

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

Present: Hon'ble Mr. Ram Singh

----- Vice Chairman (J)

Hon'ble Mr. D.K.Kotia

-----Vice Chairman (A)

**CLAIM PETITION NO. 58/2012**

Mulayam singh S/o Late Sri Shyam Lal R/o B-303, Dev Bhoomi Enclave Haridwar Bypass Road, Dehradun.

.....Petitioner

**Versus**

1. State of Uttarakhand through its Secretary, P.W.D., Government of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Chief Engineer Level-1, P.W.D., Yamuna Colony, Dehradun.
3. Shri Charu Chand Joshi.
4. Shri Purmal Singh Martolia.
5. Shri Mohan Singh Hayanki

(All the respondents at present are working as Executive Engineer..)

.....Respondents.

Present: Sri M.C.Pant, Ld. Counsel  
for the petitioner.  
Sri Umesh Dhaundiyal, Ld. A.P.O.,  
for the respondent Nos. 1 & 2.  
None for Respondent Nos. 3 to 5.

**JUDGMENT**

**DATED: AUGUST 09, 2017**

**(Hon'ble Mr. D.K.Kotia, Vice Chairman (A))**

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

“(i) To set aside the impugned seniority list dated 01.04.2011  
(Annexure NO. A 1 to the petition) issued by the respondent No.1 and

direct the respondent No.1 to prepare a fresh & correct seniority list according to the seniority Rules and give due place to the petitioner in the final seniority list above the respondent No.3.

(ii) To pass any other suitable order or direction as this Hon'ble Court may deem fit & proper in the circumstances of the case.

(iii) To allow the claim petition with cost. ”

2. The petitioner, who is an Engineer in the Public Works Department, Government of Uttarakhand, has challenged the seniority list of Assistant Engineers dated 01.04.2011 (Annexure: A 1). The seniority list of 01.04.2011 is in respect of Assistant Engineers from Serial No. 52 to 228 and while the petitioner is placed at Sl. No. 63, the private respondent Nos. 4 and 5 have been shown at Sl. Nos. 57 and 58. Though the seniority list does not include the private respondent No.3 yet he has been made a party by the petitioner. The contention of the petitioner is that he is senior to all these private respondents and he should have been placed at a higher place in the seniority list as compared to the private respondents.
3. It would be pertinent to mention that the petitioner has challenged the seniority list dated 01.04.2011 (Annexure: A 1) only and in this seniority list respondent No.3 is not there. Before the seniority list of 01.04.2011, another seniority list of Assistant Engineers was issued on 22.10.2009 (Annexure: R-2 to the written statement of the State respondent Nos. 1 & 2) and this seniority list has not been challenged by the petitioner. In this seniority list of 2009 also, the private respondent No.3 is not included. Before the seniority list of 22.10.2009, the State respondents had issued the seniority list of Assistant Engineers on 24.10.2005 (Annexure: R-1 to the written statement to the Respondent Nos. 1 & 2). In this seniority list of the year 2005, the name of the private respondent No. 3 is there and he has been shown above the petitioner in the list. The petitioner has not challenged this seniority list of 24.10.2005. Since the petitioner has challenged the seniority list of 01.04.2011 only (in which private Respondent No.3 is not there) and the petitioner and private respondent No.3 both are there in the

seniority list of 24.10.2005 but the petitioner has not challenged this seniority list and, therefore, only the seniority list of 01.04.2011 is before us for examination.

