated 27.06.2017: Annexure- A 7).

2.5 Certain Clerical staff of the Collectorate, District Haridwar was given promotion by respondent no.3 *vide* order no. 1201/ *Samanya Sahayak/* 2015:16 (*Pronnati*) dated 28.12.2015 (Annexure: A-8). Such promotions were made on the basis of seniority list dated 02.09.2013, which has been set aside in appeal by the Hon'ble High Court. Therefore, such promotions cannot be made on the basis of seniority list dated 02.09.2013 and fresh exercise is required to grant promotions on the basis of the only existing seniority list dated 13.07.2006.

2.6 Petitioner has already filed a representation dated 09.12.2013 (Annexure: A-10), requesting respondent no.3 to take necessary action after quashing the seniority list dated 02.09.2013 in view of order passed by Hon'ble High Court on 04.12.2013, but no fresh proceedings regarding grant of promotion have been initiated by respondent no.3.

RESPONDENTS' VERSION

3. Smt. Sangita Kanaujia, Deputy Collector , Collectorate Haridwar, Uttarakhand has filed Counter Affidavit on behalf of respondents. Each and every material averment in the claim petition has been denied, save and except as specifically admitted. The following has been mentioned in the C.A./W.S.:

3.1 Petitioner was initially appointed as Junior Clerk in the pay scale of Rs. 950-1500/- in Collectorate Office of District Magistrate, Muzaffarnagar in the erstwhile State of U.P. on 21.01.1991. His appointment is district level appointment. Rule 22 (1) of the U.P. District Offices (Collectorates) Ministerial Service Rules, 1980 provides that-

“Seniority in any category of post in the service shall be District-wise.”

Thus, it is clear that if any district cadre level Junior Clerk of Class III is transferred from one district to another on his own request, he will forego his seniority in respect to his particular date of initial appointment and he will be placed at the bottom of the clerical cadre in *inter se* seniority list of Class-III post in another district. The seniority of such employee will be determined from the date of joining in the transferred cadre.

3.2 The petitioner, *vide* application dated 09.08.1993, requested D.M., Haridwar through proper channel to transfer him from Muzaffarnagar to Haridwar and simultaneously furnished an undated application to the Commissioner, Meerut Division, Meerut through D.M., Muzaffarnagar to transfer him from Muzaffarnagar to Haridwar, on the same post. The petitioner accepted that his seniority shall be decided according to the Rules prevalent at that time and he would not have any objection to the same. The provisions regarding transfer on personal request and fixation of seniority are given in G.O. No. 116 dated 19.07.1989, which is based on G.O. dated 17.04.1984, issued by the Department of Personnel, Government of U.P. G.O. No. 4504 dated 27.03.1995 clarified that if a district cadre employee is transferred from one district to another, he will be placed at the bottom of the seniority list of that particular cadre and he cannot be permitted to claim the seniority from his initial date of appointment.

3.3 The petitioner was transferred from Muzaffarnagar to District Collectorate Haridwar on his own request, not in Government exigencies, *vide* order no. 1931 dated 17.05.1994, passed by Divisional Commissioner, Meerut, which clarified the situation that the petitioner will remain the junior most in the seniority list of the Junior Clerk cadre working in the District Collectorate Haridwar.

3.4 After transfer of the petitioner to Haridwar, final seniority list of the Clerical Cadre was issued in District Haridwar on 27.09.1994. The petitioner did not raise any objection regarding his placement in the final seniority list at Sl. No. 84, which was the bottom of the seniority list dated 27.09.1994.

3.5 Thereafter, again in the year 2001 a final seniority list was issued on 24.10.2001, against which the petitioner has furnished objections but he did not mention the fact that his seniority should be determined from the initial date, *i.e.*, 21.01.1991. Petitioner's name figured at Sl. No. 58 in the final seniority list on the basis of his joining date in the Collectorate Clerical Cadre. Now the petitioner is barred by principle of estoppel and acquiescence.

3.6 Thereafter, seniority list of Clerical Cadre, District Haridwar was issued on 13.07.2006, in which the name of the petitioner was erroneously placed at Sl. No. 35 on the basis of date of initial appointment.

