

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

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

----- Chairman

Hon'ble Capt. Alok Shekhar Tiwari

----- Member (A)

CLAIM PETITION NO. 54/NB/DB/2022

Anuj Jain, aged about 45 years, s/o late Sri P.K. Jain, r/o Sanga Cottage, Lower Mall Road, Almora.

.....Petitioner

versus

1. State of Uttarakhand through Secretary, Irrigation, Civil Secretariat, Subhash Marg, Dehradun, District Dehradun.
2. Engineer-in-Chief, Irrigation Department, Yamuna Colony, Dehradun, District Dehradun.
3. Senior Staff Officer (Personnel-2), Office of Engineer-in-Chief, Irrigation Department, Yamuna Colony, Dehradun, District Dehradun.
4. Ravindra Kumar Nailwal (Male) aged about 32 years, S/o Shri Govind Ballabh Nailwal Presently posted as Additional Assistant Engineer (Seniority No. 120) at office of the Executive Engineer, Minor lift Division, Pithoragarh, District- Pithoragarh.
5. Lavkesh Kumar (Male) aged about 38 years, S/o Shri Horilal Presently posted as Additional Assistant Engineer (Seniority No. 121) at Office of the Executive Engineer, Tubewell Division, Bajpur, Distt. Udham Singh Nagar.
6. Gaurav Kumar (Male) aged about 38 years, S/o Shri Veh Prakash Saundariya Presently posted as Additional Assistant Engineer (Seniority No. 122) at Office of the Executive Engineer, Tubewell Division, Ramnagar, Distt. Nainital.

7. Tony Singh (Male) aged about 34 years, S/o Shri Bheem Sain Presently posted as Additional Assistant Engineer (Seniority No. 123) at office of the Executive Engineer, Tubewell Division, Ramnagar, Distt. Nainital.
8. Arun Sajwan (Male) aged about 33 years, S/o Shri Satendra Singh Sajan Presently posted as Additional Assistant Engineer (Seniority No. 124) at office of the Executive Engineer, Tubewell Division, Dehradun, Distt. Dehradun.
9. Harshit Gupta (Male) aged about 31 years, S/o Shri Vijay Mohan Gupta Presently posted as Additional Assistant Engineer (Seniority No. 125) at office of the Executive Engineer, Minor Lift Division, Srinagar.
10. Sonu Kumar (Male) aged about 32 years, S/o Shri Deshraj Presently posted as Additional Assistant Engineer (Seniority No. 126) at office of the Executive Engineer, Erection Division, Roorkee.
11. Ravi Kumar (Male) aged about 34 years, S/o Shri Bishamber Singh Presently posted as Additional Assistant Engineer (Seniority No. 127) at office of the Executive Engineer, Tubewell Division, Haridwar, Distt. Haridwar.
12. Prashant Kumar (Male) aged about 33 years, S/o Shri Pooran Ram Arya Presently posted as Additional Assistant Engineer (Seniority No. 128) at office of the Executive Engineer, Workshop Division, Roorkee.
13. Aanand Singh (Male) aged about 35 years, S/o Shri Bharat Singh Rawat Presently posted as Additional Assistant Engineer (Seniority No. 129) at office of the Executive Engineer, Minor Lift Division, Srinagar, Dist- Pauri Garhwal.
14. Arpit Tripathi (Male) aged about 33 years, S/o Shri Ratnesh Kumar Tripathi Presently posted as Additional Assistant Engineer (Seniority No. 130) at office of the Executive Engineer, Minor Lift Division, Srinagar, Dist- Pauri Garhwal.
15. Vijaypal Negi (Male) aged about 30 years, S/o Shri Aanand Singh Negi Presently posted as Additional Assistant Engineer (Seniority

