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. 24/NB/DB/2013

Devki Nandan Joshi, S/o Sri Maya Dutt Joshi, R/o Rakana Tehsil & District Pithoragarh.

……Petitioner

VERSUS

1. State of Uttarakhand through Secretary, Revenue Department, Government of Uttarakhand, Dehradun.
2. Board of Revenue, Uttarakhand, Dehradun through its Secretary.
3. Uttarakhand Public Service Commission, Gurukul Kangri, Haridwar through its Secretary.
4. Sri Narayan Singh Jeena, Serving as Tehsildar Someshwar, District Almora.
5. Sri Padam Singh Mehra, Serving as Tehsildar, Bageshwar, District Bageshwar.
6. Sher Singh Airora, Serving as Tehsildar, Almora, District Almora.
7. Bachi Ram, Serving as Tehsildar, Almora, presently at Patwari, Training School, Almora.
8. Sri Pan Singh Karki, Retired Tehsildar, R/o Village & P.O. Loadh Almora, District Almora.
9. Sri Lokmani Bhatt, Serving as Tehsildar, Tehsil Pithoragarh, District Pithoragarh.

…….Respondents

Present: Sri D.S.Mehta, Ld. Counsel
for the petitioner.
Sri V.P. Devrani, Ld. A.P.O.
for the Respondents No. 1 & 2
None for the respondents no. 3 to 9

JUDGMENT

DATED: OCTOBER 06, 2016

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

1. The petitioner has filed this claim petition to set aside/quash the impugned rejection order dated 13.06.2013 passed by the respondent no. 2 and further to direct the respondents to promote him to the post of Naib Tehsildar from the date of promotion of his juniors along with all consequential benefits.

2. The facts as narrated in the petition are that the petitioner was appointed as Patwari on 12.07.1975, whereas private respondents were appointed in 1977. The petitioner was promoted to the post of Forest Panchayat Inspector on 01.10.1993, whereas, the respondents were promoted later on. The post of Forest Panchayat Inspector is the feeding post for promotion to the post of Peshkar (now re-designated as Naib Tehsildar). In the departmental seniority list of Forest Panchayat Inspector, the petitioner ranked senior to the respondents no. 4 to 9 (Annexure: 4). The grievance of the petitioner is that the persons junior and less meritorious to him were promoted from the post of Forest Panchayat Inspector to the post of Peshkar (later on re-designated as Naib Tehsildar) by means of the order dated 15.01.2009. Thereafter, again in February, 2013, some more juniors were also promoted to the post of Naib Tehsidar. The petitioner made several representations to promote him, which were finally rejected by the respondent no. 2 vide order dated 13.06.2013. Hence this petition.

3. The petitioner has also submitted that in view of his seniority position, he was also allowed adhoc promotion to the

post of Naib Tehsildar on 25.09.2002 (Annexure:3) which was for three months and the same was extended from time to time and as such, he was allowed to work till 2007. The petitioner was superannuated from service on 31.01.2013, but till his retirement, he was not substantively promoted to the post of Naib Tehsildar, even if his juniors were considered and promoted for the same.

4. It has also been contended that the post of Forest Panchayat Inspector is a 100% promotional post from Patwari and being senior on the post of Patwari, he was senior than the private respondents, but for the promotion on the post of Naib Tehsildar, his juniors (private respondents) were promoted.

5. The petition was contested by the respondents no. 1 & 2, whereas, none has appeared on behalf of respondents no. 3 to 9. The respondents no. 1 & 2 in their Counter Affidavit has submitted that the promotional exercise for the post of Peshkar (later on re-designated as Naib Tehsildar) was taken up as per Uttar Pradesh Adhinasth Rajswa Karyapalak (Peshkar) Sewa Niyamawali, 1983 (*as amended in 1994*), the promotional exercise was taken by the DPC of Public Service Commission. Finally, the committee on 22.12.2008 did not find the petitioner eligible for promotion. The criteria for promotion as per Rules, was solely on the basis of merit and not seniority. Hence, as per the recommendations of the Commission, the promotion from the post of Forest Panchayat Inspector to the post of Naib Tehsildar was made on 15.01.2009. Further in the year 2013, a promotional exercise on adhoc basis for the posts of Naib Tehsildar was taken, but prior to it, the petitioner had superannuated on 13.01.2013. The criteria for promotion was later on amended in February, 2009 and when in 2013, adhoc promotion for the post of Naib Tehsildar was taken up, the petitioner was not in service. The respondents

