

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

Present: Hon'ble Mr. Rajendra Singh

----- Vice Chairman(J)

Hon'ble Mr. A.S.Rawat

-----Vice Chairman(A)

CLAIM PETITION NO. 66/NB/DB/2023

1. Dr. Ganesh Singh Khati, aged about 53 years, S/O Sri K.S. Khati, Deputy Commissioner, Rural Development Department, Uttarakhand, presently posted as Project Director (Kumaon), Watershed Management Department, Uttarakhand, Haldwani, District Nainital.
2. Dr. Arun Kumar Rajput, (Male) aged about 48 years, S/O Sri Y.P. Rajput, presently serving as Deputy Commissioner, Rural Development Department, Uttarakhand, Head Office, Rural Development Commissioner, Uttarakhand, Pauri District Pauri Garhwal.

.....Petitioners

Vs.

1. State of Uttarakhand, through Secretary, Rural Development Department, Government of Uttarakhand, Dehradun
2. Commissioner, Rural Development, Uttarakhand, Pauri.
3. Secretary, Appointment and Personnel Department, Government of Uttarakhand, Dehradun.
4. Sri Data Ram Joshi (Male), Additional Commissioner, Rural Development Department, Development, Uttarakhand, C/O Commissioner, Rural Development, Uttarakhand, Pauri.

.....Respondents

Present: Sri Bhagwat Mehra, Advocate for the petitioners
Sri Kishore Kumar, A.P.O. for the respondents no. 1, 2 & 3
Sri M.C.Pant, Advocate for the respondent no. 4

JUDGMENT

DATED: OCTOBER 22, 2024

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

A. To set aside the impugned promotion order dated 23-02-2023 along with minutes of the DPC meeting dated 13-02-2023, issued by the Respondent No. 1 (Annexure No. 1 to the Compilation No. 1).

B. To declare the action on the part of the official Respondents in not promoting the petitioners on the post of Additional Commissioner, as arbitrary and illegal.

C. To direct the Respondents, particularly Respondent No. 1 and 2 to promote the petitioners on the post of Additional Commissioner, Rural Development, from due date i.e. 23-02-2023, when their junior i.e. Respondent No. 4 was promoted to the said post.

D. To direct the Respondents, particularly Respondent No. 1 and 2 to grant all consequential benefits to the petitioners.

E. To pass any other suitable order as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

F. To allow the claim petition with cost.

2. The facts of the case, in brief, are as follows:

2.1 The Petitioner No. 1 was initially appointed to the Class-II post of Extension Training Officer (Soil Science) in the pay scale of Rs. 8000-13500 on the recommendation of U.P. Public Service Commission and he joined duties w.e.f. 12.11.1999 and he was allotted 1997-98 Batch by the State Government. Similarly, the Petitioner No. 2 was also initially appointed to the Class-II post of Extension Training Officer (Agriculture) in the pay scale of Rs. 8,000-13,500 on the recommendation of U.P. Public Service Commission w.e.f. 24.02.1999 and he was also allotted 1997-98 Batch by the State Government. They were promoted on regular basis to the next higher post of Principal Class-I in the pay scale of Rs. 10000- 15200, vide common order dated 06.06.2005.

2.2. With a view to regulate service conditions of officers of Rural Development Department, the existing State of U.P. had framed Statutory Service Rules namely "Uttar Pradesh Rural Development Department Gazetted Officers Service Rules, 1991" under proviso to Article-309 of the Constitution, which were notified on 27.11.1991. Rule-5 of the said Rules provides for source of recruitment to the posts in different grades. Rule 5 (3) provides that the 75% posts of Deputy Development Commissioner shall be filled by promotion from amongst those persons, who have completed five years substantive service on the post of District Development Officer on the first day of year of recruitment and the remaining 25% posts of Deputy Development Commissioner shall be filled by promotion from amongst those persons who have completed five years substantive service as Principal Class-I, Extension Training Center, on the first day of year of recruitment. Similarly, Rule-5(4) of the said Rules provides that a

substantively appointed Deputy Development Commissioner is eligible for promotion to the next higher post of Additional Commissioner, Rural Development, who have completed 03 years service on the post of Deputy Commissioner on the first day of the recruitment year. Rule 17 (2) (A) of the aforesaid Rules, 1991 provides that the criterion for recruitment by way of promotion to the post of Deputy Development Commissioner shall be "Merit" as adjudged by a duly constituted Selection Committee. The composition of the Selection Committee has also been given in the said Rule. Sub-Rule (b) of Rule 17(2) provides that the Appointing Authority shall prepare the separate eligibility lists of the persons serving as District Development Officer and Principal Class-I, Extension Training Centers, as per Uttar Pradesh (Outside the Purview of Public Service Commission) Selection Eligibility List Rules, 1986 and shall place the same before the Selection Committee along with all other records, as deem fit. Sub-Rule (c) provides that the Selection Committee shall consider the claim of candidates on the basis of documents as referred in Sub-Rule (B) and if thinks necessary, it may also take an interview of the candidates. Sub-Rule (d) of the Rule 17 (2) provides that the Selection Committee shall prepare a combined select list after taking names from the both select lists of District Development Officers and Principal Class-I, Extension Training Center, in which the ratio of 3:1 shall be maintained. The first name shall be taken from the Cadre of District Development Officers. The names shall be arranged in the order of seniority, as they were in their own Cadres. The said Sub-Rule further provides that the Selection Committee shall forward the joint select list to the Appointing Authority.

2.3 As per the said Service Rules, the next post is Additional Commissioner, Rural Development. Similarly Rule 17 (3) (A) of the aforesaid Rules, 1991 provides that the criterion for recruitment by way of promotion to the post of Additional Commissioner shall be "Merit" as adjudged by a duly constituted Selection Committee. The composition of the Selection Committee has also been given in the said Rule. Sub-Rule (b) of Rule 17(3) provides that the Appointing Authority shall prepare a eligibility list of the persons as per Uttar Pradesh (Outside the Purview of Public Service Commission) Selection Eligibility List Rules, 1986 and shall place the same before the Selection Committee along with all other records, as deem fit. Sub-Rule (d) provides that the Selection Committee shall prepare

a seniority list of feeding cadre that means Deputy Development Commissioner and shall forward the same to the appointing authority. As per Rule 4 (2) of the said Rules, details of sanctioned posts in different categories have been given in the Appendix appended to the said Rules. As per the Appendix, as many as 07 posts of Deputy Development Commissioner were sanctioned by the said Rules/ at the time of framing of the said Rules. Likewise two posts of Additional Commissioner were also sanctioned/created by the said Rules/at the time of framing of the said Rules.

