

**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. 96 OF 2009

Mohan Singh Bisht, Son of Late Sri C. S. Bisht, Resident of Gajali Bichli
Talla, Haldwani, District-Nainital

.....Petitioner

VERSUS

1. State of Uttarakhand through Secretary, Food and Civil Supply Department, Dehradun.
2. Commissioner, Food and Civil Supply Department, Dehradun.
3. Sri Girish Chandra Pandey, Serving as Supply Inspector in the office of District Supply Officer, Nainital.
4. Sri Kuber Singh Negi, Serving as Supply Inspector in the office of District Supply Officer, Almora.
5. Sri M.S. Adhikari, Serving as Supply Inspector in the office of District Supply Officer, Udham Singh Nagar.
6. Sri Lalit Mohan Bhatt, Serving as Supply Inspector in the office of District Supply Officer, Nainital.
7. Sri Vinod Kumar Tiwari, Serving as Supply Inspector in the office of District Supply Officer, District Udham Singh Nagar.
8. Sri Lila Dhar Patni, Serving as Supply Inspector.
9. Jagdish Mehta, S/o not known, Serving as Supply Inspector.
10. Sri Narendra Singh, S/o not known, Serving as Supply Inspector.
11. (Deleted)
12. Prem Singh Negi, S/o not known, Serving as Supply Inspector

13. (Deleted)
14. Bahir Ahmed, S/o not known, Serving as Supply Inspector
15. (Deleted)
16. Jagdish Chand Kandpal, S/o not known, Serving as Supply Inspector
17. T. S. Bisht, S/o not known, Serving as Supply Inspector
18. (Deleted)
19. Govind Singh Rana, S/o not known, Serving as Supply Inspector
20. Prem Singh Rawat, S/o not known, Serving as Supply Inspector
21. Dhirendra Ballabh Bahuguna, S/o not known, Serving as Supply Inspector
22. Jagdamba Prasad Ghildiyal, S/o not known, Serving as Supply Inspector
23. Babu Ram Agarwal, S/o not known, Serving as Supply Inspector
24. P.P. Arora, S/o not known, Serving as Supply Inspector
25. Om Prakash Singh Negi, S/o not known, Serving as Supply Inspector
26. Anil Kumar Naithani, S/o not known, Serving as Supply Inspector
27. D.K. Maithani, S/o not known, Serving as Supply Inspector
28. Prakash Chandra Pandey, S/o not known, Serving as Supply Inspector
29. (Deleted)
30. Laxmi Prasad Tamta, S/o not known, Serving as Supply Inspector
31. R. N. Bhatt, S/o not known, Serving as Supply Inspector

.....Respondents

Present : Sri S. S. Yadav, Ld. Counsel
for the petitioner

Sri V. P. Devrani, Ld. A.P.O.
for the respondent Nos. 1 & 2

Sri D. K. Bankoti, Brief Holder
for Sri Alok Mehra, Ld. Counsel
for the respondent Nos. 3 to 8

None for other respondents

JUDGMENT**DATED: OCTOBER 24, 2017****(HON'BLE MR. D. K. KOTIA, VICE CHAIRMAN (A))**

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

"a) Issue a order or direction directing the respondents to quash the impugned final seniority list dated 05.05.2009 filed as (Annexure No- 8) passed by the respondent No. 2;

b) Issue a order or direction directing the respondents not to make any promotion on the post of Senior Supply Inspector in pursuance of the final seniority list dated 05.05.2009 filed as (Annexure No.-8);

c) Issue a order or direction directing the respondents to issue fresh final seniority list according to the statutory provision regarding determination of seniority w.e.f. the date of order of substantive appointment;

d) Issue any suitable order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of case;

e) Award the cost of the petition to the petitioner"

2.1 The petitioner was initially appointed as Supply Inspector on ad-hoc basis vide order of the District Magistrate dated 24.11.1973.

2.2 The services of the petitioner were regularized on the post of Supply Inspector in the Food and Civil Supplies Department, Government of Uttarakhand on 28.04.1987 under the U.P. Regularization of Ad-hoc Appointment (on the post within the purview of Public Service Commission) Rules, 1979 (hereinafter referred as Regularization Rules of 1979).

