

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

Present : Hon'ble Mr. Ram Singh

----- Vice Chairman (J)

&

Hon'ble Mr. D. K. Kotia

-----Vice Chairman (A)

CLAIM PETITION NO. 18/NB/DB/2015

Sunil Kumar, S/o Sri Bishan Lal, R/o C/o Sri Pratap Singh Garhiya,
Village- Majhiyakhet Bageshwar, District Bageshwar, presently posted
as Additional Assistant Engineer, Construction Division Peyjal Nigam,
Bageshwar.

..... Petitioner

VERSUS

1. Chief Engineer (H.Q.) Uttarakhand Peyjal Nigam Headquarters, 11,
Mohini Road, Dehradun.
2. Uttarakhand Peyjal Sansadhan Vikas Nirman Nigam, Head Office, 11
Mohini Road, Dehradun through its Managing Director.
3. State of Uttarakhand through Secretary Peyjal Sansadhan Vikas Evam
Nirman Nigam, Dehradun.
4. Sri Sanjay Kumar, S/o Sri Raghubir Singh,
5. Sri Pradeep Kumar, S/o Kashi Ram,
6. Sri Manvirendra Singh, S/o Sri Amar Singh.
7. Sri Sanjay Kumar, S/o Sri Sobha Ram,
8. Sri Piyush Dimri, S/o Sri Ganga Prasad Dimri,
9. Sri Rama Kant, S/o Sri Shiv Pujan Prasad,
10. Sri Vinod Prasad Raturi, S/o Sri Gunanand Raturi,

11. Sri Laxmi Chand Ramola, S/o Sri Puran Chand Ramola,
12. Sri Pramod Prasad, S/o Sri Anant Ram,
13. Sri Allah Diya, S/o Sri Maseeta Ali,
14. Sri Hem Chandra Belwal, S/o Sri J.K. Belwal,
15. Sri Shashipal Singh, S/o Sri Dal Chandra,
16. Sri Ajay Kumar Gurang, S/o Sri Tej Bahadur Gurang,
17. Sri Bishan Singh, S/o Sri Jeet Singh,
18. Sri Subhash Chandra Bhatt, S/o Sri Bhairav Dutt Bhatt,
19. Sri Ravindra Kumar, S/o Sri Chandrapal Singh,
20. Sri Lalit Gaur, S/o Sri Chandra Prakash Gaur,
21. Sri Mahendra Singh Manral, S/o Sri Kripal Singh Manral,
22. Sri Yatendra Singh Rawat, S/o Sri Bhopal Singh Rawat,
23. Sri Arvind Chandra Sundali, S/o Sri Rameshwar Prasad,
24. Sri Baldev Singh, S/o Sri Balbir Singh,
25. Sri Virendra Singh Rawat, S/o Sri Maharaj Singh Rawat,
26. Sri Deepak Kumar, S/o Sri Prem Chand,
27. Sri Prem Kumar, S/o Late Sri Deenanath,
28. Sri Rajeev Kumar, S/o Sri Ompal Sharma,
29. Sri Nand Kishore Sati, S/o Sri Bhola Dutt Sati,
30. Sri Harish Chandra Sharma, S/o Sri Devi Dutt Sharma,
31. Sri Kailash Chandra Nautiyal, S/o Sri Late Sri Gopal Krishna Nautiyal,
32. Sri Manoj Kumar Joshi, S/o Sri Harish Chandra Joshi,
33. Sri Mukesh Singh, S/o Sri Sohan Singh,
34. Sri Shailendra Singh Bhandari, S/o Sri Harendra Singh Bhandari,
35. Sri Bhupendra Singh, S/o Sri Kunwar Singh,
36. Sri Anuraj Agrawal, S/o Sri Om Prakash Gupta,
37. Sri Ambika Prasad Bhatt, S/o Sri Tota Ram Bhatt,
38. Sri Anup Singh Bhandari, S/o Sri Mahipal Singh Bhandari,
39. Sri Rajendra Prasad Budakoti, S/o Sri Kailash Chandra Budakoti,
40. Sri Anil Kumar, S/o Sri Chandra Shekhar Shukla,