4. The petitioner has challenged the seniority list dated 01.04.2011 in which private respondent Nos. 4 & 5 have been shown above the petitioner and the petitioner is aggrieved by this placement in the seniority list.
5. The contention of the petitioner is that he was appointed as Junior Engineer on 6.11.1981 and he was senior (admittedly) to the respondent Nos. 3, 4 and 5 on the post of Junior Engineer. Respondent Nos. 4 and 5 (admittedly) were appointed on the post of Junior Engineer under reserved quota for Scheduled Tribes candidates. It is also admitted that while respondent Nos. 4 and 5 were promoted from Junior Engineer to Assistant Engineer under reservation quota for Scheduled Tribe in 1994 (before the petitioner), the petitioner was promoted to the post of Assistant Engineer in the year 1998 under General Category.
6. The plea of the petitioner is that though he was promoted later as compared to the private respondent Nos. 3, 4 and 5 (on the post of Assistant Engineer) yet his seniority vis-à-vis private respondent Nos. 3, 4 and 5 (as Assistant Engineer) will be in accordance with the seniority in the feeding cadre (of Junior Engineer) as per Rule 6 of the "Uttarakhand Government Servant Seniority Rules, 2002 (hereinafter referred as "Seniority Rules of 2002") and according to Rule 6 (and its Explanation) of the "Seniority Rules of 2002", the petitioner regains the seniority of the feeding cadre even though he gets promotion after the promotion of a person junior to him in the feeding cadre.
7. It would be pertinent to mention here that it is not under dispute that the "feeding cadre" for promotion to the post of Assistant Engineer is Junior Engineer and it is also admitted that the "Seniority Rules of 2002" are applicable.
8. In the light of description in the preceding paragraphs, the petitioner has challenged the seniority list of 01.04.2011 (Annexure: A 1) and has

prayed to set aside the same and prepare it according to the Seniority Rules of 2002.

9. State respondent Nos. 1 and 2 have opposed the claim petition and it has been stated in their joint written statement that the contention of the petitioner is not tenable as the cadre of Junior Engineer and the cadre of Assistant Engineer are separate ones. Though the feeding cadre for promotion on the post of Assistant Engineer is Junior Engineer yet after the promotion of Junior Engineer to the post of Assistant Engineer, the seniority on the post of Junior Engineer ceases to exist. After promotion from the post of Junior Engineer to the post of Assistant Engineer, the date of promotion will determine the seniority of Assistant Engineers as the cadres of the Junior Engineers and Assistant Engineers are different ones. From Junior Engineer to Assistant Engineer, while the private respondent No.3 was promoted in 1991 and private Respondent Nos. 4 and 5 were promoted in 1994 and, therefore, their cadre changed from Junior Engineer to a new cadre of Assistant Engineer and since the petitioner was promoted from Junior Engineer to Assistant Engineer in 1998, he will be junior to the private respondent Nos. 3, 4 and 5 in the seniority list of Assistant Engineers. The State respondents have further contended that the Rule 6 and its explanation of the Seniority Rules of 2002 are not applicable as after the promotion, the cadre of the Junior Engineer has changed to a different cadre of the Assistant Engineer and, therefore, the seniority of the petitioner and private respondents has been rightly decided on the basis of dates of their substantive appointment (promotion) on the post of Assistant Engineer.
10. Private respondent Nos. 4 and 5 have also filed their joint written statement and they have reiterated the same pleadings which have been stated by the State respondent Nos. 1 and 2 in their written statement.
11. Private respondent No.3 has also filed separate written statement and he has also taken the same stand which other private respondents have taken. Since the petitioner has challenged the seniority list of 2011 only

- in which the respondent No.3 does not exist and the petitioner has not challenged the seniority list of 2005 in which respondent No.3 has been shown above the petitioner, we have not adjudicated upon the seniority issue between the petitioner and the private respondent No.3.
12. In spite of sufficient opportunity, no rejoinder affidavit was filed by the petitioner and therefore, the opportunity to file rejoinder affidavit was closed vide Tribunal's order dated 09.05.2013.
  13. We have heard learned counsel for the petitioner and learned A.P.O. on behalf of respondent Nos. 1 and 2 and also perused the record. In spite of sufficient opportunity, none appeared on behalf of respondent Nos. 3 to 5 at the time of hearing.
  14. Petitioner as well as respondents both have relied on Uttarakhand Government Servants Seniority Rules, 2002 (for short Seniority Rules of 2002). It would be appropriate to reproduce the relevant Rules of the Seniority Rules of 2002 before the arguments of both the parties are discussed.