2.4. The State Government inter-alia created posts of Chief Development Officer vide Government order 24.06.1992 with a view to strengthen the system of development administration at District level. In pursuance of the aforesaid policy decision as contained in Government order dated 24.06.1992, the erstwhile State of U.P. vide Government order dated 07.08.1993, promoted as many as 11 persons to the post of Chief Development Officer in the pay scale of Rs. 3200- 4875. Out of 11 persons so promoted, eight were from District Development Officer's Cadre and the remaining were from the Cadre of Principal, Extension Training Center. In this view of matter, it can be safely inferred that the ratio of 75:25 was maintained in promotion to the post of Chief Development Officer and sufficient representation/ quota was given to the persons belonging to petitioners Cadre, as provided in Rule 5(3) of the 1991 Rules.

2.5. As stated earlier, as per the Rules, 1991, for promotion to the post of Deputy Development Commissioner, the minimum qualifying service in the feeding Cadre i.e. District Development Officer or Principal, Extension Training Center, is five years on the first day of year of recruitment. As stated above, the petitioners were regularly promoted to the post of Principal Class-1 in the pay scale of Rs. 10000-325-15200 vide order dated 06.06.2005. As such, the petitioners have completed the prescribed qualifying service of five years on 05.06.2010 and they became eligible for promotion to the next higher post of Deputy Development Commissioner on 01.07.2010 i.e. recruitment year 2010-2011. Various posts of Deputy Development Commissioner were lying vacant since long and at least one post was vacant from the recruitment year 2004-05. In view of the vacancies

on the said post, the persons belonging to feeding Cadre, were given officiating charge of the said posts.

2.6. In the year 2009, the Respondent No. 1 was contemplating the promotion exercise for promotion to the posts of Deputy Development Commissioner/ Chief Development Officer. However, in the said promotion exercise, only the persons belonging to District Development Officer's Cadre were being considered ignoring the claims of persons belonging to petitioners' Cadre, as such, the Petitioner No. 1 represented before the Respondents to also consider the claim of persons belonging to petitioners' Cadre, as per mandate of Rule 5 (3) of the 1991 Rules. The Respondent No. 1 promoted as many as two officers (namely Sri Roshan Lal and Sri Dalip Chandra) from the Cadre of District Development Officer, to the post of Chief Development Officer in the month of June, 2009 ignoring the claim of persons serving in the Extension Training Cadre. One person Sri R.P. Arya was promoted to the post of Deputy Development Commissioner in June, 2009 itself. At the relevant time, the following three posts of Deputy Development Commissioner/ Deputy Commissioner were vacant.

1. Deputy Commissioner (Administration)
2. Deputy Commissioner (Programme)
3. Deputy Commissioner (Training)

The post of Deputy Commissioner (Training) fall vacant due to retirement of one Sri Hari Om Prakash Agrawal, who was from the Cadre of petitioners' i.e. Extension Training Cadre. It is stated that Sri Hari Om Prakash Agrawal was promoted to the post of Deputy Commissioner in the month of May, 2005 in the pay scale of Rs. 12000- 16500 and he was the only officer belonging to the Extension Training Center, who was promoted to the said post. Sri Agrawal could serve on the said post only for a period of about 15-20 days as he was due for retirement on 30.05.2005. As such, the Petitioner No. 1 again represented the Respondents vide representation dated 25.08.2009 and requested to give appropriate representation to the persons belonging to Extension Training Cadre in the promotion to the post of Deputy Commissioner. After retirement of Sri Hariom Prakash Agrawal, the Petitioners were the senior most officers of the State belonging to Extension Training Cadre.

2.7 The legitimate claims of persons belonging to Extension Training Cadre was being denied in every conceivable manner. With a view to bestow undue benefit upon the persons belonging to District Development Officers' Cadre, the Respondent No. 1 framed another Statutory Service Rules namely "The Uttarakhand Provincial Development Service Rules, 2011" which were notified on 27.05.2011.

2.8 By means of the said Service Rules, the 100% promotion quota was provided to the persons belonging to District Development Officers' Cadre for promotion to the post of Deputy Commissioner or equivalent posts. There was not a single provision in the entire Rules which provides any promotion quota for persons belonging to the Extension Training Cadre. Rule-17 of the said Rules provides for procedure of recruitment by promotion through Selection Committee. However, the criterion of promotion has not been disclosed at all and a vague word "given measurement" has been used as criterion of promotion, while in the earlier Rules, the criterion of promotion was provided as "Merit". In the Annexure 'A' appended to the said Rules, as many as 08 posts of Deputy Commissioner or equivalent posts have been sanctioned in the pay scale of Rs. 37400-67000 (Grade Pay 8700). Out of the eight posts so sanctioned, two are of Deputy Commissioner, five are of Chief Development Officer and one Joint Secretary. As per the earlier Rules, as many as 2 posts (25%) would come to the share of the persons belonging to Extension Training Cadre.

2.9 As per the said Rules, Rule-5(5) of the same, deals with that the recruitment by promotion to the post of Additional Commissioner, Rural Development and it is provided that the promotion to the said post shall be made by promotion of the persons serving on the post of Chief Development Officer/Deputy Commissioner/Joint Secretary i.e. the feeding posts, who have completed 03 years service on the feeding post. The aforesaid action of the Respondents in taking away the promotional avenues of the petitioners was in clear violation of proviso to Article-74 of the U.P. Reorganization Act, 2000. The relevant portion of the said Act, is as reproduced below:

"74. Other provisions relating to Services.- (1) Nothing in this section or in Section 73 shall be deemed to affect on or after the appointed day, the operation of the provisions of Chapter I of Part XIV of the Constitution in relation to determination of the conditions of service of persons in connection with the affairs of the Union or any State.

Provided that the conditions of service applicable immediately before the appointed day in the case of any person deemed to have been allocated to the State of Uttar Pradesh or to the State of Uttaranchal under Section 73 shall not be varied to his disadvantage except with the previous approval of the Central Government."