41. Sri Pramod Chandra Kothiyal, S/o Sri Bhagwati Prasad Kothiyal,
42. Sri Anand Singh, S/o Sri Hari Singh Bisht,
43. Sri Sushil Bahuguna, S/o Sri Kundan Lal,
44. Sri Neeraj Kumar Kapil, S/o Sri Sumer Chandra Sharma,
45. Sri Narendra Mohan Garkoti, S/o Sri Keshav Dutt Garkoti,
46. Sri Ravindra Singh Panwar, S/o Sri Chandan Singh Panwar,
47. Sri Mukesh Kumar, S/o Sri Hari Singh,
48. Sri Deepak Vattsa, S/o Sri D. K. Vattsa,
49. Sri Vinod Prasad Semwal, S/o Sri Ghananand Semwal,
50. Sri Balam Singh Negi, S/o Sri Khem Singh Negi,
51. Sri Bharat Singh Rawat, S/o Sri Manohar Singh Rawat,
52. Sri Dharmendra Prasad, S/o Late Sri Ishwari Dutt Kukreti,
53. Sri Ravindra Singh, S/o Sri Bachan Singh,
54. Sri Nitesh Kumar, S/o Sri Shankar Singh Yadav,
55. Sri Sanjay Kumar, S/o Sri Sita Ram,
56. Sri Satendra Kumar Gupta, S/o Sri Ravindra Kumar,
57. Sri Sandeep Kumar Nautiyal, S/o Sri Mangat Ram Nautiyal,
58. Sri Anil Juyal, S/o Sri Hari Prasad Juyal,
59. Sri Harish Prasad, S/o Sri Bharat Ram,
60. Sri Santosh Kumar, S/o Sri Fakeer Chandra Panwar,
61. Sri Anant Kumar Badula, S/o Sri B. K. Badula,
62. Sri Mohd. Parvez, S/o Sri Mohd. Imran,
63. Sri Jagdish Singh, S/o Sri Gajendra Singh,
64. Sri Pradeep Singh, S/o Sri Raghuvir Singh Bhandari,
65. Sri Jitendra Kumar Suyal, S/o Sri Naval Kishore Suyal,
66. Sri Bhajan Singh, S/o Sri Darban Singh,
67. Sri Arvind Kumar, S/o Sri Sukendra Pal Singh,
68. Sri Bhushan Singh, S/o Sri Prasadi Singh,
69. Sri Ashok Kumar, S/o Sri Ram Nath Sharma,
70. Sri Ravindra Singh, S/o Sri Raipal Singh,

71. Sri Yashbir Malla, S/o Sri Amar Bahadur Malla,
72. Sri Azad Singh, S/o Sri Prem Singh,
73. Sri Ram Kumar, S/o Sri Rishipal Singh,
74. Sri Rajvir Singh Rana, S/o Sri Lakhan Singh Rana,
75. Sri Radhey Shyam Singh, S/o Sri Jaswant Singh,
76. Sri Raj Mohan Lal Gupta, S/o Sri Jagmohan Lal Gupta,
77. Sri Mustaq Alam, S/o Sri Zahiduddin,
78. Sri Kamal Kishore, S/o Sri Mohan Singh,
79. Sri Irshad Hasan, S/o Sri Iliyas Hasan,
80. Sri Wahid Hussain, S/o Sri Nizamuddin,
81. Sri Tripan Singh Bhandari, S/o Sri Khushal Singh Bhandari,
82. Sri Mohd. Amzad Khan, S/o Sri Babu Hasan

All posted as Additional Assistant Engineers and through Chief Engineer (H.Q.), Uttarakhand Pey Jal Nigam Head Quarter, 11, Mohini Road, Dehradun.

..... Respondents

Present : Sri Rakesh Thapliyal, Senior Counsel &
Sri Xitij Kaushik,
for the petitioner.

Sri V. P. Devrani, A.P.O.
for the respondent No. 3.

Sri B.P. Nautiyal, Senior Advocate, Assisted by Sri
Manokam Nautiyal & Sri Pooran Singh Rawat, Counsel
for the respondents No. 1 & 2.

Sri Alok Mehra, Ld. Counsel
for the respondents No. 15, 18, 19, 22, 29, 33, 39, 51,
53, 58, 63, 64, 66, 68, 69, 72, 73, 76, 79 & 82.

Sri M.C. Pant, Ld. Counsel
for the respondents No. 7, 9, 10, 12, 16, 17, 20, 21, 23,
24, 25, 30, 31, 32, 34, 35, 36, 41, 50, 57, 70, 74, 75 &
78.

None for the other private respondents.

JUDGMENT**DATED: OCTOBER 10, 2017****(HON'BLE MR. D. K. KOTIA, VICE CHAIRMAN (A))**

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

“(i) to quash the impugned order dated 3-11-2014 passed by respondent no.1 rejecting the representation/objection of the petitioner against the tentative seniority list issued by respondents on 14-9-2010 and subsequent Final Seniority List (November 2014) of Junior Engineer Civil issued vide office memorandum dated 28-11-2014 by the respondent.

(ii) To direct the respondents to determine the seniority of Junior Engineers strictly as per rule 23 of UP Jal Nigam Subordinate Engineering Services Rules, 1978.

(iii) To pass any other relief, order or direction, which this Hon'ble Tribunal deem fit and proper in the facts and circumstances of the case.

(iv) Award the cost of the petition to the petitioner.”

2. The brief facts of the case are as under:

2.1 The state respondents issued an advertisement for recruitment of Junior Engineers (Civil) in the year 2004.

2.2 In pursuant to the said advertisement, the selection took place after the written test and interview (for which Punjab University was engaged) and a merit list was prepared on the basis of total marks in the written test and interview.

2.3 The State respondents, thereafter, issued an appointment letter on 13.05.2005 (Annexure: A3) in which names of the petitioner and some other selected persons were included.

2.4 In pursuant to the same advertisement/selection, the respondents issued further appointment letters on 27.06.2005, 09.08.2005, 27.09.2005 and 16.12.2005 to remaining persons who were also available in the single merit list prepared for the recruitment of Junior Engineers (Civil).

2.5 Thus, 5 appointment letters were issued on different dates for one selection made in pursuant to the advertisement issued in 2004 and selection made in 2005.

2.6 A tentative seniority list of Junior Engineers (Civil) was issued on 06.08.2010 (Annexure: A4) in which the petitioner was shown at serial number 140 and the persons who were appointed by the subsequent appointment letters (on 27.06.2005, 09.08.2005, 27.09.2005 and 16.12.2005) were shown below the petitioner.

