

**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. 01/N.B./D.B./2015

1. B. M. Bhatt, S/o Shri B. D. Bhatt, presently posted as Sub-Divisional Officer, Uttarakhand Power Corporation Ltd., Tanakpur, District-Champawat (Uttarakhand).
2. Girish Chandra Joshi, S/o Shri Tikamram Joshi, posted as Assistant Engineer, Uttarakhand Power Corporation Ltd., Haldwani, District Nainital.
3. Vinod Kumar Bisht, S/o Shri Ram Dutt Bisht, posted as Assistant Engineer, Uttarakhand Power Corporation Ltd., Pihoragarh, District Pithoragarh.
4. Govind Singh Karki, S/o Shri Diwan Singh Karki, posted as Assistant Engineer, Uttarakhand Power Corporation Ltd., Bajpur, District Udham Singh Nagar.
5. Surendra Singh Bisht, S/o Late Shri Kamal Singh Bisht, posted as Assistant Engineer, Uttarakhand Power Corporation Ltd., P. O. Selakuli, District Dehradun.
6. S. P. Kudial, S/o Shri G. N. Kudial, posted as Assistant Engineer, Uttarakhand Power Corporation Ltd., Mohanpur, Dehradun, District Dehradun.
7. Kishore Kumar Pant, S/o Shri Ramdutt Pant, posted as Assistant Engineer, Uttarakhand Power Corporation Ltd., Haldwani, District Nainital.

8. Shri Vineet Saxena, S/o Late Shri S. M. Lal Saxena, Sub-Divisional Officer, Uttarakhand Power Corporation Ltd., Industrial Area Haridwar, District Haridwar.

.....Petitioners

VERSUS

1. State of Uttarakhand through its Secretary, Energy, Secretariat, Dehradun.
2. Uttarakhand Power Corporation Ltd. Through its Managing Director, Urja Bhawan, Kanwli Road, Dehradun.
3. Shri Surya Darshan Singh Bisht, Executive Engineer, Office of Superintending Engineer, (EDC Urban), Uttarakhand Power Corporation Ltd., 18 EC Road, Dehradun, District Dehradun.
4. Shri Arvind Kumar, Executive Engineer, Office of Superintending Engineer, EDC (Rural), Uttarakhand Power Corporation Ltd., 18-EC Road, Dehradun, District Dehradun.
5. Shri Begraj Singh, Executive Engineer, Office of Superintending Engineer, Uttarakhand Power Corporation Ltd., Rudrapur, District-Udham Singh Nagar.
6. Shri Umakant Chaturvedi, Executive Engineer, Office of Superintending Engineer, Uttarakhand Power Corporation Ltd., Ranikhet, District-Almora.
7. Shri Prashant Pant, Executive Engineer, Office of Superintending Engineer, (Gramin Vidyut Mandal), 18-EC Road, Dehradun, Uttarakhand Power Corporation Ltd., Dehradun, District Dehradun.
8. Shri Sandeep Kumar Gupta, Executive Engineer, Office of Superintending Engineer, (Gramin Vidyut Mandal), Uttarakhand Power Corporation Ltd., Rudrapur, District Udham Singh Nagar.
9. Shri Dharmveer Singh, Executive Engineer, Office of Superintending Engineer, (Materials Management), Uttarakhand Power Corporation

Ltd., Gabbar Singh Bhawan, Kanwli Road, Dehradun, District Dehradun.