have denied the fact that in 2012 any promotion for the post of Naib Tehsildar was made. The respondents have contested the petition solely on the ground that the petitioner was considered for promotion as per Rules and was not found fit, hence, the promotion was not given to him. The petition deserves to be dismissed.

6. Rejoinder affidavit has also been filed on behalf of petitioner reiterating the facts as have been stated in the petition and denied the averments made by the respondents.

7. We have heard learned counsel for the petitioner as well as learned A.P.O. for the respondents. We have also perused the record produced by the petitioner as well as respondents and we also perused the record of DPC summoned by the court and submitted by the respondents.

8. The respondents have nowhere denied this fact that on the post of Forest Panchayat Inspector, the petitioner was senior to the other private respondents. The concerned Rule of the Uttar Pradesh Adhinasth Rajswa Karyapalak (Peshkar) Sewa Niyamawali, 1983 as amended in 1994 by the government of Uttar Pradesh is Rule 5, sub rule-(2) of the said Rules which was amended in 1994 and reads as follows:

स्तम्भ– एक वर्तमान खण्ड	स्तम्भ– दो एतद् द्वारा प्रतिस्थापित खण्ड
(एक) कुल रिक्तियों की एक तिहाई रिक्तियॉ जिला अल्मोड़ा, पिथौरागढ़, गढ़वाल, चमोली, टिहरी गढ़वाल, उत्तरकाशी एवं नैनीताल की पर्वतीय पट्टियों और जिला देहरादून के परगना जौनसार भावर में नियुक्त ऐसे सुपरवाइजर,	(एक) कुल रिक्तियों की एक तिहाई रिक्तियॉ जिला अल्मोड़ा, पिथौरागढ़, गढ़वाल, चमोली, टिहरी गढ़वाल, उत्तरकाशी, जिला नैनीताल की पर्वतीय पट्टियों और जिला देहरादून के परगना जौनसार भावर में नियुक्त ऐसे सुपरवाइजर, कानूनगो और वन पंचायत

कानूनगो में से जिन्होंने चयन के वर्ष की पहली जनवरी को मूल पद पर मौलिक और/या स्थानापन्न रूप में कुल मिलाकर कम से कम सात वर्ष की सेवा की हो, योग्यता के आधार पर प्रोन्नति द्वारा भरी जायेगी।	निरीक्षकों में से जिन्होंने भर्ती के वर्ष जिसमें चयन की जाय, की पहली जुलाई को मूल पद पर मौलिक और /या स्थानापन्न रूप में कुल मिलाकर सात वर्ष की सेवा की हो, पदोन्नति द्वारा भरी जायेगी।

After creation of State of Uttarakhand, The Uttarakhand Adhinasth Rajswa Karyapalak (Naib Tehsildar) Sewa Niyamawali, 2009 (Annexure: R-2) was enacted on 13.2.2009 in which, the source of recruitment has been mentioned under Rule 5, which reads as under:

''5. भर्ती का श्रोत–

सेवा में पदों पर भर्ती निम्नलिखित श्रोतों से की जायेगीः–

(1) पचास प्रतिशत पद आयोग द्वारा संचालित प्रतियोगिता परीक्षा के आधार पर सीधी भर्ती द्वारा,

(2)(क) चालीस प्रतिशत पद मौलिक रूप से नियुक्त रासस्व निरीक्षकों में से जिन्होंने भर्ती के वर्ष के प्रथम दिवस को इस रूप में तीन वर्ष की सेवा पूरी कर ली हो, आयोग के माध्यम से पदोन्नति द्वारा;