2.10. The petitioners opted for Uttarakhand State with a view that their service conditions, as existed earlier, cannot be varied to their disadvantage by the successor State, unless the Central Government approves the same. However, when the petitioners became eligible and were likely to be considered for promotion to the next higher post of Deputy Commissioner as per existing Rules of 1991, as applicable in successor State of Uttarakhand by virtue of Section 86 of the U.P. Reorganization Act, the Respondent No. 1, by means of the aforesaid action, tried to take away the accrued/vested right of the petitioners. It is submitted that whether the chance of promotion is a conditions of service or not, came up for consideration before Hon'ble Supreme Court in the matter of Mohammad Shujat Ali and others Vs. Union of India and others and other connected writ petitions, and a Constitution Bench of Hon'ble Supreme Court vide Judgment dated 03.05.1974, reported in (1975) 3 SCC 76, inter-alia held that chance of promotion is also a condition of service. A similar controversy also came up before the Hon'ble Uttarakhand High Court for adjudication in Special Appeal No. 267 of 2011 (Bahadur Singh and others Vs. Deewan Singh Bhandari and others). After following the judgment rendered by Hon'ble Supreme Court in the case of Mohd. Shujat Ali (Supra) and other case law on the point, a Division Bench of Hon'ble Uttarakhand High Court has also held that the even the change in criterion of promotion, would tantamount to change the chance of promotion.

2.11 The State Government has framed Relaxation Rules, 2010 for relaxation in qualifying service which provides that relaxation up to 50% may be given in the qualifying service, wherever the same is provided in Statutory Rules. The State Government has again vide Amendment Rules, 2021 has applied the said Relaxation Rules, 2010 for the recruitment year 2021-22. The petitioners become eligible for promotion to the post of Deputy Commissioner which fell vacant in the year 2008 (recruitment year 2007-08) as per the existing Rules.

2.12 Feeling aggrieved, the petitioners approached Hon'ble Uttarakhand High Court by filing Writ Petition No. 152 (S/B) of 2022 (Dr.

Ganesh Singh Khati and others Vs. State of Uttarakhand and others), seeking the following reliefs:-

A. To declare the Uttarakhand Provincial Development Service Rules, 2011, notified on 27.5.2011 (Annexure No. 11 to the writ petition) in so far as it ousts the persons belonging to Extension Training Cadre for promotion to the post of Deputy Commissioner/ Chief Development Officer, as arbitrary and illegal.

B. To issue a writ order or direction in the nature of certiorari for quashing the impugned Service Rules, 2011 notified on 27.5.2011 in so far as it relates to ousting of the persons belonging to Extension Training Cadre for promotion to the post of Deputy Commissioner/ Chief Development Officer.

C. To issue a writ order or direction in the nature of mandamus commanding the Respondents to consider and promote the petitioners to the post of Deputy Commissioner under the 25% promotion quota, as per mandate of Rule 5 (3) of Uttar Pradesh Rural Development Department Gazetted Officers Service Rules, 1991, from due date along with all consequential benefits.

D. To issue any other writ order or direction which this Hon'ble Court may deem fit and necessary in the circumstances of the case.

E. To award the cost of the writ petition in favour of the petitioners.

2.13 The aforesaid writ petition was heard and decided by the Hon'ble Uttarakhand High Court vide judgment dated 07-05- 2013 and direction was issued to the Respondents to consider the case of the promotion of the petitioners to the post of Deputy Commissioner within a period of 04 months.

2.14 The promotion order in favour of the petitioners was issued by the Respondents on 11-08-2015. Although the post of Deputy Commissioner was in the Grade Pay of Rs. 8700/- as per the Rules, but, in the promotion order, the Respondents mentioned the Grade Pay of Rs. 7600/-. Ultimately vide order dated 02-01-2017, the State Government corrected the same and the Grade Pay of the promoted post of the petitioner was sanctioned as Rs. 8700/- w.e.f. the initial date of issuance of promotion order i.e. 11-08-2015. The petitioners are continuously working on the post of Deputy Commissioner in the department, with due honesty, dedication and sincerity. As such the petitioners have completed about 24 years of continuous satisfactory services in the Department. They are possessing unblemished service record to their credit.

2.15 In view of the aforesaid statutory provisions of Rules, 1991, the petitioners are serving on the post of Deputy Commissioner w.e.f. 11-08-2015 against the vacancies of recruitment year 2008-09. As such, in any condition, they have completed more than seven and half years of

continuous satisfactory service on the post of Deputy Commissioner on regular and substantive basis. As stated above, as per the Rules of 1991, for promotion to the post of Additional Commissioner, the required qualifying service is 03 years service as Deputy Commissioner on the first day of the recruitment year. As such, the petitioners completed 03 years of qualifying service on the post of Deputy Commissioner on 10-08-2018 and they became eligible for promotion to the next higher post of Additional Commissioner on 01-07-2019, in any condition. Even as per the Rules of 2011, the qualifying service for promotion for the said post is only 03 years. As such in any case the petitioners became eligible for promotion on 01-07-2019. Although the petitioners became eligible for promotion to the post of Additional Commissioner on 01-07-2019 i.e. recruitment year 2019-20, however, since at the relevant time, the lone post of Additional Commissioner was not vacant, as such, their claim could not be considered for the said promotion. The Cadre of District Development Officer was not ready to accept the legitimate claims given to the petitioners by the Hon'ble Uttarakhand High Court, as such, they challenged the promotion order dated 05-08-2015 as well as order dated 02-01-2017, firstly before Hon'ble Uttarakhand High Court and thereafter, this Hon'ble Tribunal. The said claim petitions have been dismissed by this Hon'ble Tribunal vide common judgment dated 23-12-2019.

2.16 The lone post of Additional Commissioner fall vacant in the month of September, 2022 on account of retirement of one Sri Roshal Lal w.e.f. 30-09-2022. As such, with a view to fill up the said post by way of promotion, the State Government issued a tentative seniority list of the officers serving on the post of Deputy Commissioner, vide office memo dated 16-01-2023. A bare perusal of the said tentative seniority list would reveal that the petitioners were placed at Sl. No. 1 and 2 of the said seniority list. However, the name of the Respondent No. 4 is all together missing in the said list. It is submitted that the said list is digitally signed by the Secretary on 09-02-2023. Immediately after issuance of the tentative aforesaid seniority list dated 16-01-2023, on the very next day, the Respondent No. 1 without finalizing the seniority list, proposed the meeting of Departmental Promotion Committee for promotion to the said post of Additional Commissioner, to be held on 20-01-2023, vide letter dated 19-01-2023.

2.17 When the petitioners came to know about the aforesaid undue hasty action of holding the DPC and they were also having reasons to believe that they are not being considered for promotion, the petitioner no. 1 immediately submitted representation on 19-01-2023 personally in the office of Opposite Party. When the petitioners came to know that the said DPC is going to be again held on 13-02-2023, as such, a legal notice on behalf of the petitioners by their counsel was sent through e-mail to the Respondents on 13-02-2023 at 11:30 AM as well as by registered post. The Respondents held the DPC on 13-02-2023 and vide letter dated 16-02-2023 issued by Respondent No. 3, it was informed to the Respondent No. 1 that Sri Data Ram Joshi (Respondent No. 4) has been recommended for promotion. Thereafter, vide impugned order dated 23-02-2023, passed by the Respondent No. 1, the Respondent No. 4 was promoted to the post of Additional Commissioner. It has recommended the promotion of Respondent No. 4. It is also submitted that before recommending the promotion, neither the Respondent No. 4 or other Officers were even not categorized as to whether they are suitable or unsuitable for promotion, which is mandatory condition in the Rules.