10. Shri Pradeep Kumar, Executive Engineer, Office of Superintending Engineer (EDC), Uttarakhand Power Corporation Ltd., Pithoragarh, District Pithoragarh.
11. Shri Jakir Hussain, Executive Engineer, Office of Superintending Engineer, Uttarakhand Power Corporation Ltd., Shrinagar, District Pauri Garhwal.
12. Shri Kailash Kumar, Executive Engineer, Office of Superintending Engineer (C & P), Uttarakhand Power Corporation Ltd., Gabbar Singh Bhawan, Kanwli Road, Dehradun, District Dehraun.
13. Shri Deepakpal Arya, Executive Engineer, Office of Superintending Engineer, Uttarakhand Power Corporation Ltd., Rudrapur, District Udham Singh Nagar.
14. Shri Manoj Gusain, Executive Engineer, Office of Superintending Engineer, Uttarakhand Power Corporation Ltd., EDC Shrinagar, District Pauri Garhwal.
15. Shri Anup Kumar, Executive Engineer, Office of Superintending Engineer, Uttarakhand Power Corporation Ltd., Shrinagar, District Pauri Garhwal.
16. Shri Deepak Saini, Executive Engineer, Office of Superintending Engineer, Uttarakhand Power Corporation Ltd., EDC Roorkee, District Haridwar.
17. Mohd. Afjaal, Executive Engineer, Office of Superintending Engineer (Project), R-APDRP-Near Sent Paul School, Nainital Road, Haldwani, Uttarakhand Power Corporation Ltd., District Nainital.
18. Shri Nitin Singh Garkhal, Assistant Engineer, Sub-Divisional Officer, Uttarakhand Power Corporation Ltd., Ramnagar, District-Nainital.
19. Shri Harun Rashid, Executive Engineer, Office of Superintending Engineer (C & P), Uttarakhand Power Corporation Ltd., Gabbar Singh Bhawan, Kanwli Road, Dehradun, District Dehraun.

20. Km. Nandita Aggarwal, Executive Engineer, Office of Superintending Engineer, Uttarakhand Power Corporation Ltd., EDC Roorkee, District Haridwar.
21. Shri Gaurav Saklani, Executive Engineer, Office of Superintending Engineer (Project R-APDRP Part-B), Uttarakhand Power Corporation Ltd., Gabbar Singh Bhawan, Kanwli Road, Dehradun, District Dehradun.
22. Smt. Pujarani, Executive Engineer, Office of Superintending Engineer, EDC (Urban), Uttarakhand Power Corporation Ltd., Kaulagarh FRI Dehradun, District-Dehradun.
23. Shri Bhaskar Pandey, Executive Engineer, Office of Superintending Engineer, (Subhash Nagar, Haldwani), Uttarakhand Power Corporation Ltd., Haldwani, District Nainital.
24. Shri Kanhiya Jee Mishra, Executive Engineer, Office of Superintending Engineer, (EDC Urban), Uttarakhand Power Corporation Ltd., Kashipur, District Udham Singh Nagar.
25. Shri Vivek Kandpal, Executive Engineer, Office of Superintending Engineer, Uttarakhand Power Corporation Ltd., Kashipur, District Udham Singh Nagar.
26. Shri Ajeet Kumar Yadav, Executive Engineer, Office of Superintending Engineer, (EDC Urban), Uttarakhand Power Corporation Ltd., Rudrapur District Udham Singh Nagar.
27. Shri Manoj Kumar, Executive Engineer, Office of Superintending Engineer, (EDC), Uttarakhand Power Corporation Ltd., Ranikhet, District Almora.
28. Shri Ashutosh Tiwari, Executive Engineer, Office of Superintending Engineer, (EDC Urban), Uttarakhand Power Corporation Ltd., Dehradun, District Dehradun.

.....Respondents

1. Prayank Pande, Sub Divisional Officer, E.D.S., Uttarakhand Power Corporation Ltd. Nainital.

2. Sri Sandeep Kumar Sharma, Presently working as A.E. RAPDRP-Part B, UPCL, Dehradun.
3. Sri Manoj Prakash Singh Rawat, presently working as S.D.O., EDSD, Rajpur Road, Dehradun.
4. Rahul Channa, S/o Sri Vishambar Nath Channa, R/O H. No. 1000, Street No. 14, Ramnagar, Roorkee.
5. Sweta Dinkar Rautela, W/ o Sri Dinkar Rautela, R/o quarter No. 1, Type 3, Urja Bhagan, Kanwali Road, Dehradun.
6. Abhinav Rawat, S/osri Jagmohan Singh Rawat, R/o Saket Colony, Lane No. 3, Ajabpur Kalan, Dehradun.
7. Anuj Kumar Tripathi, S/o Sri Budh Pal Sharma, H.N. 18/3, Suresh Sharma Nagar, Bareilly, Uttar Pradesh.
8. Meenakshi Pant, W/o Sri Nikhil Khanna, R/o 39 Narendra Vihar Ext. Kaulagarh Road, Dehradun.
9. Vivek Upadhaya, S/o Sri Mahesh Upadhyay, Sanjay colony, R.K. Tent House Road, Kusumkhera, Haldwani.
10. Rohitashu Pandey, S/o Sri B.D.Pandey, R/o Sanjal Colony, R.K.Tent House Road, Kusumkhera, Haldwani.
11. Himanshu Badoni, S/o Sri Dwarka Prasad Badoni, R/o 27-B, Garhi Cantt, Dehradun.
12. Manisha Joshi, S/o Sri Bhuvan Chandra Joshi, R/o Joshi Niwas, Amoun, near Mazar, Tanakpur Road, Khatima.
13. Prashant Mohan Joshi, S/o Sri G.C.Joshi, R/O E-28 Shivlok Colony, Rajpur Road, Dehradun.
14. Geeta Pathak, W/o Sri Sanjay Tiwari, R/o Type 4, Yamuna Colony, Dehradun.
15. Gulshan Baloni, S/o Sri Jeewal Lal Baloni, R/o 27/3, Rana Niwas, near Uma Lodge, Karnparyag.
16. Subhash Kumar S/o Sri Birendra Prasad, R/o Type 4/3, Urja Bhawan, Kanwali Road, Dehadun.
17. Vaibhav Sharma, s/o Sri Yogendra Sharma, R/o Tulsi Vihar Colony, Gumaniwala, Rishikesh.