2.7 Thereafter, another tentative seniority list was issued on 14.09.2010 (Annexure: A5) wherein the petitioner was placed at serial no. 226. The said tentative seniority list was made as per the merit list based on the total marks of written test and interview prepared by the Punjab University which was engaged for the recruitment. In this tentative seniority list dated 14.09.2010, all five appointment orders (issued on 13.05.2005, 27.06.2005, 09.08.2005, 27.09.2005 and 16.12.2005) were combined and the seniority of all the recruited Junior Engineers (Civil) was arranged in order of merit prepared by the Punjab University taking recruitment as one selection based on common advertisement/written test/interview.

2.8 The petitioner submitted objections against the tentative seniority list dated 14.09.2010 on 17.01.2014 (Annexure: A6) on the

ground that the seniority of Junior Engineers (Civil) should be fixed on the basis of the date of appointment letter. As the appointment letter in which name of the petitioner is included is dated 13.05.2005 falling in the 2004-05 recruitment year and other JEs were appointed later (in June, August, September and December, 2005) and, therefore, the petitioner should have been placed above the private respondents who were appointed at a later date in the 2005-06 recruitment year.

2.9 Thereafter, the objections filed by the petitioner on 17.01.2014 were decided by the respondent No. 1 and the same was rejected vide letter dated 03.11.2014 (Annexure: A1).

2.10 The petitioner was not satisfied by the rejection of his objections by the respondent No. 1 on 03.11.2014 (Annexure: A1). He again submitted a representation on 21.11.2014 (Annexure: A8).

2.11 The respondent No. 1 by the Office Memorandum dated 28.11.2014 issued the final seniority list (Annexure: A2) after considering all the objections against the tentative seniority list dated 14.09.2014.

2.12 The petitioner also submitted a representation on 05.01.2015 (Annexure: A8) against the final seniority list dated 28.11.2014.

2.13 As the petitioner is not satisfied by the rejection of his objections dated 03.11.2014 (Annexure: A1) and the final seniority list dated 28.11.2014 (Annexure: A2), the petitioner has filed this claim petition seeking the relief mentioned in paragraph 1 of this order.

3. The petitioner has challenged the final seniority list dated 28.11.2014 mainly on the following grounds:-

3.1 According to the Rule 23 of the U.P. Jal Nigam Sub-ordinate Engineering Service Rules, 1978 (hereinafter referred as the Service

Rules of 1978), the seniority list is to be determined from the date of appointment. Rule 23 of the Service Rules of 1978 reads as under:

उत्तर प्रदेश जल निगम अधीनस्थ अभियंत्रण सेवा नियमावली, 1978

ज्येष्ठता

“23. (1) इस विनियम में तथा उपबन्धित के सिवाय सेवा की किसी शाखा में किसी श्रेणी के पद पर नियुक्त व्यक्तियों की ज्येष्ठता नियमित नियुक्ति के दिनांक के अनुसार और जहाँ दो या अधिक व्यक्ति एक ही दिनांक को नियुक्त किये जायें, वहाँ उस क्रम के अनुसार जिसमें उनके नाम अनुमोदित सूची में रखे गये हों अवधारित की जायेगी।”

The contention of the petitioner is that the Rule 23 of the Service Rules of 1978 governs the field for determination of seniority and placing of the persons who were appointed on later dates by different appointment letters (dated 27.06.2005, 09.08.2005, 27.09.2005 and 16.12.2005) above the petitioner in the final seniority list dated 28.11.2014 is in complete violation of Rule 23 of the Service Rules of 1978.

3.2 The Uttarakhand “Pey Jal Sansthan Sansadhan Vikas Avem Nirman Nigam” framed new service rules in 2011 which came into force with effect from 24th June, 2011. It has also been contended by the petitioner that according to the Service Rules of 2011 also persons appointed on a subsequent date cannot be placed above the petitioner in the seniority list.

3.3 The Government of Uttarakhand has also framed the Uttarakhand Government Servant Seniority Rules, 2002 (hereinafter referred as the Seniority Rules of 2002). The petitioner has contended that though the Seniority Rules of 2002 are not applicable but even then according to Rule 5 of the Seniority Rules of 2002 also, the private respondents cannot be placed above the petitioner in the

final seniority list dated 28.11.2014. Rule 5 of the Seniority Rules of 2002 reads as under:

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

Provided that a candidate recruited directly may lose his seniority, if he fails to join without valid reasons when vacancy is offered to him, the decision of the appointing authority as to the validity of reasons, shall be final.

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

Explanation.....”

The contention of the petitioner is that the petitioner joined at earlier point of time compared to the private respondents who were appointed by the subsequent appointment orders and joined later and, therefore, according to rule 5 of the Seniority Rules of 2002, the petitioner should have been placed above the private respondents in the seniority list.

3.4 The petitioner has also contended that the state respondents issued the tentative seniority list on 14.09.2010 inviting objections upto 15.10.2010. The seniority was to be determined according to the provisions of Rule 23 of the Service Rules of 1978. For determining the seniority of Junior Engineers (Civil), the Service Rules of 2011 did not exist in 2010 when the tentative seniority list was issued.

