

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

Present: Hon'ble Mr. Ram Singh

----- Vice Chairman (J)

Hon'ble Mr. D.K.Kotia

-----Vice Chairman (A)

CLAIM PETITION NO. 18/ DB/2016

Saurabh Kumar Chaturvedi, S/o Sri V.S. Chaturvedi, aged about 57 years, presently posted as Divisional Forest Development Manager (HQ), Uttarakhand Forest Development Corporation, Dehradun.

.....Petitioner

Versus

1. State of Uttarakhand through Principal Secretary, Forest, Civil Secretariat, Dehradun.
2. Managing Director, Uttarakhand Forest Development Corporation, Curzon Road, Dehradun.
3. Shri G.C. Pant, Regional Manager (Officiating), Western Region, C/o Managing Director, Uttarakhand Forest Development Corporation Curzon Road, Dehradun.
4. Shri M.P.S. Rawat, Regional Manager (Officiating), Kumaun Region, C/o Managing Director, Uttarakhand Forest Development Corporation Curzon Road, Dehradun.
5. Shri Bhupendra Singh, D.F.D.M. C/o Managing Director, Uttarakhand Forest Development Corporation Curzon Road, Dehradun.
6. Shri B.D. Harbola, D.F.D.M. C/o Managing Director, Uttarakhand Forest Development Corporation Curzon Road, Dehradun.
7. Shri Arvind Kumar Shrivastava, D.F.D.M. C/o Managing Director, Uttarakhand Forest Development Corporation Curzon Road, Dehradun.
8. Shri Trilochan Arya, D.F.D.M. C/o Managing Director, Uttarakhand Forest Development Corporation Curzon Road, Dehradun.
9. Shri J.P.Bhatt, D.F.D.M. C/o Managing Director, Uttarakhand Forest Development Corporation Curzon Road, Dehradun.
10. Shri R.D.Sati, D.F.D.M. C/o Managing Director, Uttarakhand Forest Development Corporation Curzon Road, Dehradun.

11. Shri M.G.Goswami, D.F.D.M. C/o Managing Director, Uttarakhand Forest Development Corporation Curzon Road, Dehradun.
12. Shri T.Bhargavachari, D.F.D.M. C/o Managing Director, Uttarakhand Forest Development Corporation Curzon Road, Dehradun.
13. Shri D.C.Tiwari, D.F.D.M. C/o Managing Director, Uttarakhand Forest Development Corporation Curzon Road, Dehradun

.....Respondents.

Present: Sri Shashank Pandey, Ld. Counsel
for the petitioner.

Sri Umesh Dhaundiyal, Ld. A.P.O.
for the respondent Nos. 1 & 2.

Sri L.K.Maithani, Ld. Counsel
For Respondent Nos. 3 to 11 & 13.

Sri R.K.Garg, Ld. Counsel
for Respondent No. 12

JUDGMENT

DATED: NOVEMBER 18, 2016

(Hon'ble Mr. D.K.Kotia, Vice Chairman (A))

1. The petitioner has filed the present claim petition for seeking the following relief:-
 - (i) "Issue an order or direction to quash the tentative seniority list dated 06-01-15.
 - (ii) Issue an order or direction to quash the order dated 17-11-15 of the committee.
 - (iii) Issue an order or direction quashing the order dated 28.10.2013 vide which the respondent no. 4 was given charge of Regional Manager, Garhwal.
 - (iv) Issue an order or direction to the respondent no. 1 to place the petitioner at serial no. 1 by issuing a fresh seniority list as per the seniority list issued by the Uttar Pradesh Forest Development Corporation on 16.06.2001.
 - (v) Issue any other order or direction which the Hon'ble Court deems fit and proper.

- (vi) Award the cost of claim petition to the petitioner.”
2. Respondents have filed their written statements and petitioner has also filed rejoinder affidavit in reply to the written statements of the respondents. Respondents have also filed supplementary written statements and written submissions as well. We have perused the entire record carefully.
 3. The present claim petition has been filed mainly against the seniority list of the Divisional Logging Managers working in the Uttarakhand Forest Development Corporation. The tentative seniority list was issued on 06.01.2015 (Annexure: A 1). The objections filed by the petitioner against the tentative seniority list were considered by a committee constituted by the Managing Director of the Corporation which submitted its report on 17.11.2015 (Annexure: A 2) and the committee found the tentative seniority list in order. The report of the committee regarding seniority list of the Divisional Logging Managers was approved by the Board of Directors of the Corporation in its meeting on 26.2.2016 (Annexure: A 31 and A 32). There are 15 Divisional Logging Managers in the final seniority list wherein the petitioner has been shown at Sl. No. 12 and the private respondent Nos. 3 to 13 have been shown at Sl. Nos. 1 to 11. The contention of the petitioner is that the seniority has been wrongly fixed and according to the petitioner, he should have been placed at No. 1 in the seniority above all the private respondent Nos. 3 to 13.
 4. The dispute of “Seniority” among the petitioner and the private respondents has been continuing for nearly three decades and therefore, it would be necessary to understand the matter from the beginning when the petitioner and respondents entered into the service of the Corporation.
 5. The petitioner as well as respondents were appointed on the post of Logging Officer in the Uttar Pradesh Forest Development Corporation. Admittedly, the petitioner was appointed on 19.11.1984 and all the private respondents (Nos.3 to 13) were appointed on 07.08.1982. This first appointment of the petitioner and the private respondents in the

Corporation was by the method of direct recruitment. Thus, the private respondents were appointed (in 1982) prior to the appointment of the petitioner (in 1984). The appointment letters of the petitioner and private respondents have been filed as Annexure CA-1 and CA-2 to the W.S. of Respondent Nos. 5, 7 and 8 to 11.