18. Dhananjay Kumar, S/o Sri Umesh Prasad Singh, R/o Drona Vatika, Lane No. 4, Sahastradhara Road, Dehradun.
19. Jaipriya D/o Sri Rajj Kumar Arya, R/o Quarter No. 2, Type 3, Urja Bhawan, Kanwali Road, Dehradun.
20. Arshad Ali, S/o Sri Shaqir Ahmad, R/o House No. 263/1, Aman Vihar, Lane No.12, Turner Road, Dehradun.
21. Parvesh Kumar, S/o Sri Yogendra Kumar, R/o Quarter No. 1, Type 4, Hydell Colony, Ranikhet.
22. Sunil Kumar S/o Sri Rajveer Singh, R/o Village Gumaliwala, P.O.Sohanpur, Roorkee.
23. Neha Singh, W/o Sri Mahendi Ratta, R/o House No. 176, Lane No. 6, Ramnagar Roorkee,
24. Parul Shahu R/o Sri Manish Kumar, R/o House No. P-25, Shiwalik Nagar, BHEL Ranipur, Haridwar.
25. Reeta Rajpur, D/o Late Sri Gopal Chand Rajpur, R/o Village, Chama, Post Bejerh, District Pithoragarh.
26. Vikas Bharti, S/o Sri Nand Ram, R/o Type IV/4 (FH), Urja Bhawan, Kanwali Road, Dehradun.
27. Vipin Kumar, S/o Sri Rabindra Prasad, R/o Quarter No. 28, Rajeshwari Puram, Jogiwala, Dehradun.
28. Samar Bahadur Yadav, S/o Sri G.P.Yadav, R/o G-75, Block No. 3, Hathibarkala Estate, Dehradun.
29. Monika Chunera, D/o Sri K.R.Chunera, R/o Village, Bhagirathi P.O. & District Bageshwar.
30. Ujjwal Bhaskar, S/o Sri Deep Chand, R/o Type 3/6, Hydell Colony, Kathgodam.
31. Santosh Agarwal, S/o Sri Panna Lal Agarwal, R/o 6-D/935, Awas Vikas Colony, Agra.
32. Ashwani Kumar Singh, S/o Sri Prem Nath, R/o 166, Purva Deen Dayal, Roorkee.
33. Mukesh Kumar, S/o Late Sri Vijay Pal Singh, R/o C-109, Plot 40 New Vishnu Garden, P.o. Gurukul Kangri, Haridwar.

