

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

Present: Hon'ble Mr. Rajendra Singh

----- Vice Chairman (J)

Hon'ble Mr. A. S. Rawat

----- Vice Chairman (A)

CLAIM PETITION NO.20/NB/DB/2024

1. Harinandan Kapri, aged about 48 years s/o Sri Bishan Dutt Kapri Presently Posted as Assistant Engineer PMGMSY Irrigation Division Jeolikoat Nainital R/o Chandrika Colony Pilikothi Road, Bari Mukhani, Haldwani, Nainital Uttarakhand- 263139
2. Birendra Singh, aged about 48 years s/o Sri Hayat Singh Presently Posted as Assistant Engineer PMGSY ID Lohaghat Irrigation Division, Lohaghat, R/o Talli Chandmari Lohaghat, District Champawat ,Uttarakhand- 262524.

.....Petitioners

vs.

1. State of Uttarakhand through its Secretary Irrigation Uttarakhand Secretariat Dehradun.
2. Engineer in Chief (Head of Department) Irrigation Department Yamuna Colony Dehradun.
3. Uttarakhand Public Service Commission Gurukul Kangari Haridwar.
4. Naresh Pal Singh s/o not Known Presently posted as Assistant Engineer, Service through Engineer in Chief (Head of Department) Irrigation Department Yamuna Colony Dehradun.
5. Mayank Mittal s/o not Known Presently posted as Assistant Engineer, Service through Engineer in Chief (Head of Department) Irrigation Department, Yamuna Colony, Dehradun.
6. Vijay Shanker s/o not Known Presently posted as Assistant Engineer, Service through Engineer in Chief (Head of Department) Irrigation Department Yamuna Colony Dehradun.
7. Bhim Singh S/o not Known Presently posted as Assistant Engineer, Service through Engineer in Chief (Head of Department) Irrigation Department Yamuna Colony Dehradun.
8. Jatin Bhardwaj S/o not Known Presently posted as Assistant Engineer, Service through Engineer in Chief (Head of Department) Irrigation Department Yamuna Colony Dehradun.
9. Himanshu Pant S/o not Known Presently posted as Assistant Engineer, Service through Engineer in Chief (Head of Department) Irrigation Department Yamuna Colony Dehradun.

10. Govind Kumar S/o not Known Presently posted as Assistant Engineer, Service through Engineer in Chief (Head of Department) Irrigation Department Yamuna Colony Dehradun.

11. Gaurav Tripathi S/o not Known Presently posted as Assistant Engineer, Service through Engineer in Chief (Head of Department) Irrigation Department Yamuna Colony Dehradun.

12. Vivek Pratap Singh S/o not Known Presently posted as Assistant Engineer, Service through Engineer in Chief (Head of Department) Irrigation Department Yamuna Colony Dehradun.

13. Ashish Shukl S/o not Known Presently posted as Assistant Engineer, Service through Engineer in Chief (Head of Department) Irrigation Department Yamuna Colony Dehradun.

.....**Respondents**

Present: Sri N. K. Papnoi, Advocate for the petitioners
Sri Kishore Kumar, A.P.O. for the respondents No. 1 & 2
Sri Ashish Joshi, Advocate for the respondent No. 3

JUDGMENT

DATED: MAY 20, 2025

HON'BLE MR. A.S.RAWAT, VICE CHAIRMAN (A)

By means of present claim petition, the petitioners seek the following reliefs:

i) To issue order or direction appropriate in nature and set aside the final seniority list dated 02-06-2022 (Contained as Annexure No. 1 to the claim petition) and further direct the respondents to correct the seniority list as per rules and treat the private respondents junior to the petitioners and placed the petitioners at serial no. 52 and 53 on the recommendation of the D.P.C. dated 27-06-2014 by treating their selection for the year of 2013-14, after calling the entire records from the respondents or in alternate pass any appropriate orders keeping in view of the facts highlighted in the body of the petition or mould the relief appropriately.

ii) To issue any other order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case.

2. Brief facts of the case are as follows:

2.1 The petitioners were appointed on the post of Junior Engineers (Civil) in the Irrigation Department on 20.07.2004 in the pay scale of Rs. 5000-150-8000 and joined their duties at Kumoun Irrigation Division Almora.

