

**UTTARAKHAND PUBLIC SERVICES TRIBUNAL
DEHRADUN BENCH AT NAINITAL**

Present: Hon'ble Mr. Justice J.C.S. Rawat

.....Chairman

&

Hon'ble Sri U.D. Chaube

..... Member (A)

CLAIM PETITION NO. 12/NB/DB/2015

1. K.S. Kanyal, S/o Sri Harak Singh Kanyal, serving as Assistant Engineer, Minor Irrigation, Sub Division-Dhari, Division Nainital.
2. Prashant Kumar, S/o Nrottam Lal, serving as Assistant Engineer, Sub Division-Didihat, Division Pithoragarh.
3. Abhishek Kholia, S/o Sri Nand Kishore Kholia, serving as Assistant Engineer, Minor Irrigation, Sub Division Nainital, Division Nainital.
4. Deepankar Bharti, S/o Sri Kali Ram, serving as Assistant Engineer, Minor Irrigation, Sub Division-Roorkee, Division-Haridwar.
5. Mukesh Dutt, S/o Sri Mansa Ram, serving as Assistant Engineer, Sub Division-Uttarkashi, Division-Uttarkashi.
6. Vimal Kumar Suntha, S/o Sri Revadhar Suntha, serving as Assistant Engineer, Sub Division-Champawat, Division Champawat.
7. Dhiraj Kumar, S/o Late Sri Harpal Singh, serving as Assistant Engineer, Sub Division-Satpuli, Division Pauri.
8. Sushil Kumar, S/o Sri Raghuvir Singh, serving as Assistant Engineer, Minor Irrigation, Sub Division-Kapkot, Division Bageshwar.
9. Bharat Prakash Singh, S/o Sri B.S. Rawat, serving as Assistant Engineer, Minor Irrigation, Sub Division Pithoragarh, Division Pithoragarh.

10. Madan Mohan Sharma, S/o Late Sri Jayanti Prasad Sharma, serving as Assistant Engineer, Minor Irrigation, Sub Division Barakot, Division-Champawat.

..... Petitioners

Versus

1. State of Uttarakhand, through Secretary, Minor Irrigation Department, Government of Uttarakhand, Dehradun.

2. Secretary, Personnel Department, Government of Uttarakhand, Dehradun.

3. Chief Engineer, Minor Irrigation Department, Dehradun.

4. Sri Kishan Singh Rawat, S/o not known to the applicant, serving as Assistant Engineer (In charge Executive Engineer) Status Cell, Chief Office, Minor Irrigation, Lane No. 3, Indraprastha Colony Jogiwala, Mussoorie Bye Pass, Nehrugram, Dehradun.

5. Sri K.N. Nautiyal, S/o not known to the applicant, serving as Assistant Engineer, Minor Irrigation, Sub Division-Rudrapur, Division-Udham Singh Nagar.

6. Sri V.M. Lakhera, S/o not known to the applicant, serving as Assistant Engineer, Minor Irrigation, Sub Division-Ukhimath, Division-Rudraprayag.

7. Sri T.S. Negi, S/o not known to the applicant, serving as Assistant Engineer, Minor Irrigation, Circle Office Pauri.

8. Sri S.K. Bhatt, S/o not known to the applicant, serving as Assistant Engineer, Minor Irrigation, Sub Division-Pauri, Division-Pauri.

9. Sri M.S. Parsola, S/o not known to the applicant, serving as Assistant Engineer (In charge Executive Engineer), Minor Irrigation, Division Tehri.

10. Sri A.K. Srivastava, S/o not known to the applicant, serving as Assistant Engineer, Minor Irrigation, Sub Division-Kotdwar, Division-Pauri.

11. Sri L.P. Badoni, S/o not known to the applicant, serving as Assistant Engineer, Minor Irrigation, Sub Division-Narendra Nagar, Division-Tehri.

12. Sri Naresh Kumar, S/o not known to the applicant, serving as Assistant Engineer, Minor Irrigation, Sub Division-Haridwar, Division-Haridwar.

13. Sri Govardhan Singh, S/o Sonpal Singh, serving as Assistant Engineer, Minor Irrigation, Sub Division-Almora, Division-Almora.

..... Respondents

Present: Sri Manoj Tewari, Advocate assisted by Sri Alok Mehra, Advocate for the petitioners.

Sri V.P. Devrani, A.P.O. for the respondent Nos .1 to 3.

Sri Lalit Belwal, Advocate for the respondent nos. 9, 11, 12 & 13.

None for the other respondents.

JUDGMENT

DATED: NOVEMBER 03, 2015

(Hon'ble Mr. Justice J.C.S. Rawat, Chairman):

1. The petitioner has sought the following reliefs:

“ i) to quash and set aside the seniority list dated 24.09.2014, issued by respondent no.1, in so far as it relates to the applicants.

ii) issue an order or direction commanding the respondent no.1 to re-draw the seniority list of Assistant Engineers in accordance with the applicable rules particularly Rule 8(3) of the Uttarakhand Government Servants Seniority Rules, 2002.

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

iv) to award the cost of the petition in favour of the applicants.”