34. Puneet Kumar Srivastava, S/o Sri H.S.Srivastav, R/o 3-Model Colony, Rudrapur.
35. Praveen Singh Negi, S/o Sri Bharat Singh Negi, R/o Village Bagi, Vishapti Kesetra, Bhaniyawala, Dehradun.
36. Lalit Mohan, S/o Sri Bishan Ram Arya, R/o Indira Colony, Gali No. 1, Rudrapur, U.S.Nagar.
37. Rakesh Singh Burfal, S/o Sri B.S.Burfal, R/o Village Darathi, P.O. Rathi, District Munsiyari, Pithoragarh.
38. Neeti Vishesh W/o Sri Vishesh Kumar, J.T.O. (Indoor), B.S.N.L. Telephone Exchange, Police Line, Pithoragarh.
39. Amit Tomar, S/o Sri N.S.Tomar, R/o 25, Shivpuram, Paniyala Road, Roorkee.
40. Chandra Mohan, S/o Sri Shiv Lal R/o 18, EC. Road, Type 4/5, UPCL Colony, Dehradun.
41. Shilpi Shaini W/o Sri Ravikant Saini, R/o E.H. 19, Sector 6, BHEL, Haridwar.
42. Jyotsna Shrestha, D/o Sri M.B.Pradhan, R/o 61, Hathibarkala, Dehradun.

.....Interveners.

Present: Sri I. P. Gairola, Ld. Counsel
for the petitioners.

Sri V.P.Devrani, Ld. A.P.O.
for the State

Sri D.S.Patni, and Sri Bhagwat Mehra, Ld.
Counsels for the respondent no. 2.

Sri Rakesh Thapliyal, Ld. Counsel
for the respondent nos. 6, 10 and 17

Sri Piyush Garg, Ld. Counsel
for the respondent No. 23

Sri Vinay Kumar, Ld. Counsel
for the respondent No. 24.

Ms. Rangoli Purohit, Ld. Counsel
for the respondent No. 25

Sri S.S.Yadav, Ld. Counsel
for the respondents No. 26 & 28

Sri Vipul Sharma Sri Shashank Pandey, &
Sri S.S. Yadav, Ld. Counsels for the
interveners

JUDGMENT

DATED: NOVEMBER 07, 2017

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

1. By way of this original petition, the petitioners have prayed for a direction to quash the final seniority list dated 03.1.2015, select list/recommendation of departmental promotion committee dated 04.01.2015 and the promotion order dated 05.01.2015 issued by the respondent no. 2 and for any other suitable orders along with cost of the petition.
2. Briefly stated facts are that the petitioners the Junior Engineers, were promoted on the post of Assistant Engineers (Electrical & Mechanical) in the year 2007-08 and 2008-09. The other private respondents were appointed on the post of Assistant Engineers in the year 2008-09 after selection and completion of training against the vacancies of 2006-07. The respondent department issued a combined seniority list of the cadre of Assistant Engineers (Electrical & Mechanical) in which respondents No. 3 to 22 were given seniority right from the date when they joined the services as Trainee after their selection on the basis of advertisement. The petitioners have challenged their seniority on the ground that their substantive appointment cannot be treated from the date of their induction as trainees but from the date of their substantive appointment in the cadre by the department after completion of their training.
3. The tentative seniority list was challenged in the department on the various grounds. The petitioners filed objections against the tentative seniority list dated 26.12.2013 which were decided in casual manner and without deciding the objections of the petitioner No. 7, the final

seniority list was issued. The matter was challenged before the Hon'ble High Court whereupon a direction was issued to the respondent department to decide the objections of the petitioners as well as other employees and to issue final seniority list within a period of one month from 06.06.2014 with a direction to proceed further for promotion only after final seniority list is issued. According to the petitioner, in gross violation of the order of Hon'ble High Court, final seniority list dated 03.1.2015 was issued and was uploaded on the website of the department on 04.1.2015 and on the same day, promotions were made after conducting the DPC proceedings. Hence, the petitioners have filed this petition for seeking the relief to quash the final seniority list dated 03.1.2015, the select list and the recommendations of DPC dated 4.1.2015 and promotions letters issued thereafter on 5.1.2015 by the respondent department.

4. The petition was opposed by the respondent department as well as by the private respondents on the ground that direct selection for the post of Assistant Engineer was commenced pursuant to the advertisement issued in October 2006 against the vacancies of 2006-07. The private respondents were appointed as Trainee Engineers vide order dated 30.04.2008 followed by another order dated 30.06.2009 and the selection of the respondents pertains to the recruitment year 2007-08 and they were given status of the Trainee Engineers. The seniority in the cadre of Assistant Engineer shall be determined from the date of their initial appointment as Trainee Engineers. The petition filed by the petitioners is misconceived and the seniority list and promotions are as per law and the petition deserves to be dismissed.
5. After hearing both the parties, the petition was decided on the basis of the relevant concerned Regulations of 1970. The judgment of this Tribunal dated 09.11.2016 was challenged before the Hon'ble High Court in appeal wherein, it was argued that the relevant Rules of seniority for the concerned persons were amended in 1998 and the

petition was decided on the basis of the old Regulations. After considering the points raised before the Hon'ble High Court, the Hon'ble High Court set aside the decision of this Tribunal and the matter was remitted back for hearing afresh and the concerned department was directed to file all the relevant Rules and Regulations before the Tribunal and all the persons having interest were given opportunity to appear before the Tribunal and put their submissions as interveners.

