

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

Present: Hon'ble Mr. Ram Singh

----- Vice Chairman (J)

Hon'ble Mr. U.D.Chaube

-----Member (A)

**CLAIM PETITION NO. 07/NB/DB/2014**

1. Pramod Gangari, S/o Sri Mahadev Singh Gangari, Serving as Assistant Engineer, Rural Engineering Services, Division, Uttarkashi.
2. Nitin Pandey, S/o Sri G.C.Pandey, Serving as Assistant Engineer, Rural Engineering Services, Division Nainital.
3. Amit Bhartiya, S/o Sri R.R. Bhartiya, Serving as Assistant Engineer, P.M.G.S.Y., Didihat, District Pithoragarh.
4. Alla Diya, S/o Sri Masita Ali, Serving as Assistant Engineer, Rural Engineering Services, Division, Pithoragar.
5. Menal Gulati, W/o Sri Ankit Ashutosh Gulati, Serving as Assistant Engineer, Rural Engineering Services Headquarters at Dehradun.
6. (Deceased)

.....Petitioners

**VERSUS**

1. State of Uttarakhand through Secretary, Panchayati Raj & Rural Engineering Services, Government of Uttarakhand, Dehradun.
2. Chief Engineer (HOD), Rural Engineering Services, Government of Uttarakhand, Dehradun.
3. Devendra Prasad Joshi, Serving as Assistant Engineer, Office of Executive Engineer, Rural Engineering Services, Devlok Hotel Near Petrol Pump, Rudraprayag.
4. Anand Kumar Dhyani, Serving as Assistant Engineer, Office of Executive Engineer, Rural Engineering Services, Shashi Complex, Bypass Road, Ghansali, District New Tehri.

5. Devi Prasad Dhuandiyal, Serving as Assistant Engineer, Office of Executive Engineer, Rural Engineering Services, Shashi Complex Bye Pass Road, Ghanshali, District New Tehri.
6. Rajendra Chandra Mungali, Serving as Assistant Engineer, P.I.U.-2, Rural Engineering Services, P.M.G.S.Y. Kapkot, Durga Bhawan, Suraj Kund, Bageshwar.
7. Devendra Singh Lingwal, serving as Assistant Engineer, Office of Executive Engineer, Rural Engineering Services, Vikas Bhawan Pauri, District Pauri Garhwal.
8. Surendra Singh Rana, serving as Assistant Engineer, Rural Engineering Services, P.M.G.S.Y. Division, Karan Lodge, Opposite G.M.V.N. Badinath Road, Karanprayag, District Chamoli.
9. Lalit Chandra Pandey, Serving as Assistant Engineer, Office of Executive Engineer, Rural Engineering Services, Opposite R.T.O. Office, Roshnabad, Haridwar, District Haridwar.
10. Rajkumar Singh, Serving as Assistant Engineer, Office of Executive Engineer, Rural Engineering Services, Vikas Bhawan, Uttarkashi, District Uttarkashi.
11. Bhupal Singh Mehra, serving as Assistant Engineer, Office of Executive Engineer, Rural Engineering Services, Division Bhikyasain, District Almora.
12. Anil Kumar, Serving as Assistant Engineer, Office of Executive Engineer, Rural Engineering Services, Vikas Bhawan Bhimtal, Nainital.
13. Pankaj Kumar, Serving as Assistant Engineer, Office of Executive Engineer, Rural Engineering Services, Vikas Bhawan Rudrapur, Udham Singh Nagar.
14. Sanjay Bharti, Serving as Assistant Engineer, Office of Executive Engineer, Rural Engineering Services, Vikas Bhawan Rudrapur, District Udham Singh Nagar.
15. Kamlesh Kumar Joshi, Serving as Assistant Engineer, Office of Executive Engineer, Rural Engineering Services, Wood Kafal, Didihat, District Pithoragarh.
16. Sanjay Sharma, Serving as Assistant Engineer, Office of Executive Engineer, Rural Engineering Services, Vikas Bhawan, Almora.