3. C.A./W.S. has been filed on behalf of respondents no 1 & 2 in which it has been stated as under:

3.1 याची संख्या-1 की नियुक्ति उत्तर प्रदेश शासन के आदेश दिनांक 12-11-1999 को हुई। वादी की नियुक्ति उत्तर प्रदेश ग्राम्य विकास प्रसार प्रशिक्षण राजपत्रित अधिकारी सेवा नियमावली 1992 तथा समय समय पर शासन से जारी की गयी अन्य सेवा नियमावलियों व शासनादेशों के अधीन विनियमित होगी से आच्छादित है। शासनादेश संख्या 610/दिनांक 24 जून 2005 से ग्राम्य विकास विभाग के निदेशालय एवं जनपद कार्यालयों के पुनर्गठन विषयक शासनादेश निर्गत किया गया। जिससे खण्ड विकास अधिकारी सेवा संवर्ग उपायुक्त के पदों पर पदोन्नति की गयी। वादीगण प्रसार प्रशिक्षण संवर्ग से आच्छादित है तथा प्रसार प्रशिक्षण संवर्ग की नियमावली वर्ष 1992 से नियुक्त हुए है। उत्तराखण्ड राज्य में उक्त संवर्ग हेतु पृथक से शासनादेश संख्या 473/दिनांक 18 जून 2004 से पदीय ढाँचा स्वीकृत है। प्रशिक्षण संवर्ग के उक्त पदीय ढाँचे में स्वीकृत पदों पर वरिष्ठता कम में श्री हरि ओमप्रकाश अग्रवाल की पदोन्नति उपायुक्त प्रशिक्षण-प्रबन्धन के पद पर हुई है। शासनादेश संख्या 473/दिनांक 16 जून 2004 से स्वीकृत उपायुक्त प्रशिक्षण-प्रबन्धन के पद पर श्री हरिओम प्रकाश अग्रवाल की पदोन्नति उपायुक्त प्रशिक्षण- प्रबन्धन के पद पर होने एवं उनकी सेवानिवृत्ति

के उपरान्त उक्त पद पर रिक्त रहा है। उत्तराखण्ड शासन ग्राम्य विकास विभाग के कार्यालय ज्ञाप संख्या 3721/ दिनांक 23 सितम्बर 2013 से प्रसार प्रशिक्षण संवर्ग के अधिकारियों की अन्तिम ज्येष्ठता सूची प्रख्यापित है जिसमें वादी का नाम ज्येष्ठता क्रमांक-03 पर अंकित है। शासनादेश संख्या 872/दिनांक 08 मार्च 2011 से राज्य कर्मचारियों के लिए सुनिश्चित प्रोन्नयन (ए०सी०पी०) की व्यवस्था की गयी है। वर्णित शासनादेश की व्यवस्थानुसार एसीपी के अन्तर्गत सीधी भती के किसी पद पर प्रथम नियुक्ति की तिथि से 10 वर्ष, 18 एवं 26 वर्ष की अनवरत संतोषजनक सेवा के आधार पर तीन वित्तीय स्तरों पर प्रोन्नयन अनुमन्य कराये जाने का उल्लेख है।

3.2 उत्तराखण्ड प्रादेशिक सेवा नियमावली 2011 के नियम 5 (5) में अपर आयुक्त ग्राम्य विकास के पद पर मौलिक रूप से नियुक्त ऐसे मुख्य विकास अधिकारी/उपायुक्त/संयुक्त विकास आयुक्त में से, जिन्होंने भर्ती के वर्ष के प्रथम दिवस को इस रूप में 03 वर्ष की सेवा एवं कुल 24 वर्ष की सेवा पूर्ण कर ली हो, श्रेष्ठता के आधार पर चयन समिति के माध्यम से पदोन्नति किसे जाने का प्राविधान है। उत्तराखण्ड में प्रसार प्रशिक्षणों के लिए राज्य स्तर पर उत्तराखण्ड एवं पाँच क्षेत्रीय ग्राम्य विकास संस्थानों एवं तीन जिला ग्राम्य विकास संस्थानों को प्रसार प्रशिक्षण केन्द्रों के रूप में विकसित करने हेतु प्रशिक्षण संस्थानों का पुनर्गठन किये जाने विषयक शासनादेश संख्या 473/ दिनांक 16 जून 2004 निर्गत है। चयन समिति की बैठक के संबंध में सही है किन्तु त चयन समिति द्वारा वादीगणों की पदोन्नति उपायुक्त प्रशिक्षण प्रबन्धन के पद पर वित्तिमान 16500-39100 ग्रेड पे 7600 में किये जाने की संस्तुति की गयी है।

3.3 वादागणों की पदोन्नति शासन के आदेश संख्या 1579/दिनांक 11-08-2016 के द्वारा की गयी है, तथा उक्त पदोन्नति रिट याचिका संख्या 327/एस०बी०/2013 श्री सत्यवीर सिंह बनाम उत्तराखण्ड राज्य व अन्य में दायर पुनर्विचार याचिका एवं रिट याचिका संख्या 2102/एस०बी०/2015 श्री शैलेन्द्र सिंह बिष्ट बनाम राज्य में पारित होने वाले अन्तिम निर्णय के अधीन की गयी है। मा० उच्च न्यायालय द्वारा रिट याचिका संख्या 327/एस०बी० / 2013 श्री सत्यवीर सिंह बनाम उत्तराखण्ड राज्य व अन्य को लोक सेवा अधिकरण खण्डपीठ नैनीताल को दिनांक 22-09-2022 को स्थानान्तरित कर दी गयी है। वर्तमान में उक्त रिट याचिका संख्या लोक सेवा अधिकरण खण्डपीठ नैनीताल में विचाराधीन है। वर्तमान में प्रभावी उत्तराखण्ड प्रादेशिक विकास सेवा नियमावली 2011 के भाग तीन में अपर आयुक्त, ग्राम्य विकास के पद पर मौलिक रूप से नियुक्त ऐसे मुख्य विकास अधिकारी/उपायुक्त/संयुक्त विकास आयुक्त में से, जिन्होंने भर्ती के प्रथम वर्ष दिवस को इस रूप में 03 वर्ष की सेवा एवं कुल 24 वर्ष की सेवा पूर्ण कर ली हो, श्रेष्ठता के आधार पर चयन समिति के माध्यम से पदोन्नति के द्वारा भरे