3.5 It has also been contended by the petitioner that as per his appointment letter dated 13.05.2005, he was appointed in the

recruitment year 2004-05 (01.07.2004 to 30.06.2005) and the private respondents were appointed in the recruitment year 2005-06 (01.07.2005 to 30.06.2006). In view of this, the petitioner should have been placed above the private respondents in the seniority list.

4.1 Respondents No. 1 and 2 have opposed the claim petition and stated in their joint written statement (which has been adopted by the respondent no. 3) that the Uttarakhand Peyjal Nigam made direct recruitment of Junior Engineers (Civil) in 2005 and the selection committee prepared the merit list and on the basis of the merit list, the Junior Engineers (Civil) were appointed as per requirement of the department and sanction given by the Government at various points of time in 2005 and 2006. On the basis of the total marks obtained by the candidates in the merit list, the department has issued the final seniority list and name of the petitioner has been rightly shown at serial number 226 in accordance with the merit list.

4.2 Respondents No. 1 and 2 have also contended that by office memorandum dated 18.01.1999, Rule 23-क' was added to the U.P. Jal Nigam Sub-ordinate Engineering Service Rules, 1978 after the resolution of the Board of directors and after the approval of the Government (Annexure: CA-1). The initial paragraph of the said OM reads as under:-

“प्रधान कार्यालय उत्तर प्रदेश जल निगम 6- राणा प्रताप मार्ग
लखनऊ।

संख्या 137/प्र-1/जल निगम अनुपालन/35/129/28 दिनांक 18.01.
99

//कार्यालय ज्ञाप//

उत्तर प्रदेश शासन के सार्वजनिक उद्यम विभाग के शासनोदशः
405/यॉ-2-1992, दिनांक 01.05.92 के द्वारा प्रख्यापित उत्तर प्रदेश के
सार्वजनिक उद्यमों/निगमों के सेवकों पर लागू सेवा नियमावलियों में
ज्येष्ठता के प्राविधान को उत्तर प्रदेश जल निगम में लागू कराने हेतु जल

निगम, निदेशक मण्डल की 127 वीं बैठक, जो दिनांक 19.03.98 को हुई थी के मद संख्या 127.19.01 पर उत्तर प्रदेश जल निगम अभियन्ता (सार्वजनिक स्वास्थ्य शाखा) सेवा नियमावली- 1978 के विनियम-23 के आगे 23-क अंगीकृत किए जाने हेतु प्रस्ताव पारित किया गया था जिस पर सचिव, नगर विकास, उत्तर प्रदेश शासन के पत्र संख्या 2855/9-9-98-71सी/99 दिनांक 24.10.1998 द्वारा शासन का अनुमोदन प्रदान कर दिया गया है। अतः उक्त विनियमावली के विनियम-23 के आगे विनियम 23-क निम्नानुसार जोड़ा जाता है।”

4.3 It has further been contended by the respondents No. 1 and 2 that the seniority of the Junior Engineers (Civil) has been fixed according to Rule 23-‘क’ of the Service Rules of 1978. The relevant part of Rule 23-‘क’ reads as under:-

“23-क (1) यह विनियम दिनांक 24.10.98 से प्रवृत्त होगा, तथा इस तिथि के पूर्व विनियम-23 में किए गये प्राविधान लागू माने जाएंगे।

(2) यह विनियम इससे पूर्व बनाये गये विनियम या इस विनियमावली में किसी बात के प्रतिकूल होते हुये भी प्रभावी होगा।

(3) जहां तक कि विषय या सन्दर्भ में कोई प्रतिकूल बात न हो इस विनियम में प्रयुक्त “मौलिक नियुक्ति” “वर्ष” तथा “पोषक संवर्ग” का तात्पर्य वही होगा जो उत्तर प्रदेश सरकारी सेवक “ज्येष्ठता” नियमावली-1991 के नियम-4 में दिया हुआ है।

नोट-1 उस स्थिति में ज्येष्ठता जब केवल सीधी भर्ती द्वारा नियुक्तियों की जायं।

जहां सेवा नियमावली के अनुसार नियुक्तियाँ केवल सीधी भर्ती द्वारा की जानी हो वहां किसी एक चयन के परिणामस्वरूप नियुक्ति किये

गये व्यक्तियों की परस्पर ज्येष्ठता वही होगी जो चयन समिति द्वारा तैयार की गयी योग्यता सूची में दिखायी गयी है।

प्रतिबन्ध यह है कि सीधे भर्ती किया गया कोई अभ्यर्थी अपनी ज्येष्ठता खो सकता है, यदि किसी रिक्त पद का उसे प्रस्ताव किए जाने पर वह विधिमान्य कारणों के बिना कार्यभार ग्रहण करने में विफल रहता है, कारणों की विधिमान्यता के सम्बन्ध में नियुक्ति प्राधिकारी का विनिश्चय अन्तिम होगा।

अग्रेतर प्रतिबन्ध यह है कि पश्चातवर्ती चयन के परिणामस्वरूप नियुक्त किए गये व्यक्ति पूर्ववर्ती चयन के परिणाम स्वरूप नियुक्त किए गये व्यक्तियों से कनिष्ठ रहेंगे।”

4.4 Respondents No. 1 and 2 have further submitted that Rule 23-‘क’ has been added to the Service Rules of 1978 with effect from 24.10.1998. It has also been made clear in Rule 23-‘क’ (1) that “यह विनियम दिनांक 24.10.1998 से प्रवृत्त होगा तथा इस तिथि के पूर्व विनियम-23 में किये गये प्राविधान लागू माने जायेंगे।” The contention of respondents No.1 and 2, therefore, is that Rule 23 was applicable before 24.10.1998 and from 24.10.1998, Rule 23-‘क’ has come into force. The direct recruitment of Junior Engineers (Civil) was made in 2005 and, therefore, for determining the seniority, Rule 23-‘क’ (and not Rule-23) of the Service Rules of 1978 is applicable. The respondents No. 1 and 2 have stated that the claim petition has been filed by concealing the Rule 23-‘क’ by the petitioner which had come into force w.e.f. 24.10.1998.