2.3 Private respondents were also initially appointed as Supply Inspectors on ad- hoc basis in various districts.

2.4 While the petitioner was appointed as Supply Inspector on ad-hoc basis in November, 1973, the private respondents no. 3 to 8 were appointed as Supply Inspectors on ad-hoc basis in May, 1973. Thus, the private respondents (No. 3 to 8) were appointed on ad-hoc basis prior to the ad-hoc appointment of the petitioner.

2.5 It is mentioned here that out of total 24 private respondents, only 6 private respondents (No. 3 to 8) have contested the present claim petition. In spite of sufficient service, remaining 18 private respondents did not appear and it was decided to proceed ex-parte against them.

2.6 The ad-hoc appointments of the petitioner and the private respondents (No. 3 to 8) were regularized under the Regularization Rules of 1979.

2.7 The orders of regularization of the petitioner and the private respondents (No. 3 to 8) were issued by the District Magistrate of the concerned districts on different dates. The regularization order of the petitioner was issued on 28.04.1987 and the regularization orders of the private respondents (No. 3 to 8) were issued after 28.04.1987. Thus, the regularization order of the petitioner was issued earlier than the regularization orders of the private respondents (No. 3 to 8).

2.8 It is pertinent to note that though the regularization orders of the petitioner and private respondents (No. 3 to 8) were issued on different dates on 28.04.1987, 29.04.1987, 06.05.1987, 07.05.1987 and 12.05.1987 yet the petitioner and private respondents (No. 3 to 8) were regularized w.e.f. the same retrospective date i.e. 01.01.1977.

3.1 The petitioner has submitted in the claim petition that a final seniority list of Supply Inspectors was issued on 21.11.1998

(Annexure: A1). In this seniority list, the petitioner was shown above the private respondents and the contention of the petitioner is that the seniority list dated 21.11.1998 had attained the finality.

3.2 It is also to be noted that after creation of the State of Uttarakhand, the state respondent No. 2 issued a tentative seniority list on 05.07.2001 in which the petitioner was shown below the private respondents (Annexure: 5 to the W.S. of respondents No. 3 to 8). The seniority list dated 05.07.2001, however, was not finalized.

3.3 Thereafter, the State respondent No. 2 again issued a tentative seniority list on 09.06.2005 (Annexure: A2) which provided that those persons whose seniority has already been fixed in 1998, cannot file the objections. In this seniority list of 09.06.2005, the petitioner was shown above the private respondents.

3.4 Ten Supply Inspectors (which included private respondents No. 3 to 8) challenged the seniority list dated 09.06.2005 before the Hon'ble High Court at Nainital in Writ Petition No. 806 (S/S) of 2005 (Girish Chandra Pandey and others Vs. State of Uttarakhand and others). The petitioner also filed the Intervention Application No. 348 of 2007 in Writ Petition No. 806 (S/S) of 2005.

3.5 The Writ Petition as well as Intervention Application filed by the petitioner was disposed of by the Hon'ble High Court at Nainital vide order dated 25.04.2008 (Annexure: A3). The operative part of the order reads as under:-

“7.....the writ petition deserves to be disposed of with the direction that the objections of the petitioners shall be considered before the final seniority list of the Supply Inspectors is published. The condition in the impugned tentative seniority list, denying the petitioners to make representation, is quashed. A fresh final seniority list shall be prepared in the light of the observations made in the judgment.....”

The direction given by the Hon'ble High Court and the observations made by the Hon'ble High Court will be further taken up in detail later in this order.

3.6 After the order of the Hon'ble High Court at Nainital, respondent No. 2 issued another tentative seniority list on 19.06.2008 (Annexure: A4). In this tentative seniority list, the petitioner was placed below the private respondents. The petitioner filed the objections against the tentative seniority list dated 19.06.2008 on 30.06.2008 (Annexure: A5).