2. It is again usual dispute between directly appointed Assistant Engineers in the Minor Irrigation Department of the Uttarakhand and the promotee Assistant Engineers in the same department. The petitioners appeared in the competitive examination for the post determined by the respondent no. 2 in the year 2006. Thereafter, Public Service Commission after advertising the vacancies, conducted examination & interviews, declared the result and the petitioners were appointed on the basis of the recommendations of Public Service Commission and petitioners no. 1 & 2 were appointed vide order dated 17.06.2011; petitioners No. 3 & 4 were appointed vide order dated 29.06.2011; Petitioner no. 5 was appointed vide order dated 20.07.2011; and petitioner no. 6 was appointed vide order dated 25.08.2011. The petitioners No. 7 & 8 were appointed as Assistant Engineer on 28.1.2013 and petitioners No. 9 & 10 were appointed as Assistant Engineer on 06.02.2013. The delay in the appointment of petitioners no. 7 & 8 was caused due to the pendency of the writ petition bearing no. 213 of 2011, Rajeev Mishra Vs. State of Uttarakhand & others. Thus, all the petitioners were appointed by the same selection. The private respondents are the promotee Assistant Engineers of different branches of Minor Irrigation Department and the respondents No. 4 to 10 were promoted by a common order dated 17.09.2010 while respondents No. 11 to 13 were promoted vide order dated 14.01.2011. All the respondents had been appointed on the date given in the appointment order and no particular back date has been specified therein from which the promotion would take effect. Seniority was drawn by the respondent no. 1 on 11.7.2014 and a seniority list was prepared in accordance with law and specifically Rule 8(3) of the Uttarakhand Govt. Servants Seniority Rules, 2002 and the list was prepared in a cyclic order with the respondents. The first name was Sri Krishan Singh

Rawat, who was promoted on 17.09.2010 and the petitioner no. 1 was placed at Sl. No. 2. Since the tentative seniority list was prepared; the President of the Association of the Degree Holder Examinations Engineers submitted a representation expressing disagreement of the said tentative seniority list by private respondents and due to the unknown reasons, the tentative seniority list was changed and the impugned seniority list was published in which the petitioners have been shown en-block below the respondents No. 4 to 10.

3. The respondents have contested the case and filed W.S.. The respondent has stated that the tentative seniority list was not prepared in accordance with law, it was wrong because the Assistant Engineers of 2009-10 batch were wrongly shown as batch 2010-11, which created confusion. When the orders of the Public Service Commission of Uttarakhand and the State Government in this respect were brought to the notice of the authority, the mistake in the tentative seniority list was corrected and the Assistant Engineers of 2009-10 batch were placed at their respective places and the final seniority list was then prepared as per the position of the Assistant Engineers and the record and as per Rules. It is also alleged that seniority list was only corrected. Ultimately, they have prayed that claim petition be dismissed.
4. We also summoned the entire record from the department.
5. We have heard learned counsel for the parties and perused the record. Learned counsel for the petitioner contended that the respondent has tried to create confusion between the expression of recruitment year and the selection year. The relevant Service Rules use the expression of recruitment year, which is also defined in the rules and expression of selection year neither used nor defined in any Rules. Mr. Manoj Tiwari, Senior Counsel further contended that selection year of respondents No. 4 to 10 was changed from 2010-11 in the seniority list to 2009-10 in the final seniority list, which is totally against the factual aspect of the case. Learned Senior Counsel further contended that the post of

Assistant Engineer in the Minor Irrigation Department is a Group-B post, which is governed by the statutory rules notified on 22.09.2006 and the Rule 22 thereof deals with the seniority and Sub-rule 1 refers to the Seniority Rules of 2002 applicable in the present case. Along with Sub-rule 1 of the Minor Irrigation Service Rules, 2006, the Sub-rule, 2,3 & 4 have also been added with the Rule-22 in Minor Irrigation Service Rules, 2006; the said sub-rules are also identical to the Uttarakhand Govt. Servants Seniority Rules, 2002. The respondents cannot be given the seniority of the selection year, but they can be given seniority only from the date of their substantive appointment. Mr. Manoj Tiwari, Senior counsel further contended that respondents no. 4 to 10 were promoted against the vacancies of the recruitment year 2009-10 and if they are given the seniority of recruitment year 2009-10, then someone who is promoted against vacancy of recruitment year 2000-01 would claim seniority from that recruitment year. The direct recruitment quota vacancies against which petitioners were promoted arose during different recruitment year between recruitment year 2000-01 to 2005-06. Therefore, by the same analogy, the petitioners would also become entitled to seniority from a date anterior to the date of their appointment.

6. Mr. Lalit Belwal, learned counsel for the respondents refuted the contention of the petitioners counsel. The contention of learned counsel for the petitioner is not correct that the tentative seniority list was prepared in accordance with Sub-rule 3 of Rule 22 of Minor Irrigation Service Rules, 2006 rather it was wrong because the Assistant Engineers of 2009-10 batch were wrongly shown as of the batch of 2010-11, which created all the confusion. In this regard, he further contended that when the order of Public Service Commission and the other relevant factum was brought before the State Govt. after considering the said representation, it was found that the respondent has committed a mistake while

treating the petitioners of 2010-11 batch in the tentative seniority list and it was corrected accordingly treating the respondents for the year of 2009-10. The impugned seniority list has been made in accordance with the rules. He further contended that the Assistant Engineers of the year 2010-11, selection year has been placed in the seniority list as per the rules. The petitioners belong to the recruitment year of 2010-11, as such they have been placed below en bloc to the respondents treating them selected for the year 2009-10. Learned counsel for the respondents further contended that the petition is misconceived and is liable to be dismissed.