3.7 On 01.10.2012 the seniority list of Clerical Cadre, District Haridwar was circulated, in which petitioner's name figured at Sl. No. 50 on the basis of joining date of Clerical Cadre of District Haridwar.

3.8 The seniority list dated 13.07.2006 was challenged before the Hon'ble High Court in WPSS No. 1536/2006, Sri Mahesh Chandra Sharma and others vs. State of Uttarakhand and others, which was decided on 09.05.2013, operative portion of the said judgment reads as under:

“However, it is made clear that till such re-determination of the seniority is done and new seniority list is prepared, the existing seniority shall not be given effect to for any further promotion.....”

It is quite clear that the previous list dated 13.07.2006 shall be ineffective from the date when new seniority list will be effective. Accordingly, fresh seniority list dated 02.09.2013 of the Clerical Cadre, District Haridwar was issued in view of judgment dated 09.05.2013 of the Hon'ble Court (Copy: Annexure- C.A.-R-8).

3.9. In Special Appeal No. 105 of 2016, Vijay Pal Singh and another vs. State of Uttarakhand and others, Hon'ble Court directed as under:

“In case, a petition is filed before the Uttarakhand Public Services Tribunal within a period of eight weeks from today, the same shall be considered on merits without reference of delay.” (Copy Annexure: A-1)

Present claim petition has not been filed within eight weeks.
[Nevertheless, the present claim petition is being decided purely on merits.]

3.10 On the basis of seniority list dated 02.09.2013, in which the name of the petitioner figured at Sl. No.50, the petitioner has taken benefit of promotion to the post of Senior Clerk from the post of Junior Clerk, hence, he cannot raise the issue of wrong fixation of seniority. He was placed at Sl. No. 35 in the list dated 13.07.2006. Copy of promotion order of the petitioner dated 28.12.2015 has been filed as Annexure: CA-R-10.

REJOINDER AFFIDAVIT

4. Rejoinder Affidavit has been filed by the petitioner. In Para 5 of the R.A., the petitioner has emphatically made it clear that the petitioner has not claimed any relief regarding the legitimacy of the presently existing seniority list dated 13.07.2006, filed as Annexure: A-2 to the claim petition. According to the petitioner, seniority list dated 13.07.2006 is still in existence.

4.1 In para 8 of the R.A., it has been stated that seniority list dated 01.10.2012 was made subject to final orders in WPSS No. 1429/2006 Jeetendra Kumar and others vs. Chief Revenue Commissioner, Uttarakhand and others. The said writ petition has already been dismissed as withdrawn by Hon’ble Court *vide* order dated 06.10.2012 (Copy: Annexure- A 11).

4.2 It has also been stated in para 8 of the R.A. that WPSS No. 1429/2006 was filed against the seniority list dated 13.07.2006. Similarly, in WPSS No. 1536/2006 Mahesh Chandra Sharma and others vs. State of Uttarakhand and others, the seniority list dated 13.07.2006 was challenged, but order dated 09.05.2013 (Annexure: CA-8), passed in WPSS No. 1536/2006 has been set aside by the Division Bench of Hon’ble Court *vide* order dated 04.12.2013 in Special Appeal No. 268/2013 Rishipal Saini vs. State of Uttarakhand and others (Annexure: A-6) and, therefore, the seniority list dated 13.07.2006 is still in existence.

4.3 Ld. Counsel for the petitioner vehemently argued that seniority list dated 01.10.2012 has become *otiose*.

DISCUSSION

5. In the case of K.P. Sudhakaran & another vs. State of Kerala & others, 2006 (5) SCC 386, the issue for consideration was that whether the seniority of transferred LDCs, transferred on their request to another unit in the same department, shall be reckoned from the date of their initial appointment to the post or from the date on which they were transferred to new district. Hon'ble Apex Court observed as under:

“11. In service jurisprudence, the general rule is that if a Government servant holding a particular post is transferred to the same post in the same cadre, the transfer will not wipe out his length of service in the post till the date of transfer and the period of service in the post before his transfer has to be taken into consideration in computing the seniority in the transferred post. But where a Government servant is so transferred on his own request, the transferred employee will have to forego his seniority till the date of transfer, and will be placed at the bottom below the junior-most employee in the category in the new cadre or department. This is because a government servant getting transferred to another unit or department for his personal considerations, cannot be permitted to disturb the seniority of the employees in the department to which he is transferred, by claiming that his service in the department from which he has been transferred, should be taken into account. This is also because a person appointed to a particular post in a cadre, should know the strength of the cadre and prospects of promotion on the basis of the seniority list prepared for the cadre and any addition from outside would disturb such prospects. The matter is, however, governed by the relevant service Rules.”