(ख) दस प्रतिशत पद मौलिक रूप से नियुक्त रजिस्ट्रार कानूनगो में से, जिन्होंने भर्ती के वर्ष के प्रथम दिवस को इस रूप में पांच वर्ष की सेवा पूरी कर ली हो, आयोग के माध्यम से पदोन्नति द्वाराः

परन्तु यदि पदोन्नति के लिये प्रर्याप्त संख्या में पात्र या उपयुक्त रजिस्ट्रार कानूनगो उपलब्ध न हो तो पद उपनियम (2) के खण्ड (क) के अधीन पदोन्नति द्वारा भरा जा सकता है।''

Rule-5, sub-rule 2 of the said Rules was amended in November, 2009 and further amended in 2010 w.e.f. 28.1.2011 by which, the quota for recruitment was modified, which reads as under:

नियम 5 का संशोधन

2. उत्तराखण्ड अधीनस्थ राजस्व कार्यपालक (नायब तहसीलदार) सेवा नियमावली, 2009 में नीचे स्तम्भ–1 में दिये गये वर्तमान नियम 5 के उपनियम (2) के स्थान पर स्तम्भ– 2 में दिया गया उप नियम रख दिया जायेगा, अर्थात;

स्तम्भ– 1 वर्तमान उपनियम	स्तम्भ– 2 एतद् द्वारा प्रतिस्थापित उपनियम
(2)(क) चालीस प्रतिशत पद मौलिक रूप से नियुक्त रासस्व निरीक्षक में से जिन्होंने भर्ती के वर्ष के प्रथम दिवस को इस रूप में तीन वर्ष की सेवा पूरी कर ली हो, आयोग के माध्यम से पदोन्नति द्वारा;	(2)(क) तीस प्रतिशत पद मौलिक रूप से नियुक्त रासस्व निरीक्षक में से जिन्होंने भर्ती के वर्ष के प्रथम दिवस को इस रूप में तीन वर्ष की सेवा पूर्ण कर ली हो, आयोग के माध्यम से पदोन्नति द्वारा;
(ख) दस प्रतिशत पद मौलिक रूप से नियुक्त रजिस्ट्रार कानूनगो में से, जिन्होंने भर्ती के वर्ष के प्रथम दिवस को इस रूप में पांच वर्ष की सेवा पूरी कर ली हो, आयोग के माध्यम से पदोन्नति द्वाराः परन्तु यदि पदोन्नति के लिये प्रर्याप्त संख्या में पात्र या उपयुक्त रजिस्ट्रार कानूनगो उपलब्ध न हो तो पद उपनियम (2) के खण्ड (क) के अधीन पदोन्नति द्वारा भरा जा सकता है।	(ख) दस प्रतिशत पद मौलिक रूप से नियुक्त रजिस्ट्रार कानूनगो में से, जिन्होंने भर्ती के वर्ष के प्रथम दिवस को इस रूप में पांच वर्ष की सेवा पूरी कर ली हो, आयोग के माध्यम से पदोन्नति द्वारा; (ग) दस प्रतिशत पद मौलिक रूप से नियुक्त वन पंचायत निरीक्षकों में से जिन्होंने भर्ती के प्रथम दिवस की इस रूप में तीन वर्ष की सेवा पूरी कर ली हो आयोग के माध्यम से पदोन्नति द्वारा; परन्तु यह कि यदि पदोन्नति के लिए प्रर्याप्त संख्या में पात्र या उपयुक्त रजिस्ट्रार कानूनगो अथवा वन पंचायत निरीक्षक उपलब्ध न हो तो पद उपनियम (2) के खण्ड (क) के अधीन पदोन्नति द्वारा भरा जा सकता है।

9. Learned counsel for the petitioner has argued that initially for the post of Peshkar/Naib Tehsildar, Uttar Pradesh Adhinasth Rajswa Karyapalak (Peshkar) Sewa Niyamawali, 1983 was the governing law in which, the post of Peshkar (redesignated as Naib Tehsildar) was mentioned under Rule 7, whereas, source of recruitment was mentioned under Rule 5 of the said Rules of 1983, which reads as under:

''5. भर्ती का श्रोतः– सेवा में भर्ती निम्नलिखित स्रोतों से की जायेगी–

(क) कुल रिक्तियों की एक–तिहाई रिक्तियां जिला अल्मोड़ा, पिथौरागढ़, गढ़वाल, चमोली, टिहरी–गढ़वाल, उत्तरकाशी एवं जिला नैनीताल की पर्वतीय पट्टियों और जिला देहरादून के परगना जौनसार बावर में नियुक्त ऐसे सुपरवाइजर कानूनगो में से जिन्होंने चयन के वर्ष की पहली जनवरी को मूल पद पर मौलिक और/या स्थानापन्न रूप में कुल मिलाकर कम से कम सात वर्ष की सेवा की हो, योग्यता के आधार पर प्रोन्नति द्वारा भरी जायेगी।, औरः

(दो)शेष दो–तिहाई रिक्तियां सीधी भर्ती द्वारा।''

10. After going through all the concerned laws amended from time to time, it is clear that initially under Rule-5 of the Uttar Pradesh Adhinasth Rajswa Karyapalak (Peshkar) Sewa Niyamawali, 1983, for the post of Peshkar (Naib Tehsildar), the feeding cadre was supervisor Kanoongo of hill area, who has completed 7 years of service and criteria of promotion was **purely on merit**. Whereas, two third posts of Peshkar (Naib Tehsildar) were to be filled up by direct recruitment. The said Rules of 1983 was amended on 14.11.1994 by which Rule-5 was amended and in the amended Rule, in the feeding cadre Forest Panchayat Inspectors were included and the criteria of promotion purely on the basis of merit was removed because the words ''योग्यता के आधार पर प्रोन्नति द्वारा भरी जायेगी'' did not find place in the amended clause and it was substituted by the words ''प्रोन्नति द्वारा भरी जायेगी'' Hence, the criteria for promotion on the basis of merit was deleted in 1994. These Rules were made effective in the State of Uttarakhand in view of U.P. Reorganization Act till the enactment of Uttarakhand Adhinasth Rajswa Karyapalak (Naib Tehsildar) Sewa Niyamawali, 2009 on 13.2.2009, but Rules of 2009 were not relevant for the time when promotions were made in 2008.

11. According to the Rule 5 of the said Rules of 2009, 50% Naib Tehsildar were to be filled up by direct recruitment, 40% were to be filled up from promotion from the Revenue Inspectors, who

have completed three years of service, 10% were to be filled up from Registrar Kanoongo, who have completed five years of service by way of promotion. These Rules were further amended w.e.f. 28.1.2011 by which the Van Panchayat Nirikshak were also included to the extent of 10% of the vacancies having three years of experience on that post and criteria was **by way of promotion** and not by way of promotion purely on the basis of merit.

12. Rule 4 of the Uttaranchal Governments Servants (Criterion for Recruitment by Promotion) Rules, 2004, reads as under:

> *"4.* ***Criterion for Recruitment by Promotion****—Recruitment by promotion to the post of Head of Department, to a post just one rank below the Head of Department and to a post in any Service carrying the pay scale the maximum of which is Rs. 18,300 or above shall be made on the basis of merit, and to the rest of the posts in all service to be filled by promotion, including a post where promotion is made from a Non-gazetted post to a Gazetted post or from one Service to another Service, shall be made on the basis of seniority to the rejection of the unfit."*

Hence, as per Rule 4 of the said Rules of 2004, the seniority cannot be ignored.

13. Referring to all concerned Rules, learned counsel for the petitioner has argued that when the criteria for promotion is specifically mentioned, purely as merit then the seniority will loose its importance, but when merit is not the only criteria then seniority cannot be ignored. We agree with this argument. Learned counsel for the respondents has argued that as per the relevant rules of that time, the sole criteria for promotion to the post of Peshkar (redesignated as Naib Tehsildar) was merit as per the Rules applicable at that time, when the DPC was held in the year

2008. We do not agree with this argument because initially in the year 1983, the criteria for promotion for Peshkar (Naib Tehsildar) as per Rule-5 was purely on merit because the words ''योग्यता के आधार पर प्रोन्नति द्वारा भरी जायेगी'' were written but this Rule was amended in 1994 w.e.f. 14.11.1994 and the words ''योग्यता के आधार पर प्रोन्नति द्वारा भरी जायेगी were deleted and simply the words ''प्रोन्नति द्वारा भरी जायेगी'' were written. Hence, after 14.11.1994, the criteria for promotion, was not solely on merit and criteria of seniority subject to the rejection of unfit, should have been followed.