7. Learned A.P.O. did not advance any further arguments in connection with the case, he only supported the arguments advanced by Mr. Belwal, learned counsel for the respondents. He produced entire record of the Govt. by which the vacancies have been determined of both the petitioners as well as respondents and all the relevant note-sheet and the documents before the Court to appreciate the matter
8. The petitioner himself has admitted in the claim petition that the posts of Assistant Engineer against whom the petitioners have been selected were advertised for the recruitment year 2006-07. It is also not in dispute that the respondents were recruited against the vacant vacancies determined by the Government under Rule 14, were for the year 2009-10. During the course of hearing, original record was also summoned from the department, which reveals that the vacancies were determined of the respondents in the year 2009-10 and their selection year was 2009-10. The dispute amongst the petitioners and the respondents is that the appointment letters of the respondents No. 4 to 10 were issued on 17.09.2010, whereas, the appointment letters of respondents No. 11 to 13 were issued on 14.1.2011. It is also the case of the petitioners that no particular back date has been specified therein from which the promotion was to take effect of the respondents.

According to the petitioners, the date of appointment letter would be decisive for the determination of the seniority. He further asserted in his pleading that the petitioners no. 1 & 2 were appointed on 17.6.2011; petitioners no. 3 & 4 were appointed on 29.06.2011; the petitioner no. 5 was appointed on 20.07.2011; the petitioner no. 6 was appointed on 25.08.2011. The petitioners no. 7 to 10 were appointed on 28.1.2013. The petitioners have asserted that the petitioners no. 1 to 6 have been appointed in the recruitment year of 2010-11 and the respondents had also been appointed in the recruitment year 2010-11 so the respondents and the petitioners' appointment has been made in the recruitment year 2010-11. So, their seniority should be drawn according to Rule 8(3) of the Uttarakhand Government Servants Seniority Rules, 2002. It is also asserted that the respondents no. 4 to 10 were promoted against the vacancies of the recruitment year 2009-10 and if they are given the seniority of recruitment year 2009-10, then the petitioners have been selected against the vacancies accrued for the year 2006-07. So if the selection year is taken into consideration, the petitioners would be senior to them. The respondents, in nutshell asserted that their year of selection was 2009-10; the petitioners cannot run over their seniority and they cannot be adjusted in the cyclic order. In nutshell, the petitioners have asserted that they and the respondents were appointed during the same recruitment year, therefore, their name should be arranged together in a cyclic order in the seniority list. To analyze the assertion of the respective parties, we would like to quote the Rule 22 of the Minor Irrigation Rules, 2006, which is as under:

“22. Seniority: (1) The seniority of persons substantively appointed in any category of posts shall be determined in accordance with the “Uttaranchal Government Servants Rules, 2002. If two or more persons are appointed together by such order in which their names are arranged in the

appointment order the seniority of persons in any category of post shall be determined from the date of the order.

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 issue of the order:

(2) The seniority inter se of persons appointed directly on the result of any one selection, shall be the same as determined by the commission or, as the case may be, by Selection Committee:

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.

(3) The seniority inter se of persons appointed by promotion shall be the same as it was in the cadre from which they were promoted.

(4) where appointment are made both by promotion and direct recruitment or from more than one source and the respective quota of the sources is prescribed, the inter se seniority shall be determined by arranging the names in a cyclic order in a combined list, prepared in accordance with Rule 17, in such manner that the prescribed percentage is maintained.

Provided that-

(1) Where appointments from any source are made in excess of the prescribed quota, the persons appointed in excess of quota shall be pushed down, from seniority, to subsequent year or years in which there are vacancies in accordance with the quota.

(2) Where appointments from any sources fall short of the prescribed quota and appointments 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 in the combined list of that year, to be prepared under this Rule, their names shall be placed at the top followed by the names, in the cyclic order, of the other appointees.

(3) Where, in accordance with the rules or prescribed procedure, the unfilled vacancies from any source could, in the circumstances mentioned in the relevant rule or procedure be filled from the other source and appointment in excess of quota are so made, the persons so appointed shall get the seniority of that very year as if they are appointed against the vacancies quota.”

9. From the perusal of the above rule, it is clear that the Uttarakhand Govt. Servants Seniority Rules, 2002 have also been made applicable in the present case. Apart from that, the Minor Irrigation Service Rules, 2006 also provides certain clauses, which are in some places in addition to the Uttarakhand Government Servants Seniority Rules, 2002. The Minor Irrigation Service Rules, 2006 had been notified in the year 2006, whereas seniority rules of 2002 notified in 2002. The non-obstinate clause of the Uttarakhand Govt. Servants Seniority Rules, 2002 only overrides the inconsistency provisions of other seniority service rules of the other department prior to the publication of Uttarakhand Govt. Servants Seniority Rules, 2002. Thus, the provisions of Rule 8 of the said Rule the Uttarakhand Govt. Servants Seniority Rules, 2002 vis-à-vis Rule 22 of the Minor Irrigation Service Rules 2006 would be applicable in the case of the petitioners. In both the Rules, the seniority has to be determined in order of their names as arrayed in the appointment letter. Thus, the appointment order is the basis of determining of the seniority of the officers. It is also provided in both the rules, which are added as proviso that if the appointment order is to specify 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 any other cases, it will