6. In compliance of the order of the Hon'ble High Court, the matter was again heard before the court. The respondent department was directed to file all the concerned Regulations as applicable upto date. Other interveners were also heard in the petition. All the parties were again given opportunity to file the relevant documents and copy of the Rules and Regulations before the Court.
7. We have heard the arguments of learned counsel for the petitioners, respondents and the interveners and gone through all the records.
8. The basic question before the court is to decide whether the Training period of the direct recruitees (trainees) for the Electrical & Mechanical Branch of Assistant Engineers is to be counted for the seniority or not. To answer this question, it is necessary to ascertain all the relevant Rules or Regulations relating to the matter.
9. It is an admitted fact that in the concerned Service Regulations for the Assistant Engineers (Electrical & Mechanical) Branch is the Uttar Pradesh State Electricity Board Services of Engineers Regulations, 1970 (hereinafter referred to as said Regulations). As per Regulation-2 of the said Regulations,, cadre consisting the post of Chief Engineer, Additional Chief Engineer, Superintending Engineer, Executive Engineer and Assistant Engineer. Regulation 3(30) of the said Regulation, defines the terms of Trained Engineer as follows:

“3(30) ‘Trained Engineer’ means a Trained Engineer who after a course of successful training under the Board is declared fit for appointment as an Assistant Engineer under the Board.”

Regulation-4 provides for Strength of Service, which may be prescribed by the Board from time to time and is prescribed in Appendix ‘A’ to the Regulations. Regulation-5 is the most relevant Rule mentioned in Part-III Sources of Recruitment and the relevant extract of the Regulation 5(1) reads as under”:

“5.(1) Initial recruitment to the service shall be made to the post of Assistant engineer in the following manner:-

(a) By appointment from amongst Trained Engineer’s 65 1/3%

(b) BY promotion from amongst members of Junior Engineers Service in the Selection Grade in the manner prescribed in Appendix ‘C’ 33 1/3%

(c) By promotion from amongst the confirmed and qualified Computers (Selection Grade) (E/M) in the manner prescribed in Appendix ‘C’. 1 1/3 %

Provided that as between members of Junior Engineers and Computer the vacancy shall be shared by them in the proportion of their respective cadre strength from time to time.”

10. Regulation-7 provides for number of recruits to be taken; according to which the Board shall ascertain the probable number of vacancies likely to occur in the various classes of posts in the Service during the course of the next year. Board will also decide the number of vacancies to be allocated to Graduate Engineers and the number of vacancies for the reserved candidates.
11. The definition clause in Regulation 3(13) prescribes for direct recruitment, which reads as under:

“(13) ‘Direct Recruitment’ means recruitment made against a post in the cadre of the service under clause (a) of sub-regulation 1 of Regulation 5 of these Regulations. ”

12. Regulation 15 provides for publication of combined waiting list on the basis of the list received under Rule 6 of Appendix-B and the Select List referred to in Rule 7 of Appendix ‘C’ . According to Regulation 17, appointment to the cadre of Assistant Engineer, shall be made in the same order in which their names appear in the combined waiting list prepared under Regulation 15. Regulation 19, prescribes for determination of seniority.
13. Regulation 19 of the said Regulation has now been amended by the 1998 Regulation and now the 1998 Regulations are the relevant rules for determination of the seniority. The U.P. State Electricity Board Employees Seniority Regulations 1998 were published on 24.02.1998 and its Regulation 3 provides that Regulations will be effective even after being adverse to any matter in any other service regulation framed earlier to it. As per Regulation 2, these Regulations will be applicable for determination of seniority of all those employees of the U.P. State Electricity Board, whose appointment are made under the Regulation framed under Section 79C of the Electricity supply Act, 1948.
14. Hence, it is an admitted fact now that for the appointment on the post of Assistant Engineer (Electrical & Mechanical), the relevant service Regulations are of 1970, whereas, for determination of the seniority, the relevant Regulations are the U.P. State Electricity Board Employees Seniority Regulation, 1998. Regulation- 4 of the Regulation of 1998, defines the cadre, feeding cadre, Basic/Original Appointment and the Recruitment Year. Feeding cadre now has been defined as the cadre of service, out of the members of which under the relevant

service regulations promotion may be made at the higher service or post.

