

**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. 42/DB/2016

1. Gulab Singh Tomar, S/o Late Sri Jagat Singh Tomar, Research Supervisor, Hydrolic Research Unit-2, Irrigation Research Institute Roorkee, District Haridwar, Uttarakhand.
2. Vijay Kumar Kashyap, S/o Late Sri Shiv Kumar, Research Supervisor, Hydrolic, Research Unit-2, Irrigation Research Institute, Roorkee, District Haridwar, Uttarakhand.
3. Naveen Kumar Aggarwal, S/o Late Sri Radha Krishna Aggarwal, Research Supervisor, Hydrolic Research Unit-1, Irrigation Research Institute, Roorkee, District Haridwar, Uttarakhand.
4. Jaibir Singh, S/o Late Sri Baru Singh, Research Superviosor, Hydrolic Research Unit-1, Irrigation Research Institute, Roorkee, District Haridwar, Uttarakhand.

.....Petitioners

VERSUS

1. State of Uttarakhand through Secretary, Irrigation, Government of Uttarakhand, Subhash Road, Dehradun.
2. Chief Engineer & Head of the Department, Department of Irrigation, Madho Singh Bhandari Bhawan, Uttarakhand, Dehradun.
3. Chief Engineer (parikalp), Department of Irrigation Roorkee, District Haridwar, Uttarakhand.
4. Jagpal Singh, S/o Sri Dharm Singh, Research Supervisor, Soil Research Unit-I, Irrigation Research Institute, Roorkee.
5. Mahipal Singh, S/o Sri Asha Ram, Research Supervisor, Soil Research Unit-II, Irrigation Research Institute, Roorkee.

6. Raghuveer Singh, S/o Sri Krapal Singh, Research Supervisor, Material Testing Unit-I, Irrigation Research Institute, Roorkee.
7. Janeshwar Prasad, S/o Sri Lekh Ram, Research Supervisor, Material Testing Unit-I, Irrigation Research Institute, Roorkee.
8. Arvind Kumar, S/o Sri Molahad Singh, Research Supervisor, Material Testing Unit-II, Irrigation Research Institute, Roorkee.
9. Anoop Singh, S/o Sri Tika Singh, Research Supervisor, Basic Research Unit-II, Irrigation Research Institute, Roorkee.
10. Bhanwar Singh, S/o Sri Chatru, Research Supervisor, Ground Water Research Unit-II, Irrigation Research Institute, Roorkee.

.....Respondents.

Present: Sri M.C.Pant & Sri L.K.Maithani, Ld. Counsel
for the petitioners
Sri Umesh Dhaundiyal, Ld. A.P.O.
for the respondents No. 1, 2 & 3
Sri Kanta Prasad &
Sri Arun Pratap Shah, Counsel
for the respondents No. 4 to 10.

JUDGMENT

DATED: JULY 11, 2017

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

1. The petitioners have filed this claim petition for the following reliefs:

“i) To quash the order dt. 19.12.2015 of respondent No. 3 (Annexure No. A-9) in league with the seniority list dt. 28.02.2012 and 03.12.2013 (Annexure No. A-4 & A-5) alongwith its effect and operation also after calling the entire records from the respondents.

ii) To issue an order or direction to the respondents to declare the petitioners are entitled for maintaining their inter-se seniority in accordance with the rules 7 & 8 of the Government Servant Seniority Rules, 2002 and also direct to the respondent to redraw the seniority list and placed

the petitioners at proper place in comparison to the respondents alongwith all consequential benefit as the impugned order was never being in existence.

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

iv) To award the cost of the petition to the petitioner."

2. Briefly, the facts of the case are that in the recruitment year of 2005-06, the appointments on the post of Scientific Assistant were made by two sources i.e. by direct recruitment and by promotion. The petitioners No. 1, 3 and 4 were appointed against the vacancy of Scientific Assistant of direct recruitment on 30.12.2005 and petitioner no. 2 was appointed on the post of Scientific Assistant against the vacancy of direct recruitment under Dying in Harness Rules on 23.03.2006. During the recruitment year 2005-06, 32 persons, working on the post of Model Assistant, were also promoted to the post of Scientific Assistant on 31.12.2005 against the vacancy of promotional quota. On 28.02.2012, seniority list of Scientific Assistant was issued by the respondent no. 3, in which the persons, who were promoted in the same year 2005-06 i.e. (commencing from 1st July to 30th June), were placed above the petitioners and were shown at sl. No. 1 to 32. The combined select list was not prepared as provided in the Rule 17 of the concerned Service Rules of 2003 and the seniority of the promotee vis-à-vis direct recruitees, were not decided as the Rule 8(3) of the Seniority Rules of 2003.

