

BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT DEHRADUN

Present: Hon'ble Mr. Ram Singh

----- Vice Chairman (J)

Hon'ble Mr. D.K.Kotia

-----Vice Chairman (A)

CLAIM PETITION NO. 51/DB/2014

1. Ashok Kumar Gupta aged about 51 years S/o Late Shri Kanhaya Prashad Gupta presently posted as Junior Engineer, Uttarakhand Jal Sansthan, 32 Rajpur Road, Dehradun.
2. D.S. Jhinkwan aged 36 years S/o Late Shri Fakeer Singh Jhinkwan presently posted as Junior Engineer in Uttarakhand Jal Sansthan (South Division) Jhanda Zone, Dehradun,
3. Brij Mohan Singh Negi aged 52 years S/o Late Shri Sate Singh Negi, Presently posted as Junior Engineer Uttarakhand Jal Sansthan, Pithuwala, Dehradun.

.....Petitioners

VERSUS

1. State of Uttarakhand through Principal Secretary, Govt. Of Uttarakhand Pay Jal Vibhag Sachivalaya, Dehradun (Service through APO)
2. Sri Subhash Chandra Gangola , Junior Engineer , Uttarakhand Jal Sansthan.
3. Sri Suraj Singh, Junior Engineer , Uttarakhand Jal Sansthan.
4. Sri Krishnakant , Junior Engineer , Uttarakhand Jal Sansthan.
5. Sri Suman Singh, Junior Engineer , Uttarakhand Jal Sansthan.
6. Sri Dev Raj Junior Engineer , Uttarakhand Jal Sansthan.
7. Sri Deen Dayal, Junior Engineer , Uttarakhand Jal Sansthan.
8. Sri Ravindra Kumar, Junior Engineer , Uttarakhand Jal Sansthan.
9. Sri Manoj Kumar, Junior Engineer , Uttarakhand Jal Sansthan.
10. Sri Jai Pal Singh Chauhan, Junior Engineer , Uttarakhand Jal Sansthan.
11. Sri Narendra Kumar Rikhari, Junior Engineer , Uttarakhand Jal Sansthan.
12. Sri Neeraj Tripathi, Junior Engineer , Uttarakhand Jal Sansthan.
13. Sri Deep Chandra Belwal, Junior Engineer , Uttarakhand Jal Sansthan.
14. Sri Pawan Kumar Joshi, Junior Engineer , Uttarakhand Jal Sansthan.

15. Sri Devki Nandan, Junior Engineer, Uttarakhand Jal Sansthan.
16. Sri Kailash Chandra Joshi, Junior Engineer, Uttarakhand Jal Sansthan.
17. Sri Suresh Chandra Joshi, Junior Engineer, Uttarakhand Jal Sansthan.
18. Sri Mukesh Kumar Saxena, Junior Engineer, Uttarakhand Jal Sansthan.
19. Sri Rewat Singh, Junior Engineer, Uttarakhand Jal Sansthan.
20. Sri Himanshu Nautiyal, Junior Engineer, Uttarakhand Jal Sansthan.
21. Sri Harish Chandra Dwivedi, Junior Engineer, Uttarakhand Jal Sansthan.
22. Sri Mohan Singh Rawat, Junior Engineer, Uttarakhand Jal Sansthan.
23. Sri Girish Chandra Semwal, Junior Engineer, Uttarakhand Jal Sansthan.
24. Sri Virendra Singh Mehta, Junior Engineer, Uttarakhand Jal Sansthan.
25. Sri Sekhar Rotela, Junior Engineer, Uttarakhand Jal Sansthan.
26. Sri Rakesh Chandra, Junior Engineer, Uttarakhand Jal Sansthan.
27. Sri Pawan Singh, Junior Engineer, Uttarakhand Jal Sansthan.
28. Narendra Singh Jagwan, Junior Engineer, Uttarakhand Jal Sansthan.
29. Sri Brij Mohan Rawat, Junior Engineer, Uttarakhand Jal Sansthan.
30. Sri Pramod Chandra, Junior Engineer, Uttarakhand Jal Sansthan.
31. Sri Harish Chandra Pant, Junior Engineer, Uttarakhand Jal Sansthan.
32. Sri Ashok Kumar, Junior Engineer, Uttarakhand Jal Sansthan.
33. Sri Narendra Singh, Junior Engineer, Uttarakhand Jal Sansthan.
34. Sri Prashant Kumar Semwal , Junior Engineer, Uttarakhand Jal Sansthan.
35. Sri Diwakar Dangwal ,Junior Engineer, Uttarakhand Jal Sansthan.
36. Sri Krishna Chandra Budhani, Junior Engineer, Uttarakhand Jal Sansthan.
37. Sri Manoj Singh Bisht, Junior Engineer, Uttarakhand Jal Sansthan.
38. Sri Anoop Semwal, Junior Engineer, Uttarakhand Jal Sansthan.
39. Sri Sohan Singh Jethudi , Junior Engineer, Uttarakhand Jal Sansthan.
40. Sri Anil Parihar, Junior Engineer, Uttarakhand Jal Sansthan.
41. Sri Bhagat Singh Rawat, Junior Engineer, Uttarakhand Jal Sansthan.
42. Sri Vinay Singh Bisht, Junior Engineer, Uttarakhand Jal Sansthan.
43. Sri Anil Negi ,Junior Engineer, Uttarakhand Jal Sansthan.
44. Sri Kishore Chandra Pant, Junior Engineer, Uttarakhand Jal Sansthan.
45. Sri Bahadur Singh, Junior Engineer, Uttarakhand Jal Sansthan.
46. Sri Jyoti Kotnala, Junior Engineer, Uttarakhand Jal Sansthan.