[Emphasis supplied]

5.1 The petitioner is not legally entitled to get benefit from the date of his initial appointment because the seniority of the Clerical Cadre is maintained district-wise and since the petitioner changed the district, therefore, he is not eligible for seniority over other Clerks.

5.2 Seniority List of Clerical Staff was prepared in the Collectorate of district Haridwar *vide* Office Order No. 748/12 dated 13.07.2006, on the basis of Service Rules called the U.P. District Offices (Collectorates) Ministerial Service Rules, 1980. Seniority list dated 13.07.2006 was contrary to the Rules and, therefore, the D.M., Haridwar *vide* Office Order No. 553 dated 01.10.2012 issued fresh seniority list subject to the decision of the Hon'ble Court in WPSS No. 1429/2006 Jeetendra Kumar and others vs. Chief

Revenue Commissioner, Uttarakhand and others and WPSS No. 1536/2006 Mahesh Chandra Sharma and other vs. State of Uttarakhand and others.

5.3 The petitioner was appointed in district Haridwar on 07.06.1994. Petitioner's service is to be taken as new service and he was placed as the junior most in the seniority list at the time of his appointment in district Haridwar. Sri Rajbir Singh was appointed in 1992 and he is senior to the petitioner in the seniority list.

5.4 Seniority List dated 13.07.2006 was challenged before the Hon'ble Court in WPSS No. 1536/2006 Mahesh Chandra Sharma and others vs. State of Uttarakhand and others, which was decided on 09.05.2013 and the previous seniority list dated 13.07.2006 became ineffective from the date when the new seniority list dated 02.09.2013 was prepared.

5.5 New seniority list dated 02.09.2013 was prepared as per the directions of Hon'ble High Court in WPSS No. 1536/2006 Mahesh Chandra Sharma and others vs. State of Uttarakhand and others *vide* order dated 09.05.2013, relevant portion of which reads as under:

“In the light of aforesaid, the writ petition is disposed of with a direction to the District Magistrate, Haridwar to redetermine the seniority of all Class III employees on the basis of the principle as referred above. If an employee has been transferred from 'A' or 'B' district to Haridwar under special circumstances by the authority purely in order to meet an administrative contingency then he is liable to claim his seniority, however, if the transfer is on the personal request of the employee he will have to forego his seniority and will have to be placed at the bottom of the cadre. However, it is made clear that till such re-determination of the seniority is done and new seniority list is prepared, the existing seniority shall not be given effect to for any future promotion.”

5.6 In seniority list dated 02.09.2013, the name of the petitioner finds place at Sl. No. 50, he has taken benefit of the promotion on the post of Senior Clerk from the post of Junior Clerk, hence, he cannot raise the issue that his seniority is wrongly mentioned in this seniority list dated 02.09.2013.

5.7 According to Ld. A.P.O., in the decision of WPSB No. 41/2003, it has been observed that if an employee is transferred from one district to another, the seniority would be counted from the date of joining in another district. Ld. A.P.O. also pointed out that the Hon'ble Court in its judgment had instructed and permitted the respondents (writ petitioners) to approach the

Tribunal with the seniority dispute with which they had approached the Court, a remedy which the petitioner has not availed for determination of *inter se* seniority.

6. Various writ petitions & special appeals were preferred before Hon'ble High Court of Uttarakhand at Nainital regarding the issue of seniority (challenging the seniority list of the Clerical Cadre in Collectorate Haridwar), which were decided by the Hon'ble Court. Chronology of the cases filed before the Hon'ble Court and orders passed in those cases, is as follows:

(1.) In Writ Petition No. 1536 of 2006 (S/S) Sri Mahesh Chandra Sharma and others vs. State of Uttarakhand and others, Hon'ble Court observed as under:

'6. As a general principle, if a Government servant is so transferred on his own request, the transferred employee will have to forego his seniority till the date of transfer, and will be placed at the bottom below the junior-most employee in the category in the new cadre or department. This Court in Rakesh Kumar Tripathi & others Vs. High Court of Uttarakhand in Writ Petition No.1127/2011 (S/S) vide judgment dated 15.03.2013 has also determined the similar issue.