17. Vinod Kumar Joshi, Serving as Assistant Engineer, Office of Executive Engineer, Rural Engineering Services, Tapovan Raod, Dehradun.

.....Respondents.

Present: Sri Alok Mehra, Ld. Counsel  
for the petitioners  
  
Sri V.P.Devrani, Ld. A.P.O.  
for the respondents No. 1 & 2  
  
Sri M.C.Pant, Ld. Counsel  
for the private respondents no. 5 & 9 to 17

### **JUDGMENT**

**DATED: AUGUST 10, 2016**

**(Hon'ble Mr. Ram Singh, Vice Chairman (J):**

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

*“i) To quash and set aside the impugned seniority list dated 30.10.2012 issued by respondent no. 1 (Annexure No.1 to the petition).*

*ii) To direct the respondent no. 1 to re-determine the inter-se seniority of promotees and direct recruitees appointed in the same recruitment year i.e. 2010-11 in terms of Rule 8 of the Uttarakhand Government Servants Seniority Rules, 2002.*

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

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

2. The brief facts giving rise to the petition are that the petitioners possess Bachelor's Degree in Civil Engineering from the different Government Colleges and they responded to the advertisement advertised by Public Service Commission in respect of the State

Engineering Service Examination 2007 by which vacancies in the three departments namely; Jal Sansthan, Minor Irrigation, Panchayati Raj Department and Rural Engineering Services were available. The vacancies were invited for the recruitment year 2006-07 as the advertisement was issued on 05.06.2007 and was published in Amar Ujala on 06.06.2007. The petitioners participated in the written examination and after being declared successful, they participated in the interview on 28.09.2010. On the basis of final selection on 14.02.2011, a recommendation of Public Service Commission was sent to the Government and they were substantively appointed on the posts of Assistant Engineer (Civil) by respondent no. 1 on 30.06.2011.

3. The service conditions of the petitioners are governed by the Uttarakhand Rural Engineering (Group B) Service Rules, 2006 (hereinafter referred to as the Recruitment Rules, 2006) and as per Rule 3(j) of the Recruitment Rules, 2006, "year of recruitment" has been described as a period of 12 months commencing from the first day of July of a calendar year. The petitioners were substantively appointed during the recruitment year 2010-11 and in compliance of the appointment order, the petitioners joined their duties as Assistant Engineer in the department. During the recruitment year 2010-11, the answering respondents no. 3 to 17 were also promoted against the vacancies of the recruitment year 2010-11. As per the relevant provision of the Recruitment Rules, 2006 and as per the Uttarakhand Government Servants Seniority Rules, 2002 as amended from time to time, a tentative seniority list of directly recruited and promotees Assistant Engineers was issued on 25.05.2012. The Recruitment Rules, 2006 requires that in a particular recruitment year, the recruitment should be made by a common order from two sources i.e. direct & by promotion against 50-50% quota available to them and their seniority is required to be fixed in a cyclic order, but the respondent no.1 in the tentative seniority list dated 25.5.2012 placed the petitioners at the bottom below the private respondents, who were promoted separately

in the same recruitment year. After circulation of the tentative seniority list by the respondent no. 2 on 04.06.2012, petitioners submitted their objections and contended that the persons appointed from different sources in the same recruitment year be placed in a cyclic order in the seniority list and a request was made to put the things in order. The final seniority list was issued on 30.10.2012 in which the recruitment year of the petitioners was incorrectly described as the year of 2011-12. The final seniority list was served upon the petitioners in the third week of December 2012. They submitted their representations with a request to reconsider the matter in the light of applicable rules and to correct the final seniority list on the basis of date of substantive appointment order irrespective of their date of joining but this legal position was ignored by the respondent no. 1 and no decision whatsoever has been taken till now on the representation of the petitioners.