3.7 Against the order of the Hon'ble High Court dated 25.04.2008 passed by the Hon'ble Single Judge, the petitioner also filed the Special Appeal No. 98 of 2008 and the Division Bench of the Hon'ble High Court disposed of the Appeal on 23.06.2008 (Annexure: A6). The judgment reads as under:-

"Special Appeal No. 98 of 2008:

*We have seen the judgment dated 25th April, 2008 passed in Writ Petition No. 806 of 2005 (S/S), as also the order dated 12th June, 2008 passed in M.C.C. No. 509 of 2008, **and find that the learned Single Judge has not erred in any manner either in disposing of the writ petition or the recall application. Actually, the observation made in para 5 of the judgment dated 25th April, 2008 (supra) is a general statement of law, which is undisputed as far as the service jurisprudence is concerned.** While disposing of the recall application, the learned Single Judge has given the liberty to the appellants to make a fresh representation to the competent authority for redressal of their grievances vis-a-vis the seniority position of the writ petitioners.*

We, by way of further explanation and clarification, do observe and direct that the appellants shall indeed be at liberty to bring forth all the contentions before the competent authority with respect to their placement in the seniority list.

The appeal stands disposed of.

*(J. C. S. Rawat, J.)
23.06.2008*

*(V. K. Gupta, C. J.)
23.06.2008"*

3.8 The contention of the petitioner is that without considering the representation of the petitioner dated 30.06.2008 properly, the respondent No. 2 issued the final seniority list on 05.05.2009 (Annexure: A8). In the final seniority list dated 05.05.2009 which is under challenge in the present claim petition, the petitioner has been placed below the private respondents.

3.9 The petitioner made a representation against the final seniority list (dated 05.05.2009) on 08.05.2009 (Annexure: A9) which remained undecided.

3.10 The petitioner filed the writ petition No. 533 (S/S) of 2009 before the Hon'ble High Court at Nainital against the final seniority list dated 05.05.2009. The Hon'ble High Court dismissed the writ petition on 25.08.2009 on the ground of alternative remedy before this Tribunal. Hence, the present claim petition.

4. The main grounds on the basis of which the claim petition has been filed are that the seniority should have been determined on the basis of the dates of issue of regularization orders; the seniority should have been determined from the date of substantive appointment which is the date of issue of the regularization order; the respondents have not prepared the seniority list according to the Regularization Rules of 1979, the Seniority Rules of 1991 and the Seniority Rules of 2002; the judgment of the Hon'ble High Court in the writ petition No.806 (S/S) of 2005 has been misinterpreted by the state respondents for determining the seniority; the period of ad hoc appointment cannot be counted for the purpose of seniority; the seniority list of 1998 had attained the finality and the settled seniority list could not be re-opened; and the seniority list of 1998 could not be altered without the prior approval of the Central Government under Section 74 of the U.P. Reorganization Act, 2000.

5. It would be appropriate to look at the Rule position at this stage. As has been stated earlier, the petitioner as well as private respondents were initially appointed on ad hoc basis and they were regularized under the Regularization Rules of 1979. Rule 4 and Rule 7 of the Regularization Rules of 1979 read as under:-

"4. Regularisation of ad-hoc appointments: (1) any person who-

(i) was directly appointed on ad hoc basis before January 1, 1977 and is continuing in service as such on the date of commencement of these rules;

(ii) possessed requisite qualifications prescribed for regular appointment at the time of such ad hoc appointment; and

(iii) has completed or, as the case may be, after he has completed three years continuous service shall be considered for regular appointment in permanent or temporary vacancy as may be available on the basis of his record and suitability before any regular appointment is made in such vacancy in accordance with the relevant service rules or order.

(2).....

(3).....

(4) **The appointing authority shall prepare an eligibility list of the candidates, arranged in order of seniority, as determined from the date of order of appointment** and if two or more persons are appointed together from the order in which their names are arranged in the said appointment order, **the list shall be placed before the Selection Committee** along with their character rolls and such other records, pertaining to them as may be considered necessary to judge their suitability.

(5) The Selection Committee shall consider the cases of the candidates on the basis of their records referred to in sub-rule (4).

(6) **The Selection Committee shall prepare a list of the selected candidates, the names in the list being arranged in order of seniority and forward it to the appointing authority.**"

7. **Seniority :- (1) A person appointed under these rules shall be entitled to seniority only from the date of order of appointment after selection** in accordance with these rules and shall, in all cases be placed below the persons appointed in accordance with the relevant service rules, or as the case may

be, the regular prescribed procedure, prior to the appointment of such person under these rules.

(2) If two or more persons are appointed together, their seniority inter se shall be determined in the order mentioned in the order of appointment."