47. Sri Luxman Singh Parihar, Junior Engineer, Uttarakhand Jal Sansthan.
48. Sri Jagdish Singh, Junior Engineer, Uttarakhand Jal Sansthan.
49. Sri Parmanand Punetha, Junior Engineer, Uttarakhand Jal Sansthan.
50. Sri Chandra Sekhar Pant, Junior Engineer, Uttarakhand Jal Sansthan.
51. Sri Pankaj Upadhyaya , Junior Engineer, Uttarakhand Jal Sansthan.
52. Sri Pranay Dhyani, Junior Engineer, Uttarakhand Jal Sansthan.
53. Sri Raghvendra Dobhal, Junior Engineer, Uttarakhand Jal Sansthan.
54. Sri Ravindra, Junior Engineer, Uttarakhand Jal Sansthan.
55. Sri Prem Chandra ,Junior Engineer, Uttarakhand Jal Sansthan.
56. Sri Anand Singh , Junior Engineer, Uttarakhand Jal Sansthan.
57. Sri Lalit Mohan Ethani , Junior Engineer, Uttarakhand Jal Sansthan.
58. Sri Anand Ballabh Joshi , Junior Engineer, Uttarakhand Jal Sansthan.
59. Sri Yashpal Singh Bisht, Junior Engineer, Uttarakhand Jal Sansthan.
60. Sri Manoj Dabral, Junior Engineer, Uttarakhand Jal Sansthan.
61. Sri Rakesh Joshi , Junior Engineer, Uttarakhand Jal Sansthan.
62. Sri Jagdish Singh Panwar, Junior Engineer, Uttarakhand Jal Sansthan.
63. Sri Surendra Singh Ratuela, Junior Engineer, Uttarakhand Jal Sansthan.
64. Sri Satish Singh,Junior Engineer, Uttarakhand Jal Sansthan.
65. Sri Mayank Mani Bajpai, Junior Engineer, Uttarakhand Jal Sansthan.
66. Sri Yahsveer Singh Rauthan, Junior Engineer, Uttarakhand Jal Sansthan.
67. Sri Chandra Mohan Chankanyal, Junior Engineer, Uttarakhand Jal Sansthan.
68. Sri Virendra Singh , Junior Engineer, Uttarakhand Jal Sansthan.
69. Sri Puran Chandra Pandey, Junior Engineer, Uttarakhand Jal Sansthan.
70. Sri Dinesh Chandra Purohit, Junior Engineer, Uttarakhand Jal Sansthan.
71. Sri Neeraj Kumar Sharma ,Junior Engineer, Uttarakhand Jal Sansthan.
72. Sri Pradeep Kumar ,Junior Engineer, Uttarakhand Jal Sansthan.
73. Sri Kamal Kumar Bhatt ,Junior Engineer, Uttarakhand Jal Sansthan.
74. Kumari Vandana Rani, Junior Engineer, Uttarakhand Jal Sansthan.
75. Sri Ajay Singh Saini, Junior Engineer, Uttarakhand Jal Sansthan.
76. Sri Sunil Kumar Singh ,Junior Engineer, Uttrakhand Jal Sansthan.
77. Sri Juned Ahmed, Junior Engineer, Uttarakhand Jal Sansthan.
78. Sri Sanjeeva Bhatnagar, Junior Engineer, Uttarakhand Jal Sansthan.

79. Sri Arun Kumar Gupta ,Junior Engineer, Uttarakhand Jal Sansthan.
 80. Mohd Parvez Alam ,Junior Engineer, Uttarakhand Jal Sansthan.
 81. Sri Sanjay Kumar ,Junior Engineer, Uttarakhand Jal Sansthan.
 82. Sri Santosh Kumar ,Junior Engineer, Uttarakhand Jal Sansthan.
 83. Sri Surendra Singh ,Junior Engineer, Uttarakhand Jal Sansthan.
 84. Sri Kamal Kishore Tamta ,Junior Engineer, Uttarakhand Jal Sansthan.
 85. Sri Prashant Verma ,Junior Engineer, Uttarakhand Jal Sansthan.
 86. Sri Naveen Kumar ,Junior Engineer, Uttarakhand Jal Sansthan.
 87. Sri Balam Giri ,Junior Engineer, Uttarakhand Jal Sansthan.
 88. Sri Vinod Aswal ,Junior Engineer, Uttarakhand Jal Sansthan.
 89. Sri Sushil Kumar ,Junior Engineer, Uttarakhand Jal Sansthan.
 90. Sri Vinod Kumar ,Junior Engineer, Uttarakhand Jal Sansthan.
 91. Sri K.L. Shah ,Junior Engineer, Uttrakhand Jal Sansthan
 92. Chief General Manager, Uttarakhand Jal Sansthan (HOD), Nehru Colony, Dehradun.

.....Respondents

Present: Sri Jugal Tiwari, Ld. Counsel
for the petitioners.

Sri Umesh Dhaundiyal, Ld. A.P.O.
for the State

Sri L.K.Maithani, Ld. Counsel
for the respondent no. 92

JUDGMENT

DATED: DECEMBER 17, 2016

(HON'BLE MR. D.K. KOTIA, VICE CHAIRMAN (ADMIN.))

1. The petitioner has filed the present claim petition for seeking following relief:

“In view of the facts stated in para 4 and grounds taken in para 05 above particularly the criteria adopted by the Uttarakhand Govt. in drawing up the final seniority list in respect of the petitioners may kindly be declared invalid and illegal and the impugned seniority list be quashed and set aside and respondent no. 1 be ordered to issue a fresh seniority list placing the petitioners senior to the private respondents no. 02,03 and 04 respectively.”

- 2.1 The petitioners are Junior Engineers in Uttarakhand Jal Sansthan, Peaya Jal Department, Government of Uttarakhand. The final seniority list of Junior Engineers issued by the Government on 17.01.2013 (Annexure: A1) has been challenged by the petitioners in this claim petition. The seniority list in all contains names of 155 Junior Engineers and the names of the petitioners are placed at the bottom at serial numbers 153, 154 and 155 in this seniority list. The petitioners have claimed seniority above private respondents No. 2, 3 and 4 (who are at serial numbers 55, 56 and 57 in the seniority list) in their relief.
- 2.2 The petitioners were Junior Engineers in Public Works Department (PWD) and Public Health Engineering Department in Arunachal Pradesh. They were taken on deputation by the Government of Uttarakhand in 2002-2003 on their request initially for three years and posted in Jal Sansthan in 2003.
- 2.3 Thereafter, the petitioners (and other deputanists) requested Jal Sansthan for absorption in the Sansthan as Junior Engineer. The Jal Sansthan in its Board meeting approved the proposal of absorption in October, 2006 (Annexure: A5). The proposal approved by the Board of Jal Sansthan is reproduced below:-

“उत्तरांचल जल संस्थान में विगत कुछ वर्षों से अरुणाचल प्रदेश लोक निर्माण विभाग/ लोक स्वास्थ्य अभियन्त्रण एवं जलापूर्ति तथा ग्रामीण निर्माण विभाग से प्रतिनियुक्ति पर आये अभियन्ता जिनका विवरण निम्न प्रकार है:-

1-श्री देवेन्द्र सिंह झिंक्वाण	अवर अभियन्ता
2-श्री बृजमोहन सिंह नेगी	अवर अभियन्ता
3-श्री के०एल० शाह	अवर अभियन्ता
4-श्री महावीर सिंह बिष्ट	अवर अभियन्ता
5- श्री ए०के० गुप्ता	अवर अभियन्ता
6- श्री आर०के० रोहेला	सहायक अभियन्ता

उत्तरांचल जल संस्थान में अपनी सेवायें संविलियन कराये जाने के इच्छुक हैं। इनके संविलियन सम्बन्धी प्रस्ताव का अनुमोदन इस प्रतिबन्ध के साथ किया जाता है कि इस सम्बन्ध में इनके मूल विभाग से अनापत्ति पत्र प्राप्त कर लिया जाये, इनकी ज्येष्ठता वर्तमान में कार्यरत अवर अभियन्ता की सूची में सबसे नीचे निर्धारित होगी तथा पारस्परिक ज्येष्ठता यह जिस विभाग से आये हैं, वहाँ पर मौलिक पद पर