3. On 03.12.2013, again final seniority list was issued in which petitioners were again placed below the promotees like the seniority list of 2012. The petitioners could not make any representation/objection against the seniority list of 2012 as it was not duly served to the employees of the department. However, some other persons filed

objections against the seniority list of 2013. Again, on 13.04.2015, an interim seniority list of Scientific Assistant was issued and objections were invited from the employees against which the petitioners submitted their objections on 27.04.2015 and prayed for to correct the list and determine the seniority of the petitioners along with promotees of the selection year 2005-06 as per Rule 8(3) of the Seniority Rules of 2002. The respondent no. 3 sought direction from respondent no. 2 on 05.10.2015 for deciding this issue and respondent no. 2, on 15.10.2015 made his observation on the issue of interim seniority list dated 13.04.2015. Thereafter, on the basis of the observation of respondent no. 2, respondent no. 3 without considering the objections of the petitioners, cancelled the interim seniority list of 2015 on 19.12.2015 on the ground that no objection was made against the interim seniority list of 2012 and promotions have been made on the basis of that list, hence that is final. Against arbitrary act of the respondents No. 2 & 3, the Union of the employees preferred/filed representation to the respondents on 16.02.2016 and 24.02.2016 and respondent no. 2 directed respondent no. 3 to take decision on the matter of the petitioners.

4. Simultaneously on the letter written by the Union of employees to the respondent no. 1, a report from respondent no. 2 was called upon on 31.03.2016, upon which, respondent no. 2 directed respondent no. 3 to submit his report on the matter before him. It was also stated that the respondents are going to start the promotional exercise for the next cadre post of Assistant Research Officer on the basis of the impugned seniority list dated 28.02.2012 and 03.12.2013 and till date, seniority of the petitioners and promotees, appointed on the post of Scientific Assistant in the year 2005-06, have not been decided as per Rule 8(3) of the Seniority Rules of 2002, hence, this petition was filed for the relief sought as above on the following grounds.

5. That the act of the respondents towards the petitioners is arbitrary, discriminatory and violative of Article 14 and 16 of the Constitution of India. Without disposal of the objection made by the petitioners against seniority list of 2015, the respondents cancelled the seniority list, which is wrong and illegal. Before finalization of seniority list of Scientific Assistant, no combined select list was prepared by the respondents, which is the mandatory requirement as per Rule 17 of the concerned Service Rules of 2003, and the Uttarakhand Government Servant Seniority Rules, 2002, hence, seniority list issued by the respondents in February 2012 and December 2013 are wrong, illegal and are liable to be re-corrected. It is also contended that as per Rule 8(3) of the Seniority Rules of 2002, read with Rule 17 of the Service Rules of 2003, the seniority of the promotees and direct recruitees should be determined in a cyclic order, which was not done in the case of the petitioners. The respondents are bound to follow the Rules strictly and anything done in contravention of Rules, is wrong and non-est in the eyes of law. The seniority list dated 28.02.2012 and 03.12.2013, were issued in contravention of law and cannot be sustained on the ground that objections were not made against them, and on their basis, promotions have been made on the post of Research Supervisor, because the promotions were made before issuing the seniority list dated 28.02.2012. The seniority is a civil right, so the erroneous and illegal seniority list can be challenged even on the basis of subsequent events and petition needs to be heard on merit. Respondents cannot be allowed to take the benefit of their own wrong, hence request to quash the order dated 19.12.2015 and to quash the seniority list of 2012 and 2013 has been made alongwith a direction to the respondents to redraw the seniority list as per Rule 17 of the concerned Rules and Rule 8 of the Seniority Rules of 2002 and place the petitioners at appropriate places in their seniority alongwith all consequential benefits and the cost of the petition.

6. The petition was opposed by all the respondents. On behalf of respondents No. 1 to 3, C.A./W.S. was filed by learned A.P.O. under the signature of Sanjeev Kumar Srivastava, Executive Engineer and it has been contended that the seniority list has been prepared as per Rules. According to the respondents, the petitioners were not directly recruited, but they were regularized against the post of direct recruitment and have also taken the benefit of next promotion on the basis of seniority list of 2012 and 2013, the representation of the petitioners was duly disposed of by the respondents; no objection against the interim seniority list of 2012 was filed and after getting promotion on the basis of seniority list, now their objection is time barred. The petition, based on wrong facts is having no merit and deserves to be dismissed.