6.1 The petitioner in his claim petition has taken a plea that the private respondents did not possess the minimum qualification as per advertisement and the Uttar Pradesh Forest Corporation Service Regulations for appointment on the post of Logging Officers in 1982. Denying this, the State respondents have contended that the Uttar Pradesh Forest Corporation Service Regulations came into force w.e.f. 01.04.1985 (Annexure: A 9) and therefore, the plea of the petitioner regarding minimum qualification is wrong and the private respondents were appointed following due process of law in 1982. The private respondents have also contended that their appointment was challenged by the Assistant Logging Officers in the Uttar Pradesh Public Services Tribunal on the ground of qualification also and the Tribunal dismissed the claim petition against the appointment of the respondents (Annexure: CA 3 to the W.S. of private respondents).

6.2 The private respondents on the contrary have stated that while they were appointed on 07.08.1982 after successful in the physical test and interview, the petitioner was appointed on 19.11.1984 (Annexure: CA 2 to the W.S. of private respondents) on ad-hoc basis subject to the condition that the petitioner is declared successful in the interview at the time of next selection. The private respondents have also contended that the petitioner was appointed without the physical test.

6.3 It is pertinent to note here that the petitioner has not challenged the appointment of private respondents dated 07.08.1982 on the post of Logging Officer in the present claim petition. Private respondents also never challenged the appointment of the petitioner dated 19.11.1984 at any point of time.

6.4 The appointments of the petitioner as well as respondents which were not challenged during a period of more than three decades, have now

no relevance in this claim petition. We, therefore, leave this matter of initial appointments of the petitioner and private respondents here only without further going into this as the appointment of the petitioner and private respondents is not the subject matter of the present claim petition.

7 Undisputedly, the petitioner was appointed on 19.11.1984 and private respondents were appointed on 07.08.1982 on the post of Logging Officer. It is also admitted to all the parties that the cadre of the Logging Officers is the feeding cadre for promotion to the post of Divisional Logging Manager.

8.1 Petitioner in the claim petition has contended that the petitioner and the private respondents have never been a part of a single seniority list in the feeding cadre and hence, their inter-se seniority in the feeding cadre has never been decided. The State as well as the Corporation in their W.S. have stated that this contention of the petitioner is wrong. Private respondents in their W.S. have also contended that the single seniority list of the petitioner as well as all the private respondents on the post of Logging Officer was prepared and the final seniority list was also issued and this seniority list was never challenged by the petitioner or any other Logging Officer.

8.2 Perusal of record reveals that the Managing Director, U.P. Forest Development Corporation issued a tentative seniority list of Logging Officers in 1985. In this seniority list, the name of the petitioner is at Sl. No. 25 and all eleven private respondents are above the petitioner at Sl. Nos. 3, 5, 7, 10, 12, 15, 18, 19, 20, 21 and 22. This tentative seniority list of 1985 was finalized in 1987. In the final seniority list of Logging Officers issued in 1987, the petitioner is placed at Sl. No. 24 and all eleven private respondents are above the petitioner at Sl. Nos. 3, 5, 7, 10, 12, 14, 17, 18, 19, 20 and 21.

8.3 The final seniority list of Logging Officers issued in 1987 shows the substantive appointment on the post of Logging Officer (by direct

recruitment) of the private respondents in 1982 and the substantive appointment of the petitioner in 1984.