6.1 The Government of Uttar Pradesh had also framed the General Seniority Rules in 1991 known as the "U.P. Government Servants Seniority Rules, 1991". The Government of Uttarakhand has also framed the "Uttarakhand Government Servants Seniority Rules, 2002." The Rules of 1991 and Rules of 2002 are exactly same (identical). Hereinafter, these Rules have been referred as the "General Seniority Rules."

6.2 The "General Seniority Rules" deal with the determination of seniority (i) where according to the service rules, appointments are to be made only by the direct recruitment; (ii) where according to the service rules, appointments are to be made only by promotion; and (iii) where according to the Service rules, appointments are made both by promotion and direct recruitment.

6.3 The appointment on the post of Supply Inspectors is made by direct recruitment as well as by promotion. The Rule 8(1) of the "General Seniority Rules" is relevant which reads as under:-

"8. Seniority where appointments are made both by promotion and direct recruitment--

(1) Where according to the service rules appointments are made both by promotion and by direct recruitment, the seniority of persons appointed shall, subject to the provisions of the following sub-rules, be determined from the date of the order of their substantive appointments and if two or more persons are appointed together, in the order in which their names are arranged in the appointment order:

Provided that if the appointment order specifies a particular back date, with effect from which a person is substantively appointed, that date will be deemed to be

the date of order of substantive appointment and, in other cases, it will mean the date of order :

Provided.....”

7. The State respondents No. 1 and 2 have opposed the claim petition and it has been stated in their joint written statement that a tentative seniority list was issued on 19.06.2008 in the light of the observations made by the Hon’ble High Court in its order in writ petition No. 806 (S/S) of 2005. Objections were invited from the Supply Inspectors including the petitioner on the tentative seniority list. A committee was constituted to consider the objections. Since there was no substance in the objections raised by the petitioner, his objections were rejected and the final seniority list was issued on 05.05.2009.

8. The State respondents have contended that the seniority list of Supply Inspectors has been prepared as per the direction and observations of the Hon’ble High Court at Nainital in writ petition No. 806 (S/S) of 2005. The relevant paragraphs of the order of the Hon’ble High Court read as under:

“3) Brief facts of the case are that the petitioners were initially appointed Supply Inspectors, on ad hoc basis. Later their services were regularized under the U.P. Regularization of Ad-hoc Appointments (On Posts Within The Purview Of The Public Service Commission) Rules 1979, w.e.f. 01.01.1977. The contention of learned counsel for the petitioners is that the persons who were appointed on ad hoc basis subsequent to the appointment of the petitioners have been given seniority in the impugned seniority list over the petitioners only for the reason that the order of regularization is dated earlier to that of the petitioners. Challenging the ground on which the subsequent appointees were given seniority over the petitioners, this writ petition is filed.

4) A counter affidavit has been filed on behalf of the respondents in which it is admitted that the petitioners were initially appointed Supply Inspectors on ad hoc basis, and subsequently they were regularized

under the rules. However, in Para 9 of the counter affidavit it is stated that final seniority list was prepared in the year 1998, which has attained finality and the answering respondents are bound by said seniority list. It is further stated in the counter affidavit that some 108 representations were considered in the State of U.P. before the final seniority list was made in the year 1998. In Para 15 of the counter affidavit it is stated that in compliance of order dated 23.06.2005, passed by this Court, in this writ petition, the petitioners have made the representations and the same are under consideration, before the Government and no final orders have been passed.

5) *Admittedly, the petitioners are Supply Inspectors appointed on ad hoc basis in May 1973. It is also not disputed that their services were regularized under the U.P. Regularization of Ad-hoc Appointments (On Posts Within The Purview Of The Public Service Commission) Rules, 1979, w.e.f. 01.01.1977. Learned counsel for the petitioners drew attention of this Court to sub Rule (4) of Rule 4 of the aforesaid Rules of 1979, which reads as under:*

“4 (4). The appointing authority shall prepare an eligibility list of the candidates, arranged in order of seniority as determined, from the date of order of appointment and, if two or more persons are appointed together, from the order in which their names are arranged in the said appointment order. The list shall be placed before the Selection Committee along with their character rolls and such other records, pertaining to them, as may be considered necessary to judge their suitability.”