4.5 Respondents No. 1 and 2 have, therefore, contended that according to Note-1 to Rule 23-‘क’ where appointments are to be made only by the direct recruitment the seniority inter se of the persons appointed on the result of any one selection, shall be the same as it is shown in the merit list prepared by the Selection

Committee. The seniority list of JEs (Civil) dated 28.11.2014 has been prepared as per Note-1 to the Rule 23-‘क’ of the Service Rules of 1978 in accordance with the merit list prepared by the Selection Committee.

5. Private respondents No. 36 who has also been authorized by 23 other private respondents has filed the written statement and the claim petition has been opposed mainly on the grounds that more meritorious candidates must be kept above less meritorious candidates; delay in issuing appointment letters by the state respondents to private respondents cannot adversely affect their seniority which must be based on the merit list prepared by the Selection Committee for one selection; Rule 23 of the Service Rules of 1978 is in violation of Article 14 of the Constitution as it amounts to alteration of merit which had been prepared by the Selection Committee; dates of appointment cannot be a ground to discriminate among persons recruited through the same selection and the single merit list; the recruitment year interpreted by the petitioner cannot be accepted as the same is not tenable in the eyes of law; the selection against vacancies and dates of appointment orders relate back to the merit list; the petition is not maintainable for non-joinder of necessary parties; the petitioner has also been benefited by the same seniority list (by way of promotion) which the petitioner is now challenging and it is not permissible in the eye of law; the rule position as highlighted by the petitioner is totally misleading; and the petitioner has suppressed the material documents and facts from the Tribunal by not annexing his promotion order of 2011.

6. Private respondents No. 22 who has also been authorized by 19 other private respondents has filed the written statement and the claim petition has been opposed mainly on the ground that the Service Rules of 1978 were amended in 1999 w.e.f. 24.10.1998. According to the amended Service Rules of 1978, where appointments are to be made only by the direct recruitment, the

seniority inter se of the persons appointed on the result of any one selection shall be the same as it is shown in the merit list prepared by the Selection Committee. The department has prepared and finalized the seniority list dated 28.11.2014 as per the merit list of Junior Engineers pursuant to the selection held in the year 2005. The respondents have also stated that the amendment in the Service Rules of 1978 in the year 1999 which is a material fact was concealed by the petitioner in the claim petition. The respondents have also contended that the Service Rules of 2011 are not applicable as these rules came into force w.e.f. 24.06.2011. The respondents have also submitted that the amended Service Rules of 1978 in 1999 by which Rule 23-‘क’ was added to the original Service Rules of 1978 are parameteria with the Seniority Rules of 2002. The Note-1 to Rule 23-‘क’ added to the Service Rules of 1978 in 1999 (quoted in paragraph 4.3 of this order) is parameteria with the Rule 5 of the Seniority Rules of 2005 (quoted in paragraph 3.3. of this order).

7. There are in all 79 private respondents. 44 private respondents have filed the written statement. In spite of service and sufficient opportunity, remaining 35 private respondents did not file any written statement.

8. The petitioner has filed three rejoinder affidavits against three written statements filed by the respondents and the same averments have been reiterated and elaborated in these rejoinder affidavits which were stated in the claim petition. The petitioner has emphasized on the following points in his rejoinder affidavits:-

- (i) The appointment order of the petitioner has been issued in the recruitment year 2004-05 and the appointment orders of the private respondents have been issued in the recruitment year 2005-06. Therefore, the inter se seniority of persons appointed by different appointment orders can only be

determined from the date of their substantive appointment and not in accordance with the merit list.

- (ii) The merit list prepared by the Punjab University (recruitment agency) after conclusion of the selection process cannot be taken into consideration for the purpose of seniority list as is evident from the fact that at the bottom of the merit list it is mentioned that the merit list is provisional and is subject to the final decision of the department.
- (iii) The seniority list can be prepared on the basis of the merit list only when there is a single appointment order. Since the different appointment orders were issued on different dates, the inter se seniority cannot be decided on the basis of the merit list.
- (iv) Rule 23- 'क' of the Service Rules of 1978 (quoted in paragraph 4.3 of this order) and the Rule 5 of the Seniority rules of 2002 (quoted in paragraph no. 3.3. of this order) are identical and the correct interpretation of Rule 5 of the Seniority Rules of 2002 is that the merit list cannot be the basis to determine the seniority when a person is appointed by a subsequent appointment order. Otherwise, it would mean to provide seniority from a retrospective date when the person had neither been appointed nor he had joined.
- (v) The petitioner has pointed out at the following proviso of Rule 5 of the Seniority Rules of 2002:-

“Provided that a candidate recruited directly may lose his seniority, if he fails to join without valid reasons when vacancy is offered to him, the decision of the appointing authority as to the validity of reasons, shall be final.”