- 8.4 The tentative seniority list of 1985 and the final seniority list of 1987 of Logging Officers have been shown in Annexure: CA 8 to the W.S. of the respondent Nos. 5,7,8,9,10 and 11 which have not been denied by the petitioner in his rejoinder affidavit.
9. The petitioner was promoted to the post of Divisional Logging Manager in 1991 (Annexure: A 6) and the private respondent No. 3 was promoted to the post of Divisional Logging Officer in 1988, private respondents Nos. 4, 5, 6 and 8 in 1996, private respondent Nos. 10, 11, 12 and 13 in 2001, private respondent No.7 in 2004 and private respondent No. 9 in 2009. Both Petitioner and respondents have stated in their pleadings about various writ petitions filed by the private respondents in the Hon'ble High Court at Allahabad challenging the promotion of the petitioner before the promotion of the private respondents (except private respondent No. 3) but no judgment of the Hon'ble High Court on promotion has been filed by any party. In any case, the subject matter of the present claim petition is not the promotion of the petitioner made in 1991 but the issue and relief in the petition is related to the inter se seniority among petitioner/private respondents on the post of Divisional Logging Managers and therefore, there is no need to examine the matter of the promotion of the petitioner in 1991 any further .
- 10.1 The Uttar Pradesh Forest Development Corporation issued a seniority list of Divisional Logging Managers on 07.08.1996 (Annexure: A12). This seniority list, as mentioned in the covering letter enclosing the seniority list, was prepared according to the rules framed by the personnel department of the state government. In this seniority list, the inter se seniority of the Divisional Logging Managers was determined on the basis of the seniority on the lower post of Logging Officer in the feeding cadre. Therefore, the private respondents No. 4,5,6 and 8, who were promoted from the post of Logging Officer to the post of Divisional Logging Managers on 03.07.1996 after the promotion of the petitioner on the post of Divisional Logging Manager on 19.03.1991, were shown

senior to the petitioner in the seniority list of the Divisional Logging Managers because they were senior to the petitioner on the lower post of the Logging Officer in the feeding cadre as the private respondents were appointed in 1982 and the petitioner in 1984 on the post of Logging Officer in feeding cadre.

10.2 In the seniority list of the Divisional Logging Managers dated 07.08.1996 (Annexure: A12), the private respondents No. 4,5,6 and 8 were shown at serial number 9,12,15 and 18 and the petitioner was shown at serial number 20. Thus, the basis of the determination of inter se seniority on the promoted post in the seniority list was the inter se seniority on the lower post in the feeding cadre according to the rules of the government.

10.3 The petitioner submitted a representation against the seniority list of the Divisional Logging Managers dated 07.08.1996 on 12.08.1996 (Annexure: A13). The representation of the petitioner dated 12.08.1996 against the seniority list of the Divisional Logging Managers dated 07.08.1996 was considered and it was rejected by the M.D. of the Corporation on 28.11.1996 (Annexure: CA6 to the W.S. of the respondents Nos. 5,7,8,9,10 and 11). The same is reproduced below:

“उत्तरप्रदेश वन निगम
कार्यालय प्रबंध निदेशक
21 / 475 इन्दिरा नगर लखनऊ 16

पत्रांक ई 9378 / पदों / प्र० प्रबंधक

दिनांक 28.11.1996

सेवा में,

श्री एस के चतुर्वेदी
प्रभागीय विक्रय प्रबंधक
उ० प्र० वन निगम,
रामनगर।

विषय— प्रभागीय प्रबंधकों की वरिष्ठता सूची।

सन्दर्भ आपका पत्रांक मैमो / व सूची प्र० प्रबंधक दिनांक 12.08.96

महोदय,

उपर्युक्त विषयक संदर्भित पत्र का अवलोकन करें जिसमें आपने यह लिखा है कि लॉगिंग अधिकारी के पद पर नियुक्ति के समय आप एस० एफ० एस० प्रशिक्षण प्राप्त थे जबकि प्रभागीय प्रबंधक की वरिष्ठता सूची में अंकित अन्य अधिकारी अपनी

मूल नियुक्ति के समय एस एफ एस प्रशिक्षण प्राप्त नहीं थे, इसलिए ऐसे अधिकारियों से पहले आपका नाम प्रभागीय प्रबंधकों की वरिष्ठता सूची में रखा जाय । इस संबंध में सूचित करना है कि उ०प्र० वन निगम सेवा नियमावली अथवा उससे पूर्व वन निगम में जो नियम लागू थे उसमें इस बात का कोई उल्लेख नहीं है कि लॉगिंग अधिकारी के पद पर नियुक्ति के समय जो एस एफ एस प्रशिक्षण प्राप्त हो उसका वरिष्ठता में सर्वप्रथम रखा जायेगा। इसके अतिरिक्त यह भी सूचित करना है कि प्र० प्रबंधक की वरिष्ठता सूची में आपसे जो वरिष्ठ (क्रम सं० 1 से 19 तक) अधिकारी हैं उनकी नियुक्ति उ०प्र० वन निगम में विद्यमान प्रचलित नियमों के अर्न्तगत की गयी थी और ये सभी अधिकारी आपसे पहले निगम में नियुक्त हैं इसलिये वरिष्ठता क्रम में 1 से 19 तक के इन सभी अधिकारियों का नाम उनकी ल०अधिकारी/विक्रय अधिकारी के पद की वरिष्ठता क्रम में रखा गया है जो शासन के कार्मिक विभाग द्वारा तैयार की गयी माडल नियमावली में दिये गये नियमों के अर्न्तगत है।

अतः उपरोक्तानुसार प्रभागीय प्रबंधकों की वरिष्ठता सूची में आपका नाम यथा स्थान पर रखा गया है और इसमें कोई परिवर्तन किया जाना नियमानुकूल नहीं है।