- No. 131) at office of the Executive Engineer, Minor lift Division, Almora.
16. Jitendra Kumar (Male) aged about 42 years, S/o Shri Balmukund Singh Presently posted as Additional Assistant Engineer (Seniority No. 132) at office of the Executive Engineer, Tubewell Division Tanakpur, Dist- Champawat.
 17. Harish Chamoli (Male) aged about 34 years, S/o Shri Ramanand Chamoli Presently posted as Additional Assistant Engineer (Seniority No. 133) at office of the Executive Engineer, Tubewell Division, Ramnagar, Dist- Nainital.
 18. Jaideep Singh Gussain (Male) aged about 32 years, S/o Shri Shiv Singh Gussain Presently posted as Additional Assistant Engineer (Seniority No. 134) at Office of the Executive Engineer, Minor Lift Division, Srinagar, Dist-Pauri Garhwal.
 19. Sunil Kandpal (Male) aged about 37 years, S/o Shri Bhuwan Chandra kandpal Presently posted as Additional Assistant Engineer (Seniority No. 135) at Office of the Executive Engineer, Tubewell Division, Haldwani, Dist- Nainital.
 20. Km. Sujata (Female) aged about 35 years, D/o Shri Chatur Singh Presently posted as Additional Assistant Engineer (Seniority No. 136) at office of the Executive Engineer, Tubewell Division, Dehradun.
 21. Litesh Pant (Male) aged about 33 years, S/o Shri Dinesh Chandra Pant Presently posted as Additional Assistant Engineer (Seniority No. 137) at office of the Executive Engineer, Minor Lift Division, Pithoragarh.
 22. Roshan Kumar Arya (Male) aged about 30 years, S/o Shri Gussain Ram Arya Presently posted as Additional Assistant Engineer (Seniority No. 138) at office of the Executive Engineer, Minor Lift Division, Pithoragarh.
 23. Km. Anuradha (Female) aged about 31 years, D/o Shri Jagdish Lal Presently posted as Additional Assistant Engineer (Seniority No. 139) at office of the Executive Engineer, Tubewell Division, Bajpur, Dist- Udham Singh Nagar.

24. Anil Singh (Male) aged about 31 years, S/o Shri Shivcharan Singh Presently posted as Additional Assistant Engineer (Seniority No. 140) at office of the Executive Engineer, Tubewell Division, Bajpur, Dist- Udham Singh Nagar.
25. Nishant Dhyani (Male) aged about 44 years, S/o Shri Ravindra Kumar Dhyani Presently posted as Additional Assistant Engineer (Seniority No. 141) at office of the Executive Engineer, Additional Assistant Engineer (Seniority No. 130) at office of the Executive Engineer, Tubewell Division, Ramnagar, Dist- Nainital.
26. Jitendra Singh Rawat (Male) aged about 36 years, S/o Shri Ratan Singh Rawat Presently posted as Additional Assistant Engineer (Seniority No. 142) at office of the Executive Engineer, Erection Division, Roorkee, Dist-Haridwar.
27. Shobhit Dhiman (Male) aged about 37 years, S/o Shri Vijay Pal Presently posted as Additional Assistant Engineer (Seniority No. 143) at office of the Executive Engineer, Tubewell Division, Haridwar.
28. Neelam Upreti (Female) aged about 39 years, D/o Shri Pooran Chandra Upreti Presently posted as Additional Assistant Engineer (Seniority No. 144) at Office of the Executive Engineer, Tubewell Division Tankpur, Dist- Champawat.
29. Sandeep Singh (Male) aged about 31 years, S/o Shri Bharat Singh Presently posted as Additional Assistant Engineer (Seniority No. 145) at Office of the Executive Engineer, Minor Lift Division, Dist- Pauri Garhwal.
30. Nav Jyoti Bhatt (Male) aged about 32 years, S/o Shri Brij Mohan Bhatt Presently posted as Additional Assistant Engineer (Seniority No. 146) at Office of the Executive Engineer, Minor Lift Division Uttarkashi.
31. Manish Kumar (Male) aged about 30 years, S/o Shri Yogendra Kumar Presently posted as Additional Assistant Engineer (Seniority No. 147) at Office of the Executive Engineer, Tubewell Division Tanakpur, Dist- Champawat.
32. Mayraj Hussain (Male) aged about 44 years, S/o Shri Sharafat Hussain Presently posted as Additional Assistant Engineer