The contention of the petitioner is that the correct interpretation of Rule 5 and its proviso is that for determination of seniority the appointment and joining are the main deciding factors and, therefore, seniority can be based upon merit, only if the persons are appointed by single appointing order.

9. On the direction of the Tribunal, the respondents No. 1 and 2 have also filed the original merit list (showing marks in written test, marks in interview and total marks) prepared by the Punjab University of Junior Engineers (Civil) selected for the appointment.

10. Respondents No. 1 and 2 have also filed a supplementary written statement in which it is certified by the Annexures SA-1 and SA-2 that the seniority list of Junior Engineers (Civil) has been finalized after considering and disposing of all the objections received against the tentative seniority list.

11. We have heard all the parties and perused all the record.

12. Before discussing the rival contentions of the parties, it would be appropriate to ascertain the "Rule Position" which governs the determination of the seniority of the Junior Engineers (Civil) who were recruited and selected for appointment in 2005.

12.1 It is admitted to all the parties that the Service Rules of 1978 are the relevant rules for the recruitment of Junior Engineers (Civil). It is also admitted to all the parties that the appointment on the post of Junior Engineers (Civil) is made only by the direct recruitment. It is also admitted to all the parties that the selection of the petitioner and private respondents was done by one selection in the year 2005 in accordance with rules.

12.2 There is difference among the parties regarding relevant rules for the determination of inter se seniority of the persons appointed on the result of any one selection.

12.3 The petitioner in the claim petition has contended that the inter se seniority of Junior Engineers selected in 2005 is to be governed by Rule 23 of the Service Rules of 1978. Respondents have contended that Rule 23 of the Service Rules of 1978 is not applicable for determination of inter se seniority of Junior Engineers (Civil) selected in 2005. Respondents have pointed out that a new rule namely Rule 23- 'क' was added to the Service Rules of 1978 in 1999 and the inter se seniority of JEs appointed in 2005 is to be governed by the Rule 23- 'क' of the Service Rules of 1978. Rule 23 has been quoted in paragraph 3.1 of this order. Rule 23- 'क' has also been quoted in paragraphs 4.2 and 4.3 of this order. After careful examination of description of Rule 23 and Rule 23- 'क' in the said paragraphs, it is crystal clear that Rule 23 ceases to exist from 24.10.1998. Rule 23 is applicable for the period before the date of 24.10.1998. From 24.10.1998, Rule 23- 'क' replaces rule 23. The Rule 23-'क' (1) is reproduced again which reads as under:-

“23-क (1) यह विनियम दिनांक 24.10.98 से प्रवृत्त होगा, तथा इस तिथि के पूर्व विनियम-23 में किए गये प्राविधान लागू माने जाएंगे।”

Thus, we are of the view that Rule 23 of the Service rules of 1978 is not applicable and the Rule 23-'क' of the Service Rules of 1978 is applicable in the case in hand.

12.4 Government of Uttarakhand has also framed the Seniority Rules of 2002 and Rule 5 of the said rules is relevant in the present case. Note-1 to the Rule 23-'क' of the Service Rules of 1978 (quoted in paragraph 4.3 of this order) and Rule 5 of the Seniority Rules of 2002 (quoted in paragraph 3.3. of this order) are identical. The fact that these rules are exactly same is admitted to all the parties.

12.5 It is also pertinent to note here that the “उत्तरांचल पेयजल संसाधन विकास एवं निर्माण निगम” adopted the service rules of Uttar Pradesh Jal Nigam (till separate rules are framed by the Uttaranchal Nigam). The OM dated 24.07.2006 is reproduced below:

“उत्तरांचलन पेयजल संसाधन विकास एवं निर्माण निगम

प्रधान कार्यालय: 11- मोहनी रोड, देहरादून- 248001

पत्रांक: 2838/बोर्ड बैठक

दिनांक 24/07/06

कार्यालय ज्ञाप

एतद् द्वारा स्पष्ट किया जाता है कि उत्तरांचल पेयजल निगम, निदेशक मण्डल की आहूत प्रथम बैठक दिनांक 07.02.2004 के प्रस्ताव संख्या 1.7 में उत्तरांचल पेयजल निगम में सेवा विनियमावली तथा निर्माण कार्यो की पद्धति उत्तर प्रदेश जल निगम में प्रचलित विनियमावली तथा निर्माण पद्धति का तदर्थ रूप से यथावत लागू रखने के सम्बन्ध में निम्नलिखित प्रस्ताव मण्डल द्वारा अनुमादित किया गया।

“उत्तरांचल पेयजल निगम के गठन के उपरान्त वर्तमान में किसी भी सेवा के लिए पृथक सेवा शर्तो को विनियम नहीं हुआ है। चूंकि उत्तरांचल पेयजल निगम में कार्यरत कर्मचारियों की सेवा शर्ते वही है जो उत्तर प्रदेश जल निगम में कार्यरत कर्मियों की है, अतः जब तक उत्तरांचल पेयजल निगम के लिए पृथक सेवा शर्तो का विनियम नहीं हो जाता है, तब तक उत्तर प्रदेश जल निगम में विभिन्न कर्मियों के लिए प्रचलित सेवा विनियमालियों के अध्याधीन सेवा सम्बन्धी प्रकरणों में कार्यवाही की जा रही है, इसी प्रकार निर्माण कार्यो के सम्पादन हेतु भी उत्तर प्रदेश जल निगम में प्रचलित वित्तीय नियमों के अनुसार कार्यवाही की जा रही है।”