भवदीय

जवाहर लाल
प्रबंध निदेशक

11.1 The petitioner has also filed an office memorandum issued by the M.D. of the Uttar Pradesh Forest Development Corporation on 06.05.2001 (Annexure: A14). The perusal of this OM reveals that the petitioner gave a representation on 28.09.2000 and by this OM dated 06.05.2001, the representation of the petitioner had been decided. The M.D. of the Uttar Pradesh Forest Development Corporation decided the representation of the petitioner in his favour and placed the petitioner above the private respondents in the seniority based on a letter of the government dated 18.03.1991. The M.D. of the Corporation by this O.M. placed the petitioner at Sl. No. 4 while the petitioner was at Sl. No. 20 in the seniority list of 07.08.1996 (Annexure: A12). The Government of Uttarakhand adopted the decision of the M.D. of the Uttar Pradesh Forest Development Corporation dated 06.05.2001 up to 09.02.2007. The seniority list of Divisional Logging Managers were issued on 16.06.2001, in 2002 and in 2005 on the basis of the decision of the

M.D. of Uttar Pradesh Forest Development Corporation on 06.05.2001 on the representation of the petitioner dated 20.09.2000.

11.2 The state respondents as well as private respondents have contended that the Uttarakhand Forest Development Corporation came into existence on 01.04.2001 having its own Managing Director and, therefore, the M.D. of the Uttar Pradesh Forest Development Corporation had no right to decide the representation of the petitioner on 06.05.2001 and re-fix the seniority of the employees of the Uttarakhand Forest Development Corporation. The respondents have further stated that the OM of the M.D. dated 06.05.2001 is against the provisions of the Rules which govern the seniority. The respondents have also stated that the copy of the OM dated 06.05.2001 was given to the petitioner only. The contention of the respondents is that the settled seniority list of 07.08.1996 could not be changed unless the procedure laid down under the rules to prepare the seniority list is followed. All the employees who were placed below the petitioner as a result of this OM dated 06.05.2001 were not given any opportunity to object the proposed change. The respondents have also mentioned that the representation of the petitioner against the seniority list of 07.08.1996 had been rejected on 18.11.1996 and to entertain and decide another representation dated 28.09.2000 by the M.D. of the U.P. Forest Development Corporation to change the seniority list of 1996 on 06.05.2001 after the creation of the Uttarakhand Forest Development Corporation on 01.04.2001 is an illegal action.

12 The Corporation further issued a final seniority list of Divisional Logging Officers on 09.02.2007 (Annexure : A 22). In this seniority list, there were 15 Divisional Logging Officers in all. The petitioner was placed at serial number 14 in the seniority list and the private respondents were shown above the petitioner in the list. The petitioner has contended that he immediately challenged the seniority list by making a representation against it to the respondent No.1 and the same was not decided. In reply to this, the State respondents (No.1 and 2) have stated in their joint W.S. that in the year 2007, the correct exercise has been adopted by the

Uttarakhand Forest Development Corporation for preparing/ determining the seniority of the Divisional Logging Managers and after considering each and every aspect relating to settled position and principles of law as well as Rules as applicable and the objection of each and every Divisional Logging Manager(including the petitioner), the seniority list dated 09.02.2007 was finalized. It is pertinent to note here that the seniority list of 09.02.2007 was issued based on the seniority on the lower post in the feeding cadre as was done at the time of issuing the seniority list on 07.08.1996 (Annexure : A 12).

13.1 On 29.11.2007, the service of the petitioner was terminated after a departmental inquiry by the M.D. of the Corporation. The petitioner challenged the punishment order by filing a claim petition No. 102/2007 which was allowed by the Tribunal (Annexure: A 23). The petitioner has contended that the Tribunal vide order dated 23.10.2008 quashed the order of suspension and termination and held that the Managing Director was not competent authority for either changing the seniority of the petitioner or punishing the petitioner. The Corporation also filed the writ petition before the Hon'ble High Court and vide order dated 08.10.2010 (Annexure: A 24), the Hon'ble High Court did not interfere with the order of the Tribunal but granted liberty to the Corporation to initiate such proceedings as it may deem fit and proper.

13.2 We have perused the orders of the Tribunal and the Hon'ble High Court (Annexures : A 23 and A 24) carefully and find that the issue of "seniority" was not at all there before the Tribunal and the Hon'ble High Court. There is nothing in the findings of the Tribunal and the Hon'ble High Court regarding "Seniority" issue. Neither the Tribunal nor the Hon'ble High Court have dealt with the issue of "seniority." Nor the petitioner raised the issue of "seniority" either before the Tribunal or before the Hon'ble High Court as is clear by the perusal of order of the Tribunal as well as order of the Hon'ble High Court. Thus, the contention of the petitioner in para 4(u) of the petition is misconceived and is of no relevance to the present petition.