4. The petitioners have contended that the seniority is a statutory right of a government employee, which is governed by the statute. The State Government or Head of Department cannot evolve a different method for determining seniority, which is contrary to the statute, which provides that in case where appointments during the same recruitment year are made by direct recruitment and also by promotion, the quota prescribed for these two sources is 50% each and the persons appointed from the two sources shall be placed in the seniority list in a cyclic order, in which the first name would be that of a promotee. This statutory provision cannot be violated by the Government under any circumstances. The explanation given in the final seniority list dated 30.10.2012, that joining of petitioners was in a subsequent recruitment year, is not tenable in the eye of law because for the purpose of seniority, the date of substantive appointment is relevant. The petitioners filed a writ petition before the Hon'ble High Court of Uttarakhand at Nainital for quashing of the impugned seniority list dated 30.10.2012. The Hon'ble High Court was pleased to dispose

of the writ petition on the ground that petitioners first should approach the Tribunal for the same. Hence this petition.

5. The petitioners have also taken the ground that Rule 21 of the Recruitment Rules, 2006, which deals with seniority, provides, that seniority shall be determined in accordance with the Uttarakhand Government Servants Seniority Rules, 2002 as amended from time to time. The petitioners were substantively appointed during the recruitment year 2010-11 on the post of Assistant Engineers and private respondents No. 3 to 17 were also promoted against the vacancies of 2010-11 as Assistant Engineer in the same recruitment year, but they were wrongly placed above the petitioners. According to the petitioners, the respondent no. 1 has ignored this fact that date of passing of "order of substantive appointment" was to be considered for the purpose of seniority and not the date of joining in terms of Seniority Rules applicable in State of Uttarakhand. Accordingly, the petitioners have asked for the relief to quash the seniority list dated 30.10.2012 (Annexure-1) issued by the respondent no. 1 and to direct the respondent no.1 to re-determine the inter-se seniority of promotees and direct recruitees in accordance with relevant Rule 8 of the Uttarakhand Government Servants Seniority Rules, 2002 alongwith any other relief, with cost of the petition.

6. The respondents no. 1 & 2 as well as private respondents resisted the claim of the petitioners, inter-alia on the ground, that appointment of the petitioners was not made in the year 2010-11. The final seniority list has been prepared correctly and date of joining is having a direct nexus in respect of determination of seniority between the petitioners and private respondents as the date of substantive appointments. The selection year of the petitioners was 2011-12 as they entered into service after 1<sup>st</sup> July 2011, whereas, the selection year of the private respondents was 2010-11. Although, the appointment letters of the petitioners were issued on 30.06.2011 but they joined in a

subsequent year which starts from 1<sup>st</sup> July 2011. They were entitled to count their seniority from the date when they joined the services and became the members of the service and they have no right to claim any seniority when they did not even take birth in the cadre and the petition is liable to be dismissed on this count alone. The respondents have also contended that the directly appointed persons joined their duties in the year 2011-12 on 07.07.2011, 08.07.2011 and 11.07.2011 respectively, whereas, all the promotee officers joined their duties on 08.03.2011. Accordingly, they were rightly shown above in the seniority list. The petitioners cannot claim seniority without being the member of the services. The seniority has rightly been fixed as per the relevant Rules.

7. We have heard learned counsel for the parties and perused the record of file and also entire record, summoned from the department.

8. The crux of the matter for the decision of seniority in this case is the removal of confusion between the expression of “recruitment year” and the “selection year”. The petitioners have come up on the basis that their appointment order was issued on 30.06.2011 in the recruitment year of 2010-11 hence, irrespective of their joining, they should be treated as substantively appointed in the year 2010-11. Although, they have pleaded that they were recruited against the vacancies of 2006-07, when the vacancies were advertised, hence, they should be kept en-bloc senior to the promotee officers treating them selected in 2006-07. This contention of the petitioners cannot be accepted in view of the fact that the selection process might be started in the year 2006-07, obviously because the vacancies were created in that year, but the selection was finally made in the year 2010-11, hence, they cannot claim seniority from the year 2006-07.