7. In the light of aforesaid, the writ petition is disposed of with a direction to the District Magistrate, Haridwar to redetermine the seniority of all Class III employees on the basis of the principle as referred above. If an employee has been transferred from 'A' or 'B' district to Haridwar under special circumstances by the authority purely in order to meet an administrative contingency then he is liable to claim his seniority, however, if the transfer is on the personal request of the employee he will have to forego his seniority and will have to be placed at the bottom of the cadre. However, it is made clear that till such re-determination of the seniority is done and new seniority list is prepared, the existing seniority shall not be given effect to for any future promotion. Needful be done within three months from the date of production of a certified copy of this order. No order as to costs.'

[Emphasis supplied]

(2) In Special Appeal No. 268 of 2013, Rishipal Saini vs. State of Uttarakhand and others, Hon'ble Court passed an order on 04.12.2013, as below:

'In the writ petition, seniority disputes were raised. A learned Single Judge has dealt with the seniority dispute by entertaining the writ petition and passing the judgment under appeal, with a direction upon the District Magistrate to determine the seniority on the basis of the principles laid down in the judgment under appeal. The fact remains that a Division Bench of this Court has already opined that all seniority disputes must be, first, decided by the Public Services Tribunal. We, accordingly, grant leave to the appellant to prefer an appeal.

2. In the matter of preferring the appeal, there has been some delay and, accordingly, an Application for condonation of delay has been filed. That is not being objected. We have also considered the averments made in the Application for condonation of delay and, being satisfied with the reasons furnished for the delay, allow the Application.

3. Having regard to what has been stated above, we allow the appeal; set aside the judgment and order under appeal; and permit the respondents / writ petitioners, who approached the writ court, to approach the Tribunal with the seniority dispute with which they had approached this Court.'

[Emphasis supplied]

(3) Petitioner of the present claim petition also preferred Special Appeal No. 301 of 2013, Vijay Pal Singh and another vs. State of Uttarakhand and others, which was decided by Hon'ble Court on 04.12.2013 with the following order:

'In view of the order passed in Special Appeal No. 268 of 2013, no separate order need be passed on this appeal. The same is, accordingly, disposed of along with all Applications made in connection therewith.'

(4) Writ Petition (S/S) No. 948 of 2014, Sukhvansh Singh and others vs. State of Uttarakhand and others was decided on 28.08.2014, as follows:

'1. The petitioner is an Administrative Officer in Collectorate Haridwar. He is aggrieved due to the complete inaction on the part of the respondents, who are not undertaking the promotional exercise for the post of Administrative Officer Grade-II to Administrative Officer. Hence the present writ petition.

2. In the reply, the reasons given for not undertaking the promotional exercise by the respondents are that certain orders of this Court passed in Special Appeal No. 268 of 2013. A short background, therefore, to those preceding orders are stated as under:- In the earlier round of litigation certain employees of Collectorate Haridwar had approached this Court for wrong fixation, challenging the inter se seniority. The matter was disposed of by this Court in WPSS No. 1536 of 2006 (decided on 09.05.2013) with the direction that the seniority be determined according to certain principle as laid down in the judgment. The said order was challenged by the employees of Collectorate, Haridwar in a Special Appeal (No. 268 of 2013), in which following order was passed:-

In the writ petition, seniority disputes were raised. A learned Single Judge has dealt with the seniority dispute by entertaining the writ petition and passing the judgment under appeal, with a direction upon the District Magistrate to determine the seniority on the basis of the principles laid down in the judgment under appeal. The fact remains that a Division Bench of this Court has already opined that all seniority disputes must be, first, decided by the Public Services Tribunal. We, accordingly, grant leave to the appellant to prefer an appeal.

In the matter of preferring the appeal, there has been some delay and, accordingly, an Application for condonation of delay has been filed. That is not being objected. We have also considered the averments made in the Application for condonation of delay and, being satisfied with the reasons furnished for the delay, allow the Application.