14. The petitioner was not satisfied by the seniority list dated 09.02.2007 (Annexure: A 22). He has contended that he made several representations against the injustice done to him. One representation(undated) made by his wife has been enclosed by the petitioner as Annexure: A 28. Thereafter, the M.D. of the Corporation issued a tentative seniority list of Divisional Logging Managers on 06.01.2015 (Annexure: A 1). In this tentative seniority list, the petitioner was shown at Sl. No. 12 and the private respondents were placed above the petitioner at Sl. Nos. 1 to 11. The petitioner filed the objections against the tentative seniority list on 12.01.2015 (Annexure: A 29). A committee was constituted to consider the representation of the petitioner which submitted its report on 17.11.2015 (Annexure: A 2) and the committee found the tentative seniority list in order. The report of the committee regarding seniority list of the Divisional Logging Managers was approved by the Board of Directors of the Corporation in its meeting on 26.02.2016 (Annexure: A 31 and A 32). In this seniority list, the position of the seniority between the petitioner and the private respondents remained the same which was determined in the seniority list dated 09.02.2007 and the seniority list dated 07.08.1996. The main relief for which the present petition has been filed is quashing of the “seniority list” of the Divisional Logging Managers finalized on 17.11.2015/ 26.02.2016.
15. We have heard learned counsel for the petitioner and also learned counsels for the respondents and perused the record carefully.
16. Before the arguments of the parties are discussed, it would be appropriate to look at the rule position related to the “Seniority”.
17. The relevant Rules which have been framed under the U.P. Forest Corporation Act known as “**Uttar Pradesh Forest Corporation Service Regulations**” which came into force w.e.f. **01.04.1985** are reproduced below:-

REGULATION 24- Seniority

“24. A category wise gradation list of all the regular employees of the Corporation shall be maintained for determining the inter se seniority of an employee within the category. The Managing Director may order that the gradation list for any particular category shall be prepared for the Corporation as a whole or separately for each of its units. The decision of the Managing Director in this respect is as under:-

[i] Gradation list in respect of the following categories of employees under group ‘C’, shall be prepared and updated for the Corporation as a whole in the Managing Director’s Office and circulated through the Regional Managers among the employees periodically.

1. Assistant Logging Supervisor [515-865]
2. Stenographer [515-865]
3. Assistant Accountant [490-760]
4. Compiler (490-760)
5. Asstt. Grade-II [490-760]

(ii) In respect of the rest of the categories of employees, the Gradation list shall be prepared and updated by the respective Appointing Authorities and circulated among the employees periodically.

Notes:- [1] The seniority of an employee on his initial regular appointment to a post shall be determined on the basis of his position in the merit list drawn at the time of selection for that post. In case two or more persons have same position in the merit list, the person elder in age, shall be senior.

[2] where appointment has been made as a result of promotion on ad-hoc basis and no merit list has been prepared, inter-se seniority of the employees in the next grade shall be fixed in accordance with seniority in the lower grade from which they were promoted.

[3]

18. The relevant Rules under the “Uttaranchal Government Servants Seniority Rules, 2002” (before these Rules, the “Uttar Pradesh Government Servants Seniority Rules, 1991” were

applicable and the Rules of 1991 are pari-materia to the Rules of 2002) are reproduced below:-

“3. These rules shall have effect notwithstanding anything to the contrary contained in any other service rules made here to before.

5. Where according to the service rules appointments are to be made only by the direct recruitment the seniority *inter se* of the persons appointed on the result of any one selection, shall be the same as it is shown in the merit list prepared by the commission or the committee, as the case may be:

Provided.....

Provided further that persons appointed on the result of a subsequent selection shall be junior to the persons appointed on the result of a previous selection.

6. **Where according to the service rules, appointments are to be made only by promotion from a single feeding cadre, the seniority *inter se* of persons so appointed shall be the same as it was in the feeding cadre.**

***Explanation*--A person senior in the feeding cadre shall even though promoted after the promotion of a person junior to him in the feeding cadre shall, in the cadre to which they are promoted, regain the seniority as it was in the feeding cadre.**

7. Where according to the service rules, appointments are to be made only by promotion but from more than one feeding cadres, the seniority *inter se* of persons appointed on the result of any one selection shall be determined according to the date of the order of their substantive appointment in their respective feeding cadres.

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

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

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

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

(3)

19.1 Counsel for the petitioner has argued that the committee which was constituted to examine the tentative seniority list dated 06.01.2015 (Annexure : A 1) has determined the seniority of the petitioner and the private respondents on the post of Divisional Logging Manager on the basis of non-existent *inter se* seniority between the petitioner and the private respondents on the post of Logging Officers. The contention of the counsel for the petitioner is that no seniority list of petitioner vis-à-vis private respondents on the post of Logging Officers was made/ circulated and therefore, Note 2 of Regulation 24 of the U.P. Forest Corporation Service Regulations cannot operate.