9. The respondent no. 1 has fixed their seniority on the basis of their date of joining in service, which was obviously completed after 1<sup>st</sup> July 2011. Hence following the analogy, “appointment from the date of joining”, the petitioners were pushed down as appointed in the year

2011-12, whereas, their appointment letters were issued on 30.06.2011 which falls in the recruitment year 2010-11.

10. The relevant Recruitment year for the petitioners and the private respondents is 2010-11 as per the Uttarakhand Rural Engineering (Group-B) Services Rules, 2006 (hereinafter referred to as Recruitment Rules, 2006). Rule 3(j) of the said Rules defines the year of recruitment, which reads as under:

*“3(j)- “Year of recruitment” means the period of twelve months commencing from the first day of July of a calendar year.”*

Accordingly, for the purpose of recruitment and seniority, the period starting from first day of July to 30<sup>th</sup> June of a particular year, is to be counted as the “year of recruitment”. There is no doubt that the posts of Assistant Engineers are to be filled in 50-50 % ratio from the direct recruits and the promotee officers and the procedure for recruitment has been prescribed in Rule 14 to 17 of the said Rules. Rule 15 prescribes the procedure for direct recruitment, Rule 16 prescribes the procedure for recruitment by promotion and Rule 17 prescribes the procedure for combined select list. Rule 17 reads as follows:

*“17. Combined Select List—If in any year of recruitment, appointments are made both by direct recruitment and by promotion, a combined select list shall be prepared by taking the names of candidates from the relevant lists, in such manner that the prescribed percentage is maintained, the first name in the list being of the person appointed by promotion.”*

Hence, the Rule-17 casts a duty upon the government or appointing authority to prepare a combined select list of direct recruits and of promotees and appointment should be made by taking

names from the relevant list in such manner that the prescribed percentage is maintained, the first name in the list being of the person appointed by promotion. The source of recruitment has been prescribed in Rule 5 which is 50 percent by direct and 50 percent by promotion. Rule 17 makes it obligatory on the government that while appointing on the post of Assistant Engineers, the recruitment from direct as well as promotee officers should be made at one and the same time in a cyclic order in a particular recruitment year but deviating from this Rule, the appointing authority issued separate list for promotees and direct recruits. Hence, it is apparent that the foundation of initial seniority was laid in contravention of Rule 17, by the appointing authority by issuing the appointment letters of promotees on 08.03.2011(Annexure-4). They should have waited for the recommendations of the Commission of the direct recruits. Had the Rule 17 been complied with in its letter and spirit, the dispute would have never been arisen. It is also revealed that final result of selection of direct recruits was declared by the Commission on 14.02.2011, prior to the date of appointment of promotee officers, and after that the government was having knowledge that once the result has been declared in February, 2011, hurry should have not been made in giving appointment to the promotee officers on 8.3.2011. After receipt of the recommendations of the Commission, the matter was kept pending for couple of months till last date of the year of selection 2010-11. The written statement submitted by the respondents itself shows that select list of direct recruits was received on 5.04.2011 in the recruitment year 2010-11. Although, some other correspondence was made on 29.08.2012 but that is not relevant for this purpose because it was done in the latter year. When the list of direct recruits was received by the government on 5.4.2011, the delay in issuing the appointment letters was not justified and surprisingly, the appointment of the direct recruits was pending for almost three months and it was issued only on the last date of recruitment year i.e. 30.06.2011 leaving no opportunity for the

appointees to join their services in the recruitment year in which they were selected.

11. The main contention of the respondents has been that although the appointment letters of the petitioners for substantive appointment was issued on 30.06.2011 in the recruitment year 2010-11, but as they joined their duties after 7, 8 or 9 days later, which falls in the next year of recruitment, hence, according to them, they cannot claim seniority from the date of issuance of appointment order. This contention of the respondents cannot be and should not be accepted at all because the appointing authority by its unjustified conduct, cannot debar the petitioners from their legitimate claim. Learned counsel for the petitioners has argued that for the purpose of seniority, the relevant date is the date of “substantive appointment” and not the date of joining and he has submitted that as per the seniority norms as also laid down by the Hon’ble Apex Court, the seniority is to be reckoned from the date of substantive appointment and the date of joining is of no relevance for determination of seniority. For determination of seniority, the relevant Rule is Rule 21 of the Uttaranchal Rural Engineering (Group-B) Services Rules, 2006, which says that the seniority of the persons “substantively appointed” to the post shall be determined in accordance with the Uttaranchal Government Servants Seniority Rules, 2002 as amended from time to time.