15. Regulation 4, Clause-h of the Regulation defines the Basic/Original appointment as under:

“(h)- The meaning of “Basic/Original Appointment” is such appointment at any post in the cadre of service, which is not the ad hoc appointment and such appointment which has been done after selection according to the service Rules, concerned with the service. ”

16. Regulation- 8 of 1998 Regulations, provides for the situation when the appointment to a cadre are made by the direct as well as by promotion and it provides that when the appointments are made by both the sources, the seniority will be counted from the date of their substantive appointment and when two or more persons are appointed by the same appointment letter then according to the serial their names are mentioned therein. Provisions of Regulation 8(1) also provides for a proviso to the fact that if by any order the appointment is made with effect from back date, then substantive appointment will be treated from the date mentioned in the order otherwise the appointment will be treated from the date of order of appointment. This is very relevant and important provision to be seen in this matter.

17. Coming back to the crux of the points to be decided is that what will be the date of substantive appointment for the persons who are recruited directly. Learned counsel for the petitioner has argued that the substantive appointment should be considered, which is made to the cadre post. We agree with this argument. As per the Uttar Pradesh State Electricity Board Services of Engineers Regulations, 1970 (the said Regulations), the cadre of posts are Assistant Engineer, Executive Engineer, Superintending Engineer and Chief Engineer. There is no post of Trainee Engineer in the cadre. Regulation 5 of the said

Regulations provides for source of recruitment i.e. 65 1/3% appointment from amongst trained engineers, and it does not mention the words direct recruitment from the graduate engineers. Trained Engineers have been defined in the Regulations as an engineers who after completion of successful training under the board, is declared fit for appointment as Assistant Engineer under the Board. Learned counsel for the petitioner has argued that there is no provision of direct recruitment for the post of Assistant Engineer in Electrical & Mechanical Branch unlike the provisions of direct recruitment for Assistant Engineer (Civil) branch as provided in another Rules of 1970. Their contention is acceptable because the said direct recruitment to the post upto 65 1/3 % of cadre is to be made only from those engineers who have earlier been selected by a direct recruitment process and completed successful training. In view of the court it is a separate group, which is selected by a procedure mentioned in Appendix 'B' for training. Learned counsel for the petitioner has argued that may it they be directly recruited candidates, but they are not directly recruited to the cadre of Assistant Engineer but they are directly recruited to train the Engineers and the trained engineer is no where in the cadre, hence their initial appointment on the post of Trained Engineer cannot be said to be substantive appointment in the cadre of Assistant Engineer.

18. We have gone through the Appendix 'B' which relates to sub clause-(a) of sub clause (1) of Regulation 5, that provides for the appointment from amongst trained engineers. Learned counsel for the respondents have argued that Appendix 'B' prescribes the procedure for direct recruitment and when a person selected by following this procedure, is given appointment for training and after completion of training, his substantive appointment to the post of Assistant Engineer will automatically relate back to his first date of appointment as trainee. Whereas, learned counsel for the petitioner has argued differently and

has submitted that the person will be directly appointed for training and he may be given increment etc. but for the purpose of seniority, his substantive appointment to the cadre will be from the date when his appointment to the cadre of Assistant Engineer is made after completion of successful training.