Learned counsel for the petitioners argued that without complying said procedure, the regularization orders were passed by the District Magistrates at their end, despite the directions issued by Food Commissioner (copies of which are contained as Annexure 3, 4 and 5 to the writ petition). It is further contended on behalf of the petitioners that merely for the reason that in some Districts, the District

Magistrate could not sign the regularization order on particular date, or the regularization order is passed after couple of days to the regularization order passed in other Districts relating to the junior ad hoc Supply Inspectors, the seniors cannot be placed below the juniors, particularly, when regularization is made for all w.e.f. 01.01.1977. I agree with the contention of learned counsel for the petitioners that where the regularizations orders are passed on different dates but indicate that the persons regularized are so regularized w.e.f. same day, the earlier appointed ad-hoc Supply Inspectors cannot be placed below the Supply Inspectors appointed ad-hoc on later date only for the reason that the order of regularization is dated prior to the order regularizing the services of the Supply Inspectors appointed earlier.

6).....

7) In the above circumstances, the writ petition deserves to be disposed of with the direction that the objections of the petitioners shall be considered before the final seniority list of the Supply Inspectors is published. The condition in the impugned tentative seniority list, denying the petitioners to make representation, is quashed. A fresh final seniority list shall be prepared in the light of the observations made in the judgment. (Intervention Application No. 348 of 2007 also stands disposed of, accordingly)."

Sd/-
(Prafulla C. Pant, J.)

Dt. April 25, 2008"

9. In view of the order of the Hon'ble High Court above, the State respondents have contended that the dates of orders of regularization cannot form the basis to determine inter se seniority of Supply Inspectors who were regularized w.e.f. the same retrospective date i.e. 01.01.1977. In such case, the date of initial appointment on ad hoc basis can be the only criterion for fixing the inter se seniority of Supply Inspectors. It has further been contended by the State respondents that the petitioner and the private respondents were regularized w.e.f. the same date. The claim of the petitioner that he

should have been placed above the private respondents in the seniority list (because his order for regularization was issued prior to the dates of regularization orders of the private respondents) cannot sustain in the light of the observation of the Hon'ble High Court in paragraph 5 of the order as the petitioner was appointed initially on ad-hoc basis in November, 1973 and the private respondents were initially appointed on ad-hoc basis prior to the petitioner in May, 1973. Since the date from which the petitioner and the private respondents have been regularized is the same (01.01.1977), the inter-se seniority of Supply Inspectors has been fixed from the dates of their initial ad-hoc appointments in accordance with the direction/observation of the Hon'ble High Court.

10.1 The private respondent No. 3, who has also been authorized by the private respondents No. 4 to 8, has filed the written statement and opposed the claim petition. It has been contended by the private respondents that the post of Supply Inspector is a State cadre post and the seniority list is maintained at the State level. The Supply Inspectors were regularized in different districts and separate orders for regularization were issued by concerned District Magistrates on different dates. Though the regularization orders were issued on different dates yet the date from which regularizations were made was the same date (01.01.1977). Since all the Supply Inspectors were regularized w.e.f. the same date, the regularization and the inter-se seniority of Supply Inspectors in the State cadre was to be determined keeping in view Rule 4 (4) of the "Regularization Rules of 1979" which provides that an eligibility list shall be prepared wherein names shall be arranged in order of seniority from the date of order of (ad-hoc) appointment. The private respondents No. 3 to 8 were initially appointed on ad-hoc basis in May, 1973 prior to the petitioner who was initially appointed on ad-hoc basis in November, 1973. In view of earlier appointment of the private respondents than that of the

petitioner, the petitioner cannot claim the seniority over the private respondents when regularizations have been made w.e.f. the same date (01.01.1977). The plea of the petitioner that he should have been placed above the private respondents in the seniority list because his regularization order was issued earlier (though he was initially appointed in November, 1973) than the private respondents (while they were initially appointed in May, 1973) is misconceived and contrary to the Regularization Rules of 1979.

