

BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT NAINITAL

Present: Hon'ble Mr. Ram Singh

----- Vice Chairman (J)

Hon'ble Mr. U.D.Chaube

-----Member (A)

CLAIM PETITION NO. 10/N.B./D.B./2014

1. Ganga Prasad, S/o Sri Ratan Ram,
2. Umesh Chandra Kandpal, S/o Sri B. D. Kandpal,
3. Rajeev Sharma, S/o Sri R. P. Sharma,
4. Harish Chandra Arya, S/o Sri Ram Lal,
5. Kishan Ram, S/o Sri Godhan Ram,
6. Kundan Mehta, S/o Late Sri Sher Singh,
7. Naveen Chandra Fulara, S/o Sri Harish Chandra,
8. Lalit Prasad, S/o Sri Khim Ram,
9. Neeraj Joshi, S/o Sri Jagdish Chandra Joshi,
10. Smt. Khadija Banu, W/o Sri Mohmmad Shamim,

All are serving as Office Assistant Grade—II, in the office of Divisional Manager (Operation), Uttarakhand Transport Corporation, Kumaon Region, Kathgodam, District Nainital.

.....Petitioners

VERSUS

1. State of Uttarakhand through Secretary, Transport Department, Government of Uttarakhand, Dehradun.
2. Uttarakhand Transport Corporation, 1, Raj Vihar, Chakrata Road, Dehradun through its Managing Director.
3. Divisional Manager (Operation), Uttarakhand Transport Corporation, Kumaon Region, Kathgodam, District Nainital.

4. Sri Farid Ahmad, presently serving as Office Assistant Grade-I, Uttarakhand Transport Corporation, Kathgodam Depot, Kathgodam, District Nainital.
5. Sri Vinod Kumar Maheshwary, presently serving as Office Assistant Grade-I, Uttarakhand Transport Corporation, Kathgodam Depot, Kathgodam, District Nainital.
6. Sri R.P. Joshi, presently serving as Office Assistant Grade-I, Uttarakhand Transport Corporation, Haldwani Depot, Haldwani, District Nainital.
7. Sri Basant Singh Jina, presently serving as Office Assistant Grade-I, Uttarakhand Transport Corporation, O/O Divisional Manager (Operation), Kathgodam, District Nainital.
8. Sri Pooran Chandra Sanwal, presently serving as Office Assistant Grade-I, Uttarakhand Transport Corporation, O/O Divisional Manager (Operation), Kathgodam, District Nainital.
9. Sri Harish Chandra Joshi, presently serving as Office Assistant Grade-I, Uttarakhand Transport Corporation, O/O Divisional Manager (Operation), Kathgodam, District Nainital.
10. Sri Mohan Singh Kapkoti, presently serving as Office Assistant Grade-I, Uttarakhand Transport Corporation, Kathgodam Depot, Kathgodam, District Nainital.
11. Sri Jagdish Chandra Bahuguna, presently serving as Office Assistant Grade-II, Uttarakhand Transport Corporation, Bhowali Depot, District Nainital.
12. Sri Govind Singh Nagarkoti, presently serving as Office Assistant Grade-II, Uttarakhand Transport Corporation, O/O Divisional Manager (Technical), Kathgodam, District Nainital.
13. Sri Bal Krishan Sharma, presently serving as Office Assistant Grade-II, Uttarakhand Transport Corporation, Rudrapur Depot, District Udham Singh Nagar.
14. Sri Pushkar Singh Bisht, presently serving as Office Assistant Grade-II, Uttarakhand Transport Corporation, O/O Divisional Manager (Operation), Kathgodam, District Nainital.

15. Sri Suresh Chandra Arya, presently serving as Office Assistant Grade-I, Uttarakhand Transport Corporation, O/O Divisional Manager (Operation), Kathgodam, District Nainital.
16. Sri Naveen Manral, presently serving as Office Assistant Grade-I, Uttarakhand Transport Corporation, O/O Divisional Manager (Operation), Kathgodam, District Nainital.
17. Sri Naveen Chandra Etni, presently serving as Office Assistant Grade-I, Uttarakhand Transport Corporation, O/O Divisional Manager (Operation), Kathgodam, District Nainital.
18. Sri Hemant Kumar, presently serving as Office Assistant Grade-I, Uttarakhand Transport Corporation, O/O Divisional Manager (Operation), Kathgodam, District Nainital.
19. Sri Raju Srivastava, presently serving as Office Assistant Grade-II, Uttarakhand Transport Corporation, Rudrapur Depot, District Udham Singh Nagar.
20. Sri Naveen Chandra Lohni, presently serving as Office Assistant Grade-II, Uttarakhand Transport Corporation, O/O Divisional Manager (Operation), Kathgodam, District Nainital.
21. Sri Ganesh Singh Negi, presently serving as Office Assistant Grade-II, Uttarakhand Transport Corporation, O/O Divisional Manager (Operation), Kathgodam, District Nainital.
22. Sri Kailash Chandra Pandey, presently serving as Office Assistant Grade-II, Uttarakhand Transport Corporation, Ramnagar Depot, Ramnagar, District Nainital.
23. Sri Kamlesh Joshi, presently serving as Office Assistant Grade-II, Uttarakhand Transport Corporation, O/O Divisional Manager (Operation), Kathgodam, District Nainital.
24. Sri Sunil Kumar, presently serving as Office Assistant Grade-II, Uttarakhand Transport Corporation, Almora Depot, Almora
25. Sri Mukesh Kumar Verma, presently serving as Office Assistant Grade-II, Uttarakhand Transport Corporation, O/O Divisional Manager (Operation), Kathgodam, District Nainital.