जाने का उल्लेख है । वर्णित नियमावली में अपर आयुक्त पद हेतु पोषक संवर्ग, खण्ड विकास अधिकारी है। वादी प्रसार प्रशिक्षण अधिकारी है। प्रसार प्रशिक्षण संवर्ग के अधिकारियों हेतु ज्येष्ठता सूची वर्ष 2013 प्रख्यापित है। श्री दाता राम जोशी का नाम ज्येष्ठता कम में वर्णित ज्येष्ठता सूची के क्रमांक 04 पर अंकित है।

3.4 वादीगण भिन्न संवर्ग के होने के कारण उत्तराखण्ड प्रादेशिक सेवा नियमावली से आच्छादित नहीं है। अतः विचार नहीं किया गया । प्रतिवादी संख्या-04 श्री दाता राम जोशी की नियुक्ति खण्ड विकास अधिकारी संवर्ग के अन्तर्गत दिनांक 1-07-1991 को हुई है जबकि वादी गणों की नियुक्ति वर्ष 12-11-1999 में प्रसार प्रशिक्षण अधिकारी के पद पर हुई है। अतः मौलिक रूप से नियुक्ति के आधार पर श्री दाता जोशी, वादीगणों से ज्येष्ठ अधिकारी है। शासन के कार्यालय ज्ञाप संख्या 163/दिनांक 26-02-2018 जिसके द्वारा खण्ड विकास अधिकारी प्रादेशिक विकास सेवा संवर्ग के अधिकारियों की अन्तिम ज्येष्ठता सूची प्रख्यापित है, के अनुसार ज्येष्ठता कम में श्री दाताराम जोशी की अपर आयुक्त के पद पर पदोन्नति की गयी है। शासन के कार्यालय ज्ञाप संख्या 16 जनवरी 2023 से प्रख्यापित अन्तिम ज्येष्ठता सूची को पदोन्नति हेतु विचार में लाये जाने का कोई विधिक अधिकार नहीं है। प्रतिवाद पत्र के उपरोक्त कथनों के आधार पर याचिका की याचिका सव्यय अस्वीकार होने योग्य है। मा० न्यायाधिकरण से प्रार्थना है, कि याचिकाकर्ता के द्वारा योजित की गयी वर्तमान याचिका असत्य एवं भ्रामक तथ्यों पर आधारित है, जिस कारण उक्त याचिका खारिज होने योग्य है।

4. R.A. to the C.A./W.S. filed on behalf of respondents no. 1 & 2 has been filed on behalf of the petitioner, in which it has been stated that-

4.1 The Writ Petition filed by Dr. Satyaveer Singh was earlier dismissed by the Hon'ble High Court vide order dated 26-05-2015, the promotion order in favour of the petitioners was issued on 11-08-2015. Thereafter, a Review Application was filed in the matter and the said Writ petition was restored to its Original Number, but, without any interim order. The said Writ Petition was thereafter again dismissed by the Hon'ble High Court in the year 2019 as having been infructuous. However, again on Review Application, the said Writ Petition was restored with a cost of Rs. 5,000/- upon Dr. Satyaveer Singh and ultimately the same was transferred to this Hon'ble Tribunal vide order dated 22-09-2022. Although the said case has been listed thereafter, before this Hon'ble Tribunal on as many as 12-14 times, but, not a single hearing could take place as neither Dr. Satyaveer

Singh nor any Counsel is ready to press the said Writ Petition. In so far as the alleged Writ Petition No. 2102 (S/B) of 2015 filed by Sri Shailendra Singh Bisht is concerned, in this regard, it is submitted that the said Number of Writ Petition is incorrect and infact it was Writ Petition No. 210 (S/B) of 2015. The said Writ Petition was dismissed by the Hon'ble High Court vide order dated 11-12-2018, but, a liberty was given to him to approach this Hon'ble Tribunal.

4.2 Sri Shailendra Singh Bisht approached this Hon'ble Tribunal by filing Claim Petition No. 30/DB/2019 (Shailendra Singh Bisht Vs. State of Uttarakhand and others). The said Claim Petition has already been dismissed by this Hon'ble Court vide judgment dated 23-12-2019. It is further made clear that the said judgment has attained finality in the absence of any challenge by Sri Shailendra Singh Bisht. The post of Additional Commissioner, Rural Development is only meant for the feeding Cadre of Block Development Officer, while the petitioners are from training Cadre, is totally arbitrary, illegal and has not legs to stand at all and cannot be countenanced in the eyes of law. It has been contended in the paragraph under reply that name of Sri Data Ram Joshi is at Sl. No. 4 of the seniority list dated 26-02-2018, however, in reply it is submitted that the said seniority list is relating to only officers of Block Development Cadre and the same has nothing to do with the present controversy i.e. promotion on the post of Additional Commissioner. Moreover, it is not the case of the Respondents at all that the names of the petitioner herein were also included in the said seniority list and the petitioners were placed below Sri Data Ram Joshi in the said list.

4.3 The Respondents have contended that since the petitioners are not covered from the Uttarakhand Provincial Development Service Rules, 2011, as such they have not been considered for promotion. In this regard it is submitted that admittedly as per Rules of 1991, the next promotional post available to the petitioners is of Additional Commissioner and 03 years service on the post of Deputy Commissioner is required. Admittedly the petitioners were promoted to the post of Deputy Commissioner vide order dated 11-08-2015 and such, they have already completed 03 years qualifying service in August, 2018 and they became eligible for promotion, in any event, on 01-07-2019. As such, the claim of the petitioners for

promotion to the post Additional Commissioner is fully justified. The official Respondents have utterly failed to dispute the admitted fact that the petitioners were promoted on the post of Deputy Commissioner vide order dated 11-08-2015 while Sri Data Ram Joshi was promoted on the said post vide order dated 28-04-2016 with immediate effect. Here it is not the case of any catchup Rule and catchup Rule is not applicable in the present case because both the persons were promoted from different sources.

5. C.A./W.S. has been has also been filed on behalf of respondent no. 4 stating there that-

5.1 The post and cadre of petitioners as well as private respondent is quite different and distinct. Thus, both the claimants are quite junior and having no compare with the deponent because the recruitment process, recruitment source, structure of post, service rules governing the service conditions of the deponent as well as the private respondents are entirely different. The nature, and duty of service is different in comparison to the post held by the claimants. The seniority list of the deponent and the private respondents are entirely different and the basis of claim of the petitioner is false and based on misrepresentation, hence the claim petition is liable to be dismissed with cost. The promotion order dated 23/02/2023 of the deponent on the post of Addl. Commissioner, as well as D.P.C. decision by the claimants have no legs to stand and there is no locus to challenge the same. Apart from this the deponent who has been retired 28 February, Z.2023 and after his retirement, the claimants have challenged the promotion order with an attempt to harass the deponent which amounts to abuse to process of court.