12. The substantive appointment has been defined under Section 3(i) of the above Recruitment Rules of 2006. Rule 3(i) of the said Rules reads as under:

*“3(i) “Substantive appointment” means an appointment not being an adhoc appointment, on a post in the cadre of the service, made after selection in accordance with the rules and, if there were no rules, in accordance with the procedure*

*prescribed for the time being, by executive instructions issued by the Government.”*

In the Uttaranchal Government Servant Seniority Rules, 2002, the substantive appointment has also been defined in Rule 4(h), which reads as under:

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

From the reading of the above rules, it is clear that except adhoc appointment on a post in the cadre of service, if appointment is made in accordance with service rules or an executive instructions, the “date of appointment order” shall be treated as the date of substantive appointment. The definition of the substantive appointment in both the rules is almost same. Undoubtedly, the appointment order of the petitioners was issued on 30.06.2011 in the year 2010-11 and that shall be treated as their “date of substantive appointment”, in consequence of which the date of joining may be different for different persons, but it does not affect the seniority. It can be clarified by an example that when by a selection process, a list is prepared on the basis of merit placing the persons in their order of merit and on the basis of that appointment order, joining of those persons, shall be different unless a particular date is fixed for joining. The appointment order dated 30.06.2011 did not prescribe any particular date of joining; it was made effective immediately with the date of issuance of order. Learned counsel for the respondents has argued that as they have not joined their duties in the same recruitment year 2010-11, hence, they cannot be treated as appointed in the year 2010-11 as 30<sup>th</sup> June was the last date of the recruitment year. Such argument cannot be accepted because when the direct recruits were selected five months earlier and

recommendations of the Commission were made three months before the end of recruitment year why their appointments were so delayed by the appointing authority till the last date of year for the reasons best known to them. How such persons could join their duties in the same recruitment year when the order was issued on last date. The argument of the respondents cannot be accepted even for a moment because if it is allowed to prevail then there shall be an inter-se dispute even between the direct recruits also because even after being appointed on one date, the persons residing in different places of the Country will receive information of appointment on different dates and after receiving information of appointment letters, they might have joined their duties not on the same date or as per chronological order of their merit list and accordingly their seniority will be disturbed, which is not justified and we are of the view that the date of appointment order of the petitioners i.e. 30.6.2011 is the date of substantive appointment and date of joining which was 7 to 9 days later has no relevance because of the reasons that information to the candidates might have reached on different dates and joining of service cannot disturb the merit list and affect the seniority of the persons appointed in the same recruitment year i.e. 2010-11. Hence the argument and the reasons given by the respondents, that in finalizing the seniority list the date of joining is relevant, is wrong, unjustified and is against the provisions of statute and respondents cannot be allowed to make its own interpretation contrary to the statutory rules.

13. The date of substantive appointment cannot be reckoned from the date of occurrence of vacancies. Hence this contention of the petitioners cannot be accepted that the petitioners were recruited against the vacancies of the year 2006-07, hence they be given seniority since 2006-07. As held by the Hon'ble Apex Court in the case of **State of Uttaranchal Vs. Dinesh Kumar Sharma, (2007)1 Supreme Court Cases, 683**, the Hon'bel Apex Court has held that seniority should be reckoned only from the date of substantive appointment to the vacant

post and under the Rules and not retrospectively from the date of occurrence of vacancy.