2.2 The respondent department in the year of 2013 sent requisition to the respondent no.3 for promotion on the post of Assistant Engineers for the selection year 2013-2014 under promotion quota. The respondent no.3 convened the D.P.C. on 27-06-2014 and recommended the names of the petitioners and other similarly situated persons vide order no. 122/07/DPC/E-1/2013-14 dated 27-06-2014.

2.3 The similarly situated Junior Engineer (Civil) who have acquired the degree during their service, were considered for promotion under 7.33 quota by the respondent no.3 and vide order no. 121/06/DPC/E-1/2013-14 dated 27-06-2014, their names were recommended for promotion and the department vide order dated 30-06-2014 issued promotion orders giving benefit of seniority and they were shown above to the petitioners in the impugned final seniority list.

2.4 Since respondent no.3 is the selecting body and they have declared the petitioners suitable for promotion through the D.P.C. on 27.06.2014 in selection year 2013-14 ending on 30-06-2014 and thus the date of promotion of the petitioners is 27-06-2014, but the respondent department with intention to give undue advantage to their near and dear deliberately did not issue the promotion order before 30-06-2014 and issued the same on 06.08.2014.

2.5 In the year 2011, the respondent department sent a requisition for appointment of Assistant Engineer to respondent no.3 and pursuant to the requisition, the respondent no.3 had issued advertisement for direct selection on the post of Assistant Engineer and after completing the selection the final result was issued and the appointment orders were issued to the direct recruited candidates on 26-02-2014 for the selection year 2013-14. The private respondent no.4 has been issued the appointment order on 02.12.2014 on the basis of his merit.

2.6 The respondent department on 01.04.2019 and 02.05.2019 issued tentative seniority list, in which, the petitioners have been

shown at serial no. 124 & 125. The petitioners, who were selected for the year 2013-14 have been shown below the direct recruited candidates who have joined their service much after the petitioners. The private respondent no. 4 & 13 who joined their services on 02-12-2014 have been shown senior to the petitioners.

2.7 Feeling aggrieved by the tentative seniority list, the petitioners submitted their objections to the tentative seniority list and specifically stated that in their case the D.P.C. was conducted on 27-06-2014 and they were found suitable for the promotion for the year 2013-14 then, why their seniority is fixed by treating them 2014-15.

2.8. The respondent department vide their letter dated 30-05-2024 provided the copy of the final seniority list dated 02-06-2022 along with decision on their objections on the request of the petitioner through RTI application.

2.9 In the impugned seniority list, the private respondent no. 4 has been shown at serial no. 50 by treating him selected for the year 2013-14. But in the case of the petitioners, they are given seniority below to the private respondent no. 4 by treating their selection year 2014-15. The act of the respondent department is arbitrary, malafide and illegal because when a person who joins his duties on 02-12-2014 how he becomes senior to the person who joins on 06-08-2014.

3. The petitioner has challenged the impugned orders on the following grounds:

3.1 The act of the respondent department is illegal and arbitrary and against the various decision of the Hon'ble Supreme Court and Hon'ble High Courts in which the Hon'ble Courts has categorically held that in the cases of the seniority, the date of D.P.C. is counted not the date of joining. Similarly in the case of the direct recruitment, the seniority is fixed as per the merit list of the selection not from the date of joining thus in the present case, the selection year of the petitioners is to be treated as 2013-14 and their seniority be fixed at serial no. 52

and 53 just below to the degree holder engineers who were promoted under 7.33 quota through the same D.P.C. *i.e.* 27-06-2014.

3.2 The respondent department is adopting dual policy in the case of the petitioners, they are saying that the petitioners have joined their duties in August 2014 thus their selection year will be 2014-15 and in case of the private respondent no.4 and 13 despite of this fact that they have joined their service in December 2014 they have been granted seniority on the basis of the selection by the respondent no.3. Thus, when the respondent no.3 has selected the petitioner on 27-06-2014 and due to the inaction of the respondent department, the promotion orders were issued on 06-08-2014 and thus the petitioners have not joined before 30-06-2014 and there is no fault of the petitioners but due to inaction of the respondent department, the seniority of the petitioners is affected.