5.2 The respondent no. 4 was promoted on 28 April, 2016 on the post of Chief Development Officer in the pay scale of Rs. 37400-67000 with grade pay of Rs. 8700 after completing 19 years of service. The state government has passed an order on 2nd January, 2017 granting the pay-scale of Rs. 37400-67000 with grade pay of Rs. 8700 to the claimants by amending the earlier order dated 11 August 2015 and allowed the aforesaid scale w.e.f. 11 August 2015 without promotion and violating Service Rules of 1991. It is further pertinent to mention that the petitioners were promoted in violation of the Provincial Development Service 2011 rules, the promotion is to be provided after 19 years of service whereas the promotion was

provided to petitioners after a mere service of 15 years which show the biasness and prove conclusively the hint of nepotism and favoritism. The judgment of the Hon'ble High Court which was made basis for present claim as well as for granting to the petitioners the aforesaid scales *w.e.f.* 2015 cannot be justified.

5.3 The state government has not passed any order for the unification of both cadres or equate the posts of the claimants as well as private respondents or formulate any scheme for drawing inter se seniority amongst them in the Training and Provincial Development cadre. To the post of additional commissioner, the requirement is that the length of service should be 24 years. The previous promotions of the claimants have already been challenged by Dr. Satyaveer Singh Vs State before PST, Nainital bench based upon not consideration of senior employee for promotion. It is useful to mention here that Dr. Satyaveer Singh who is admittedly senior to the petitioner has not raised anything against the impugned order in this petition but to harass the deponent the petitioner have filed such type of frivolous petition. The petitioner Ganesh Khati was promoted from Extension Trainee Officer to Principal on 6th June, 2005 on Ad-Hoc basis which is a violation of the 1991 & 1992 Service Rules which require 5 years of mandatory service before a promotion.

5.4 Hon'ble High Court of Uttarakhand in the writ petition no. 152 of 2012 S/B dated 07.05.2013 passed an order stating according to old Service Rules 1991 the Principal (Group A) of the trainee cadre to post of Deputy Commissioner Training by direction to the state government to fill the said post of Deputy Commissioner amongst all eligible candidates from Principal (Group A). However, State Government violated the above order and Service Rules of 1991 para 17(2) (c) in which promotion ratio between the PDS and training cadre is 75:25 is mentioned which has been violated and promoted 2 candidates against one cadre post which is financial embezzlement also.

5.5 The respondent no. 4 was promoted on upgraded post on 29 March, 2013 on the pay scale of Rs. 16500-39100 and grade pay of Rs. 7600 after completing more than 13 years of services and the deponent was again promoted on the recommendation of the D.P.C. after completion of more than 19 years in service to the post of Chief Development Officer with

the pay scale of Rs 37400-67000 and grade pay of Rs 8700 according to the Service Rules 2011. If the claimants were given additional benefits illegally and not in accordance with the service rules then the deponent should also be given the same additional benefits from his eligibility from 29th March 2013 or the illegal increment of pay scale to the petitioner must be rectified. It is pertinent to mention that Rule-5 (5) of the Uttarakhand Provincial Development Service Rules-2011, from among such Chief Development Officers/ Deputy Commissioners/ Joint Developments originally appointed to the post of Additional Commissioner, Rural Development, who on the first day of the year of recruitment as 03 years of service and have completed 24 years of service, there is a provision for promotion through the selection committee on the basis of merit. The petitioners do not have this eligibility, Uttar Pradesh Reorganization Commission has not been violated.

5.6 The previous promotions That of the claimants have already been challenged by Dr. Satyaveer Singh Vs State before PST, Nainital bench based upon not consideration of senior employee for promotion. It is useful to mention here that Dr. Satyaveer Singh who is admittedly senior to the petitioner has not raised anything against the impugned order in this petition but to harass the deponent the petitioner have filed such type of frivolous petition. The petitioners are trying to mislead the Court as the promotion of the petitioners has been done by the government's order no. 1579/dated 11.8.2015, and the said promotion in Writ Petition No. 327/S.B. / 2013 Reconsideration petition filed in Mr. Satyaveer Singh vs. State of Uttarakhand and others and Writ Petition No. 210/SB/2015 Mr. Shailendra Singh Bisht vs. State is subject to the final decision to be passed. Writ Petition No. 327/SB/2013 Mr. Satyaveer Singh vs. State of Uttarakhand and others has been transferred by Hon'ble High Court to Public Service Tribunal, Division Bench, Nainital on 22.9.2022. Presently Writ Petition No. 327/S. B./2013 Mr. Satyaveer Singh vs. State of Uttarakhand and others is under consideration in Public Service Tribunal Division Bench Nainital.

5.7 The seniority list of training cadre for the promotion of deputy commissioner is also challenged by Sh. Bharat Chandra Bhatt in writ petition no. 59/2020(S/B) before the Hon'ble High Court Nainital, which is still pending for final judgment. At present effective Part III of the

Uttarakhand Provincial Development Service Rules, 2011, on the post of Additional Commissioner, Rural Development, from among such Chief Development Officers/ Deputy Commissioners/Joint Development Commissioners, who have put in 03 years of service as such on the first day of recruitment and must have completed a total of 24 years of mandatory service, mentioned by promotion through the selection committee on the basis of merit. For the post of Additional Commissioner, the feeder cadre is the block development officer and the petitioner is of the extension training cadre. The seniority list for the year 2013 is promulgated for the officers of Extension Training Cadre and the seniority list for the year 2018 for the officers of the Provincial Service Cadre is promulgated. It is to be informed that according to the Government's Office Memorandum No. 163 / dated 26.2.2018, by which the final seniority list of Block Development Officer / Provincial Development Service Cadre officers is promulgated, the post of Additional Commissioner of Respondent No. 4 (deponent) in order of seniority has been promoted. There is no legal basis for considering the provisional seniority list promulgated from the government's office memorandum number 16 January 2023 for promotion.