19. Hence, the main issue to be decided by this court is whether initial appointment as trainee should be treated as substantive appointment to the cadre or his appointment after completion of training will be treated as a substantive appointment to the cadre.
20. We have gone through the Appendix 'B' of the said relevant Rules. The title of this Appendix provides only "Procedure for Direct Recruitment" and it does not write as "procedure for direct recruitment of Assistant Engineer". This Appendix 'B' prescribes different stages while directly recruiting the candidates for training, as its clause-1 provides for publication of vacancies by the Board in the newspaper; clause-2 provides for submission of application by the candidates to the Secretary of the Board; clause-3 provides for a written test and/or interview to be held by the Board; clause-4 provides for fees to be paid by the candidates; clause-5 provides for constitution of selection committee; clause-6 provides for the procedure how marks will be awarded in the competitive examination; clause-7 provides for physical standard and medical examination; clause-8 provides for training; clause-9 provides for facilities during training; clause-10 provides for conditions by which during the training period trainee will be governed such rules and regulations may be prescribed from time to time and he has to pass necessary test failing which the services of the trainee will be terminated.
21. After completion of this stage, Clause-11 of the said Appendix 'B' comes into play and it provides as under:

“11. On completion of the training and before appointment as Assistant Engineer, a trainee will be required to pass a final test, as may be prescribed. He may also be required to sign a Service Agreement setting forth the terms and conditions of his appointment as may be prescribed.”

Hence, a bare reading of clause-11, clearly provides for a stage after completion of the training and before his appointment to the cadre of Assistant Engineer and that the trainee will be required to pass final test. This clause presumed the appointment of a trainee as Assistant Engineer only after passing the successful training test because this provides that if he fails to complete the training, he will not be appointed as Assistant Engineer.

22. The court is of the view that simultaneous reading of this provision with Regulation 5 (i.e. source of recruitment) of the said Regulations, clearly demonstrate that the substantive appointment on the post of Assistant Engineer cadre can only be made after completion of successful training and he is appointed to the cadre and such appointment stage to the cadre of Assistant Engineer comes only at the stage which is prescribed in clause-11 of Appendix ‘B’ i.e. when directly recruited candidates after completion of training, is considered for appointment to the cadre. Hence, in our view, the substantive appointment to the cadre post of Assistant Engineer is the date when a trained engineer is appointed to the cadre.
23. The argument of learned counsel for the respondents had been that after completion of training, his appointment to the cadre of Assistant Engineer, will relate back to the date of his initial appointment as trainee. We do not agree with this argument because of the reasons that prima facie by reading clause-11 of Appendix ‘B’ and Regulation 5 of the said Regulations, the appointment to the cadre post of Assistant Engineer is made only from amongst the trained engineers. It

cannot be said to be a direct recruitment to the Assistant Engineer post. The direct selection/recruitment is made for selecting the trainees and only after their successful training, the persons became eligible for the appointment as Assistant Engineer cadre and this is the General Rules that a person cannot be appointed to a post before acquiring the essential eligibility qualification.

24. The respondents have argued that the Regulation 13 of Appendix 'B' provides for lossing of seniority, hence it conveys the meaning that the seniority will be counted from the date of their initial appointment as trainee. The court do not agree with this argument because of the reasons that this provision pertains to the inter –se seniority of the direct selectees as this Appendix 'B' pertains to them only and not the promotees.

25. Learned counsel for the respondents has argued that the direct recruitees, were appointed after due selection process, they were given salary with increments as other regular employees, hence they will be deemed to be appointed on the cadre on the very first day. The court is of the view that the seniority is to be counted only from the date of their substantive appointment. Appointment as trainee is not an appointment to the cadre because a trainee becomes eligible only after completion of training and if the Rules had meant for this purpose, then for the source of recruitment, the word 'direct recruitment' instead of "appointment amongst trainee engineers" would have been used like another set of Regulations for the recruitment of Engineers in Civil Branch, where terminology has been different and the source of recruitment of 65 1/3 % has been written as direct recruitment. Whereas, the word direct recruitment has not been used in the said Regulations relating to Engineers in Electrical & Mechanical Branch.