- (Seniority No. 148) at Office of the Executive Engineer, Tubewell Division Bajpur, District- Udham Singh Nagar.
33. Vivek Kumar (Male) aged about 34 years, S/o Shri Suresh Chandra Presently posted as Additional Assistant Engineer (Seniority No. 149) at Office of the Executive Engineer, Tubewell Division Dehradun.
 34. Ravindra Kumar Dhiman (Male) aged about 45 years, S/o Shri Janeshwar Prasad Presently posted as Additional Assistant Engineer (Seniority No. 150) at Office of the Executive Engineer, Tubewell Division Roorkee, Dist- Haridwar.
 35. Vinay Kumar Saini (Male) aged about 36 years, S/o Shri Jagpal Singh Presently posted as Additional Assistant Engineer (Seniority No. 151) at Office of the Executive Engineer, Tubewell Division Bajpur, Dist- Udham Singh Nagar.
 36. Inder Arya (Male) aged about 34 years, S/o Shri Durgaram Presently posted as Additional Assistant Engineer (Seniority No. 152) at Office of the Executive Engineer, Tubewell Division Bajpur, Dist- Udham Singh Nagar.
 37. Digaram (Male) aged about 35 years, S/o Shri Rishipal Presently posted as Additional Assistant Engineer (Seniority No. 153) at Office of the Executive Engineer, Govt Workshop Roorkee, Dist- Haridwar.
 38. Jitendra Kumar (Male) aged about 44 years, S/o Shri Dharma Singh Presently posted as Additional Assistant Engineer (Seniority No. 154) at Office of the Executive Engineer, Tubewell Division, Haridwar.
 39. Rinku Singh (Male) aged about 35 years, S/o Shri Raghuveer Singh Presently posted as Additional Assistant Engineer (Seniority No. 155) at Office of the Executive Engineer, Tubewell Division, Dehradun.
 40. Indra Mohan (Male) aged about 35 years, S/o Shri Paniram Arya Presently posted as Additional Assistant Engineer (Seniority No. 156) at Office of the Executive Engineer, Minor Lift Division, Almora.

41. Neetu Singh (Male) aged about 36 years, S/o Shri Sripal Singh Presently posted as Additional Assistant Engineer (Seniority No. 157) at Office of the Executive Engineer, Govt Workshop Division, Roorkee, Dist - Haridwar.
42. Ajeet Kumar Singh (Male) aged about 35 years, S/o Shri Bachan Singh Presently posted as Additional Assistant Engineer (Seniority No. 158) at Office of the Executive Engineer, Minor Lift Division, Uttarkashi.
43. Km. Disha Singh (Female) aged about 31 years, D/o Shri Om Avtar Singh Presently posted as Additional Assistant Engineer (Seniority No. 159) at Office of the Executive Engineer, Tubewell Division Haridwar.
44. Govind Singh (Male) aged about 34 years, S/o Shri Abbal Singh Rawat Presently posted as Additional Assistant Engineer (Seniority No. 160) at Office of the Executive Engineer, Tubewell Division Ramnagar, Dist- Nainital.
45. Abhishek Kumar (Male) aged about 36 years, S/o Shri Ramlal Presently posted as Additional Assistant Engineer (Seniority No. 161) at Office of the Executive Engineer, Minor Lift Division Uttarkashi.
46. Rakesh Kumar (Male) aged about 36 years, S/o Shri Prasad Lal Presently posted as Additional Assistant Engineer (Seniority No. 162) at Office of the Executive Engineer, Minor Lift Division Uttarkashi.
47. Deepak Kumar (Male) aged about 39 years, S/o Shri Chandrabhan Singh Presently posted as Additional Assistant Engineer (Seniority No. 163) at Office of the Executive Engineer, Erection Division, Roorkee, Dist- Haridwar.
48. Anil Kumar (Male) aged about 35 years, S/o Shri Girish Ram Arya Presently posted as Additional Assistant Engineer (Seniority No. 164) at Office of the Executive Engineer, Minor Lift Division- Pithoragarh.
49. Raj Kumar (Male) aged about 50 years, S/o Shri Jeli Singh Presently posted as Additional Assistant Engineer (Seniority No.

- 165) at Office of the Executive Engineer, Tubewell Division Haridwar.
50. Sanjeev Kumar (Male) aged about 42 years, S/o Late Shri Mohan Ram Presently posted as Additional Assistant Engineer (Seniority No. 166) at Office of the Executive Engineer, Tubewell Division Haldwani, Dist- Nainital.
51. Ajay Kumar (Male) aged about 35 years, S/o Shri Mohan Lal Presently posted as Additional Assistant Engineer (Seniority No. 167) at Office of the Executive Engineer, Tubewell Division, Haldwani, Dist-Nainital.
52. Gajendra Pal Arya (Male) aged about 41 years, S/o Shri Nandiram Arya Presently posted as Additional Assistant Engineer (Seniority No. 168) at Office of the Executive Engineer, Tubewell Division Ramanagr, Dist- Nainital.
53. Nitin Kumar (Male) aged about 32 years, S/o Shri Rampal Singh Presently posted as Additional Assistant Engineer (Seniority No. 169) at Office of the Executive Engineer, Tubewell Division Hadwani, Dist-Nainital.
54. Mahendra Singh (Male) aged about 35 years, S/o Shri Santram Presently posted as Additional Assistant Engineer (Seniority No. 170) at Office of the Executive Engineer, Tubewell Division Dehradun.
55. Km. Priyanka Saini (Female) aged about 32 years, D/o Shri Vikendra Kumar Saini Presently posted as Additional Assistant Engineer (Seniority No. 171) at Office of the Executive Engineer, Govt Workshop Division, Roorkee, Dist-Haridwar.
56. Km. Khusbu Lata (Female) aged about 35 years, D/o Shri Satish Chandra Presently posted as Additional Assistant Engineer (Seniority No. 172) at Office of the Executive Engineer, Tubewell Division Haldwani, Dist-Nainital.
57. Km. Priyanka Upadhyay (Female) aged about 31 years, D/o Shri Rakesh Kumar Upadhyay Presently posted as Additional Assistant Engineer (Seniority No. 173) at Office of the Executive Engineer, Tubewell Division Haridwar.