Having regard to what has been stated above, we allow the appeal; set aside the judgment and order under appeal; and permit the respondents / writ petitioners, who approached the writ court, to approach the Tribunal with the seniority dispute with which they had approached this Court.

[Emphasis supplied]

3. Now the stand taken by the respondents is that since no one has approached the Tribunal for determination of the seniority or for re-determination of the seniority, there is no seniority list hence no promotional exercise can take place.

4. This argument cannot be accepted. There is no order of this Court placing restriction of any kind on the respondents for making promotional exercise. Being considered for promotion to the next higher post is a Fundamental Right of a Government employee. At least his candidature has to be considered in accordance with law for the promotion by denying the right to the petitioner. The respondents have, in fact, violated the Fundamental Right to the petitioner given to him under Article 16 of the Constitution of India.

5. The writ petition therefore, succeeds. A mandamus is issued to the respondents to initiate promotional exercise in accordance with the existing inter se seniority list. In case, any person has any dispute to the said seniority list, they are always at liberty to approach the State Public Service Tribunal, as held by the Division Bench of this Court in Special Appeal No. 268 of 2013 (decided on 04.12.2013). Let the promotional exercise be commenced forthwith.'

[Emphasis supplied]

(5) In Writ Petition (S/S) No. 549 of 2016, Vijay Pal Singh and another vs. State of Uttarakhand and others, Hon'ble High Court on 17.03.2016 passed the following order:

'1. The petitioners before this Court are Class III employees of District Collectorate, Haridwar. They have challenged the inter se seniority list of Class III employees and the subsequent promotion order passed on the basis of the seniority list.

2. In the earlier round of litigation, the writ petition (WPSS No. 1536 of 2006 decided on 09.05.2013) was entertained by this Court in which certain directions were given to the authorities concerned as to the calculation of seniority of such employees. Subsequently, the above order was challenged in the special appeal (SPA No. 268/2013 decided on 04.12.2013) and the order of the Single Judge was set aside on the ground that the Division Bench of this Court has already held that all seniority disputes must be first decided by the State Public Services Tribunal.

3. Now, after determination of the seniority, for whatever reasons it might be in the subsequent promotion order, the petitioner again challenged the said inter se seniority list before this Court. Since the Division Bench of this Court has already decided this controversy (referred above), the present matter should also first go to the State Public Services Tribunal, as it was so held by the Division Bench.

4. Accordingly, the writ petition stands dismissed on the ground of alternative remedy.'

[Emphasis supplied]

(6) Special Appeal No. 105 of 2016, Vijay Pal Singh and another vs. State of Uttarakhand and others was decided by Hon'ble High Court *vide* order dated 04.11.2020, as below:

'Aggrieved by the order dated 17.03.2016 passed by the learned Single Judge in relegating the petitioners to the Uttarakhand Public Services Tribunal, the petitioners are in appeal.

2. Shri Ashish Joshi, learned counsel for the appellants, contends that the relief, as sought for by the appellants-writ petitioners, required to be granted; the respondents are acting upon the seniority-list, which has been set aside.

3. However, on hearing learned counsel, **we do not find any merit in this appeal.** The writ petition has been dismissed on the ground that the petitioners have an alternative and efficacious remedy before the Uttarakhand Public Services Tribunal. In view of the availability of this remedy, the learned Single Judge declined to interfere in the matter. We do not find any ground to interfere in the order passed by the learned Single Judge.

4. In view of an alternative and efficacious remedy, we do not find that any error was committed by the learned single judge. Hence, the appeal is dismissed. However, liberty is granted to the appellants-writ petitioner to approach the Uttarakhand Public Services Tribunal.

5. In case, a petition is filed before the Uttarakhand Public Services Tribunal within a period of eight weeks from today, the same shall be considered on merits without reference to delay.

6. Pending applications (CLMA No. 4244 of 2016 and IA No. 10710 of 2020) stand rejected'."

[Emphasis supplied]

7. In the litigation before Hon'ble High Court, the petitioner (along with others) approached Hon'ble Court challenging the seniority list (of the Clerical Cadre in Collectorate Haridwar). Liberty was granted to the writ petitioner to approach this Tribunal. The petitioner has, although approached this Tribunal, but for different reliefs (without any prayer for determining the inter se seniority) which are reproduced herein below, at the cost of repetition:

“(1). That this Hon'ble Tribunal may be pleased to direct the respondent no.3 (District Magistrate, Haridwar) to undertake the proceeding to consider the case of the petitioner for the purpose of promotion on higher post according to the existing seniority list dated 13.07.2006 (Annexure:. A-3) and under said service Rules 1980 (Annexure: A-2.