नियुक्ति की तिथि अथवा यदि कोई ज्येष्ठता सूची वहां पर प्रचलित हो तो उसके आधार पर तथा यदि दो अभियन्ताओं की मौलिक नियुक्ति की तिथि एक ही हो, तो जो आयु में ज्येष्ठ होगा, के आधार पर निर्धारित की जायेगी।

(जो0के0पन्त) वित्त निदेशक उत्तरांचल जलसंस्थान	(एच0पी0उनियाल) मुख्य महाप्रबन्धक उत्तरांचल जलसंस्थान	(डा0आर0सी आर्य) महानिदेशक चिकित्सा स्वास्थ्य एवं परिवार कल्याण ,उत्तरांचल
(अमरेन्द्र सिन्हा) सचिव नियोजन उत्तरांचल शासन	(राधा रतूड़ी) सचिव वित्त उत्तरांचल शासन	(डी0के0गुप्ता) प्रबन्ध निदेशक उत्तरांचल पेयजल निगम

(एस0एस0 सन्धू)
अध्यक्ष
उत्तरांचल जल संस्थान”

2.4 The above resolution of the Board of Jal Sansthan for absorption was sent to the Government vide letter dated 23.11.2006 (Annexure: A6) mentioning specifically that there is no provision of absorption in the Service Rules. The said communication is reproduced below:

“उत्तरांचल जल संस्थान
'जलभवन' बी-ब्लॉक, नेहरू कालोनी, देहरादून -248001

पत्रांक / 3946 / अधि0 संविलीनीकरण / 2006-07 दिनांक 23 / 11 / 06

सेवा में,

अपर सचिव
पेयजल
उत्तरांचल शासन
देहरादून।

विषय: प्रतिनियुक्ति पर कार्यरत कार्मिकों का उत्तरांचल जल संस्थान में संविलियन किए जाने के सम्बन्ध में।

महोदय,

उपरोक्त विषयक शासन के पत्र सं0 205 /उन्तीस(1)/05/(1 अधि0)/2005 पेयजल अनुभाग -1 देहरादून दिनांक 11 अगस्त, 2005 के क्रम में अवगत कराना है कि अरुणाचल प्रदेश से उत्तरांचल जल संस्थान में प्रतिनियुक्ति पर कार्यरत सहायक अभियन्ता /अवर अभियन्ता का सेवा संविलियन का प्रस्ताव उत्तरांचल जल संस्थान बोर्ड से बाई सरकुलेशन(By Circulation) अनुमति प्राप्त की ली गयी है।(प्रति संलग्न)

2- सेवा नियमावली में संविलियनीकरण के सम्बन्ध में कोई व्यवस्था उल्लिखित नहीं है।

संलग्न : यथोपरित।

भवदीय

(एस0के0गुप्ता)
सचिव, प्रशासन”

- 2.5 The Uttarakhand Jal Sansthan wrote another letter dated 22.12.2008 (Annexure: A7) to the Government intimating that though the deputation period of the petitioners (and others) has expired yet the Government of Arunachal Pradesh has given the consent in November, 2008 for absorption of the petitioners in Jal Sansthan and the Sansthan in this letter requested to the Government for sanction/necessary order in regard to absorption of the petitioners.
- 2.6 Admittedly, deputation/absorption was not a mode for recruitment (on the post of Junior Engineer) according to service rules when the petitioners were taken on deputation and there was no provision in the service rules for absorption of Junior Engineers working on deputation. Later, the Government of Uttarkahand framed “उत्तराखण्ड जल संस्थान अभियंत्रण सेवा नियमावली, 2011” which came into force w.e.f. 2.12.2011 (Annexure: A11). These Rules are referred as ‘Rules of 2011’ hereinafter.
- 2.7 It was provided under Rule 6(1) of the Rules of 2011 that the mode of recruitment of Junior Engineer in Jal sansthan will be ‘direct recruitment’ through the Uttarakhand Public Service Commission. However, one time absorption of Junior Engineers who were working on deputation as on 2.12.2011 (the date when the Rules of 2011 came into force) was allowed under proviso to Rule 6(1). Rule 6(1) of the Rules of 2011 is reproduced below:-

भर्ती का स्त्रोत

“सेवा में विभिन्न श्रेणियों के पदों पर भर्ती निम्नलिखित स्त्रोतों से की जायेगी, अर्थात:

(1) कनिष्ठ अभियन्ता- कनिष्ठ अभियन्ता के पदों पर भर्ती लोक सेवा आयोग के माध्यम से सीधी भर्ती द्वारा की जायेगी;

परन्तु यह कि नियुक्ति प्राधिकारी, नियमावली के लागू होने के दिनांक को जल संस्थान में प्रतिनियुक्ति पर तैनात मौलिक रूप से नियुक्त कनिष्ठ अभियन्ताओं, जो प्रतिनियुक्ति की तारीख से निरन्तर कार्यरत हों और पद की शैक्षिक अर्हता धारित करते हों, का संविलियन निर्धारित मानकों के अन्तर्गत जैसा राज्य सरकार उचित समझे, केवल एक बार के लिये सीधी भर्ती के रिक्त पदों के विरुद्ध कर सकेगा।

2.8 The Government of Uttarakhand thereafter, prepared the norms/conditions for absorption of Junior Engineers and communicated to deputanists (including petitioners) through the concerned Executive Engineer on 29.03.2012 (Annexure: A10). One of the conditions which was prescribed for absorption was that the Junior Engineers who opt for absorption will be placed below the Junior Engineers (who were already working in the Sansthan) in the seniority list and an affidavit of their consent would be obtained from them in this regard.