3.4 The conduct of the authorities of the respondent department seems to be suspicious because in the case of degree holder quota, they acted promptly on the recommendation of the respondent no.3 dated 27-06-2014. The recommendations for promotion of eligible candidates were issued on 30.06.2014 as against the promotion order of the petitioners on 06-08-2014. The private respondents have been considered recruited in the selection year 2013-14 and the petitioners were shown for the year 2014-15.

3.5 Rule 8 of the Uttarakhand Government Servants Seniority Rules 2002 provides the procedure for fixation of the seniority between promotees and direct recruits. The Rule 8(3) provides for fixation of seniority by cyclic order, the first position is given to promotees. In the instant case the petitioners who were selected by the D.P.C. on 27-06-2014 were shown junior to the persons who were given appointment in December 2014, which is a clear-cut violation of the aforesaid provisions.

3.6 The respondent without considering the objections of the petitioners rejected the same and finalized the tentative seniority list. The petitioners are legally entitled to be placed above the private

respondents no. 4 & 13 in the seniority list as per the Seniority Rules of 2002. The claim petition is liable to be allowed.

4. C.A./W.S. has been filed on behalf of respondents no. 1 & 2 and opposed the claim petition stating therein that-

4.1 याचीकर्ताओं द्वारा अन्तिम वरिष्ठता सूची दिनांक 02.06.2022 को चुनौती दी गयी है। याचीगणों द्वारा अभिलेखों से इतर किया गया कथन स्वीकार नहीं है। याचीगणों का यह कहना कि विभागीय चयन समिति के अनुमोदन दिनांक 27.06.2014 के अनुसार उनका प्रोन्नति वर्ष 2013-14 है असत्य एवं भ्रामक है क्योंकि याचीगणों के सम्बन्ध में प्रोन्नति आदेश 06.08.2014 को जारी किया गया है और सेवा नियमावली व माननीय उच्चतम न्यायालय के विभिन्न आदेशों के द्वारा यह प्रतिपादित किया गया है कि भर्ती या प्रोन्नति की तिथि, प्रोन्नति आदेश के जारी होन और पद पर योगदान करने की तिथि से ही माना जायेगा, चूंकि याचीगणों द्वारा नवीन प्रोन्नत पद पर दिनांक 06.08.2014 के बाद योगदान दिया है इसलिए उनका चयन वर्ष 2014-15 ही होगा और उसी आधार पर उनकी वरिष्ठता निर्धारित की गयी है। इसके अतिरिक्त यह कथन करना है कि याचीगणों को अन्तिम वरिष्ठता सूची समय से उपलब्ध कराते हुये उनसे आपत्तियां मांगी गयी थी जिस पर याचीगणों द्वारा अपनी आपत्तियां प्रस्तुत की एवं उक्त आपत्तियों का निराकरण करने के उपरान्त विभाग द्वारा अन्तिम वरिष्ठता सूची जारी की है जिसमे कोई सुधार की आवश्यकता नहीं है और याचीगणों की याचिका खारिज होने योग्य है।

4.2 विभाग द्वारा दिनांक 01.04.2019 को एवं पुनः दिनांक 02.05.2019 को सहायक अभियन्ताओं की अन्तिम वरिष्ठता सूची जारी करते हुये उक्त अन्तिम वरिष्ठता सूची पर आपत्तियां मांगी गयी। याचीगणों द्वारा भी उक्त अन्तिम वरिष्ठता सूची के सम्बन्ध में अपनी आपत्तियां प्रस्तुत की और समस्त सहायक अभियन्ताओं द्वारा दी गयी आपत्तियों का निराकरण करने के उपरान्त ही अन्तिम वरिष्ठता सूची जारी गयी है जो विधि एवं नियमानुसार सही है। याचीगणों द्वारा जो आधार याचिका में लिये गये हैं वही आधार उनके द्वारा अपनी आपत्तियों में भी लिये गये थे जिनका निराकरण विभाग द्वारा समय पर कर दिया गया है। याचीगणों को उनके चयन वर्ष 2014-15 के आधार पर वरिष्ठता प्रदान की गयी है क्योंकि याचीगणों द्वारा प्रोन्नत आदेश दिनांक 06.08.2014 के क्रम में सहायक अभियन्ता के पद पर अपना योगदान दिया है। मात्र विभागीय प्रोन्नति समिति की संस्तुति के आधार पर याचीगणों का चयन वर्ष 2013-14 नहीं माना जा सकता है क्योंकि माननीय उच्चतम न्यायालय द्वारा अपने विभिन्न आदेशों में यह सिद्धान्त प्रतिपादित किया है कि वरिष्ठता कैडर में जन्म लेने यानी पद पर नियुक्ति की तिथि से ही मानी जायेगी न कि भर्ती चयन वर्ष से। अतः उक्त के आधार पर याचीगणों की याचिका खारिज होने योग्य है।