mean the date of issue of the order. As we have noticed earlier that the appointment order of the respondents does not contain any such back date in their appointment letter, which is annexure-1 to the written statement. It only mentions that the respondents have been appointed against the vacancies of the selection year 2009-10. We have to analyze whether the selection year has been mentioned in the order, then what will be the effect of such mentioning in case of the petitioners' seniority. Hon'ble High Court of Uttarakhand in the case of **Nandan Giri Vs. State of Uttarakhand & others, reported in 2015, UD, 27**. The Division Bench comprising of Hon'ble Chief Justice Mr. K.M.Joseph and Hon'ble Mr. V.K.Bisht has held in para 17 as under:

“17. The first thing we must do in terms of the rules, which we have adverted to is what is the date of the order of substantive appointment. The order of substantive appointment of the applicants is dated 27.08.2010. The applicants before the Tribunal are in serial Nos. 5 & 6. Their selection year is, undoubtedly, shown as 2003-2004, but there is nothing in the order to indicate that in terms of either proviso to Rule 8 of the Uttaranchal Government Servants Seniority Rules 2002, or in terms of proviso to Rule 22 of the 1983 Rules that the promotion has been given with reference to an anterior date. We are of the view that therefore mere reference to the selection year in the order of appointment would not suffice and it cannot be treated as a case where the proviso either under Rule 8 of the aforesaid seniority rules, or the 1983 Rules would become applicable. The result would be that the order of substantive appointment within the meaning of the 1983 Rules would be taken as 27th August, 2010. The inevitable result of arriving at this conclusion would be that in terms of Rule 22 the seniority of the applicants would be decided with reference to the said date. We are of the clear view that in the conspectus of the statutory Rules available the Tribunal has committed an illegality in proceeding to lay

down the principle that in the matter of determining seniority reliance could be placed on ad hoc service also”

10. The Hon’ble High Court while dealing with the case of Commercial Tax Officer and has quoted the Rule 22 of the U.P. Tax Officers Group-II Service Rules, 1983 (hereinafter referred to as Trade Tax Officers Service Rules, 1983), are identical rather parameteria to the Rule 22 of Minor Irrigation Service Rules, 2006. In view of the above findings of Hon’ble High Court, we do not find that making reference of selection year is of any avail to the petitioners.
11. Now we have to analyze as to whether the year of selection is material for determination of the seniority or not? As we have pointed out earlier that Rule 22(1) of Minor Irrigation Service Rules, 2006 is self-explanatory, it provides that appointment order against the substantive vacancy is the decisive factor to decide the seniority of an officer in the cadre. The similar position also provided in the rule-8 of the Uttarakhand Government Servants Seniority Rules, 2002 which has been quoted in paragraph no. 14 of the judgment. The U.P. Government Servants Seniority Rules, 1991 are also identical to Uttarakhand Government Servants Seniority Rules, 2002. There is also a provision under Rule 8 (1) that the order of substantive appointment would be the date of order and it will be relevant for determining the seniority of the officers or the employees. The matter in **Pawan Pratap Singh Vs. Reevan Singh (2011)1 SCC(L&S)481** came up before the Hon’ble Supreme Court that State Govt. determined the vacancies of the Deputy Jailor in the year 1987 and the said vacancies were notified by the Public Service Commission. In the mean time, in the year 1989, the U.P. Govt. established Subordinate Service Commission by an enactment and now the vacancies of Deputy Jailor were also to be filled up by the said Subordinate Service Commission. In the year 1990 again the vacancies were advertised for the post of Deputy Jailor; it was also decided by the

State Govt. that vacancies for the year 1987 which have been assigned to hold examination to the Public Service Commission would remain with the Public Service Commission and the selection would be done of those 600 vacancies by the U.P. Public Service Commission. 60 vacancies which have been notified for the year 1990; recommendations thereof was to be sent by the Subordinate Service Commission. The Subordinate Service Commission submitted its recommendations for the appointment of the candidates in the year 1991. The U.P. Public service Commission also conducted the examination and selected the candidates and recommended to the Govt. on 26.4.1994. The dispute arose among both the direct recruitees regarding seniority. The Govt. applied the U.P. Govt. Servants Seniority Rules, 1991 determining the seniority of both the batches of the Deputy Jailors and the candidates appointed in the year 1991 were shown senior to the candidates appointed in the year 1994. The litigation between the parties reached to Hon'ble Apex Court. The Hon'ble Apex Court in para 46 has held as under:

“In the light of the legal position summed up above and Rule 8 of the 1991 Rules, it is plain that the 1991 appointees who were selected and appointed in accordance with the service rules cannot be made junior to the 1994 appointees even if it is assumed that the selection and appointment of the 1994 appointees was for earlier vacancies. The 1991 appointees having been appointed substantively much prior to point of time, they are entitled to rank senior to the 1994 appointees.”