19.2 The petitioner has stated in Para 4(j) in the claim petition as under:-

“4(j) *That, since the petitioner and the private respondents have never been a part of a single seniority list in the feeding cadre and hence, their inter-se seniority in the feeding cadre has never been decided. Thus, the finding of the committee formed to decide the representation of the petitioner that the seniority of the petitioner vis-à-vis private respondents is based on their inter-se seniority in the feeding cadre is absolutely wrong and baseless.”*

19.3 Counsels for the State and private respondents have refuted this argument and stated that it is wrong to say that the petitioner and private respondents have never been a part of a single seniority list in

the feeding cadre on the post of Logging Officers and their inter-se seniority in the feeding cadre has never been decided. The seniority list of petitioner and private respondents on the post of Logging Officers (which is a post of feeding cadre for promotion to the post of Divisional Logging Manager) was issued in 1985 (tentative list) and in 1987 (final list) which have been shown in Annexure : CA 8 to the W.S. of the Respondent Nos. 5,7,8,9,10 and 11.

19.4 In the final seniority list of Logging Officers dated 16.11.1987, the petitioner is placed at Sl. No. 24 and all eleven private respondents are above the petitioner at Sl. Nos. 3, 5, 7, 10,12, 14, 17, 18, 19 20 and 21.

19.5 The perusal of record clearly shows that the seniority list of Logging Officers showing petitioner and all the private respondents exists and the contention of the petitioner in para 4(j) in the claim petition is factually not correct.

20.1 Ld. Counsel for the petitioner has further argued that at the time of his appointment on the post of Logging Officer in 1984, he had the Diploma of the State Forest Service College, Dehradun and therefore, he had higher qualification compared to the private respondents. He has further contended that because of better qualification of the petitioner, he was given the charge of the Divisional Logging Manager in 1986 prior to the private respondents and was promoted in 1991 earlier than the private respondents on the basis of a letter of the State Government dated 08.03.1991 (Annexure: R-1 to the Rejoinder of the petitioner). Therefore, he is entitled to be given seniority above all the private respondents who did the State Forest Service College Course after the promotion of the petitioner in 1991.

20.2 Ld. Counsel for the private respondents has refuted this argument and contended that there is no law or rule which allows or prescribes that a Logging Officer who has done SFS course earlier will become senior as compared to the Logging Officers who are appointed before such a Logging Officer.

20.3 The date of substantive appointment of the petitioner is 19.11.1984 and the date of substantive appointment of the private respondents is

07.08.1982. The private respondents are senior to the petitioner on the post of Logging Officers in the feeding cadre and therefore, after promotion of the private respondents, they would be senior on the post of Divisional Logging Manager according to the Seniority Rules of 2002.

20.4 The Counsel for the respondents has pointed out the proviso to Rule 5 of the Seniority Rules of 2002 (reproduced in Paragraph 18 of this order) which provides that persons appointed on the result of a subsequent selection shall be junior to the persons appointed on the result of a previous selection and argued that since the private respondents were appointed in 1982 and the petitioner was appointed in 1984, therefore, the private respondents are senior to the petitioner on the post of Logging Officer which is the post of feeder cadre for further promotion to the post of Divisional Logging Manager.

21.1 It is not in dispute that the private respondents were appointed on the post of Logging Officer in 1982 and the petitioner was appointed on the post of Logging Officer in 1984. It is also admitted to both the parties that for determining the seniority, Seniority Rules of 2002 (reproduced in paragraph 18 of this order) are applicable.

21.2 The proviso to Rule 5 of the Seniority Rules of 2002 clearly provides that persons appointed in a subsequent selection shall be junior to the persons appointed on the result of a previous selection.

21.3 The Counsel for the petitioner could not demonstrate any rule which shows that because of the higher qualification, the petitioner will be senior as compared to the private respondents who were appointed earlier than him. The seniority list of Logging Officers dated 16.11.1987 places the private respondents at higher places than that of the place of the petitioner. The petitioner has never challenged this seniority list of 1987. Under these circumstances, we are of the view that the private respondents are senior to the petitioner on the post of Logging Officer which is the post in the feeding cadre for promotion to the post of Divisional Logging Manager.

22.1 The petitioner was promoted to the post of Divisional Logging Manager in 1991 and the private respondents (except Respondent No.3) were promoted on the post of Divisional Logging Manager after the promotion of the petitioner. Ld. Counsel for the petitioner has further argued that since the petitioner was promoted on the post of Divisional Logging Manager in 1991 before the private respondents, the petitioner should be treated senior to the private respondents in the cadre of Divisional Logging Manager.

22.2 The Counsels for the respondents in their counter argument have stated that even though the private respondents were promoted after the promotion of the petitioner but according to Rule 6 of the Seniority Rules of 2002, after promotion on the post of Divisional Logging Manager, the inter se seniority of the petitioner and private respondents shall be the same as it was in the feeding cadre.

22.3 In the present case, the single feeding cadre of the petitioner and the private respondents is 'Logging Officer'. In our view, the private respondents who were senior in the feeding cadre on the post of Logging Officer and who were promoted on the post of Divisional Logging Manager after the promotion of the petitioner on the post of Divisional Logging Manager (who was junior in the feeding cadre), private respondents regain their seniority as it was in the feeding cadre according to "Explanation" given under Rule 6 of the Seniority Rules of 2002 which is again quoted below:-

"Explanation--A person senior in the feeding cadre shall even though promoted after the promotion of a person junior to him in the feeding cadre shall, in the cadre to which they are promoted, regain the seniority as it was in the feeding cadre."