2.9 The resolution of the Board of Jal Sansthan dated 19.10.2006 was acted upon after adopting due process and empowering the Government to absorb Junior Engineers under the Rules of 2011. Thereafter, after framing the terms and conditions of absorption, the 'office order' of absorption of Junior Engineers was issued by the Appointing Authority (Government of Uttarakhand) on 10.05.2012 (Annexure: A9) which is reproduced below:

“उत्तरांचल शासन
पेयजल अनुभाग-1
संख्या 452/उन्तीस(1)/12(31अधि0)/2005
देहरादून दिनांक 10.5.2012

कार्यालय आदेश

उत्तराखण्ड जल संस्थान के पत्र संख्या 697 /कार्मिक /01 प्रतिनियुक्ति 11/2012-13 दिनांक 7.5.2012 के क्रम में उत्तराखण्ड जल संस्थान की बोर्ड बैठक में पारित निर्णय दिनांक 19.10.2006 के क्रम में अरुणाचल प्रदेश से लोक निर्माण विभाग, लोक स्वास्थ्य अभियान्त्रिकी तथा जलापूर्ति विभाग एवं लोक निर्माण विभाग ईटानगर अरुणांचल प्रदेश से प्रतिनियुक्ति पर उत्तराखण्ड जल संस्थान में कायरत अभियन्ताओं को उत्तराखण्ड जल संस्थान अभियंत्रण सेवा नियमावली 2011 के नियम 6(1) के परन्तुक में निहित प्राविधानों तथा संविलियन हेतु निर्धारित निम्नांकित सेवा शर्तों एवं प्रतिबंधों के अधीन निम्नलिखित कनिष्ठ अभियन्ताओं की सीधी भर्ती के रिक्त पदों के विरुद्ध संविलियन किये जाने की स्वीकृति एतद् द्वारा प्रदान की जाती है।

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| 1. | श्री ए०के०गुप्ता | कनिष्ठ अभियन्ता |
| 2. | श्री देवेन्द्र सिंह झिंक्वाण | कनिष्ठ अभियन्ता |
| 3. | श्री बृजमोहन सिंह नेगी | कनिष्ठ अभियन्ता |
| 4. | श्री के०एल० शाह | कनिष्ठ अभियन्ता |

संविलियन की सेवा शर्तों:-

1. कनिष्ठ अभियन्ता के पद पर मौलिक रूप से नियुक्त हों।
2. प्रतिनियुक्ति की तिथि से निरन्तर कार्यरत हों।
3. प्रचलित नियमावली अनुसार कनिष्ठ अभियन्ता के पद की शैक्षिक अर्हता धारित करते हों।
4. पूर्व सेवा से सम्बन्धित समस्त सेवा लाभ, यदि कोई देय हों, वह पूर्व सेवायोजक द्वारा उपलब्ध कराई जायेगी तथा पेंशन, जी०पी०एफ० आदि देय लाभों के सम्बन्ध में उत्तराखण्ड जल संस्थान के प्रचलित नियम लागू होंगे।
5. अन्य राज्य के कार्मिकों के सम्बन्ध में वेतन संरक्षण राज्य सरकार में प्रचलित नियमानुसार देय होगा।
6. संविलियन केवल सीधी भर्ती के रिक्त उपलब्ध पदों के सापेक्ष तथा पैतृक विभाग की अनापत्ति के आधार पर किया जायेगा।
7. संविलियन के आधार पर ज्येष्ठता वर्तमान में कार्यरत कनिष्ठ अभियन्ताओं की सूची में सबसे नीचे निर्धारित होगी। संविलियनित होने वाले कनिष्ठ अभियन्ताओं की पारस्परिक ज्येष्ठता पैतृक विभाग की ज्येष्ठता क्रम के अनुरूप होगी और पैतृक विभाग भिन्न-भिन्न होने की दशा में मौलिक नियुक्ति की तिथि के आधार पर होगी किन्तु यदि दो अभियन्ताओं की मौलिक नियुक्ति की तिथि एक ही हो, तो आयु में ज्येष्ठ अभियन्ता का ज्येष्ठता क्रम पहले निर्धारित किया जायेगा।
8. प्रत्येक संविलियन अभियन्ता संविलियन आदेश की तिथि से संगत सेवा नियमावली में विहित अवधि तक परिवीक्षा में रहेंगे तथा परिवीक्षा अवधि समाप्त होने पर संगत सेवा नियमावली के अनुसार उनका पद पर स्थायीकरण कर दिया जायेगा।
9. संविलियन का निर्णय लेने से पूर्व सम्बन्धित कनिष्ठ अभियन्ता से संविलियन की पूर्व निर्धारित शर्तों के सम्बन्ध में सहमति शपथ पत्र के माध्यम से ली जायेगी।

(एस०राजू)
प्रमुख सचिव”

2.10 The above absorption order was issued on 12.05.2012 after the Rules of 2011 came into force and the same was issued by the Government exercising its power under proviso to Rule 6(1) of the Rules of 2011

which permitted “one time” absorption of Junior Engineers working on deputation as on 02.12.2011. It is also pertinent to note that the conditions/norms for absorption as empowered under proviso to Rule 6(1) of the Rules of 2011 were also determined by the Government and mentioned in detail in the order of absorption dated 12.05.2012.

2.11 Apart from other conditions, the important conditions of the absorption order dated 12.05.2012, relevant to the present case are repeated here:-

“7 संविलियन के आधार पर ज्येष्ठता वर्तमान में कार्यरत कनिष्ठ अभियन्ताओं की सूची में सबसे नीचे निर्धारित होगी।.....”

“8 प्रत्येक संविलियत अभियन्ता संविलियन आदेश की तिथि से संगत सेवा नियमावली में विहित अवधि तक परीक्षा में रहेंगे तथा परीक्षा अवधि समाप्त होने पर संगत सेवा नियमावली के अनुसार उनका पद पर स्थायीकरण कर दिया जायेगा।”

“9 संविलियन का निर्णय लेने से पूर्व सम्बन्धित कनिष्ठ अभियन्ता से संविलियन की पूर्व निर्धारित शर्तों के सम्बन्ध में सहमति शपथ पत्र के माध्यम से ली जायेगी। ”

2.12 In pursuant to the absorption order dated 12.05.2012, the petitioners gave their consent for the terms and conditions prescribed in the absorption order through affidavits and after that, they were absorbed in the Jal Sansthan.

2.13 The Jal Sansthan thereafter, issued a tentative seniority list of Junior Engineers on 12.08.2012 (Annexure: 8). In this tentative seniority list of 155 Junior Engineers in all, the petitioners were shown at serial numbers 58,60 and 62. As many as 20 objections were received against the tentative seniority list. It was also pointed out in objections against the tentative seniority list that the petitioners who were absorbed in Jal Sansthan vide order dated 12.05.2012 were to be placed below the Junior Engineers working on date. After considering the objections related to the petitioners, the Government modified the tentative seniority list and the petitioners were placed below the Junior Engineers working on 12.05.2012 at serial number 153, 154 and 155 in the final seniority list dated 13.01.2013 (Annexure: A1).