12. Thus, it is apparent from the above judgment that the interpretation of the above Rule-8 which is identical of the Rule 8 of Uttarakhand Govt. Servants Seniority Rules, 2002 and Rule 22 of Minor Irrigation Service Rules, 2006, has held that 60 candidates whose vacancies were determined in 1990 and selection by 1991 by the Subordinate Service Commission, would be senior to the appointees whose vacancies were determined in

the year 1987-88 and recommended for appointment in the year 1994, would be junior to those persons in view of the above rules. Thus, in this judgment, Hon'ble Apex Court has held that the appointment order is decisive to determine the seniority of the employees. Thereafter, in **State of Uttaranchal Vs. Dinesh Kumar Sharma (2007)1 SCC, 683**, while dealing with the U.P. Govt. Servants Seniority Rules, 1991 has also held as under:

“28. It is clear from the above that a person appointed on promotion shall not get seniority of any earlier year but shall get the seniority of the year in which his/her appointment is made. Therefore, in the present fact situation the respondent cannot claim promotion from the date of occurrence of the vacancy which is 1995-96 but can only get promotion and seniority from the time he has been substantively appointed i.e. from 1999. Likewise, the seniority also will be counted against the promotion/appointment in the cadre from the date of issuance of order of substantive appointment in the said cadre i.e. from 19.11.1999.

29. In a recent judgment of this Court in Uttaranchal Forest Ranger's Assn. Direct Recruit) Vs. State of U.P.(2006) 10 SCC, 346 (Dr. Ar. Lakshmanan and Tarun Chatterjee, JJ.), this Court was of the view that seniority has to be decided on the basis of rules in force on the date of appointment, no retrospective promotion or seniority can be granted from a date when an employee has not even been borne in the cadre. Similar view was taken by this Court in Keshav Chandra Joshi v. Union of India, 1993 SCC (L&S) 694.

31. This Court in Vinodanand Yadav v. Sate of Bihar, 1994 SCC(L&S) 789, held on an issue regarding the inter se seniority among the direct recruits and promotees the court applying the ratio of State of Bihar v. Akhouri Sachindra Nath, 1991 SCC(L&S) 1070, held that the appellants who were direct recruits shall be considered senior over the promotees not borne on the cadre when the direct recruits were appointed in service. Hence the gradation list drawn under which promotees were

given seniority over direct recruits could not be sustained and was thereby set aside.”

13. The Hon'ble High Court following the above decision has also held in Nandan Giri's case (Supra), held that the seniority would be determined from the date of order.
14. Learned counsel for the private respondents Mr. Lalit Belwal further contended that final seniority list of the private respondents has been prepared and the same has been circulated amongst the officers according to rules. Assistant Engineers of the selection year of 2009-10 and 2010-11 have been figured in the seniority list at their respective places as per law. Learned Sr. counsel for the petitioners, Mr. Manoj Tiwari contended that the appointment order of both the respondents and petitioners was 2010-11 so the recruitment year of the appointment has to be seen for the determination of seniority and not the year for which the vacancies have been notified. Learned counsel for the respondents Mr. Belwal refuted the above contention and contended that Assistant Engineers promoted and appointed in 2009-10 and 2010-11 will be treated as one and the selection year has to be given due place which has rightly been given. In nutshell, the case of the petitioners is that the seniority has been given not of the selection year of the officers. To analyze the above contention, it is necessary to go through the relevant provisions of Minor Irrigation Service Rules, 2006. Rule-5 deals with the quota of recruitment for the post of Assistant Engineers in the Minor Irrigation; rule 6 deals with reservation in favour of Scheduled Castes/Scheduled Tribes candidates; rule 7,8 and 9 deal with Nationality, age of the candidates in case direct recruitment and academic qualification of the direct recruits respectively; rule 10,11,12 and 13 deal with preferential qualification, character of the candidates of direct recruits, marital status and physical fitness of the direct recruits respectively. Rule 14 provides the determination of vacancies by the appointing authority to be filled

during the course of the year of recruitment; Rule 15 deals with procedure for direct recruitment and rule 16 deals with procedure for recruitment by promotion; Rule 17 provides for combined select list for the post of Assistant Engineer. This is relevant for the purpose of this case to decide the controversy which is between the parties. Rule 18 is the procedure of promotion through selection committee; Rule 19,20 and 21 deal with appointment, probation, confirmation and seniority of the Assistant Engineers in the Minor Irrigation so appointed by the direct recruitment or by promotion. For the purpose of this case, Rule 22 is important, which deals with seniority of the Assistant Engineers appointed by the Government. Before proceeding further, we would like to mention that Rule 22(4) which has been quoted above in the preceding para of the judgment. Rule 22(4) deals with the determination of seniority with regard to appointment which has been made both by promotion and direct recruitment or from more than one source and the respective quota of the sources is prescribed, the interse seniority should be determined by arranging the names in a cyclic order in a combined list, prepared in accordance with Rule 17, in such manner that the prescribed percentage is maintained. Thus, in this sub-clause, the word "Appointment" is very important. Rule 22(1) of Minor Irrigation Service Rules, 2006 also provides that Uttarakhand Govt. Servants Seniority Rules, 2002 will be applicable in the case of determination of the seniority. The relevant portion of Rule 8 of the Uttarkahand Govt. Servants Seniority Rules, 2002 is as under:

"8. Seniority where appointment by promotion only from and direct recruitment-

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

persons are appointed together, in the order in which their names are arranged in the appointment order:

Provided 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 :

Provided further that a candidate recruitment 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.