..... Respondents

Present: Sri Piyush Tiwari and Sri Sandeep Tiwari,
Advocates, for the Petitioner
Sri Kishore Kumar, A.P.O., for the Official Respondents
Sri Ganesh Kandpal, Advocate, for Private Respondents
No. 19 & 25
Sri Piyush Tiwari is present in person. All others are present virtually.

JUDGEMENT

Dated: 06th September, 2024

Justice U.C. Dhyani (Oral)

Writ Petition No. 110 (S/B) of 2022 in this matter was filed by the petitioner before the Hon'ble High Court of Uttarakhand, which was disposed of *vide* order dated 20.07.2022 leaving it open to the petitioner to approach the Tribunal and directing him to place the pleadings exchanged in the writ petition before the Tribunal.

2. Accordingly, the petitioner has filed miscellaneous application before the Tribunal, which is treated as claim petition.

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

“(i) Issue a writ or order in the nature of certiorari quashing the impugned order dated 02.02.2022 (being Annexure-18) passed by respondent no 3 and to quash any consequential seniority list pursuant to above order.

(ii) Issue a writ or order in the nature of certiorari quashing impugned show cause notice dated 11.12.2021 (being Annexure-14) passed by respondent no 3.

(iii) Issue a writ, order or direction in the nature of mandamus directing the respondents not to disturb the seniority list finalised *vide* order dated 14.02.2018 and to promote petitioner in accordance with above settled seniority list.

(iv) Issue any other suitable writ, order or direction which this Hon'ble Court may deem fit and proper the facts and circumstance of the case.

(v) To award the cost of the petition in favour of the petitioner and against the respondents.”

4. Petitioner has filed affidavit in support of his petition. Relevant documents have been filed with the petition.

5. The petition has been contested on behalf of the respondents. Sri Jabar Singh Negi, Executive Engineer, Tubewell Division Dehradun, has filed counter affidavit on behalf of respondent no. 2 along with relevant documents.

6. Separate W.S. has been filed on behalf of respondents no. 19 and 25. Sri Sunil Kandpal, Assistant Engineer in office of Executive Engineer, Tubewell Division Kaladhungi, district Nainital, has filed counter affidavit on behalf of such private respondents.

7. No counter affidavit has been filed on behalf of other private respondents despite service of notices upon them.

8. Separate rejoinder affidavits have been filed on behalf of the petitioner against the counter affidavits of official respondents and private respondents along with documents.

9. Supplementary affidavit has been filed on behalf of respondent no. 2 by Sri Mukesh Mohan, Engineer-in-Chief, Irrigation Department, Dehradun.

10. Petitioner has assailed impugned order dated 02.02.2022, whereby he was placed at serial no. 173A in the seniority list. Earlier, he was shown at serial no. 119 in the seniority list, which was amended by the impugned order. Seniority of the petitioner was lowered down to serial no. 173A *vide* order dated 02.02.2022, which is under challenge in the present petition (Annexure No. 18).

11. Earlier, a show cause notice was given to the petitioner *vide* office order dated 11.12.2021, which is also under challenge in present petition (Annexure No. 14).

12. Petitioner also prays for restoring his seniority as per order dated 14.02.2018 (Annexure No. 10).

13. In the counter affidavit, which has been filed on behalf of private respondents, an effort has been made to justify their seniority and have, therefore, supported departmental action.