3. The grounds on the basis of which the seniority list dated 13.01.2013 has been challenged by the petitioners are that the Board of Jal Sansthan had passed a resolution for absorption of the petitioners on 19.10.2006; the petitioners were not given an opportunity of hearing and to make their objections against the tentative seniority list dated 12.08.2012; and the judgment of the Hon'ble Supreme Court (**S.I. Rooplal and Another Versus Lt. Governor through Chief Secretary, Delhi and Others- AIR 2000 SC 594**) wherein the principle has been laid down that the services rendered by deputanist in parent department are also to be counted towards seniority after absorption on the deputed post.
4. State Respondents (No. 1 and No. 92) have opposed the claim petition and in their separate written statements have contended that the petitioners have been absorbed after framing the Rules of 2011 and as per the norms determined by the Government of Uttarakhand under proviso to Rule 6 (1) of the Rules, the petitioners were to be placed below the Junior Engineers who were working at the time of absorption of the petitioners. The absorption of the petitioners was permissible only after their consent in regard to this condition of their placement in the seniority list. The petitioners gave their consent on oath through affidavits to agree to place them below the Junior Engineers working at the time of their absorption in the seniority list. The absorption order by the Government was issued on 12.05.2012 and the petitioners, therefore, have been rightly placed below private respondents (Junior Engineers who were already working on /before 12.05.2012) in the final seniority list dated 13.01.2013.
5. In spite of sufficient service, private respondents (No.2 to 91) have not filed any W.S./C.A. It was decided on 21.03.2016 to proceed ex-parte against them.
6. The petitioners have also filed separate Rejoinder Affidavits against the written statements of respondent No.1 and No.92 and the same

averments have been made in their Rejoinder Affidavits which were stated in the claim petition.

7. We have heard counsels of both the parties and also perused the record carefully.
8. Learned counsel for the petitioners has mainly argued that the petitioners after their absorption should have been given the benefit of their past service for the purpose of seniority and for this purpose he has relied on the judgment of the Hon'ble Supreme Court in the case of **S.I. Rooplal and Another Vs. Lt. Governor through Chief Secretary, Delhi and Others (supra)**. Learned counsel for the petitioners has contended that the Hon'ble Apex Court has held that *"any rule, regulation executive instruction which has the effect of taking away the services rendered by a deputationist in an equivalent cadre in the parent department while counting his seniority in the deputed post would be violative of Article 14 & 16 of the Constitution and hence liable to be struck down."* Learned counsel for the State respondents have refuted the argument of the learned counsel for the petitioners and contended that the said judgment of the Hon'ble Supreme Court is not applicable in the present case as the petitioners were absorbed under proviso to Rule 6(1) of the Rules of 2011 and the Government framed terms and conditions/ norms for absorption under the said rule and the petitioners were given an offer for absorption subject to the condition that the petitioners will be placed in the seniority list below the Junior Engineers working on the date of absorption dated 12.05.2012 and the petitioners were absorbed after the consent given by them in this regard on oath through affidavits.
 - 9.1 It would be appropriate to look into details of the judgment in **Roop Lal case (supra)** to understand the rival contentions of the parties.
 - 9.2 In the case of **Roop Lal** under Rule 5(h) of 'The Delhi Police (Appointment and Recruitment) Rules, 1980, appointment on deputation basis was one of the modes of recruitment in Delhi Police. Rule 17 of the said Rules also empowered the Commissioner of Police, Delhi to absorb officials on

deputation in Delhi Police. Certain Sub- Inspectors who were working in the Border Security Force (BSF), first deputed on transfer to Delhi Police and subsequently they were permanently absorbed in Delhi Police

9.3 In the above case, Hon'ble Supreme Court in paragraph 15 of the judgment held as under:

“15. We will now take up the question whether the appellants are entitled to count their service rendered by them as Sub-Inspector in the BSF for the purpose of their seniority after absorption as Sub-Inspector (Executive) in Delhi Police or not. We have already noticed the fact that it is pursuant to the needs of Delhi Police that these officials were deputed to Delhi Police from the BSF following the procedure laid down in Rule 5(h) of the Rules and subsequently absorbed as contemplated under the said Rules. It is also not in dispute that at some point of time in the BSF, the appellants' services were regularised in the post of Sub-Inspectors and they were transferred as regularly appointed Sub-Inspectors to Delhi Police force. Therefore, on being absorbed in an equivalent cadre in the transferred post, we find no reason why these transferred officials should not be permitted to count their service in the parent department.....”

9.4 In the case of **Roop Lal**, the Central Administrative Tribunal, Principal Bench, New Delhi had earlier decided on the basis of the Office Memorandum dated 29.05.1986 issued by the Government of India that the Sub-Inspectors were not entitled to count their past services in BSF for the purpose of seniority after their absorption in Delhi Police. The Hon'ble Supreme Court in its judgment (setting aside the order of the Tribunal) has dealt with this Office Memorandum. The Hon'ble Apex Court in Para 20 of the judgment has quoted the Memorandum as given below:-

“20. The relevant part of the Memorandum impugned in the writ petition referred to above, reads thus:

Even in the type of cases mentioned above, that is, where an officer initially comes on deputation and is subsequently absorbed, the normal principles that the seniority should be counted from the date of such absorption, should mainly apply. Where, however, the officer has already been holding on the date of absorption in the same or equivalent grade on regular basis in his parent department, it would be equitable and appropriate that such regular service in the grade should also be taken into account in determining his seniority subject only to the condition that at the most it would be only from the date of deputation to the grade in which absorption is being made. It has also to be ensured that the fixation of seniority of a transferee in accordance with the above principle will not effect any regular

promotions made prior to the date of absorption. Accordingly it has been decided to add the following sub-para (iv) to para 7 of general principles communicated vide O.M. dated 22nd December, 1959.

(iv) In the case of a person who is initially taken on deputation and absorbed later (i.e. where the relevant recruitment rules provide for "Transfer on deputation/Transfer"), his seniority in the grade in which he is absorbed will normally be counted from the date of absorption. If he has so ever been holding already (on the date of absorption) the same or equivalent grade on regular basis in his parent department, such regular service in the grade shall also be taken into account in fixing his seniority, subject to the condition that he will be given seniority from

- the date he has been holding the post on deputation, or

- the date from which he has been appointed on a regular basis to the same or equivalent grade in his parent department, *whichever is later.*"

9.5 The Hon'ble Apex Court in this case examined the validity of the Memorandum and held as under:-

"21. A perusal of Clause (iv) of the Memorandum shows that the author of this Memorandum has taken inconsistent views in regard to the right of a deputationist to count his seniority in the parent department. While in the beginning part of Clause (iv) in clear terms he says that if a deputationist holds an equivalent grade on regular basis in the parent department, such regular service in the grade shall also be taken into account in fixing the seniority. In the latter part the author proceeds to say-"subject to the condition that he will be given seniority from the date he has been holding the post or the date from which he has been appointed on a regular basis to the same or equivalent grade in his parent department whichever is later." The use of the words "whichever is later" negatives the right which was otherwise sought to be conferred under the previous paragraph of Clause (iv) of the Memorandum, We are unable to see the logic behind this. The use of the words "whichever is later" being unreasonable, it offends Article 14 of the Constitution"

"24.any Rule, Regulation or Executive Instruction which has the effect of taking away the service rendered by a deputationist in an equivalent cadre in the parent department while counting his seniority in the deputed post would be violative of Articles 14 and 16 of the Constitution. Hence, liable to be struck down. Since the impugned Memorandum in its entirety does not take away the above right of the deputationists and by striking down the offending part of the Memorandum, as has been prayed in the writ petition, the rights of the appellants could be preserved, we agree with the prayer of the petitioners/appellants and the offending words in the Memorandum "whichever is later" are held to be violative of Articles 14 and 16 of the Constitution, hence, those words are quashed from the text of the impugned Memorandum. Consequently, the right of the petitioners/appellants to count their service from the date of their regular appointment in the post of Sub-Inspector in BSF, while computing their seniority in the cadre of Sub-Inspector (Executive) in the Delhi Police, is restored."