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

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

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

(3) Where appointments are made both by promotion and direct recruitment on the result of any one selection the seniority of promotees vis-a-vis direct recruits shall be determined in a cyclic order the first being a promotee as far as may be , in accordance with the quota prescribed for the two sources.

Illustrations--(1) Where the quota of promotees and direct recruits is in the proportion of 1:1 the seniority shall be in the following order :--

First	.....	Promotee
Second	.....	Direct recruits and so on.

(2) Where the said quota is in the proportion of 1:3 the seniority shall be in the following order :--

First	.....	Promotee
Second to fourth	.....	Direct recruits
Fifth	.....	Promotee

Sixth to eight Direct recruits and so on.

Provided that--

- (i) where appointments from any source are made in excess of the prescribed quota, the persons appointed in excess of quota shall be pushed down, for seniority, to subsequent year in which there are vacancies in accordance with the quota;*
- (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) where, in accordance with the service rules the unfilled vacancies from any source could, in the circumstances mentioned in the relevant service rules be filled from the other source and appointment in excess of quota are so made, the persons so appointed shall get the seniority of that very year as if they are appointed against the vacancies of their quota”*

Perusal of the above rule clearly provides that where the appointments are made by promotion and by direct recruitment, the seniority of the persons so appointed shall be determined from the date of order of the substantive appointment. This sub-clause-1 clearly provides that the selection year is not the criteria for determination of the seniority, but the recruitment year of appointment is relevant for determination of the seniority. Thus, the word “appointment” and “substantive appointment” is relevant for further scrutiny of the matter. In both the Rule 3(h) of Minor Irrigation Service Rules, 2006 and Rule 4(h) of the Uttarakhand Govt. Servants Seniority Rules, 2002, define the “substantive appointment”. Both the rules are identical, but we are quoting both the rules for the convenience of discussion of the judgment as under:

“3(h): “Substantive Appointment” means an appointment, not being an ad hoc appointment, on a post, in the cadre of the service, made after selection in accordance with the rules; and if there were no rules, in accordance with the procedure prescribed, for the time being, by executive-instructions, issued by the Government.”

“4(h): substantive appointment means an appointment not being an ad hoc appointment, on a post in the cadre of the service, made after selection in accordance with the service rules relating to that service the service rules relating to that service.”

The effect of both the definitions is the same and the above definition of ‘substantive appointment’ clearly defines the appointment not being an adhoc appointment on a post in the cadre of the service. It is clear the day he is appointed, he becomes the member of the cadre. Prior to the date of substantive appointment, he cannot be held to be a member of the cadre. It is well established law that as soon as a person is appointed, he becomes a member of the cadre. The word ‘appointment’ also denotes the date of appointment letter as it is provided in the Rule 8 of Uttarakhand Govt. Servants Seniority Rules, 2002. Rule 22 (4) of the Minor Irrigation Service Rules, 2006, the wording of the clause is identical and paramateria, but clause-4 of Rule 22 of the Minor Irrigation Service Rules, 2006 added a phrase after the word “cyclic order” in a combined list, prepared in accordance with Rule 17, in such manner that the prescribed percentage is maintained”. Rule 17 of the Minor Irrigation Service Rules, 2006 is as under:

“17. Combined Select List for the post of Assistant Engineer- If any year of recruitment, appointments are made both by direct recruitment and by promotion a combined list shall be prepared by taking the names of candidates from the relevant lists under rule 5 in such manner that the prescribed percentage is maintained,

the first name in the list being of the person appointed by promotion.”

15. Perusal of the above rule specifically deals with recruitment, appointments if are made both by promotion and direct recruitment, a combined list shall be prepared by taking the names of candidates from the relevant lists under rule 5. As we have already noticed that Rule 5 prescribes different quota for different members of service as provided in Rule 5. Thus, this rule is an independent rule, which is linked with Rule 22 of the Minor Irrigation Service Rules, 2006. We are mentioning it as an independent rule because it is placed after the clause of Rule 14, 15 and 16 of the said rules, which deal with determination of vacancies, procedure of direct recruitment and procedure for recruitment by promotion respectively. This rule clearly signifies that how a combined list is to be prepared, if two different sources of appointments have been made at different time in a recruitment year. We are also quoting Rule 19(2) of Minor Irrigation Service Rules, 2006 as under:

“Where, in any year of recruitment, appointments are to be made, both, by direct recruitment and by promotions regular appointments shall not be made, unless selection is made, from both the sources; and a combined list is prepared, in accordance with rule 17.”

Perusal of this, rule clearly provides, if at any point of time, the appointments of any selection year are simultaneously made by the Commission of both the sources, again there will be a select list in accordance with Rule 17. Thus, the scheme of the Rules clearly takes us to a conclusion that the determination of the seniority and year of recruitment in which the appointment has been made is relevant. The Minor Irrigation Service Rules, 2006 also defines the year of recruitment in Rule 3(i) which reads as under:

“3(i) “Year of recruitment” means a period of 12 months commencing from the 1st day of July of a calendar year.”