22.4 A careful reading of "Explanation" to Rule 6 makes it clear that in case promotion of a person senior in the feeding cadre is made after the promotion of a junior in the feeding cadre, the date of promotion loses its significance and the seniority is regained by the person senior in the

feeding cadre in spite of his promotion after the promotion of a person junior to him in the feeding cadre.

22.5 The petitioner and private respondents both have been promoted on the post of Divisional Logging Manager though the petitioner was promoted earlier than the private respondents. "Explanation" to Rule 6 lays down the principle regarding determination of seniority when juniors in the feeding cadre are promoted earlier than seniors in the feeding cadre. "Explanation" to Rule 6 makes it mandatory to restore the seniority as it was in the feeding cadre. The "Explanation" to Rule 6 clearly establishes the supremacy of the seniority in the feeding cadre irrespective of the date or time of promotion. The Explanation to Rule 6 invariably deals with the promotions made earlier and later at different points of time.

22.6 Thus, in the present case, the private respondents are entitled to regain their seniority after their promotion to the post of Divisional Logging Manager as they were senior to the petitioner on the post of Logging Manager which is the post in the feeding cadre for promotion to the post of Divisional Logging Manager.

23.1 Ld. Counsel for the petitioner has further argued that as per U.P. Forest Corporation Service Regulations, for the post of Divisional Logging Manager, two modes are prescribed for entry into the service, (a) at least 50% by absorption or by deputation of Forest Officers, and (b) not more than 50% by promotion from amongst Logging officers/ Sales Officers of minimum 5 years of service on that post and hence, the seniority on this post could only be counted from the date of the substantive appointment on promoted post under Rule 8 of the Seniority Rules of 2002 and not under Rule 6 of the Seniority Rules of 2002.

23.2 Counsel for the respondents has refuted the arguments and contended that the petitioner as well as private respondents are covered by (b) above and therefore, the seniority is to be determined on the basis of the initial appointment in the feeding cadre i.e. on the post of Logging Officer.

- 23.3 A careful perusal of Rule 8 reveals that the Rule 8 of the Seniority Rules of 2002 is applicable when appointments are made both by promotion and direct recruitment. In the case in hand, the issue is of appointment on the post of Divisional Logging Manager by promotion only and not the appointment by promotion as well as direct recruitment.
- 23.4 The counsel for the petitioner equated absorption/ deputation by direct recruitment. In our view, absorption/ deputation is entirely different mode of appointment and it cannot be equated with the direct recruitment. In the present case, the petitioner as well as private respondents both are under promotion quota. In fact, there is no Divisional Logging Manager in the Seniority List under challenge who is on deputation or absorbed on the post.
- 23.5 In the present case, the promotions are made from a single feeding cadre and, therefore, the seniority is to be determined as per the principles laid down under Rule 6. The issue of absorption/ deputation is totally irrelevant to the present petition and contention of the learned counsel for the petitioner is misconceived in this regard.
- 24.1 Ld. Counsel for the petitioner has also argued that the promotion on the post of Divisional Logging Manager is made by the method of selection according to the U.P. State Forest Corporation Service Regulations and therefore, Rule 6 of the Seniority Rules, 2002 is not applicable.
- 24.2 It is difficult to agree with the contention of the Ld. Counsel for the petitioner as the Rule 6 and Explanation under it deal with all the promotions whether made according to selection or seniority or otherwise. Irrespective of mode of promotion, the Rule 6 and its Explanation provides that in case promotion of a person senior in the feeding cadre is made after promotion of a junior in the feeding cadre, the seniority is regained by the person senior in the feeding cadre in spite of his promotion after the promotion of a person junior to him in the feeding cadre.
- 24.3 In the case in hand the petitioner was promoted in 1991. It is clear on the basis of the available record that the promotion of the petitioner

was not made on the recommendation of the selection committee prescribed under U.P. Forest Corporation Service Regulations. It is also clear that when the promotion of the petitioner was made, no other Logging Officer including all the private respondents, who were working either on the post of Logging Officer or officiating on the post of Divisional Logging Manager, were considered for promotion along with the petitioner. The present case is not a case where the private respondents were considered for promotion and found unfit by the selection committee.

24.4 Therefore, we do not find any force in the contention of the Ld. Counsel for the petitioner that the petitioner was promoted to the post of Divisional Logging Manager by a selection and Rule 6 is not applicable without showing any rule that in spite of his being junior to the private respondents, he could supersede seniors (private respondents) in the feeding cadre and could be placed higher in the seniority list when the private respondents were not considered for promotion at the time of exercise to promote the petitioner was made.

25.1 Ld. Counsel for the petitioner has also contended that the seniority list prepared after deciding the representation of the petitioner by the M.D. of the U.P. Forest Development Corporation on 06.05.2001, was changed by the Uttarakhand Forest Development Corporation in 2007 and in 2015/2016 and, therefore, there is violation of Section 74(1) of the U.P. Re-Organization Act, 2000 which clearly stipulates that the conditions of service of any person appointed in the State of Uttarakhand will not be varied to his disadvantage without the prior permission of the Central Government.