14. We are of the view that the appointing authority has erred in considering the date of joining as the relevant date of substantive appointment in the services. The “substantive appointment” and date of joining are two different factors. In this case, substantive appointment of the petitioners were made on 30.06.2011 when the order was issued for appointment and hence, they shall be deemed to be substantively appointed in the year 2010-11. The interpretation on the basis of the date of joining given by the appointing authority is totally wrong and against the provisions of law. Furthermore, we are of the view that the appointment of promotee officers, which was made in the recruitment year 2010-11 should not have been made unless the list of the direct recruits were made available to them. In view of Rule 17 of the Uttaranchal Rural Engineering (Group-B) Services Rules, 2006, it was obligatory on the appointing authority to make a combined list in a cyclic order mentioning the names of the persons, first being appointed by promotion and second by direct recruits and third again a promotee and so on and as per Rule 8 of the Seniority Rules of 2002, the seniority has to be determined from the date of substantive appointment as sub-rule 3 specifically provides that where the appointments are made both by promotion and direct recruitment on the result of any one selection the seniority of promotees vis-à-vis direct recruits shall be determined in a cyclic order the first being a promotee as far as may be, in accordance with the quota prescribed for the two sources. The quota has been prescribed in the service rules as 50-50%. Hence, the seniority was to be finalized in a cyclic order between promotees and direct recruits, but respondent no. 1 did it against the rules.

15. Learned counsel for the private respondents has also argued that the method of selection and appointment as prescribed in the Recruitment Rules of 2006 are such that while issuing the appointment

to the service, the direct recruits has to be first medically examined by the medical board, whereas, the medical certificate of fitness was not required for the promote officers. According to respondents, without fulfilling all these formalities, the petitioners cannot be appointed to the service and their appointment was not as per the Rules. We are not inclined to accept the argument of the learned counsel for the respondents because of the reasons that being medically fit, is a precondition to continue in the service. No time was left by the appointing authority to fulfill these all requirements. Furthermore, appointing authority was having sufficient time to fulfill these requirements and get medical fitness test after the receipt of the select list in April 2011. This lapse does not shift the date of substantive appointment to next year. Furthermore, if the contention of the learned counsel for the private respondents is accepted then the contention of the learned counsel for the petitioners is also having equal weight which says that the appointment of the promotee officers in the month of March 2011 is against the provisions of Rule 17 which prescribes that a combined select list shall be prepared by taking the names of the candidates from the relevant list i.e. from the direct and promotee officers, which was not complied with. If the appointment of direct officers is not legal in view of Rule 13 then the appointment of promotee officers is also illegal in view of Rule 17. All these lapses on the part of the appointing authority cannot be interpreted to disadvantage the petitioners alone and their order of appointment cannot be treated as invalid, neither it can be presumed to have been issued in the year 2011-12.

16. Finally, we conclude that the petitioners and private respondents were appointed against the recruitment year 2010-11. While finalizing the seniority list, the respondent has wrongly shown that the petitioners were appointed in the recruitment year 2011-12 and the seniority of the petitioners has been wrongly fixed in the impugned seniority list dated 30.10.2012 issued by the respondent no.1.

Accordingly, this seniority list should be quashed and be set aside with the direction to redraw the seniority list in accordance with Rule 8 of the Uttarakhand Government Servants Seniority Rules, 2002 and Rule 21 of the said relevant Recruitment Rules of 2006. The claim petition deserves to be allowed accordingly.

**ORDER**

The claim petition is allowed. The final seniority list dated 30.10.2012 issued by the respondent no. 1 (Annexure-1 to the petition) is hereby quashed and set aside. The respondent no.1 is directed to redraw the seniority list of the petitioners vis-à-vis private respondents in accordance with Rule-8 of the Uttarakhand Government Servants Seniority Rules, 2002 and Rule 21 of the Uttaranchal Rural Engineering (Group B) Service Rules, 2006 as discussed above treating that the petitioners and private respondents had been appointed in the recruitment year 2010-11, within four months from the date of presentation of order to respondent no. 1. No order as to costs.

Sd/-

**(U.D.CHAUBE)**  
MEMBER (A)

Sd/-

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

*DATE: AUGUST 10, 2016*  
*NAINITAL*

*KNP*