Thus, this rule clearly provides that recruitment year is meant of 12 months commencing from 1st July of the calendar year. If we read Rule 17 read with Rule 22(3) of Minor Irrigation Service Rules, 2006 and Rule 8(1) of Uttarakhand Govt. Servants Seniority Rules, 2002 in this light, the meaning would come that if appointments from any sources either by promotion or direct have been made during the year commencing from 1st July to 30th June, the seniority shall be determined accordingly. Thus, the word “recruitment year”, Rule 17 of the Minor Irrigation Service Rules, 2006 is very clear and it is an adjective to word of appointments. So after analyzing of the above Rules, we come to the conclusion that if direct recruits and promotees have been appointed against substantive vacancies in the recruitment year commencing from July 2010-11, it will be treated as the same recruitment year.

16. Now we would like to deal with the authority in this regard. In the case of **Jagdish Ch. Patnaik and others v. State of Orrisa and others (1998)4 SCC, 456**. At the outset, we would like to make it clear that the rule which was enforced to determine the seniority of the writ petitioners as well as private respondents was Orrisa Service of Engineers Rules, 1941, in which Rule 26 deals with seniority of the officers recruited by promotion and by direct recruits during the same year. This Rule has been quoted in the authority. It is provided in the rule where the officers both by direct recruitment and by promotion are recruited during the same year, the promoted officers shall be considered senior to the officers directly recruited irrespective of their dates of joining the appointment in a year. It was also provided in the sub-clause-3 the seniority of the officers shall be determined in accordance with the order in which their names appear in the lists prepared by

the Commission. Here, the controversy arose the word “recruited during the same year”. The vacancies for the direct recruits were determined in the year 1978 according to the rules and they were appointed in the month of March, 1980 after fulfilling all the formalities as provided under Rules. Thus, the respondents before the writ court, were the Junior Engineers promoted as Assistant Engineer according to rule in the year 1979. The claim of the writ petitioners was that they should have been placed above the promotees according to their recruitment/selection year and they cannot be treated below 1979 batch. Thus, main controversy amongst the parties was that as to whether the year for which the vacancies were notified is a determinative factor to decide the seniority or the date of appointment is the decisive factor for the seniority. The matter came up before Hon’ble Supreme Court has held as under:

“24- Rule 26 with which we are really concerned in the present case is the rule of seniority. It would be appropriate to extract the said Rule 26 in extenso:-

"Rule 26 - Seniority - (1) When officers are recruited by Promotion and by direct recruitment during the same year, the promoted officers shall be considered senior to the officers directly recruited irrespective of their dates of joining the appointment.

(2) Between the two groups of promoted officers, those promoted from the rank of Sub-Assistant Engineers shall en bloc be senior to those promoted from the rank of Junior Engineers.

(3) Subject to provision of Sub-rules (1) and (2) seniority of officers shall be determined in accordance with the order in which their names appear in the lists prepared by the commission."

The very scheme of recruitment under the Rules, as indicated above, unequivocally indicates that in case of direct recruit the final

authority lies with the State Government who issues appointment orders from amongst the persons found eligible by the Public Service Commission and further who have been found medically fit by the Medical Board. Even such an appointee is also required to undergo probation for two years and thereafter he can be confirmed in the service. Under Rule 26, which is the rule for determining inter se seniority between promotees and direct recruits when the expression used is “officers are recruited by promotion and by direct recruitment” necessarily it means that when they are appointed as Assistant Engineers by the State Government. To import something else into the Rule will neither be in the interest of justice nor is it necessary in any manner and it would tantamount to a legislation by the Court. It is a well known principle of construction of statute that when the language used in the statute is unambiguous and on a plain grammatical meaning being given to the words in the Statute, the end result is neither arbitrary, irrational or contrary to the object of the statute, then it is the duty of the Court to give effect to the words used in the Statutes as the words declare the intention of the law making authority best. In that view of the matter we do not see any justification to go into the question of quota meant for direct recruits and promotees nor is it necessary to find out as to the year in which the vacancy arose against which the recruitment is made. On an analysis of the scheme of the rules, as narrated earlier, we are of the considered opinion that the expression “recruited” would mean appointed and the expression `during the same year' in Rule 26 would mean during the calendar year and, therefore, direct recruits recruited during the calendar year would be junior to the promotee recruits recruited during the said calendar year.

“34. The only other contention which requires consideration is the one raised by Mr. Raju Ramachandran, learned senior counsel appearing for the intervenors to the effect that expression “recruitment” and “appointment” have two different concepts in the service jurisprudence and, therefore, when Rule 26 uses the expression `recruited' it must be a stage earlier to the issuance of

appointment letter and logically should mean when the selection process started and that appears to be the intendment of the Rule Makers in Rule 26. We are, however, not persuaded to accept this contention since under the scheme of Rules a person can be said to be recruited into service only on being appointed to the rank of Assistant Engineer, as would, appear from Rule 5 and Rule 6. Then again in case of direct recruits though the process of recruitment starts when the Public Service Commission invites applications under Rule 10 but until and unless the Government makes the final selection under rule 15 and issues appropriate orders after the selected candidates are examined by the Medical Board, it cannot be said that a person has been recruited to the service. That being the position it is difficult for us to hold that in the Seniority rule the expression 'recruited' should be interpreted to mean when the selection process really started. That apart the said expression 'recruited' applies not only to the direct recruits but also to the promotees. In case of direct recruits the process of recruitment starts with the invitation of application by the Commission and in case of promotees it starts with the nomination made by the Chief Engineer under rule 16. But both in the case of direct recruits as well as in the case of promotees the final selection vests with the State Government under rules 15 and 18 respectively and until such final selection is made and appropriate orders passed thereon no person can be said to have been recruited to the service. In this view of the matter the only appropriate and logical construction that can be made of Rule 26 is the date of the order under which the persons are appointed to the post of Assistant Engineer. It the crucial date for determination of seniority under the said Rule. Mr. Raju Ramachandran's contention, therefore, cannot be sustained”