(2) That Hon'ble Tribunal may further be pleased to direct the respondent no.3 to complete the above required proceeding within reasonable time as deem suitable by this Hon'ble Tribunal.

.....”

8. In the claim petition, no prayer has been made for determination of *inter se* seniority of Clerical Cadre of Collectorate, District Haridwar. Instead, a prayer has been made to consider the case of the petitioner for promotion on higher post according to the existing seniority list dated 13.07.2006, which has been set aside by the D.M., Haridwar *vide* Office Order dated 01.10.2012.(The same has not been challenged). How can the

petitioner be considered for promotion on the basis of a seniority list which is not in existence? The petitioner has prayed for something before the Hon'ble High Court and he is praying for something else before this Tribunal. Legally he can file the claim petition for any relief before this Tribunal under Section 4 of the U.P. State Public Services (Tribunal) Act, 1976, but when he is referring to the decisions rendered by Hon'ble Court in Special Appeal No. 268/2013 Rishipal Saini vs. State of Uttarakhand and others decisions, he ought to have filed the claim petition for the selfsame relief before this Tribunal. He has not done so.

9. Having not done so, his claim for promotion is based upon the seniority list dated 13.07.2006, which has been superseded by the D.M., Haridwar by subsequent seniority lists dated 01.10.2012 and 02.09.2013. Efforts were made to challenge those seniority lists before Hon'ble High Court in WPSS No. 948 of 2014, Sukhvansh Singh & others vs. State of Uttarakhand & others. The Hon'ble Court without affirming or setting aside those seniority lists, granted liberty to the petitioner to approach this Tribunal to decide the *inter se* seniority, which the petitioner has not done in the instant case.

10. The argument of Ld. Counsel for the petitioner that the seniority list dated 02.09.2013, which was prepared on the direction dated 09.05.2013, passed by Hon'ble High Court in WPSS No. 1536/2006 Mahesh Chandra Sharma and others vs. State of Uttarakhand and others and seniority list dated 01.10.2012, which was prepared while setting aside the seniority list dated 13.07.2006, have rendered *otiose*, is without substance.

11. The main contention of the petitioner, which has been reflected in his application dated 09.12.2013 (Annexure: A-10), addressed to District Magistrate, Haridwar is the dispute of *inter se* seniority between the Clerks of Collectorate, District Haridwar. A seniority list was being prepared as per order dated 09.05.2013 passed in WPSS No. 1536 of 2006 (S/S) Sri Mahesh Chandra Sharma and others vs. State of Uttarakhand and others. Aggrieved against the order dated 09.05.2013, the petitioner and another preferred Special Appeal No. 301/2013, Vijay Pal Singh and another vs. State of

Uttarakhand and others. In Special Appeal No. 268/2013, Rishipal Saini vs. State of Uttarakhand and others, which was directed against the order dated 09.05.2013, Hon'ble Court *vide* order dated 04.12.2013 set aside the order dated 09.05.2013. The Special Appeal No. 301/13 Vijay Pal Singh and another was decided in terms of the order dated 04.12.2013 passed in Special Appeal No. 268/13.

12. The contention of the petitioner, therefore, is that the *inter se* seniority dated 02.09.2013 has become ineffective in view of order dated 09.05.2013 of the Hon'ble High Court.

13. It may be noted here that in subsequent WPSS No. 549/2016 (Copy: Annexure- CA- R 9), Hon'ble Court has observed that the petitioners, who are Class-III employees of Collectorate, District Haridwar, have challenged the *inter se* seniority of Class-III employees and subsequent promotion order passed on the basis of the seniority list.