25.2 Ld. Counsel for the respondents has refuted the argument and stated that Section 74(1) of the U.P. Reorganization Act, 2000 is not applicable in the present case as the seniority of the petitioner has been determined according to the settled provisions of law or rules and therefore, the contention of the Ld. Counsel for the petitioner in this regard is misconceived.

25.3 It would be appropriate to look at the provision made in Section 74(1) of the U.P. Re-Organization Act, 2000 which reads as under:-

“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 serving 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”.

25.4 A careful perusal of the proviso to Section 74(1) reveals that the conditions of service applicable immediately before the appointed day shall not be varied to the disadvantage of the employee deemed to have been allocated to the State of Uttarakhand. In the present case, the date of creation of Uttarakhand State is 9.11.2000 and the Uttarakhand Forest Development Corporation came into existence on 01.04.2001. The Government of Uttarakhand State or the Uttarakhand Forest Development Corporation has not made any variation in any Rule or Regulation related to the service conditions which were existing immediately before 09.11.2000 or immediately before 01.04.2001. The Uttarakhand Forest Development Corporation has done the exercise to determine the seniority among Divisional Logging Officers on the basis of the Rules and Regulations governing the seniority and which were applicable on/before 9.11.2000/01.04.2001.

25.5 The seniority of the Divisional Logging Managers has been fixed by the Uttarakhand Forest Development Corporation in 2007 and in 2015/2016 according to the seniority which existed on/ before 09.11.2000/ 01.04.2001. The seniority list of Logging Officers of 1987 and the seniority list of the Divisional Logging Managers of 1996 were

the seniority lists which existed on / before 09.11.2000/ 01.04.2001. The Government of Uttarakhand or the Uttarakhand Forest Development Corporation has not made any change in the conditions of service related to the fixation of seniority. The representation of the petitioner, which was decided by the M.D. of the U.P. Forest Development Corporation on 06.05.2001 after creation of the State of Uttarakhand on 09.11.2000 and the Uttarakhand Forest Development Corporation on 01.04.2001, cannot be made a basis to say that further exercise of the Government of Uttarakhand and the Uttarakhand Forest Development Corporation to determine the seniority on the post of Divisional Logging Officers in 2007 and in 2015/ 2016 was in violation of Section 74 (1) of the U.P. Reorganization Act, 2000. Therefore, we do not agree with the contention of the Ld. Counsel for the petitioner that there is any violation of Section 74(1) of the U.P. Reorganization Act, 2000.

26. Ld. Counsel for the petitioner has also sought a relief in the claim petition to quash the order dated 28.10.2013 (Annexure: A 3) by which the charge of the Regional Manager, Garhwal Region was taken back from the petitioner and the Respondent No.4 was posted and given officiating charge of the post of Regional Manager, Garhwal Region. Ld. Counsel for the respondents has vehemently opposed this and contended that the petitioner has no locus to challenge the order dated 28.10.2013 because the posting on the post of Regional Manager, Garhwal Region of the petitioner as well as Respondent No.4 is only an administrative arrangement by which only officiating charge has been given without giving any promotion and the petitioner is challenging the said order after two years despite the fact that the said order was well within the knowledge of the petitioner on 28.10.2013 itself. We tend to agree with the submissions of Ld. Counsel for the respondents and do not find any reason to interfere in the order dated 28.10.2013 (Annexure: A 1).

27. Ld. Counsel for the petitioner has submitted the following case laws:

- (i) State of U.P. Vs. Onkar Nath Tandon AIR 1993 SC 1171.

- (ii) Devendra Prasad Sharma Vs. State of Mizoram and Others 91997)4 SCC 422.
- (iii) State of Bihar and Others Vs. Bateshwar Sharma (1997) 4 SCC 424.
- (iv) Ajit Singh and Others(II) Vs. State of Punjab and Others (1999) 7 SCC 209.
- (v) Ram Prasad and Others Vs. D.K.Vijay and Others (1999) 7 SCC 251.
- (vi) Jagpal Singhand Others Vs. State of Uttaranchal and Another 2007 (1) UC 327.
- (vii) Karnataka State Road Transport Corporation and Another Vs. S.Manjunath (2000) 5 SCC 250.

We have gone through each of above cases and found that these cases are not related to the controversy involved in the present case. The facts and circumstances in the case in hand are entirely different and therefore, the above cases are not relevant and of no help to the petitioner.

28. In the light of findings and reasons stated in the preceding paragraphs, we are of the view that no relief can be granted to the petitioner. Therefore, the petition is devoid of merit and same is liable to be dismissed.

ORDER

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

(RAM SINGH)
VICE CHAIRMAN (J)

(D.K.KOTIA)
VICE CHAIRMAN (A)

DATE: NOVEMBER 18, 2016
DEHRADUN

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