6. The petitioners replied to the C.A./W.S. filed on behalf of respondent no. 4 by filing R.A. in which, it has been stated that-

6.1 A perusal of document dated 01-08-1991 annexed as at Page No. 25, only shows that the Respondent No. 4 was sent for training and nothing else, as contended by the Respondent No. 4. It is further submitted that the contention of the Respondent No. 4 that he was promoted on a Class-I post on the post of Project Director (DRDA) vide order dated 29-03-2000 is also misconceived as it is submitted that the said post of Project Director, DRDA was always an Ex-Cadre post till 2011 and the same was to be filled on deputation basis only, as the DRDA was only an agency and autonomous body. The said post was never the part of the Cadre Structure till 2011. The said post included in the Service Rules of 2011 for the first time and the said post was to be filled by promotion of District Development Officer and the next promotion was to be made on the post of Deputy Commissioner from the post of Project Director. As such, the contention of the Respondent No. 4 is totally misconceived and erroneous hence denied. The post of Project Director was included in the Cadre Structure for the first

time only in the Rules of 2011 and the said post was created in the Pay Scale of Rs. 15600-39100 with Grade Pay of Rs. 7600/-, as evident from Page No. 68 of the Claim Petition. It is submitted that infact the Respondent No. 4 was promoted on the post of Project Director only vide order dated 23-03-2013 with Grade Pay of Rs. 7600/- and not *w.e.f.* 29- 03-2000 as has been incorrectly stated by him, that too on oath.

6.2 In so far as petitioner's promotion on the post of Deputy Commissioner is concerned, in this regard it is submitted that although the said order of promotion was issued on 11-08-2015 showing the Pay Scale of Rs. 15600-39100 Grade Pay of Rs. 7600/-, however, since the said post was sanctioned and carrying the Pay Scale of Rs. 37400-67000 with Grade Pay of Rs. 8700/-, as such, the same was later on amended vide order dated 02- 01-2017 *w.e.f.* the initial date of issuance i.e. 11-08-2015. The Respondent No. 4 has fairly admitted that he is much junior to the petitioners as the petitioners were promoted on the post of Deputy Commissioner vide order dated 11-08-2015 while he was promoted to the said post only on 28-04-2016. The said promotion order dated 11-08-2015 as well as the amended order dated 02- 01-2017 were challenged firstly before Hon'ble Uttarakhand High Court and thereafter before this Hon'ble Tribunal and the said Claim Petitions have already been dismissed by detailed judgment dated 23-12-2019. The Respondent No. 4 has contended that since the petitioners have not completed 24 years of service as such they have no claim for promotion on the post of Additional Commissioner. In this regard, it is submitted that admittedly as per Rules of 1991, the next promotional post available to the petitioners is of Additional Commissioner and 03 years service on the post of Deputy Commissioner is required. Admittedly the petitioners were promoted to the post of Deputy Commissioner vide order dated 11-08-2015 and as such, they have already completed 03 years qualifying service in August, 2018 and they became eligible for promotion, in any event, on 01- 07-2019. As such, the claim of the petitioners for promotion to the post Additional Commissioner is fully justified.

6.3 The Writ Petition filed by Dr. Satyaveer Singh was earlier dismissed finally by the Hon'ble High Court vide order dated 26-05-2015. The promotion order in favour of the petitioners was issued on 11-08-2015.

Thereafter, a Review Application was filed in the matter and the said Writ petition was restored to its Original Number, but, without any interim order. The said Writ Petition was thereafter again dismissed by the Hon'ble High Court in the year 2019 as having been infructuous. However, again on Review Application, the said Writ Petition was restored with a cost of Rs. 5,000/- upon Dr. Satyaveer Singh and ultimately the same was transferred to this Hon'ble Tribunal vide order dated 22-09-2022. Dr. Satyaveer Singh had only challenged special adverse entry given to him and consequential non- consideration of his claim for promotion. It is made clear that Dr. Satyaveer Singh has never challenged the DPC minutes/decision dated 25-10-2013 as well as he has not challenged the promotion order dated 11-08-2015. Moreover, the said Claim Petition has also been disposed of by this Hon'ble Tribunal vide order dated 09-08-2023, with the finding that Dr. Satyaveer Singh cannot be given promotion on the post of Deputy Commissioner w.e.f 11-08-2015, however, a liberty has been given to make a representation in the matter.

6.4 At the cost of repetition, it is again submitted that the promotion order dated 11-08- 2015 as well as amended order dated 02-01-2017 was unsuccessfully challenged by the similarly situated persons like the Respondent No. 4 herein and the said challenge has already been dismissed vide judgment dated 23- 12-2019 by this Hon'ble Tribunal. It is submitted that in sub-para of Para No. 18 of the Counter Affidavit, the Respondent No. 4 has infact admitted that the petitioners are senior to him, as he has himself stated on oath that "Therefore, such seniority attained on the basis of an illegal promotion.....", meaning thereby, that the Respondent No. 4 has fairly admitted that the petitioners have attained seniority over the Respondent No.4, though as per him, the same was based on an illegal promotion. However, it is not his case that the alleged illegal promotion, which has resulted in giving seniority to the petitioners over the Respondent No. 4, was ever challenged by him before the competent Court of law till date. An order passed by a competent authority is always presumed to be a valid and legal order and any person who is alleging that the same is not legal/illegal, in that case his contentions cannot be considered by merely saying the same as illegal one, unless and until, he successfully challenge the same before competent Court of law and the said order is set-aside/quashed/cancelled.

6.5 it is submitted that the seniority list of training Cadre is not challenged in any so called writ petition, as alleged by the Respondent No. 4. In so far as the referred Writ Petition No. 59 (S/B) of 2020 filed by Sri Bharat Chandra Bhatt is concerned, in this regard it is submitted that as stated earlier, the promotion order dated 11-08-2015 as well as the amendment order dated 02-01-2017 was challenged before this Hon'ble Tribunal by filing two claim petitions i.e. one by Sri Shailendra Singh Bisht and another by Sri Bharat Chandra Bhatt. Both the said Claim Petitions were dismissed by this Hon'ble Tribunal by a detailed judgment dated 23-11-2019 (Copy of which is already on record as Annexure No. 19 to the Claim Petition). It is also submitted that the Hon'ble High Court vide order dated 06-01-2023 has also directed Sri Bharat Chandra Bhatt to place on record the complete record of the Claim Petition, within a period of 10 days. However, despite lapse of a more than 08 months, the said order dated 06-01-2023 has not been complied with by him, till date. As such, it can be safely inferred that the said person is also not interested to pursue the said case. Even otherwise also, it is not the case of the Respondent No. 4 that he has challenged the promotion order dated 11-08-2015 and amended order dated 02-01-2017 before any competent Court of law till date, meaning thereby, the Respondent No. 4 has admitted the said orders and he cannot be permitted to content otherwise.