14. The Hon'ble Court also observed that –“in the earlier round of litigation, the Writ Petition (WPSS No. 1536/2006, Sri Mahesh Chandra Sharma and others vs. State of Uttarakhand and others, decided on 09.05.2013) was entertained by this Court, in which certain directions were given to the authorities concerned, as to the calculation of seniority of such employees. Subsequently, the above order was challenged in the Special Appeal (SPA No. 268/2013, decided on 04.12.2013) and the order of the Single Judge was set aside on the ground that the Division Bench of this Court has already held that all seniority disputes must be first decided by the Public Services Tribunal.” The Hon'ble Court went on to observe further that, “now, after determination of the seniority, for whatever reasons it might be, in the subsequent promotion order, the petitioner again challenged the said *inter se* seniority list before this Court. Since Division Bench of the Hon'ble Court has already decided the controversy [referred above], the present matter should also first come to State Public Services Tribunal, as it was so held by the Division Bench.” It, therefore, follows that in the Writ Petition filed by the petitioner and another, challenge to *inter se* seniority was relegated to this Tribunal. Hon'ble Court did not observe anything on the *inter se* seniority of Class-III employees and subsequent promotion order passed on the basis of the seniority list.

15. Petitioner's application dated 09.08.1993, addressed to D.M., Haridwar for transfer from District Muzaffarnagar to District Haridwar, has been brought on record as Annexure: CA-R-1. In K.P. Sudhakaran & another vs. State of Kerala & others (*supra*), the Hon'ble Apex Court has held that where a Government servant is transferred on his own request, the transferred employee will be placed at the bottom below the junior-most employee in the category in the new cadre or department. Further, Rule 22(1) of the relevant Service Rules, stipulates that seniority in any category of post in the service shall be district-wise.

16. It will also be useful to reproduce the relevant observation of Hon'ble High Court in WPSS No. 948/2014, Sukhvansh Singh and others vs. State of Uttarakhand and others, as below:

“.....mandamus is issued to the respondents to initiate promotional exercise in accordance with the existing inter se seniority list. In case, any person has any dispute to the said seniority list, they are always at liberty to approach the State Public Service Tribunal.....”

The Hon'ble Court did not say anything that which is the existing seniority list.

17. Special Appeal No. 268/2013, Rishipal Saini vs. State of Uttarakhand and others along with Special Appeal No. 301/2013, Vijaypal Singh and another vs. State of Uttarakhand and others was decided *vide* order dated 04.12.2013. In Special Appeal No. 268/2013, Rishipal Saini vs. State of Uttarakhand and others, Hon'ble Court simply allowed the Appeal; set aside the judgment and order under appeal; and permitted the respondents/writ petitioners to approach the Public Service Tribunal with the seniority dispute with which they had approached the Hon'ble Court. Interestingly, instead of making a prayer to the Tribunal for settling the *inter se* seniority dispute, the petitioner is praying for considering his promotion according to (purportedly) existing seniority list dated 13.07.2006 (*which is not in existence*).

18. The observations of Hon'ble Court in Special Appeal No. 105/2016 *vide* order dated 04.11.2020, make the things more clear. When Ld. Counsel for the appellant Vijay Pal Singh and another contended before Hon'ble Court that the relief as sought for by the appellants – writ petitioners

required to be granted; the respondents are acting upon the seniority list, which has been set aside, the Hon'ble Court observed thus:

“ However, on hearing learned counsel, we do not find any merit in this appeal. The writ petition has been dismissed on the ground that the petitioners have an alternative and efficacious remedy before the Uttarakhand Public Services Tribunal. In view of the availability of this remedy, the learned Single Judge declined to interfere in the matter. We do not find any ground to interfere in the order passed by the learned Single Judge.”

Thus the Hon'ble Court did not find substance in the arguments of the petitioners that the seniority list on which the respondents are acting upon, has been set aside. The problem with the petitioners is that they are raising the same issue time and again. District Magistrate has already issued fresh seniority list(s) on the basis of judgment of Hon'ble Court in WPSS No. 1429/2006 Jeetendra Kumar and others vs. Chief Revenue Commissioner, Uttarakhand and others and WPSS No. 1536/2006 Mahesh Chandra Sharma and others vs. State of Uttarakhand and others (*supra*). There is total misreading of the decisions of Hon'ble Court by the petitioner. He has relied on such seniority list which has been set aside. The subsequent seniority list(s) have not been challenged by him in present claim petition. He wants a non-existing seniority list dated 13.07.2006 to be reckoned with for the purpose of seniority, which cannot be done. The judgments are read *in toto*. One sentence from here and another sentence from there, does not help anybody. No Court has, so far, declared those seniority lists, which the petitioner calls invalid, as invalid. In fact, the petitioner and another were given liberty to approach this Tribunal for the purpose of determination of *inter se* seniority of Clerical Cadre of Collectorate, Haridwar. Petitioner did not seek such relief before this Tribunal