.....Respondents

Present: Sri Bhagwat Mehra, Advocate
for the petitioners.

Sri V.P.Devrani, Ld. A.P.O.
for the respondent no. 1

Sri Ashish Joshi, Advocate for the
respondent nos. 2 & 3.

Sri Ganesh Kandpal, Advocate for the
respondent nos. 8, 9, 10, 22 & 23.

None for the rest of the respondents.

JUDGMENT

DATED: NOVEMBER 09, 2016

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

1. The petitioners have filed this claim petition for seeking the reliefs to set-aside the impugned final seniority list of Office Assistant Grade-II as circulated vide letter dated 14.12.2011 (Annexure: P1) passed by the respondent no. 3 along with the direction to the respondent to prepare the seniority list afresh after reckoning inter-se seniority of all employees from the date of their selection/promotion on the post of Office Assistant Grade-II and to direct the respondents to promote the petitioners to the post of Office Assistant Grade-I from the date when private respondents/juniors to them were promoted and to grant all other consequential benefits to the petitioners along with cost.

2. That as per facts narrated in the petition, the petitioners were appointed on the post of Conductor in the respondent department between 22.02.1992 to 1997, whereas, the private respondents were already in services as Conductors. In 1995-96, the respondent no. 3 conducted a selection process for the post of Office Assistant Grade-II and the petitioners were promoted to the said post in 1996-97 by various orders. The private respondents also participated in that

selection process, but they were not promoted and their promotion was made at some later stage. On 13.05.2011, the respondent no. 3 circulated a tentative seniority list of the Office Assistant Grade-II, which was prepared on the basis of the date of initial appointment on the post of Conductor and the date of promotion was not taken into account. The list was never served on the petitioners hence, they could not file any objections. On 14.12.2011, the said tentative seniority list was finalized.

3. It is also stated in the petition that the Board of Directors, which is the highest body of the respondent in its meeting on 27.07.2011 resolved that departmental promotion made on the basis of selection process, shall not be treated as promotion, and it shall be treated as departmental selection. On that basis, an order/letter no. 596 dated 11.09.2012 was circulated to the subordinate offices and the petitioners were hopeful that the respondent will correct the seniority list of the Office Assistant Grade-II as per the Board resolution, but no action was taken. Thereafter, on 12.09.2013, a meeting was held with the employees Association and the respondents gave an assurance to correct and publish the seniority list before 30.09.2013. The respondent no. 3 issued a tentative seniority list of Office Assistant Grade-II prepared on the basis of date of selection/promotion. But to the utter surprise of the petitioners, in December, 2013, without finalizing the tentative seniority list dated 26.09.2013, private respondents no. 4 to 10 were promoted on the post of Office Assistant Grade-I ignoring the claim of the petitioners. On 18.12.2013, the petitioners made a joint representation to the respondent no. 2 and requested to promote them on the post of Office Assistant Grade-I as per seniority list dated 26.09.2013, but the respondents instead of giving legitimate claim of the petitioners and with a view to cover up the illegality committed by them in promoting private respondents without finalizing seniority, issued a letter in the month of January,

2014 by anti-dating the same as 18.11.2013 and the same was sent to Assistant General Manager, Almora/Ranikhet/Bhowali/Kathgodam etc. and others. The respondent no. 3 without assigning any reason, cancelled the seniority list dated 26.09.2013. Whereas, no decision has been taken as yet on the representation of petitioners dated 18.12.2013 and the petitioners are aggrieved by the denial of their proper placement in the seniority list of Office Assistant Grade-II and they are aggrieved by the promotion of the private respondents to the post of Office Assistant Grade-I and inaction on the part of the respondents for not giving legitimate claim to the petitioners, hence, this petition has been filed.