उक्त निर्णय एवं उसके अन्तर्गत की जाने वाली कार्यवाहियों से सभी कर्मी/संगठन विज्ञ है एवं विभिन्न प्रकरणों में लागू सेवा नियमावलियों/नियमों का संदर्भ देते हुए कार्यवाहियों करने हेतु अनुरोध किया जाता रहा है। इस

सम्बन्ध में किसी भी प्रकार की भ्रांति अनुचित होगी क्योंकि जब तक उत्तरांचल पेयजल निगम के लिए पृथक सेवा शर्तों का विनियम नहीं हो जाता तब तक उत्तर प्रदेश जल निगम में विभिन्न कर्मियों के लिए प्रचलित सेवा विनियमावलियों ही लागू रहेंगी।

(पी०के० शर्मा)
प्रबन्ध निदेशक”

12.6 The Nigam has framed the “Uttarakhand Peyjal Sansadhan Vikas Evam Nirman Nigam Subordinate Engineering Service Regulations, 2011” which have come into force w.e.f. 24.06.2011. The petitioner as well as private respondents have been appointed as Junior Engineers in 2005 under the Service Rules of 1978 and the tentative seniority list was issued in 2010 and, therefore, the said Rules of 2011 are not applicable in the case in hand.

13. Learned counsel for the petitioner has mainly argued on the same lines which have been stated in paragraphs 3.1 to 3.5 and paragraph 8 of this order. Learned counsels for the respondents have refuted the arguments of learned counsel for the petitioner on the same lines which have been stated in paragraphs 4.1 to 4.5, paragraph 5 and paragraph 6 of this order.

14.1 Learned counsel for the petitioner in the pleadings has relied on Rule 23 of the Service Rules of 1978 which has been quoted in paragraph 3.1 of this order. It will be pertinent to quote the paragraph 4.14(A) of the claim petition which reads as under:

“ 14. That the order rejecting the objection of the petitioner are unsustainable on the following aspects:-

A) UP Jal Nigam Subordinate Engineering Service Rules, 1978, governs the field for determination of seniority which clearly provides that the seniority has to be determined from the date of appointment however two or more candidates are appointed on the same date

their seniority will be determined as per the recommended list and therefore in view of this placing the persons who were appointed on a later date above to the petitioner who was appointed at earlier point of time is clearly in complete violation of Rule 23 of UP Jal Nigam Subordinate Engineering Service Rules, 1978.”

Similarly, in paragraph 18 of the claim petition, the petitioner has again emphasized that for the purpose of determination of seniority, Rule 23 of the Service Rules of 1978 was to be applied over any other rule. The paragraph 4.18 of the claim petition reads as under:

“18. That it is submitted here that for the purpose of controversy it is relevant to state here that for determination of seniority of the Junior Engineers the respondents issued tentative seniority list on 14-9-2010 inviting objections upto 15-10-2010, means the seniority was to be determined according to the provisions provided by Rule 23 of Uttar Pradesh Jal Nigam Subordinate Engineering Service Rules 1978. Therefore for determining and deciding the seniority of Junior Engineers neither the Uttaranchal Government Servants Seniority Rules 2002 was applicable nor Uttarakhand Peyjal Sansadhan Vikas Ewam Nirman Nigam Subordinate Engineering Service Rules 2011 was framed or enforced.”

In the Relief Sought, in Relief (ii), the petitioner has prayed “To direct the respondents to determine the seniority of Junior Engineers strictly as per rule 23 of U.P. Jal Nigam Subordinate Engineering Services Rules, 1978.”

14.2 Respondents have refuted above contention of the petitioner and they have pointed out that a new rule namely Rule 23-‘क’ was added to the Service Rules of 1978 in 1999. 23-‘क’ replaces Rule 23 w.e.f. 24.10.1998 and, therefore, the seniority was to be decided as per Rule 23-‘क’ and not as per Rule 23 of the Service Rules of 1978.

14.3 Rule position for the purpose of determination of seniority has been examined in detail in paragraphs 12.1 to 12.6 of this order and we have held that Rule 23 of the Service Rules of 1978 is not applicable and the Rule 23-‘क’ of the Service Rules is applicable in the case in hand.

14.4 In view of above, the contention of the petitioner that the seniority was to be decided in accordance with Rule 23 of the Service Rules of 1978 is totally wrong and the same cannot be accepted. The prayer (ii) in Relief Sought by the petitioner which has been stated at the end of paragraph 14.1 above is misconceived and it not worth considering at all.

15.1 The seniority in the case in hand is governed by the Rule 23-‘क’ of the Service Rules of 1978 and as we have shown earlier (and which is admitted to all the parties), the Rule 23-‘क’ is identical to the Rule 5 of the Seniority Rules of 2002.

15.2 It would be worthwhile to look at this rule again at this stage which reads as under:

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

Provided that a candidate recruited directly may lose his seniority, if he fails to join without valid reasons when vacancy is offered to him, the decision of the appointing authority as to the validity of reasons, shall be final.