7. Respondents No. 4 to 10 have alleged that they were promoted to the post of Scientific Assistants on 31.12.2005 from the post of Model Assistants; there is no proof to show that petitioners were appointed as Scientific Assistant by way of direct recruitment; and petitioner no. 2, who was appointed on compassionate ground under Dying in Harness Rules, cannot be said to be a direct recruitee; the petitioner's appointment was in violation of Rule 15(2) of the Uttaranchal Scientific Cadre (Irrigation Department) Service Rules (Group 'A', 'B' & 'C'), 2003. The petitioners who were placed below respondents No. 4 to 10 in the seniority list filed no objections against said seniority list and on the basis of said seniority list, availed next promotion to the post of Research Supervisor. As objections were not made against the seniority list dated 28.02.2012 and 03.12.2013 at that time hence at this belated stage, the seniority cannot be challenged and it is barred by limitation and petition deserves to be dismissed.

8. Heard learned counsel for the parties and perused the record carefully.

9. The petitioners and respondents are governed by the Uttaranchal Vaigyanik Sanwarg (Sinchai Vibhag) Sewa Niyamawali (Samuh 'Ka', 'Kha', evam 'Ga'), 2003 (hereinafter referred to as 'concerned Service Rules'). As per Rule 5, the recruitment for the cadre of Model Assistant is to be made by direct recruitment and for Scientific Assistant 30% by direct recruitment and 70% by promotion from the Model Assistant. Next promotion on the post of Research Supervisor is purely on the basis of seniority-cum-merit. The disputed seniority of the petitioners and respondents is in respect of the post of Scientific Assistant and there is no dispute about this fact that the petitioners and private respondents No. 4 to 10 were appointed in the recruitment year 2005-06. According to Rule 5 of the concerned Service Rules, appointments to the post of Scientific Assistant are made by both the sources and procedure for recruitment is mentioned under Part-V. The relevant rule in this case is Rule 17, which reads as under:

“17- संयुक्त चयन सूची-

यदि भर्ती के किसी वर्ष में नियुक्तियों सीधी भर्ती और पदोन्नति दोनों द्वारा की जाये तो एक संयुक्त सूची सुसंगत सूचियों से अभ्यर्थियों के नाम इस प्रकार लेकर तैयार की जायेगी कि विहित प्रतिशत बना रहे। सूची में पहला नाम पदोन्नति द्वारा नियुक्त व्यक्ति का होगा।”

10. Rule 21 of the concerned Service Rules also deals with the seniority of the persons appointed to the cadre, which reads as under:

“21- ज्येष्ठता-

सेवा में मूल से नियुक्त व्यक्तियों की ज्येष्ठता समय-समय पर यथासंशोधित उत्तरांचल सरकारी सेवक ज्येष्ठता नियमावली, 2002 के अनुसार निर्धारित की जायेगी।”

11. The Uttaranchal Government Servants Seniority Rules, 2002 prescribes the procedure for determination of seniority and relevant Rule for this purpose is Rule 8(3), which reads as under:

“8- Seniority where appointments by promotion only from and direct recruitment:

(1).....

(2).....

(3) Where appointments are made both by promotion and direct recruitment on the result of any one selection the seniority of promotees vis a vis direct recruits shall be determined in a cyclic order the first being a promotee as far as may be, in accordance with the quota prescribed for the two sources.

Illustrations – (1) Where the quota of promotees and direct recruits is in the proportion of 1:1 the seniority shall be in the following order:-

FirstPromotee
Second Direct recruits and so on

(2) Where the said quota is in the proportion of 1:3 the seniority shall be in the following order:-

FirstPromotee
Second to fourthDirect recruits
FifthPromotee
Sixth to eight Direct recruits and so on.

Provided that—

- (i) Where appointments from any source are made in excess of the prescribed quota, the persons appointed in excess of quota shall be pushed down, for seniority, to subsequent year in which there was vacancies in accordance with the quota:
- (ii) Where appointments from any source fall short of the prescribed quota and appointment against such unfilled vacancies are made in subsequent year or years, the persons so appointed shall not get seniority of any earlier year but shall get the seniority of the year in which their appointments are made, so however, that their names shall be placed at the top followed by the names, in the cyclic order of the other appointees;
- (iii) Where, in accordance with the service rules the unfilled vacancies from any source could, in the circumstances mentioned in the relevant service rules be filled from the other source and appointment in excess of quota are so made, the persons so appointed shall get the seniority of

that very year as if they are appointed against the vacancies of their quota.”