14. The facts admitted by both the parties clarify that the petitioner was senior to the respondents no. 4 to 9 in the merit on the post of Forest Panchayat Inspector as he ranked at sl. No. 8 whereas, other ranked junior to him (as per Annexure: 4). Annexure: R-3 filed by the respondents clarifies that the DPC before sending its recommendations to the government vide letter dated 11.12.2008 adopted the criteria of merit in its meeting for selection and the seniority was totally ignored. We have also summoned the record of DPC. The agenda of the promotional committee held on 22.10.2008 also clarifies that the criteria for promotion was taken only on the basis of merit and applying the principle laid down by the commission, the petitioner's ACRs for the relevant years were considered. The ACRs of the petitioner were evaluated as per the circular of Public Service Commission. The record clarifies that none of the ACRs of the petitioner for the relevant years was adverse, and it was 'satisfactory', 'good' and 'very good' which were evaluated by marking the numbers. Applying the criteria for promotion only on the basis of merit, the recommendations was sent to the Government and accordingly, the promotion order dated 15.01.2009 was issued and the petitioner, even being senior to the private respondents, was

denied promotion and his seniority to the post of feeding cadre i.e. Forest Panchayat Inspector was totally ignored. Assuming and applying the formula that criteria for promotion is solely on the basis of merit, decision was taken, whereas, Rule-5 initially enacted in 1983, which prescribed the criteria for promotion solely on merit, was amended in 1994 before the date when DPC was held. Hence, the seniority of the petitioner was wrongly ignored.

15. Learned counsel for the petitioner has argued that when criteria is not solely on merit then the criteria of seniority subject to rejection of unfit should have been adopted. Whereas, in his case, the provisions of the concerned Rules were ignored and on the basis of criteria of merit, the petitioner was denied promotion ignoring his seniority. Hence, Court is of the view that the impugned order of promotion dated 15.01.2009 in which the petitioner was denied promotion ignoring his seniority, was not as per the provisions of law.

16. Learned counsel for the petitioner has argued that he submitted representations from time to time but the same were not considered and it was cursorily rejected vide impugned order dated 13.06.2013 and his matter should have been considered even if he had retired and he should have been granted promotion to which he was denied against the Rules. The petitioner claims for promotion to the post of Naib Tehsildar from the date of promotion of his juniors. We agree with the argument of learned counsel for the petitioner that the petitioner's claim for promotion to the post of Naib Tehsildar from the date of promotion of his juniors must be reconsidered along with all consequential benefits. Hence, the impugned order dated 13.6.2013 deserves to be quashed and set aside.

17. Learned counsel for the respondents has argued that since the petitioner has retired from service on 31.1.2013, hence, his claim cannot be considered.

18. We are of the view that the petitioner cannot be denied his legitimate claim, which accrued to him in the year 2009 only on the basis of his superannuation and if his case is found fit for promotion as per Rules, he can be awarded notional promotion with all consequential benefits. Accordingly, the petition deserves to be allowed.

ORDER

The claim petition is allowed. The impugned order dated 13.06.2013 passed by the respondent no. 2, rejecting the representation of the petitioner, is hereby set aside. The respondents are directed to consider the claim of the petitioner for promotion to the post of Naib Tehsildar from the date of promotion of his juniors and to grant all consequential benefits, if he is found fit for promotion. His representation should be reconsidered accordingly as per rules within a period of six months from the date of production of certified copy of this order. No order as to costs.

(U.D.CHAUBE)
MEMBER (A)

(RAM SINGH)
VICE CHAIRMAN (J)

DATE: OCTOBER 06, 2016
NAINITAL

KNP