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

Explanation.....”

16. Learned counsel for the petitioner has argued that the inter se seniority of persons appointed by different appointment orders can only be determined from the dates of their appointment orders. Since the petitioner has been appointed by the appointment order dated 13-05-2005 and the private respondents have been appointed by the appointment orders of the subsequent dates, the petitioner should be placed above the private respondents. It is difficult to agree with this contention of the learned counsel for the petitioner. Rule 23-‘क’ of the Service Rules of 1978 (or Rule 5 of the Seniority Rules of 2002) clearly provides that when the appointments are made only by the direct recruitment under the service rules, the inter se seniority of the persons appointed on the result of any one selection shall be as per the merit list of the selection. In the case in hand, the Junior Engineers are appointed only by the direct recruitment as provided under the Service Rules of 1978. The appointments are related to one selection made in 2005. There is only one merit list of the petitioner and the private respondents. In the light of this position of the rules and facts, the seniority list has been rightly fixed on the basis of the merit list. The issuance of appointment letters on various dates and joining on different dates are not at all relevant for the purpose of determination of seniority. The seniority is to be determined on the basis of the rule and Rule 23-‘क’ (or Rule 5) does not recognize the dates of appointment orders. The rule prescribes only the merit list for the purpose of determination of inter se seniority.

17. Learned counsel for the petitioner has also argued that the appointment order of the petitioner has been issued in the recruitment year 2004-05 and the appointment orders of the private respondents have been issued in the recruitment year 2005-06 and, therefore, the petitioner should be placed above the private respondents in the seniority list. The rule position again does not support this argument. There is no condition in the rule to

differentiate selected persons on the basis of the issuance of appointment orders in different recruitment years for the purpose of seniority. The emphasis of relevant rule is on the merit list rather than the timing or the recruitment year of the appointment orders. When the only source of recruitment is direct recruitment then in any one selection, the sole basis to determine the seniority is the merit list. One or more appointment orders may be issued at different points of time as per the need and requirement of the department but the basis of determining the inter se seniority shall be the merit list only. Offer of the appointment given by the department to a person who has been recruited on the result of any one selection at a later date and then to fix his seniority on the basis of the date of issue of the appointment letter and not on the basis of the merit list will not only be unfair and arbitrary but also be in violation of Article 14 of the Constitution.

18. The petitioner has pointed out at the following proviso of Rule 5 of the Seniority Rules of 2002:-

“Provided that a candidate recruited directly may lose his seniority, if he fails to join without valid reasons when vacancy is offered to him, the decision of the appointing authority as to the validity of reasons, shall be final.”

The contention of the petitioner is that the correct interpretation of Rule 5 and its proviso is that for determination of seniority the appointment and joining are the main deciding factors and, therefore, seniority can be based upon merit, only if the persons are appointed by single appointing order. We have carefully examined the rule and also its proviso. The rule or its proviso nowhere directly or indirectly provides that there should be a single appointment order and only then the basis of the seniority will be the merit list. Had there been

any intention of rule framers for the issuance of single appointment order only, that would have found place in the rule.

19. It would be pertinent to mention here that the fact and rules in the present case are related to the appointment only by the direct recruitment. In the case in hand, the issue of seniority is between the direct recruits and the direct recruits appointed on the result of one selection. The rule in such case recognizes only the merit list to determine the inter se seniority. It is not possible to add or subtract anything to the rule/ intrapolate or extrapolate the rule which will make it a different rule.

20. Learned counsel for the petitioner has also submitted that the merit list prepared by the Punjab University mentions at the bottom of it that the merit list is provisional and is subject to the final decision of the department. The department has issued appointment letters on the basis of the merit list and the department has also issued the seniority list on the basis of this merit list and, therefore, this submission is of no significance. Learned counsel for the petitioner has also submitted a sheet in which some candidates who have secured equal marks (total) and argued that the merit list (and consequently the seniority list) has not been prepared as per rules. This submission is neither a part of pleadings nor any relief has been sought for it and, therefore, we would not like to go further into this.

21. Learned counsel for the petitioner has also referred the case **Pawan Pratap Singh and others vs. Reevan Singh and Others (2011)3 SCC, 267**. We have carefully gone through this judgment of the Hon'ble Supreme Court. In the said referred case, the dispute was related to the direct recruitment in two separate selections. One selection which was initiated by the Uttar Pradesh Public Service Commission in 1987 was completed in 1994 and appointments were given to the selected candidates in 1994. Another selection was

initiated by the Uttar Pradesh Subordinate Services Selection Commission in 1990 and was completed in 1991 and appointments were given to the selected candidates in 1994. Thus, there were two selections. The dispute was related to the seniority as to the candidates of which selection would be treated senior--whether candidates of 1994 appointment, the selection process of which started in 1987 or the candidates of 1991 appointment, the selection process of which started in 1990. The facts and circumstances of the referred case were entirely different compared to the case in hand. The referred case is not applicable in the present case and is of no help to the petitioner.

22. For the reasons stated above, the claim petition is devoid of merit and the same is liable to be dismissed.

ORDER

The petition is hereby dismissed. The interim order granted on 26.04.2017 is hereby vacated. No order as to costs.

(RAM SINGH)
VICE CHAIRMAN (J)

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

DATE: OCTOBER 10, 2017
NAINITAL

KNP