12. The cumulative effect of all the provisions of the concerned Service Rules and the Seniority Rules of 2002, is that while making appointment to the cadre, a combined select list should be prepared, maintaining the prescribed quota of direct and promotee officers, in which first name should be of promotee officer. The ratio of quota for the recruitment to the cadre of Scientific Assistant is 30% direct and 70% by promotion, hence the requirement of law is that a combined select list should be prepared, maintaining the ratio and in the seniority, first name shall be of promotee officer. Similar provisions have been made by Rule 8(3) of the seniority Rules of 2002. Admittedly, this cadre was to be filled up by direct recruits as well as by promotees in the ratio of 30% and 70%. The requirement of law to prepare a combined list of selection for making appointment to the cadre was not followed, if it was not made at that time, even then as per Rule 8(3), the seniority of the persons appointed by promotion and direct recruitment, shall be determined in the manner mentioned therein and it will be determined in a cyclic order, the first being a promotee and as far may be in accordance with quota prescribed for two sources and an example has been cited in the rule itself, but in this case, neither the select list was prepared as per rule 17 of the concerned Service Rules nor the seniority has been fixed as per the Seniority Rules of 2002.

13. Admittedly, the direct and promotees both were recruited in the same selection year 2005-06. The concerned Service Rules specifically mentioned that seniority shall be determined in accordance with Uttaranchal Government Servants Seniority Rules, 2002. The cumulative effect of this rule is that although select list was not prepared according to rule, but their seniority can only be fixed as per the provisions of Rule 8(3) of the Seniority Rules of 2002, which was not done in this case because all the promotees 32 Officers were placed

senior to the direct recruitees. In this case, the cyclic order must have been followed in a manner that first two posts in the seniority, must be given to the promotees, third to the direct recruitees and then again promotees and so on in the ratio of 70% and 30%, but the seniority lists of 2012 and 2013 were prepared and issued in clear violation of the concerned Service Rules and Seniority Rules of 2002.

14. The respondents have taken a plea that the petitioners cannot challenge this seniority list now because of the reasons that it is too late and they also got promotion on the basis of that list. The court is of the view that the seniority is a civil right which cannot be taken away by a wrong done on the part of the department and cannot be confirmed because of the reasons that objections were not filed. Language of sub-rule (3) of Rule 8 of the Seniority Rules of 2002 leaves no scope for the HOD while determining the seniority because it prescribes that seniority of the promotees vis-à-vis direct recruitees shall be determined in a cyclic order, in accordance with quota prescribed in these sources. Furthermore, the petitioners have taken a plea that they were never informed about the list of 2012 and 2013 and objections were not invited. The court is of the view that when the respondents were issuing the seniority list again and again and it was lastly issued in the year 2015, inviting objections from the parties, then it was very much clear that issue of settling the seniority was kept open. The action of the HOD was not as per the concerned Service Rules and Seniority Rules of 2002 and observation to this anomaly was also made by Superior Authority, but the Disciplinary Authority cancelled the list of 2015 and then again adhered to the list of 2012 and 2013, which were against the provisions of law. They should have decided the objections filed thereupon and following the provisions of law, the seniority should have been redrawn.

15. The respondents have taken a contention that the petitioners cannot challenge the seniority list because of the reasons that they have taken promotion on that basis. The court is of the view that as action of

the respondents is against the mandatory provisions of law, hence the alleged list of 2012 and 2013 will be deemed to be as non-est and court is of the view that the respondent department has not settled the seniority of the persons till now as per provisions of the law. Accordingly, the petition deserves to be allowed and all the objections raised by the respondents having no force, need to be rejected. As the issue of seniority was kept open by the respondents themselves till 2015, the petition cannot be said to be barred by limitation.

16. In view of the above, the court is of the view that the petition deserves to be allowed to the extent that the impugned seniority list dated 28.02.2012 and 03.12.2013 (Annexure No. 4 and 5) need to be set aside and it is necessary to direct the respondents to redraw the seniority between the direct and promotees as per provisions of the concerned Service Rules of 2003 and the Uttaranchal Government Servants Seniority Rules, 2002. Hence following order is hereby passed.

ORDER

The petition is hereby allowed with the order that the seniority list dated 28.02.2012 and 03.12.2013 (Annexure No. A-4 & A-5) are hereby quashed. The respondents are directed to redraw the inter-se seniority list between the petitioners and respondents (Scientific Assistant of the selection year 2005-06) and to finalize the same as per law, within a period of three months from the date of this order. No order as to costs.

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

(RAM SINGH)
VICE CHAIRMAN (J)

DATE: JULY 11, 2017
DEHRADUN