9.6 It is pertinent to note here that in the case of Roop Lal, the said Memorandum dated 29.05.1986 had neither been made public nor the existence thereof made known to anybody concerned with the controversy of seniority. This Memorandum was, in fact, never acted upon by Delhi Police. Mentioning this factual position, the Hon'ble Supreme Court in Para 19 has observed as under:-

“19.....We have noticed earlier in the judgment that the constitutional validity of this Memorandum is independently challenged by the appellants in W.P. No. 191/99. There is considerable force in the argument addressed on behalf of the appellants that this Memorandum had neither been made public nor the existence thereof made known to anybody concerned with the controversy in question. We have already referred to this fact. Hence, we do not want to repeat the same in detail. On facts, we are of the opinion that the respondents ought not to have been permitted to rely upon this document because there is no material whatsoever produced by the respondents to show that this Memorandum which was issued by the Government of India was either ipso facto applicable to the Delhi Police Force or the same was adopted and applied by the Delhi Police Force.**Therefore, it is reasonable to expect that a deputationist when his service is sought to be absorbed in the transferred department would certainly have expected that his seniority in the parent department would be counted. In such a situation, it was really the duty of the respondents, if at all the conditions stipulated in the impugned Memorandum were applicable to such person, to have made the conditions in the Memorandum known to the deputationist before absorbing his services, in all fairness, so that such a deputationist would have had the option of accepting the permanent absorption in Delhi Police or not. The very fact that such steps were not taken, shows that this Memorandum was, in fact, never acted upon.....**”

10. In the case of **Indu Shekhar Singh and Others Vs. State of U.P. and Others AIR 2006SC2432** decided by the Hon'ble Supreme Court on 28.04.2006, the issue of providing counting of past services on deputation till the absorption was discussed when Service Rules did not

provide deputation/ absorption as the method of recruitment and held that in the absence of such provision in the Rules if an offer of absorption is given to the deputationists subject to the condition that their past service in parent organization/ services on deputation will not be included for the purpose of determination of seniority and they would be placed below the employees already working at the time of their absorption, under such circumstances, after giving the option and accepting the condition, the deputationists would not be entitled to claim the seniority by counting their past services. The extracts of the above judgment of the Apex Court are quoted below:-

“2. The Respondent No. 2- Mani Kant Gupta, Respondent No. 3- Virendra Kumar Tyagi and Respondent No. 4-Sukhpal Singh and the intervener herein (now Respondent No. 6-Vijay Kumar) were appointed in U.P. Jal Nigam on 5.2.1979, 12.12.1978, 16.11.1978 and 15.11.1977 respectively. Several town planning authorities including Ghaziabad Development Authority were created by Uttar Pradesh Urban Planning and Development Act, 1973 ('the Act', for short) with a view to provide for development of certain areas of State of Uttar Pradesh according to the plans and for other matters incidental thereto. By reason of U.P. Act No. 21 of 1985, the State of U.P. inserted Section 5-A in the said Act to create centralized services of all the development authorities, Sub-sections 1 and 2 whereof read as under:

5-A (1) Notwithstanding anything to the contrary contained in Section 5 or in any other law for the time being in force, the State Government may at any time, by notification, create one or more 'Development Authorities Centralized Services' for such posts, other than the posts mentioned in Sub-section (4) of Section 59, as the State Government may deem fit, common to all the development Authorities, and may prescribe the manner and conditions of recruitment to, and the terms and conditions of service of persons appointed to such service.

(2) Upon creation of a Development Authorities Centralised Service, a person serving on the posts included in such service immediately before such creation, not being a person governed by the U.P. Palika (Centralised) Services Rules, 1966, or serving on deputation, shall, unless he opts otherwise, be absorbed in such service.....”

“3. **The Respondent Nos. 2, 3, 4 and 6 (the intervener) were deputed to Ghaziabad Development Authority on diverse dates, i.e., 26.6.1986, 6.5.1989, 16.10.1985 and 1.4.1984 respectively. U.P. Jal Nigam, admittedly, is not and has never been a development authority. The employees on deputation to the development authorities from U.P. Jal Nigam, therefore, could not have been absorbed in the centralized services in terms**

of Sub-section (2) of Section 5-A of the Act. Options were, however, called for from the officers of U.P. Jal Nigam on deputation on various dates by the State of U.P. By letter 27.8.1987 and 28.11.1991, they were asked to communicate their acceptance stating as to whether they would like to be absorbed in the authorized centralized service subject to the conditions specified therein, e.g., their past services rendered in U.P. Jal Nigam would not be reckoned for the purpose of determination of seniority and they would be placed below the officers who had been appointed on regular basis in centralized service after their absorption.”

5.The State issued letters of absorption, so far as Respondent Nos. 2 and 3 are concerned on 18.3.1994 and so far as Respondent Nos. 4 and 6 (the intervener) are concerned on 6.4.1987..... the Appellants were placed above the Respondent Nos. 2, 3, 4 and 6 in the seniority list. Questioning the said orders, Respondent Nos. 2 to 4 herein filed a writ petition before the Allahabad High Court praying, *inter alia*, for the following relief:

“To issue a writ order or direction in the nature of mandamus commanding the respondents to give benefit of past service to the petitioners rendered by them in the parent department

“6. By reason of the impugned order dated 4.4.2003, the said writ petition has been allowed. The High Court, relying on or on the basis of the decision of this Court in **Sub-Inspector Rooplal and Anr. v. Lt. Governor through Chief Secretary, Delhi and Ors.**, opined:

(1) That refusal on the part of the State to grant benefit of past service in U.P. Jal Nigam in favour of the Respondents is violative of Articles 14 and 16 of the Constitution of India;

(2) By reason of acceptance of offer to give up their past services, the optees did not and could not have waived their fundamental right and, thus, acceptance of the conditions for their absorption was not material;

(3)

“12. The Respondent Nos. 2 to 4 were deputed to the Ghaziabad Development Authority on their own. They were presumed to be aware that they were not borne in the cadre of Centralised Services. The Rules do not provide for appointment by way of transfer. Appointment by way of absorption of a deputed employee would amount to fresh appointment which may be subject to the offer given by the Authority.....”.