10.2 The private respondents have also contended that the State respondent No. 2 issued a final seniority list on 21.11.1998 wherein the private respondents were placed below the petitioner. The said seniority list of 1998 was challenged by the private respondents before the U.P. Public Services Tribunal by filing claim petition No. 51 of 1999. The State respondents filed an application dated 30.09.1999 (Annexure: 4 to the W.S.) for deferring the proceedings of the claim petition on the ground that the seniority list is under challenge before the Hon'ble High Court at Allahabad in writ petition No. 1128 of 1999 wherein an interim order has been passed. The said claim petition No. 51 of 1999 is yet to be decided by the Public Services Tribunal of U.P. The private respondents have also contended that after the creation of the Uttarakhand State, respondent No. 2 issued another tentative seniority list on 05.07.2001 (Annexure : 5 to the W.S.) in which the private respondents were placed above the petitioner in the seniority list. On 09.06.2005, yet another tentative seniority list was issued by the respondent No. 2 in which the private respondents were placed below the petitioner in the seniority list. The said tentative seniority list was challenged by the private respondents No. 3 to 8 (alongwith other Supply Inspectors) before the Hon'ble High Court of Uttarakhand at Nainital in writ petition No. 806 (S/S) of 2005 which was disposed of by the Hon'ble High Court on 25.04.2008. The petitioner challenged the order of Hon'ble High Court by filing Special Appeal No. 98 of 2008

which was dismissed by the Division Bench of the Hon'ble High Court on 23.06.2008 (Annexure : A 6). The respondent No. 2 issued another tentative seniority list on 19.06.2008 and after considering the objections including the objections of the petitioner, the final seniority list was issued on 05.05.2009. The private respondents No. 3 to 8 have contended that the seniority list of 1998 cannot be said to be a list which had attained the finality and it has been under challenge throughout from 1999 to 2009.

10.3 Private respondents have also contended that the Hon'ble High Court in writ petition No. 806 (S/S) of 2005 (wherein the private respondents No. 3 to 8 were the petitioners) has held that when the persons who have been regularized w.e.f. same day, the earlier appointed ad-hoc Supply Inspectors cannot be placed below the Supply Inspectors appointed ad-hoc on later date. The relevant observation of the Hon'ble High Court is as under:-

"I agree with the contention of learned counsel for the petitioners that where the regularizations orders are passed on different dates but indicate that the persons regularized are so regularized w.e.f. same day, the earlier appointed ad-hoc Supply Inspectors cannot be placed below the Supply Inspectors appointed ad-hoc on later date only for the reason that the order of regularization is dated prior to the order regularizing the services of the Supply Inspectors appointed earlier."

11. The petitioner has also filed the rejoinder affidavits against the written statements filed by the State respondents and the private respondents and the same averments have been made in these rejoinder affidavits which have been stated in the claim petition.

12. We have heard learned Counsels for the petitioner, State respondents and the private respondents (No. 3 to 8) and perused the record.

13. Learned counsel for the petitioner, learned A.P.O. and learned counsel for the private respondents (No. 3 to 8) have argued on the same lines which have been pleaded by them in the claim petition and the written statements as described in the preceding paragraphs of this order.

14. After hearing all the parties and perusing the claim petition, written statements, rejoinder affidavits, orders of the Hon'ble High Court, rule position and other record, our analysis and conclusion is summarized below:-

14.1 Admittedly, the petitioner was initially appointed as Supply Inspector on ad hoc basis in November, 1973 and the private respondents (No. 3 to 8) were initially appointed as Supply Inspectors on ad hoc basis in May, 1973. Thus, the private respondents were initially appointed earlier than the petitioner.

14.2 Admittedly, regularization of ad hoc appointment of the petitioner and the private respondents was made by the District Magistrates of the concerned districts on different dates. While the regularization order of the petitioner was issued on 28.04.1987, the regularization orders of private respondents were issued on 29.04.1987, 06.05.1987, 07.05.1987 and 12.05.1987. Thus, the regularization order of the petitioner was issued earlier than the regularization orders of the private respondents.

14.3 Admittedly, petitioner as well as private respondents (though their regularization orders were issued on different dates) were regularized w.e.f. the same retrospective date i.e. 01.01.1977.

14.4 Admittedly, regularization of ad hoc appointment and thereafter, the inter se seniority of Supply Inspectors are governed by the "Regularization Rules of 1979" and the "General Seniority Rules"

(the relevant rules have been quoted in paragraphs 5 and 6 of this order).