4. The respondent State as well as Uttarakhand Transport Corporation and few private respondents have opposed the petition broadly on the basis that services of the claimants are governed by the U.P. State Road Transport Corporation Employee (other than officer) Service Regulation, 1981, which has been adopted by the Uttarakhand Road Transport Corporation after creation of the State of Uttarakhand and according to Rule 31 of the said Regulation, the seniority has been fixed. It has been submitted that inter-se seniority of the persons appointed by promotion shall be the same as it was on the post from which they were promoted and the seniority of the person shall be counted according to the feeding cadre post of the employees. In the present case, the petitioners and private respondents were initially appointed on the post of Conductor, which is the feeding cadre and the seniority has been prepared by the corporation on the basis of Rule 31 of the said Service Regulation of 1981. In the counter affidavit, it has also been mentioned that the department issued a tentative seniority list on 13.5.2011 in which the petitioners were placed in the seniority as per their initial appointment on the post of conductor and the objections were invited against the seniority list within one month, but no objections were filed despite the fact that the said list

was pasted on the notice board and said tentative seniority list of Office Assistant Grade-II was finalized on 14.12.2011. The contention of the petitioners is totally wrong and misconceived that the persons junior to them have been promoted on the post of Office Assistant Grade-I. It has also been submitted that the decision of the Board has no overriding effect upon the Regulation of 1981, which has been framed in exercise of the powers conferred by section 45(2) (C) of Road Transport Corporation Act, 1950. As no clear instruction has been given by the headquarters regarding seniority list dated 26.09.2013 and the said tentative seniority list of Office Assistant Grade-II was not in accordance with Regulation 31 and hence, it was cancelled vide order dated 9.11.2013. The claim petition is devoid of merit and a prayer has been made to dismiss the same.

5. A rejoinder affidavit has also been filed reiterating the same facts as have been mentioned in the claim petition.

6. We have heard learned counsel for the parties and perused the record submitted before the court.

7. Some facts are accepted to both the sides. Firstly, the petitioners and private respondents entered into the services of the respondent corporation on the post of conductor and from the date of initial entry, the petitioners came later on. It is not the claim of the petitioners that the private respondents joined their services after their initial appointment. The petitioners have come up before the court on the basis that for the post of Office Assistant Grade-II, their promotion was taken as a departmental selection and their seniority from the post of Office Assistant Grade-II should be counted from the date of their selection/promotion on the said post to which they were promoted earlier than the private respondents and they have tried to take up the help of a decision of the Board by which the Board passed resolution that from the post of conductor to the post of Office

Assistant Grade-II, the promotion shall not be treated as promotion, but a departmental selection. This proposal of the Board was not finalized by the Government. The respondents have contested this plea on the basis that the seniority of the persons are regulated by Rule 31 of the relevant Service Regulation of 1981 and the decision of the Board cannot override the Regulations made under Section 45 of the Road Transport Act. We agree with the contention of the respondents. In this case, the seniority of the petitioners and the private respondents has to be determined in accordance with Rule 31(2) of the Service Regulation, 1981, which reads as under:

“31(2). Seniority in any category of posts shall be determined from the date of continuous service followed by regular appointment and, if more than one persons are appointed on the same date from the order in which their names are arranged in the appointment order:

Provided that:-

- (i) The inter se seniority of the persons appointed directly shall be the same as determined at the time of selection and mentioned in the merit list.*
- (ii) The inter se seniority of persons appointed by promotion shall be the same as it was in the post from which they were promoted.*
- (iii) Where appointments are made both by promotion and direct recruitment in the same grade and on the same date the seniority shall be determined by arranging the names of the persons in the cyclic order in accordance with Regulation 23.*

Provided further that the inter se seniority of the persons who were employees of the State Government and have

opted for the service of the Corporation shall be the same as it was or would have been in their parent department under the State Government."

8. The perusal of the Rule 31(2) reveals that the inter se seniority of the persons appointed by promotion shall be same as it was on the post from which they were promoted. Hence, the seniority of the persons shall be counted as per the seniority of the feeding cadre and in the present case, all the petitioners and private respondents were initially appointed on the post of Conductor which is the feeding cadre and the seniority list was prepared by the respondents on the basis of Rule 31 of the Regulation, 1981. Hence, the seniority list, finalized on 14.12.2011 (Annexure: P1) was correct in accordance with the Rule 31 of the Regulations of 1981 and the court is of the view that Board's decision communicated vide order/letter no. 596 dated 11.9.2012 has no overriding effect above the Regulation issued under the Act. Undoubtedly, the post of Office Assistant Grade-II is a promotional post from Conductor; it cannot be treated as a selection post against the Rules. If any decision was taken by the respondent no. 3 under the influence of the employee Association to treat it as new selection overriding the provisions of the Rules, this was wrong and the tentative seniority list dated 26.09.2013 issued taking into account the date of appointment on the post of Office Assistant Grade-II as a selection post, was not as per the law. Moreover, the said tentative seniority list dated 26.09.2013 was cancelled vide order dated 09.11.2013 hence, on the post of Office Assistant Grade-II, the seniority list finalized vide order dated 14.12.2011 as per Rule 31 of the Regulation of 1981, is correct. The contention of the petitioners has no force because the private respondents, who were senior to the petitioners on the initial feeding cadre post of Conductor, regain their seniority on the post of Office Assistant Grade-II. Hence, this court is of the view that the respondent has rightly issued the seniority list dated

14.12.2011 and the action of the respondents cancelling the list dated 26.09.2013 was appropriate and the petitioners' claim is not sustainable, which deserves to be dismissed.

ORDER

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

(U.D.CHAUBE)
MEMBER (A)

(RAM SINGH)
VICE CHAIRMAN(J)

DATE: NOVEMBER 09, 2016
NAINITAL

KNP