19. In a zeal to establish his case, the petitioner relied upon the following:

- (i) *Badrinath vs. Government of Tamil Nadu*, AIR 2000 SC 3243;
- (ii) *Kanwar Singh Saini vs. High Court of Delhi*, (2012)4 SCC 307;
- (iii) *Chairman-cum-M.D., Coal India Ltd. and others vs. Ananta Saha and others*, 2011 (129) FLR 787 (Supreme Court).

20. Ld. Counsel for the petitioner relied upon Para 27 of *Badrinath's* decision (*supra*), as below:

“27. This flows from the general principle of applicable to 'consequential orders'. Once the basis of a proceeding is gone, may be at a later point of time by order of a superior authority, any intermediate action taken in the meantime - like the recommendation of the State and by the UPSC and the action taken thereon - would fall to the ground. This principle of consequential orders which is applicable to judicial and quasi-judicial proceedings is equally applicable to administrative orders. In other words, where an order is passed by an authority and its validity is being reconsidered by a superior authority (like the Governor in this case) and if before the superior authority has given its decision, some further action has been taken on the basis of the initial order of the primary authority, then such further action will fall to the ground the moment the superior authority has set aside the primary order.”

21. Ld. Counsel for the petitioner drew attention of this Tribunal towards Para 39 of the judgment rendered by Hon’ble Apex Court in Kanwar Singh Saini (*supra*), which is as below:

“39. In view of the above, as the application under Order XXXIX Rule 2A CPC itself was not maintainable all subsequent proceedings remained inconsequential. Legal maxim "*sublato fundamento cadit opus*" which means foundation being removed structure falls is attracted.”

22. Ld. Counsel for the petitioner also drew attention of this Tribunal towards Paras 30 and 31 of the decision rendered by Hon’ble Apex Court in Chairman-cum-M.D., Coal India Ltd. and others vs. Ananta Saha and others (*supra*), as below:

“30. It is a settled legal proposition that if initial action is not in consonance with law, subsequent proceedings would not sanctify the same. In such a fact-situation, the legal maxim "*sublato fundamento cadit opus*" is applicable, meaning thereby, in case a foundation is removed, the superstructure falls.

31. In *Badrinath v. Govt. of Tamil Nadu & Ors.*, AIR 2000 SC 3243, this Court observed that once the basis of a proceeding is gone, all consequential acts, actions, orders would fall to the ground automatically and this principle of consequential order which is applicable to judicial and quasi-judicial proceedings is equally applicable to administrative order.”

23. We are at a loss to find out how these rulings are applicable to the facts of present case. Where is the foundation being removed? No Court has held the seniority lists dated 01.10.2012 and 02.09.2013 as invalid. Where is the entire structure which would collapse? What was the initial action which was not in consonance with law? What are the subsequent proceedings which would sanctify or not sanctify initial action?

24. The petitioner wanted the *inter se* seniority of the Clerical Cadre, Collectorate, District Haridwar to be settled. He went to Hon’ble High Court, which relegated him to the Public Services Tribunal for settling the *inter se* seniority dispute. The petitioner has not come here for the said relief. He is relying on a seniority list which is not in existence. He is not challenging the

present seniority list, on the basis of which subsequent promotions have been made. This Tribunal is at a loss to find out how the reliefs, prayed for by him in the present claim petition could be granted. Petitioner has not been able to establish, even *prima facie*, his case. The same is liable to be dismissed.

25. Without challenging seniority lists dated 01.10.2012 and 02.09.2013, the petitioner is seeking direction for considering his promotion on the basis of non-existent seniority list dated 13.07.2006, which relief cannot be granted.

ORDER

26. The claim petition, therefore, fails and is dismissed. However, in the circumstances, no order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: JULY 18, 2022
DEHRADUN

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