“13. The Respondent Nos. 2 to 4, therefore were not entitled to the benefits of Rule 7. In terms of the rules, there is no provision for appointment by way of transfer. There is also no provision for appointment on permanent absorption of the deputed employees. The only provision which in the fact situation obtaining in the present case would apply and that too in the event the State intended to absorb the employees of Jal Nigam, would be Section 7(1) of the Act and Sub-Rule (2) of Rule 37 of Rules, 1985. Seniority, as is well settled, is not a fundamental right. It is merely a civil right..... The High Court

evidently proceeded on the premise that seniority is a fundamental right and thereby, in our opinion, committed a manifest error. The question which arises is as to whether the terms and conditions imposed by the State in the matter of absorption of Respondent Nos. 2 to 4 in the permanent service of Ghaziabad Development Authority is *ultra vires* Article 14 of the Constitution of India.”

“14. The State was making an offer to the Respondents not in terms of any specific power under Rules, but in exercise of its residuary power (assuming that the same was available). The State, therefore, was within its right to impose conditions. The Respondents exercised their right of election. They could have accepted the said offer or rejected the same. While making the said offer, the State categorically stated that for the purpose of fixation of seniority, they would not be obtaining the benefits of services rendered in U.P. Jal Nigam and would be placed below in the cadre till the date of absorption. The submission of Mr. Verma that for the period they were with the Authority by way of deputation, should have been considered towards seniority cannot be accepted simply for the reason that till they were absorbed, they continued to be in the employment of the Jal Nigam. Furthermore, the said condition imposed is backed by another condition that the deputed employee who is seeking for absorption shall be placed below the officers appointed in the cadre till the date of absorption. The Respondent Nos. 2 to 4 accepted the said offer without any demur on 3.9.87, 28.11.91 and 6.4.87 respectively. They, therefore, exercised their right of option. Once they obtained entry on the basis of election, they cannot be allowed to turn round and contend that the conditions are illegal.....”

11. In the case of **Indu Shekhar Singh and Others Vs. State of U.P. and Others** (supra), the Apex Court while discussing the case of **Roop Lal** observed that in that case, the Hon’ble Supreme Court was concerned with interpretation of Rule 5(h) of the Delhi Police (Appointment and Recruitment) Rules, 1980. It was also observed in the **Indu Shekhar Singh** case that the Apex Court in **Roop Lal** case interpreted the clause (iv) and in particular, the words “whichever is later” of the Office Memorandum dated 29.05.1986 and found that the views contained in the Memorandum were inconsistent and, therefore, agreeing with the prayer of the appellants, the offending words in the Memorandum “whichever is later” were held to be violative of Article 14 and 16 of the Constitution and the words “whichever is later” were quashed from the text of the Memorandum. The paragraph 23 of **Indu Shekhar** judgment wherein the case of **Roop Lal** has been discussed, is quoted below:-

“23. Having noticed the afore-mentioned decisions of this Court, we may now notice Sub-Inspector Rooplal and Anr. (supra), which is the sheet anchor of the judgment rendered by the High Court. In that case, this Court was concerned with interpretation of Rule 5(h) of the Delhi Police (Appointment and Recruitment) Rules, 1980 providing that if the Commissioner is of the opinion that it is necessary or expedient in the interest of work so to do, he may make appointment(s) to all non-gazetted categories of both executive and ministerial cadres of the Delhi Police on deputation basis and by drawing suitable persons from any other State, Union Territory, Central police organization or any other force. The Appellants therein were deputed on transfer from BSF to the Delhi Police pursuant to the aforementioned provisions. Rule 5(h) of the said rules empowered the Authority to appoint the employees of other departments drawn by way of deputation depending upon the need of the Delhi Police. There was no seniority rule. Seniority in that case was sought to be determined by way of an executive order, which in turn was issued on the basis of a Memorandum dated 29.5.1986 issued by the Government of India. The Memorandum in question was neither made public nor the existence thereof was made known to any person involved in the controversy. The said Memorandum was not made *ipso facto* applicable to the employees. In the aforementioned factual backdrop referring to R.S. Makashi and Ors. (supra) and Wing Commander J. Kumar (supra), this Court observed:

“.....Therefore, it is reasonable to expect that a deputationist, when his service is sought to be absorbed in the transferred department would certainly have expected that his seniority in the parent department would be counted. In such a situation, it was really the duty of the respondents, if at all the conditions stipulated in the impugned memorandum were applicable to such person, to have made the conditions in the memorandum known to the deputationist before absorbing his services, in all fairness, so that such a deputationist would have had the option of accepting the permanent absorption in the Delhi Police or not.”

..... The relevant part of the Memorandum issued on 29.5.1986, which was relied upon, reads thus:

“Even in the type of cases mentioned above, that is, where an officer initially comes on deputation and is subsequently absorbed, the normal principles that the seniority should be counted from the date of such absorption, should mainly apply. Where, however, the officer has already been holding on the date of absorption in the same or equivalent grade on regular basis in his parent department, it would be equitable and appropriate that such regular service in the grade should also be taken into account in determining his seniority subject only to the condition that at the most it would be only from the date of deputation to the grade in which absorption is being made. It has also to be ensured that the fixation of seniority of a transferee in accordance with the above principle will not effect any regular promotions made prior to the date of absorption. Accordingly it has been decided to add the following sub-para (iv) to para 7 of general principles communicated vide OM dated 22-12- 1959:

(iv) In the case of a person who is initially taken on deputation and absorbed later (i.e. where the relevant recruitment rules provide for "transfer on deputation/transfer"), his seniority in the grade in which he is absorbed will normally be counted from the date of absorption. If he has so ever been holding already (on the date of absorption) the same or equivalent grade on regular basis in his parent department, such regular service in the grade shall also be taken into account in fixing his seniority, subject to the condition that he will be given seniority from -

- the date he has been holding the post on deputation, or

- the date from which he has been appointed on a regular basis to the same or equivalent grade in his parent department, *whichever is later.*"

The interpretation of Clause (iv) and in particular, the words "whichever is later" came up for consideration in the said decision and on interpretation of the Rule it was held that the earlier decision in R.S. Makashi and Ors. and Wing Commander J. Kumar would be applicable. It was, however, of some interest to note it was held that such a right of the Appellants-petitioners therein could not have been taken away in the garb of an Office Memorandum. In the aforementioned fact situation, the law was stated in the following terms:

"It is clear from the ratio laid down in the above case that any rule, regulation or executive instruction which has the effect of taking away the service rendered by a deputationist in an equivalent cadre in the parent department while counting his seniority in the deputed post would be violative of Articles 14 and 16 of the Constitution. Hence, liable to be struck down. Since the impugned memorandum in its entirety does not take away the above right of the deputationists and by striking down the offending part of the memorandum, as has been prayed in the writ petition, the rights of the appellants could be preserved, we agree with the prayer of the appellant-petitioners and the offending words in the memorandum "whichever is later" are held to be violative of Articles 14 and 16 of the Constitution, hence, those words are quashed from the text of the impugned memorandum. Consequently, the right of the appellant- petitioners to count their service from the date of their regular appointment in the post of Sub-Inspector in BSF, while computing their seniority in the cadre of Sub-Inspector (Executive) in the Delhi Police, is restored."