17. In the case in hand, the petitioners were recruited in the cadre in respect of vacancies arose in the year 2005-06 though in fact the letters of appointment were issued in the recruitment year of 2010-11 and thereafter and the respondents' vacancies were determined for promotion in selection year 2009-10 and their appointment letters were also issued in recruitment year 2010-11. Thus, the

seniority would be determined in accordance with the appointment orders. The selection year is not the decisive factor but the recruitment year in which the appointment has been issued is relevant. There is no dispute that there will be some time lag between the year when the vacancy accrues and the year when the final recruitment is made for complying with the procedure prescribed in the case of direct recruitment and in the case of the promotees also, but that would not give handle to the Court to include something which is not there in the rule so seniority under Rule 22 of Minor Irrigation Service Rules, 2006 and Rule 8 of Uttarakhand Govt. Servants Seniority Rules, 2002. Rule 22 of Minor Irrigation Service Rules, 2006 as well as Rule 8 of Uttarakhand Govt. Servants Seniority Rules, 2002 respectively in which the vacancies arose and against which the recruitment has been made, is not at all to be looked into for determination of the inter-se seniority between direct recruits and promotees. It is during the calendar year commencing from first July of which year direct recruits to the cadre of Assistant Engineers and the promotees Assistant Engineers would be kept in the joint list according to Rule 17 of the Minor Irrigation Service Rules, 2006 and their seniority would be determined according to cyclic order. It is not possible for the Tribunal to import some which is not there in Rule 22 of Minor Irrigation Service Rules, 2006 as well as Rule 8 of Uttarakhand Govt. Servants Seniority Rules, 2002 and thereby legislate a new rule of seniority. In the light of above observation and Rules as indicated above, the petitioners were appointed 17.06.2011, 29.06.2011, 20.07.2011, 25.08.2011, 28.1.2013 and 06.02.2013 respectively.

18. The private respondents No. 4 to 10 have been appointed as per Annexure CA-1 on 17.09.2010 and respondents No.11 to 13 were appointed on 14.1.2011. Thus, it is apparent that the private respondents had been appointed in the recruitment year 2010-11. For determining the seniority, the recruitment year in which the

appointment has been made is material and not the selection year. The respondent/State has wrongly shown that the private respondents have been appointed in the recruitment year 2009-10. The selection year has no relevance for determination of the seniority. From date of the appointment, the petitioners and the private respondents would become the members of the cadre and as such, their seniority would be counted. We conclude that the private respondents had been appointed in the recruitment year 2010-11 and as such they cannot get the seniority of 2009-10 and the selection year. It has been held in the case of *Uttaranchal Forest Ranger's Assn. Direct Recruit) Vs. State of U.P (Supra)* that unless and until a person is not borne in the cadre, cannot claim seniority in the said cadre. The private respondents had been borne in the cadre in the year 2010-11 when their appointment has been issued. Thus, the petitioners' seniority has been shown wrongly. In view of the above, we clearly hold that the petitioners have been appointed vide dated 17.06.2011, 29.06.2011, 20.07.2011, 25.08.2011, 28.1.2013 and 06.02.2013 respectively.

19. We conclude that the private respondents had been appointed against a substantive vacancies in a recruitment year of 2010-11. The State/Respondent has wrongly shown in the impugned seniority chart that they have been appointed substantively in the selection year 2009-10. The seniority of the petitioners have been wrongly fixed in the said impugned seniority list dated 24.09.2014 issued by the respondent no.1. The petitioners have been appointed as mentioned above; their appointment order has commenced from 2010-11. Thus, the final seniority list drawn by the respondent is not in accordance with rules and is liable to be quashed to the above extent. The respondent No. 1 is directed to redraw the seniority list of the Assistant Engineers in accordance with Rule 8 of the Uttarakhand Govt. Servants Seniority Rules 2002 and Rule 22 of the Minor Irrigation Service Rules, 2006 as

discussed above to that extent and it is concluded that the private respondents had been substantively appointed in the recruitment year 2010-11 according to the above rules. So the seniority would be drawn in accordance with the substantive appointment of the petitioners as well as of the private respondents.

ORDER

The claim petition is allowed. The final seniority list dated 24.09.2014 drawn by the respondent No.1 is hereby quashed to the above extent. The respondent No. 1 is directed to redraw the seniority list of the petitioners vis-à-vis private respondents, Assistant Engineers in accordance with Rule 8 of the Uttarakhand Govt. Servants Seniority Rules, 2002 and Rule 22 of the Minor Irrigation Service Rules, 2006 and as discussed above treating private respondents had been appointed in the recruitment year 2010-11 within four months from the date of presentation of the order to the respondent No. 1. No order as to costs.

Sd/-

U.D.CHAUBE
MEMBER (A)

Sd/-

JUSTICE J.C.S.RAWAT
CHAIRMAN

DATE: NOVEMBER 03, 2015
BENCH AT NAINITAL

KNP