6.6 On the one hand, in the earlier paragraphs of his Counter Affidavit, he has contended that the petitioners are not having 24 years of service in the department which is a mandatory condition for promotion to the post of Additional Commissioner in the Uttarakhand Provincial Development Service Rules, 2011, but, on the other hand, he has himself admitted in the paragraph under reply that the petitioners are not covered under the said Rules, meaning thereby, the petitioners are covered under 1991 Rules. Such contradictory statements are unheard of. The averments made in the Claim Petition as well as preceding paragraphs of this affidavit are hereby, reiterated as correct. The detailed reply in this regard has already been given in the preceding paragraphs of this affidavit which is not being repeated for the sake of brevity. The petitioners are fully entitled for promotion on the post of Additional Commissioner from the date when their junior i.e. Respondent No. 4 was promoted to the said post i.e. 23-02-2023, along with all consequential benefits.

7. We have heard the Learned Counsel of the parties and peruse the records.

8. The learned Counsel for the petitioner pleaded that the petitioners have completed 3 years of the service as Deputy Development Commissioner so they are eligible for promotion to the next higher post of Additional Commissioner, Rural Development. As per "Uttar Pradesh Rural Development Department Gazetted Officers Service Rules, 1991" the person appointed as Deputy Development Commissioner and has completed 3 years of the service from the appointment year are eligible for promotion to the post of the Addl Commissioner Rural Development. The criterion for promotion for the post of Addl Commissioner, Rural Development shall be "Merit" as adjudged by a duly constituted Selection Committee. Selection Committee shall forward the names of the candidates in order of merit to the Appointing Authority.

9. The learned counsel for the petitioner has further argued that the respondent did not consider the petitioner for the promotion to the post of the Addl. commissioner despite being senior to the respondent no. 4. As they were promoted to the post of the deputy commissioner on 11/08/2015 as against the respondent no 4 who was promoted on 28/4/2015. Hence the impugned order dated 23/2/2023 in respect of the promotion of Shri Data Ram Joshi, Respondent No 4 and the minutes of the meeting of the DPC meeting held on 13/2/2023 may be set aside.

10. Learned APO has pleaded that the petitioners are not eligible for the promotion to the post of the Addl. Commissioner as the post is to be filled up from the cadre of the Uttarakhand Provincial Development Service. The recruitment rule "**Uttarakhand Provincial Development Service Rules, 2011**" the persons who have served as Chief Development Commissioner /Deputy commissioners / Joint Secretary for 3 years of the service and have completed 24 years of the service of recruitment on the first day of the year of recruitment are eligible for the promotion. The Selection committee will consider the eligible Chief Development Commissioner /Deputy commissioners/Joint Secretary for selection on the basis of the given measurement. As the petitioners are not from the cadre of the Uttarakhand Provincial Development Service they have not been considered for the promotion as per the Rule of 2011.Learned A.P.O. has

further argued that the petitioners were appointment in the year 1999 and the respondent no 4 was appointed in the year in 1991. The petitioners have not completed 24 years of the service as on the date DPC 13/2/2023 requisite for the promotion to the post of the Addl commissioner. The respondent No. 4 is senior and eligible also for the post of the Addl. Commissioner, Rural Development. So the claim petition of the petitioners is liable to be dismissed.

11. Written Arguments have been filed on behalf of respondent no. 4 and it has been submitted that the present claim petition is itself not maintainable because the petitioners did not have any eligibility and qualifications even to be considered under the rules regulating the service conditions for the post of Additional Commissioner. As per Annexure No. 9 of the claim petition, the Services Rules of 2011 as Annexure as per Rule 5(v) it is provided that that recruitment by promotion on the post of Additional Commissioner rural shall be made on the basis of merit such Chief Development Officer/Deputy Commissioner/Joint Commissioner who have completed three years service as such and total 24 years of service on the 1st day of year of the recruitment. The recruitment year is defined in definition clause Rule 3(j) which provides that year of recruitment means a period of 12 months commencing from 1st day of the calendar year. It is further submitted that admittedly the petitioner no. 1 was appointed on 12.11.1999 and the petitioner no. 2 was appointed on 24.02.1999 whereas the respondent no. 4 was appointed in 1991. Since the respondent no 4 was promoted as Additional Commissioner on 23.02.2023 taking into consideration his qualifying service more than 24 years and his eligibility whereas both the petitioners have not completed the requisite qualifying service on the year first day of recruitment i.e. July, 222. Thus by no stretch of imagination they cannot be considered to be eligible for the post in question, hence the petition is bereft of any merit. So far claim of the petitioners that they are senior to be respondent no. 4 is totally frivolous and cannot be sustainable in the eyes of law because even as per arithmetical reading, the petitioners were appointed in 1999 and the respondent no. 4 who was appointed in 1991. Apart from this, the petitioners belong to a different cadre and there is no unification of cadres and any integrated seniority is there. The reference of the division bench order as given by the petitioners is of no relevance and after enforcement of 2011 rules which was

not touched by the division bench, the claim of the petitioners cannot be accepted. The petitioners have filed the present claim petition just to harass the respondent no. 4 because he was retired prior to filing of the petition and hence, the petition is liable to be dismissed with cost.

12. On the basis of arguments of learned Counsels of the parties and perusal of the records, we are of the opinion that the petitioners were covered under the "Uttar Pradesh Rural Development Department Gazetted Officers Service Rules, 1991". There is a provision promotion to the post of Addl Commissioner from the post of the Deputy Development Commissioners after completion of 3 years of the service. But after Notification of "**Uttarakhand Provincial Development Service Rules, 2011**" by the Government of Uttarakhand, the members of the Uttarakhand Provincial Development Service, who are holding the post of the Chief Development Commissioner/Deputy commissioners/Joint Secretary for three years as such and total 24 years' service on the first day of the year of recruitment are eligible for the promotion. The relevant rule 5(5) is as under:

"Recruitment by promotion on the post of Additional Commissioner Rural Development shall be made on the basis of merit such Chief Development Officers / Deputy Commissioners/ Joint Secretary, who have completed 3 years of service as such and total 24 years service on the first day of the year of recruitment"

13. In view of the above provision, the promotion of the petitioners to the post of the Addl Commissioners under "**Uttarakhand Provincial Development Service Rules, 2011**" by the Government of Uttarakhand, is devoid of merits, so the petition is liable to be dismissed.

ORDER

The claim petition is hereby dismissed. No order as to costs.

A.S.RAWAT
VICE CHARMAN (A)

RAJENDRA SINGH
VICE CHARMAN (J)

DATED: OCTOBER 22, 2024
DEHRADUN
KNP