14. In para 5 of the counter affidavit filed on behalf of official respondents, it has been mentioned that on 24.5.2014 final seniority list was issued in which the name of the petitioner was placed at serial no. 1 of the seniority list of Junior Engineer (Mechanical). Dealing with the objections, Chief Engineer (Personnel) Section II, Irrigation Department, Uttarakhand, decided the matter, according to the provision of the Rule 8(3) of the Government Servant Seniority Rules and placed the petitioner at serial no. 1 of the part 3 list and at serial no. 119 of the tentative seniority list and the final seniority list was issued on 14.02.2018.

14.1 The petitioner was promoted on the post of Additional Assistant Engineer (non-functional) on 5.11.2018 and submitted his joining on 12.11.2018. On 11.12.2021 the Chief Engineer (Personnel) Section II Irrigation Department Dehradun constituted a committee for reconsideration of promotions made for the selection year 2013-14. After going through the records of the petitioner, the committee found that the petitioner submitted 3 years' diploma course provisional certificate, which was issued on 12.11.2013 and therefore, the petitioner's eligibility for promotion would have been 2014-15 whereas the petitioner was promoted for the selection year 2013-14. The committee requested the petitioner to supply certified copy of the 3 years' diploma course completed by the petitioner. The petitioner informed that he had completed 3 years' diploma course in the month of June, 2013 but due to clerical work, the certificate was issued to the petitioner on 12.11.2013. Therefore, considering the facts that the petitioner has completed the 3 years' diploma course on 12.11.2013, the seniority list issued earlier was provisionally amended and the petitioner was placed at serial no. 173 A in place of Serial No. 119. The amended seniority

list was prepared considering the certificate submitted by the petitioner.

14.2 Sri Kishore Kumar, learned A.P.O., has relied upon such para of the counter affidavit filed on behalf of official respondents and submitted that the writ petition is devoid of merits and is liable to be dismissed.

15. Sri Ganesh Kandpal, learned Counsel for respondents no. 19 and 25 submitted that on 21.03.1998, the petitioner was appointed as Junior clerk in the pay scale of Rs. 3050-4590 under dying in harness rule on account of demise of his father. During the course of the employment he obtained 3 years' Diploma in Mechanical Engineering from the Indira Gandhi National Open University herein after referred IGNO as in distance mode on 6 semester system. as such he completed said Diploma in 6 semester having 2 semesters in a year and the term of the semester is January to June and next July to December.

15.1 In the year 2013-2014 the promotion exercise was initiated for promotion on the post of Junior Engineer and since the rule 5 of the U.P. Irrigation Department Mechanical Engineers (Subordinate) Service Rules, 1992, provides source of recruitment to the post of Junior Engineer and sub-rule (3) of rule 5 of the said Rules provides 10% post of Junior Engineer shall be filled up by promotion amongst substantively appointed employee of the Irrigation Department, who have completed 10 years' service on the first day of the year of recruitment and who are possessed of the qualifications prescribed under Rule 8 of such Rules.

15.2 On the selection year for which the promotional exercise was conducted, the petitioner was not eligible to be considered for promotional exercise on the post of Junior Engineer (Mechanical) as the petitioner did not qualify the diploma course in Mechanical Engineering and the said diploma he passed on 12.11.2013.

15.3 By way of the misrepresentation of facts, he got promotion and when this fact came into knowledge of the departmental authority and enquiry was conducted in the matter, the departmental committee found that the petitioner was not eligible/qualified to be considered for promotional exercise on the post of Junior Engineer in the selection year 2013-14 and he was found eligible for promotion on the post of Junior Engineer (Mechanical) for the year 2014-15 and accordingly he was granted promotion on such post.

15.4 It is not the case of disturbing the seniority list. In fact, it is a case of cancellation of promotion order, which was illegally obtained by the claim petitioner by way of misrepresentation of facts and the seniority of the petitioner is refixed on account of change of the date of his promotion and admittedly, the said date of promotion of the petitioner is subsequent selection year of the selection year of promotion of the private respondents.

16. Rejoinder affidavit was filed by the petitioner reiterating the facts contained in the petition. Likewise, supplementary counter affidavit has been filed on behalf of respondent no. 2 in support of the counter affidavit filed earlier on behalf of official respondents.

17. Similar petition was filed before this Tribunal by one Sri Manu Kumar, who was also Assistant Engineer (Civil) in the respondent department. The only difference is that in the present petition, the petitioner is Assistant Engineer (Mechanical) in the same department. Even the date of show cause notice is also the same.