14.5 Perusal of Rule 4(4) of the “Regularization Rules of 1979” reveals that for the purpose of regularization of ad hoc employees, an eligibility list of the candidates, arranged in order of seniority, as determined from the date of order of (ad hoc) appointment shall be prepared by the appointing authority to be placed before the Selection Committee. Rule 4(6) of the “Regularization Rules of 1979” provides that the Selection Committee shall prepare a list of the selected candidates in order of seniority and forward it to the appointing authority. It is clear from 4(4) and Rule 4(6) of the “Regularization Rules of 1979” that for determination of seniority of regularized employees, only the date of initial ad hoc appointment is to be taken into account.

14.6 The “General Seniority Rules” (as quoted in paragraph 6.3 of this order) provide that the seniority of the employees is to be determined from the date of the order of their substantive appointment. The proviso of Rule 8(1) also provides that if the appointment order specifies a particular back date, with effect from which a person is substantively appointed, that date will be deemed to be the date of order of substantive appointment. In the present case, the petitioner as well as the private respondents have been regularized in April to May, 1987 on different dates but in all the regularization orders, the date of regularization is w.e.f. the same back date of 01.01.1977. Thus, the petitioner as well as private respondents have been substantively appointed w.e.f. 01.01.1977.

14.7 Since the date of substantive appointment of the petitioner and the private respondents is one, the inter se seniority among them is to be determined taking Rule 4(4) and Rule 4(6) of the “Regularization Rules of 1979” into account and, therefore, the seniority among the persons substantively appointed on the same day

shall be fixed on the basis of the dates of their initial adhoc appointment. Since the private respondents were appointed on adhoc basis earlier (in May, 1973) and the petitioner was appointed on adhoc basis later (in November, 1973), the private respondents have been rightly placed above the petitioner in the final seniority list dated 05.05.2009. The date of issuance of regularization order loses its significance when all the persons have been regularized with effect from the same retrospective date i.e. 01.01.1977.

14.8 The Hon'ble High Court at Nainital in Writ Petition No. 806 (S/S) of 2005 directed to the state respondents to prepare a fresh final seniority in the light of the observations made in the judgment. It would be worth repeating the observation of the Hon'ble High Court in its order which reads as under:

"I agree with the contention of learned counsel for the petitioners that where the regularizations orders are passed on different dates but indicate that the persons regularized are so regularized w.e.f. same day, the earlier appointed ad-hoc Supply Inspectors cannot be placed below the Supply Inspectors appointed ad-hoc on later date only for the reason that the order of regularization is dated prior to the order regularizing the services of the Supply Inspectors appointed earlier."

Perusal of record reveals that the state respondents have prepared a fresh final seniority list (dated 05.05.2009) in accordance with the above direction of the Hon'ble High Court.

14.9 In view of above, we also do not find any merit in the contention of the petitioner that the seniority list of 1998 had attained the finality and it could not be altered without the prior approval of the Central Government under Section 74 of the U.P. Reorganization Act,

2000 and we agree with the contentions of the learned counsel for the private respondents (No. 3 to 8) mentioned in paragraph 10.2 of this order in this regard.

15. Learned counsel for the petitioner and learned counsel for the private respondents have referred the following case laws: Chief of Naval Staff and another Vs. G. Gopala Krishna Pillai and others 1996 (1) SLR 631, Ram Ganesh Tripathi and others Vs. State of U.P. and Others (1997) 1 SCC 621, Anuradha Mukherjee and others Vs. Union of India and others 1996 (2) SLR 625, G.C. Gupta and others Vs. N.K. Pandey and others 1988 (7) SLR 706, Rudra Kumar Sen and others Vs. Union of India and others (2000) 8 SCC 25, S.N. Dhingra and others Vs. Union of India and others (2001) 3 SCC 125, Direct Recruit Class-II Engineering Officers Association and others Vs. State of Maharashtra and others MANU/SC/0291/1990 and Dr. Chandra Prakash and others Vs. State of U.P. and Another Writ Petition Civil No. 43 of 1998, Supreme Court. We have gone through these cases and find that facts and circumstances and also the rule position in the referred cases are entirely different compared to the case in hand. These cases are, therefore, not applicable in the present case.

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

ORDER

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

(RAM SINGH)
VICE CHAIRMAN (J)

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

DATE: OCTOBER 24, 2017
NAINITAL.