26. Learned counsel for the respondents has also argued that as per new seniority rules of 1998, their appointment will be treated from their basic/original appointment. We do not agree with this argument because in these Rules also basic/original appointment has been defined such appointment to any post in the cadre of service, whereas, trainee is not in a cadre of service and if as per law, their training was to be included in the service then in their appointment letter which were issued after training for example (Annexure A-1), which was issued after training on 30.06.2009, the date of absorption in the cadre should have been mentioned with back date. Whereas, in the appointment letter i.e. 30.06.2009 (Annexure-A1), it has been specifically mentioned that the trainees were first appointed on the date mentioned in column-7 and they were absorbed in the regular cadre of Assistant Engineer on the date mentioned in column-8 which is almost one year later of their recruitment as trainee.
27. For the purpose of seniority, Regulation-8 of the 1998 Regulations is very specific and its clause (i) specifically provides that the seniority will be given from the date of substantive appointment and when two persons are appointed by one appointment letter, their seniority will be in the order in which their names are given therein. This provision of Regulation 8(1) specifically further provides that where according to the service regulations appointments are made by promotion and direct recruitment i.e. in both the ways, in that case the seniority of the persons appointed in this way will be determined under the provisions of the following sub rule from the date of order of their basic appointment and if two or more persons are appointed together, then in that sequence in which their names have been kept in the order of appointment. Hence as per this provision, the substantive appointment will be deemed to be effective from the date of appointment order issued to the cadre unless this appointment has been made effective from an earlier date. In the present case, when

the respondents were absorbed in the regular cadre after training they were not absorbed in the cadre with back date. Had it been so, then their training period could be counted for the seniority but in the absence of this, as per Regulation 8 of 1998 Regulations, their seniority will be counted from the date of their substantive appointment to the cadre and the substantive appointment to the cadre is obviously the date on which the respondents (direct recruits) were absorbed in the cadre after training.

28. Relying upon the above rule position, court is of the view that as per the facts admitted to the parties, petitioner no. 1 was appointed in the year 2007-08 and rest of the petitioners were appointed in the recruitment year 2008-09 against the vacancies of 2007-08 and 2008-09, whereas, the respondents were appointed in the year 2008-09, against the vacancies of 2006-07. Learned counsel for the respondents have argued that except the petitioner no. 1, other petitioners have no locus standi because of the reasons that they were appointed in the same year when the respondents were appointed. The Rule 8 of 1998 of seniority Regulations provides for the restriction, which provides that where the appointment from any source are less than prescribed quota and against such unfilled vacancies, the appointments are made in the subsequent year or years then the persons appointed in this way will not get seniority of any previous years but they will get seniority of that year, in which their appointments are made, but their names will be kept at the top, after which the names of other appointed persons will be kept in sequence of turn. Hence in accordance with this provision, the respondents who were appointed to the cadre after training against the vacancy of earlier year they will rank en bloc senior against other appointees who were appointed beyond their quota in the previous year. Hence on that basis, the court is of the view that the respondents will not get seniority from the back years but they will get seniority in the year

when their substantive appointments are made but they will be placed in en block senior to the extent of their earlier vacancy against the other appointees i.e. promotees.

29. In the present case, the petitioner no. 1 was appointed earlier where other petitioners were appointed in the later year but they need to be adjusted vis-a-vis the respondents appointed in that year as per Rule 8 enumerated as above.
30. Learned counsel for the petitioners has also argued that as per the direction of the Hon'ble High Court, the respondent department was directed to finalize the seniority list as per the rules but they have finalized the seniority list in a haste on 03.1.2015 which was published on their website on 04.1.2015 and same day after four minutes of such uploading, DPC was held and recommendations were forwarded and next date i.e. 5.1.2015 promotion order was issued. It has been argued that the whole exercise was done in so haste, which proves that it was not done in the manner as it appears. This court is of the view that the act of the respondents on Sunday completed in a few minutes by issuing of seniority list, conducting of DPC and completing the whole exercise of promotion was not done in proper manner. The respondents were required to follow the rules and regulations and as well as condition of appointment letters issue by the department, which were totally ignored. Hence, the seniority list as well as promotional exercise by the DPC and issuing of promotion letters, which are on the basis of seniority list challenged therein, deserves to be set aside.

ORDER

The claim petition is allowed. The final seniority list dated 03.1.2015 issued by the respondent no. 2, select list/recommendations of DPC dated 4.1.2015 and the promotion letter/order dated 5.1.2015 issued by the respondent no.2 are hereby set aside.

The respondent no. 2 is hereby directed to prepare a fresh seniority list according to the Rules and Regulations and as per the observation made above, treating the appointment of the respondents (direct recruits) from the date of their substantive appointment to the cadre, after completion of their training period for the purpose of seniority, within a period of three months from the date of receipt of copy of this order and after publishing the seniority list, the promotional exercise can be taken accordingly as per law. No order as to costs.

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

(RAM SINGH)
VICE CHAIRMAN (J)

DATE: NOVEMBER 07, 2017
NAINITAL

KNP