18. Comparison between Manu Kumar's case and Anuj Jain's case is being shown in the chart given below:

Details	Sri Manu Kumar	Sri Anuj Jain
Department	Irrigation	Irrigation
Initially appointed on compensation	Junior Clerk 05.12.2001	Junior Clerk 21.03.1998

Permission for 3 years Diploma in Engineering after 10 years of service	30.10.2010 18.07.2011 25.07.2012	19.07.2010 26.09.2011 24.08.2012
Service Rule	U.P Irrigation Department Civil Engineer (Subordinate) Service Rules 1992.	U.P Irrigation Department Mechanical Engineer (Subordinate) Service Rules 1992.
Stream of Diploma from IGNOU Delhi	Civil Engineer	Mechanical Engineering
Promoted during Diploma	Senior Assistant	Senior Assistant
Year of appointment	2013-14	2013-14
DPC convene on	18.02.2014	20.05.2014
Date of appointment order	24.02.2014	24.05.2014
Actual assumption of charge as J.E	25.02.2014 J.E (Civil)	31.05.2014 J.E (Mechanical)
Date of publishing of tentative seniority list	28.11.2014	11.11.2014
Place in Seniority (Part III)	142	01
Date of publishing of final seniority list	30.12.2017	14.02.2018
Place in final seniority	510	119 (All 3 part)
Promotion as Additional Assistant Engineer (Non-functional)	05.11.2018	05.11.2018
Show Cause notice issued	11.12.2021	13.12.2021
Reply to Show Cause	18.12.2021	18.12.2021
Supplementary Show cause notice	24.12.2021	24.12.2021
Issue amended seniority list	02.02.2022	02.02.2022

19. The controversy involved in the present petition has been decided by the Tribunal on 29.11.2022 in claim petition no. 114/DB/2022, Manu Kumar vs. State of Uttarakhand and others. Relevant paragraphs of this judgement are reproduced herein below, for convenience:

“

8. Having remained complacent for a good number of years, private respondents (not turned up, despite service of notices upon them) cannot turn around and say that notwithstanding their inaction, they should be kept above the petitioner in the long standing seniority list. The benefits which have accrued to the petitioner, cannot now be disturbed or interfered with. In other words, a settled state of affairs cannot be unsettled now. The Tribunal is of the opinion that the controversy in hand is squarely covered by the aforesaid decisions of Hon'ble Apex Court and Hon'ble High Courts. Present petition should, therefore, meet the same fate as was met by those whose seniority was already settled and the Hon'ble Courts did not interfere in the same. Order accordingly.

9. The claim petition is allowed. Impugned orders dated 02.02.2022 (Annexure: 17 colly) are set aside and amendment to the seniority list pursuant to these orders is also quashed. No order as to costs.

.....”

20. State of Uttarakhand filed a writ petition being WPSB No. 462/2023 before Hon'ble High Court of Uttarakhand against the Tribunal's order. Writ Petition was dismissed *vide* order dated 11.12.2023. Judgement dated 11.12.2023 rendered by the Hon'ble High Court reads as below:

“State of Uttarakhand has challenged judgment and order dated 29.11.2022 passed by learned Public Services Tribunal, Uttarakhand in Claim Petition No. 114/DB/2022. By the said judgment, claim petition filed by Manu Kumar (respondent no. 1 herein) was allowed and two orders passed by Engineer-in-Chief, Uttarakhand Irrigation Department were set aside. By the first order dated 02.02.2022, year of recruitment of respondent no. 1 on the post of Junior Engineer was changed from 2013-14 to 2014-15 and the date of his promotion to the post of Junior Engineer (Civil) was altered from 24.02.2014 to 01.07.2014. By the second order dated 02.02.2022, respondent no. 1 was brought down in the final seniority list of Junior Engineers, issued on 30.12.2017, from serial number 510 to serial number 859A. These two orders have been set aside by learned Tribunal. Relevant extract of the impugned judgment is reproduced below:-

“8. Having remained complacent for a good number of years, private respondents (not turned up, despite service of notices upon them) cannot turn around and say that notwithstanding their inaction, they should be kept above the petitioner in the long standing seniority list. The benefits which have accrued to the petitioner, cannot now be disturbed or interfered with. In other words, a settled state of affairs cannot be unsettled now. The Tribunal is of the opinion that the controversy in hand is squarely covered by the aforesaid decisions of Hon'ble Apex Court and Hon'ble High Courts. Present petition should, therefore, meet the same fate as was met by those whose seniority was already settled and the Hon'ble Courts did not interfere in the same. Order accordingly.

9. The claim petition is allowed. Impugned orders dated 02.02.2022 (Annexure: 17 colly) are set aside and amendment to the seniority list pursuant to these orders is also quashed. No order as to costs.