"For the said reasons only the executive instruction was held to be ultra vires Articles 14 and 16 of the Constitution of India. It was further held that by reason of the Memorandum impugned therein the right of the deputationists could not have been taken away and in that view of the matter, the offending part of the Memorandum was struck down, as prayed in the writ petition. The rights of the Appellants were held to have been preserved and the words "whichever is later" were held to be ultra vires Articles 14 and 16 of the Constitution of India."

12. In **Indu Shekhar case**, the Apex Court after analyzing decisions of the Hon'ble Supreme Court in a number of cases and specially the **Roop Lal case** held as under:-

“24. The decisions referred to hereinbefore, therefore, lay down a law that past services would only be directed to be counted towards seniority in two situations: (1) when there exists a rule directing consideration of seniority; and (2) where recruitments are made from various sources, it would be reasonable to frame a rule considering the past services of the employees concerned. The said decisions, in our considered view, have no application in this case, having regard to the provisions of Section 5-A of the Act, in terms whereof no provision exists for recruitment of deputationists. Recruitment of deputationists, in fact, is excluded therefrom.

In the instant case while exercising, as to its power under Rule 37(3), there was no embargo for the State Government to lay down conditions for permanent absorption of employees working in one Public Sector Undertaking to another.....”

13. We have gone through the cases of **Roop Lal and Indu Shekhar Singh** and after careful examination, we are of the opinion that the ratio of **Roop Lal case** is clearly distinguishable from the present case. The facts, circumstances and rules in the present case are quite different than those were in the case of **Roop Lal** and quite similar to the case of **Indu Shekhar Singh**.
14. In the case in hand, “deputation” was not a method of recruitment when the petitioners came on their own request on deputation in 2002-2003. There was also no provision in the service rules for absorption of Junior Engineers working on deputation in Jal Sansthan. This was not the position in the case of **Roop Lal** as the Delhi Police (Appointment and Recruitment) Rules, 1980 provided deputation (Rules 5(h)) and absorption (Rule 17). Thus, in the case of **Roop Lal**, the method of recruitment was deputation and absorption under the service rules whereas in the present case, the method of recruitment was not deputation and absorption. Since service rules of Junior Engineers in Jal Sansthan did not provide deputation/ absorption, the petitioners had no right to be deputed or absorbed and thus, the question as regard

reckoning of their past services for the purpose of seniority was a matter which was within the exclusive domain of the State Government.

15. While in the case of **Roop Lal**, the Police Commissioner had asked by his letter to BSF for their employees under the rules to join Delhi Police on Deputation to be followed by absorption, in the case in hand, the petitioners themselves requested for absorption in Jal Sansthan which was considered by the State Government and as a one time arrangement, the absorption of the petitioners as Junior Engineer in Jal Sansthan was allowed under proviso to Rule 6(1) of the Rules of 2011 as has been described in paragraphs 2.6 to 2.12 above.
16. Distinguishing the case of **Roop Lal**, it is also stated that in that case, there was no undertaking by the employees who were absorbed that under the terms and conditions of absorption, their past services will not be counted for the purpose of seniority. In the present case, the State Government framed terms and conditions of absorption under proviso to Rule 6(1) of the Rules of 2011 which were accepted by the petitioners voluntarily and the petitioners willingly agreed to forgo their past services to be counted for seniority purpose. It is not a plea of the petitioners that the “undertaking” was taken from them forcefully or without their agreeing to the terms and conditions of the absorption. It was with the ‘consent’ of the petitioners that they were placed below the Junior Engineers (who were already working in the Jal Sansthan) in the seniority list after their absorption.
17. The petitioners had joined the services on deputation on their own accord and sweet-will without imposing any condition in respect of protection of their past services rendered by them in their parent department in Arunachal Pradesh before joining their post on deputation or while absorption of their services in Jal Sansthan and, therefore, after having been absorbed in the services of the Sansthan, their past services rendered in Arunachal Pradesh or Jal Sansthan cannot be counted for the purpose of determination of seniority as in the order of absorption itself

it was clearly mentioned that the petitioners will be placed below the Junior Engineers (who were already working in the Sansthan) in the seniority list after their absorption.

18. Had the petitioners not consented to the terms of absorption, they would not have been absorbed in the first place. Thus, the petitioners first agreed to the terms and conditions in order to avail the benefit of absorption and then they are denying those very terms and conditions, to seek a benefit they are not entitled to after their absorption. In the circumstances, the petitioners are estopped from claiming contrary to the terms and conditions agreed pursuant to which they were absorbed in the Jal Sansthan.
19. As service rules did not recognize deputation of the petitioners as a mode of recruitment and a special one time provision was made to absorb the petitioners in the Jal Sansthan under proviso to Rule 6(1) of the Rules of 2011 empowering the State Government to frame norms/ conditions of absorption, the seniority of the petitioners depended on the arrangement/ terms which were made by the State Government. The petitioners would thus, be borne in the Cadre of Junior Engineers in terms of the conditions laid down by the State Government in exercise of power under the said Rules.
20. The State Government made an offer to the petitioners for absorption with certain terms and conditions. The petitioners exercised their "right of election". They could have accepted the said offer or rejected the same. While making the offer, the State Government clearly stated in the absorption order that the deputed Junior Engineers who are seeking absorption shall be placed below the Junior Engineers appointed in the cadre till the date of absorption. The petitioners accepted the said offer without any demur. The petitioners, therefore, exercised their right to option. Once they obtained entry on the basis of election, they cannot be allowed to turn round and contend that the conditions are illegal.

21. **It is also pertinent to note that the petitioners have also not sought relief to quash the terms and conditions laid down in their absorption order dated 12.05.2012. In the absence of prayer to quash the absorption order and conditions therein, the petitioners' prayer to quash the seniority list cannot be sustained.**
22. Learned counsel for the petitioners has also referred the cases (1) **Hansi Brijwasi Versus State of Uttaranchal Claim petition No. 232 of 2002** of this Tribunal and (2) **State of Uttaranchal and Another Versus Public Services Tribunal and Another, writ petition No. 56 of 2004 (S/B)** Hon'ble High Court of Uttarakhand at Nainital (which upheld the above judgment of this Tribunal) in support of the case of the petitioners. We have gone through each of above cases and find 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, above cases are not relevant and of no help to the petitioners.
23. For the reasons stated above, we do not find any force in the claim petition, the same is devoid of merit and, therefore, 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: DECEMBER 17, 2016
DEHRADUN

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