5. C.A./W.S. has also been filed on behalf of the respondent no. 3 (Uttarakhand Public Service Commission) in which, it has been

stated that the Commission on receiving the requisition from the State Govt. carry out selection process either by direct recruitment or by promotion as per the relevant service rules and the prevailing government orders. The Commission conveys the recommendations of DPC to the State Govt. or concerned department. Thereafter, the state government/ concerned department issues the promotion orders. The seniority of its employees is determined by the concerned department/state government and the Uttarakhand Public Service Commission does not play any role in it.

6. Despite sufficient service upon the private respondents no. 4 to 13, they neither filed any C.A./W.S. nor appeared. Therefore, the Tribunal decided to proceed ex-parte against private respondents vide order dated 20.03.2025.

7. Heard learned Counsel for the parties and perused the record.

8. Learned Counsel for the petitioner has argued that the respondent authority held the DPC for the petitioners and those candidates who were eligible for the selection against the 7.33 percent quota at the level of Asstt. Engineer on 27-6-2014 and recommended their names to the respondents for promotion to the level of Asstt. Engineers. The promotion orders in respect of the petitioners were issued on 06.08.2014 and the persons, who were selected against 7.33 percent quota on 30-6-2014. This has resulted in the petitioners becoming junior to the some of the persons. The date of the DPC in both the cases is same but the promotions orders have been issued on different dates which has resulted the change in the selection year (from 2013-14 to 2014-15) of the petitioners and they became much junior to those who were direct appointees of the selection year 2013-14. This has been done by the respondent authorities deliberately to give advantage of seniority to the direct recruits.

9. Learned A.P.O. pleaded that the petitioners were appointed on 06.08.2014 and their recruitment year will be 2014-2015 and they have been placed in the seniority list accordingly. The Uttarakhand

Government Servants Seniority Rules, 2002 lays down that in case of recruitment from more than one source in a particular recruitment year, the seniority list will be determined in the cyclic order. In case of the petitioners, they were appointed in the year 2014-15 and were rightly placed in the seniority for the year 2014-15. The claim of the petitioners is not justified and the claim petition is liable to be dismissed.

10. Based on the arguments of the learned Counsels for both the parties and the documents submitted, we find that the meeting of the DPC was held on 27.06.2014 but the promotion order in respect of the petitioners were issued on 06.08.2014 whereas for the direct recruitees on 30.06.2014. No explanation has been given on behalf of the respondents for the reason for issuing the promotion order for the promotes much after the order of the direct recruitees. It appears that this has been done deliberately to favour the direct recruitees. This resulted in petitioners becoming too junior to the direct recruitees. Hence, the seniority list is liable to quashed and the claim petition is liable to be allowed.

ORDER

The claim petition is hereby allowed. The impugned seniority list dated 02.06.2022 is hereby quashed and the respondent authorities are directed to consider the promotion of the petitioners in the selection year 2013-14 and fix their seniority accordingly as per the Uttarakhand Govt. Servants Seniority Rules, 2002, within a period of three months from the date of production of certified copy of this order/judgment. No order as to costs.

RAJENDRA SINGH
VICE CHAIRMAN (J)

A.S.RAWAT
VICE CHAIRMAN (A)

DATED: MAY 20, 2025
DEHRADUN
KNP