10. It is made clear that the Tribunal has decided present petition only on the premise that normally long standing seniority should not be unsettled. The Tribunal has not gone into other legal aspects of the case.”

2. Learned State Counsel contended that respondent no. 1 was appointed as Junior Clerk in Uttarakhand Irrigation Department in the year 2001, however, he acquired necessary qualification i.e. Diploma in Civil Engineering during recruitment year 2013-14, therefore, he could not have been promoted as Junior Engineer

w.e.f. 24.02.2014, in view of provision contained in Rule 5(2) of U.P. Irrigation Department Civil Engineer (Subordinate) Service Rules, 1992, which provides that only such Group-C employees, who have completed ten years of service and who possess necessary educational qualification for appointment as Junior Engineer on the first day of year of recruitment, shall be considered for promotion. He submits that recruitment year means a period of twelve months commencing from the first day of July of a calendar year, therefore, respondent no. 1 could have been considered for promotion as Junior Engineer, only during recruitment year 2014-15. Thus, he submits that the competent authority was justified in changing the year of recruitment and the date of promotion of respondent no. 1, therefore, consequent revision, in the seniority list by the Appointing Authority, could not have been interfered with by learned Tribunal.

3. Learned counsel for respondent no. 1 contended that the date of promotion of his client could not have been interfered with, based on a complaint made by some Junior Engineers appointed by direct recruitment, especially, when such complaint was made seven years after promotion of respondent no. 1. He further submitted that seniority list was finalized by the competent authority after considering objections received from members of service in respect of tentative seniority list, therefore, interference with the final seniority list by the Engineer-in-Chief is unwarranted and illegal. He also contended that the final seniority list issued by competent authority on 30.12.2017 was not challenged by complainants before any judicial forum, therefore, Engineer-in-Chief could not have reviewed the seniority list after its finalization.

4. It is not in dispute that respondent no. 1 has been promoted as Additional Assistant Engineer w.e.f. 05.11.2018 based on his ranking in final seniority list, issued on 30.12.2017. This indicates that seniority list issued in 2017 was treated as final and promotions were made based on said seniority list.

5. Learned Tribunal has allowed the claim petition filed by respondent no. 1 and set aside the orders dated 02.02.2022, by holding that settled seniority cannot be unsettled after long lapse of time.

6. It is settled position in law that belated challenge to promotion/seniority has to be rejected, as it seeks to disturb the vested right of other persons regarding seniority, rank and promotion, which have accrued to them during the intervening period. In the case of Shiba Shankar Mohapatra and others v. State of Orissa and others, (2010) 12 SCC 471, Hon'ble Supreme Court has held as under:-

“18. The question of entertaining the petition disputing the long-standing seniority filed at a belated stage is no more res integra. A Constitution Bench of this Court, in Ramchandra Shankar Deodhar v. State of Maharashtra (1974) 1 SCC 317 considered the effect of delay in challenging the promotion and seniority list and held that any claim for seniority at a belated stage should be rejected inasmuch as it seeks to disturb the vested rights of other persons regarding seniority, rank and promotion which have accrued to them during the intervening period. A party should approach the court just after accrual of the cause of complaint. While deciding the said case, this Court placed reliance upon its earlier judgments, particularly in Tilokchand Motichand v. H.B. Munshi

[(1969) 1 SCC 110], wherein it has been observed that the principle on which the court proceeds in refusing relief to the petitioner on the ground of laches or delay, is that the rights, which have accrued to others by reason of delay in filing the writ petition should not be allowed to be disturbed unless there is a reasonable explanation for delay. The Court further observed as under:

“7. ... The party claiming fundamental rights must move the Court before other rights come into existence. The action of courts cannot harm innocent parties if their rights emerge by reason of delay on the part of the person moving the Court.”

7. Similar view has been expressed by Hon'ble Supreme Court in the case of Malcom Lawrence Cecil D'Souza v. Union of India, (1976) 1 SCC 599, where it is held that raking up old matters like seniority after a long time is likely to result in administrative complications and difficulties. It would, therefore, appear to be in the interest of smoothness and efficiency of service that such matters should be given a quietus after lapse of some time.

8. In the case of H.S. Vankani and others v. State of Gujarat & others, (2010) 4 SCC 301, Hon'ble Supreme Court has sounded a word of caution against unsettling the settled seniority list. In the case of K.R. Mudgal and Others v. R.P. Singh and Others, (1986) 4 SCC 531, has held as under:-

“2....A Government servant who is appointed to any post ordinarily should at least after a period of 3 or 4 years of his appointment be allowed to attend to the duties attached to his post peacefully and without any sense of insecurity. It is unfortunate that in this case the officials who are appellants before this Court have been put to the necessity of defending their appointments as well as their seniority after nearly three decades. This kind of fruitless and harmful litigation should be discouraged.

7....Satisfactory service conditions postulate that there should be no sense of uncertainty amongst the government servants created by the writ petitions filed after several years as in this case. It is essential that anyone who feels aggrieved by the seniority assigned to him should approach the court as early as possible as otherwise in addition to the creation of a sense of insecurity in the minds of the government servants there would also be administrative complications and difficulties. Unfortunately in this case even after nearly 32 years the dispute regarding the appointment of some of the respondents to the writ petition is still lingering in this Court. In these circumstances we consider that the High Court was wrong in rejecting the preliminary objection raised on behalf of the respondents to the writ petition on the ground of laches.”

[Emphasis supplied]

9. In view of the aforesaid legal position, the view taken by learned Tribunal that settled seniority could not have been unsettled, cannot be faulted. Even otherwise also, while finalizing seniority list, Appointing Authority exercises the power available to him under Uttarakhand Government Servant Seniority Rules, 2002. Rule 9 of the said Rules is extracted below:-

“9. Preparation of seniority list – (1) As soon as may be after appointments are made to a service, the appointing authority shall

prepare a tentative seniority list of the persons appointed substantively to the service in accordance with the provisions of these rules.

(2) The tentative seniority list shall be circulated amongst the persons concerned inviting objections, by a notice of reasonable period, which shall not be less than seven days from the date of circulation of the tentative seniority list.

(3) No objections against the vires or validity of these rules shall be entertainable.

(4) The appointing authority shall, after disposing of the objection by a reasoned order, issue a final seniority list.

(5) It shall not be necessary to prepare a seniority list of the cadre to which appointments are made only by promotion from a single feeding cadre.”

10. A conjoint reading of sub-rules (1) (2) & (3) of Rule 9 of the Seniority Rules indicates that before finalizing a seniority list, the Appointing Authority has to consider and decide the objections received against tentative seniority list. Thus, the Appointing Authority performs quasi judicial function.

11. It is settled position in law that a statutory authority, exercising quasi judicial function, cannot review his order in the absence of any enabling provision in the statute. The Seniority Rules, 2002 do not contain any enabling provision for review. Thus, the Engineer-in-Chief, who had finalized the seniority list in 2017, could not have exercised power of review for unsettling the settled seniority list. Thus, the only remedy available to persons aggrieved by final seniority list was to approach the competent judicial forum.

12. For the reasons recorded and in view of the legal position as discussed hereinabove, this Court does not find any reason to interfere with the impugned judgment rendered by learned Tribunal. Accordingly, writ petition fails and is dismissed. No order as to costs.

21. Thereafter, State of Uttarakhand filed Special Leave Petition (Civil) Diary No. 22749/2024, State of Uttarakhand and others vs. Manu Kumar and others before Hon'ble Supreme Court of India. Special Leave Petition (S.L.P.) was dismissed *vide* order dated 27.06.2024, as under:

“Heard the learned Counsel appearing for the petitioners.

Delay Condoned.

No case for interference is made out in exercise of our jurisdiction under Article 136 of the Constitution of India. The Special Leave Petition is accordingly dismissed.

Pending application also stands disposed of.”

22. The said judgement has, therefore, attained finality and has become law of the land.

23. When similar matter has been decided by the Hon'ble Apex Court, present petition should also be decided in the similar manner. In other words, present petition is covered by the judgement rendered by the Tribunal on 29.11.2022 in claim petition no. 114/DB/2022, Manu Kumar vs. State of Uttarakhand and others, which has been affirmed by the Hon'ble High Court of Uttarakhand and Hon'ble Supreme Court of India.

24. The petition is disposed of in terms of judgement rendered by the Tribunal on 29.11.2022 in claim petition no. 114/DB/2022, Manu Kumar vs. State of Uttarakhand and others, which has been upheld by the Hon'ble High Court of Uttarakhand, SLP against which has been dismissed by Hon'ble Supreme Court of India.

25. Seniority list, in the instant case, shall abide by the aforesaid decisions.

(Capt. Alok Shekhar Tiwari)
Member (A)

(Justice U.C. Dhyani)
Chairman

DATE: 06th September, 2024
DEHRADUN
RS