*Rule 6: "Where according to the service rules, appointments are to be made only by promotion from a single feeding cadre, the seniority inter se of persons so appointed shall be the same as it was in the feeding cadre.*

***Explanation: A person senior in the feeding cadre shall even though promoted after the promotion of a person junior to him in the feeding cadre shall, in the cadre to which they are promoted, regain the seniority as it was in the feeding cadre.***

*Rule-7. Where according to the service rules, appointments are to be made only by promotion but from more than one feeding cadres, the seniority inter se of persons appointed on the result of any one selection shall be determined according to the date of the order of their substantive appointment in their respective feeding cadres. [Explanation-.....]*

*Rule 8 (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.....”.*

*(2) The seniority inter-se of persons appointed on the result of any one selection-*

*(a) through direct recruitment, shall be the same as it is shown in the merit list prepared by the Commission or by the Committee, as the case may be;*

**(b) by promotion, shall be as determined in accordance with the principles laid down in rule 6 or rule 7, as the case may be, according as the promotion are to be made from a single feeding cadre or several feeding cadres.**

*(3).....]”*

- 15.1 Learned counsel for the petitioner has argued that the petitioner as well as private respondents were appointed by the direct recruitment in the recruitment year 1981-1982 on the post of Junior Engineer (Civil) and admittedly private respondent Nos. 3, 4 and 5 were junior to the petitioner on the post of Junior Engineer. It has further been contended by learned Counsel for the petitioner that the private respondent No. 3 was promoted on the post of Assistant Engineer in 1991, private respondent Nos. 4 and 5 were promoted in 1994 and the promotion of the petitioner was delayed and he was promoted on the post of Assistant Engineer in 1998. It has also been stated that while the petitioner and private respondent No.3 were promoted as they acquired the qualification of degree in Engineering, the private respondent Nos. 4 and 5, who were diploma holders, were promoted

from the post of Junior Engineer to the post of Assistant Engineer under the reserved quota for Scheduled Tribes.

- 15.2 The contention of learned counsel for the petitioner is that admittedly the single feeding cadre for promotion to the post of Assistant Engineer is Junior Engineer and Rule 6 of the Seniority Rules provides that in case promotions are to be made from a single feeding cadre, the seniority inter se of persons so promoted shall be the same as it was in the feeding cadre. It has also been stated that the Explanation to Rule 6 of the Seniority Rules of 2002 also very specifically clarifies that a person senior in the feeding cadre shall even though promoted after the promotion of a person junior to him in the feeding cadre shall, in the cadre to which they are promoted, regain the seniority as it was in the feeding cadre.
- 15.3 In view of Rule 6 and "Explanation" under Rule 6 of the Seniority Rules of 2002, learned counsel for the petitioner has argued that since the petitioner was senior to the private respondent Nos. 3, 4 & 5 in the cadre of Junior Engineer, he will also be senior in the cadre of the Assistant Engineer and though the respondent Nos. 3, 4 & 5 were promoted earlier to the petitioner on the post of Assistant Engineer yet after the promotion of the petitioner at a later date, the petitioner regains his seniority in the cadre of the Assistant Engineer as it was in the feeding cadre of the Junior Engineer.
16. Learned A.P.O., in his counter argument, has stated that the cadre of the Assistant Engineer is different cadre and it has no connection with the cadre of the Junior Engineer. It was further contended that after the promotion to the post of Assistant Engineers, the cadre of the private respondents had changed and seniority of the petitioner vis-a-vis private respondents on the post of Junior Engineer ceases to exist and a fresh seniority list of Assistant Engineers according to date of their promotion was prepared. The contention of learned A.P.O. is that the seniority of the petitioner and private respondents on the post of Assistant Engineer is governed by the Rule 8 (and not Rule-6 and its explanation) of the Seniority Rules of 2002.

- 17.1 After hearing both the parties and after careful perusal of record and Rule position, we find that in the present case, the single feeding cadre of the petitioner and the private respondents is Junior Engineer. In our view, the petitioner, who was admittedly senior in the feeding cadre of Junior Engineer and who was promoted on the post of Assistant Engineer after the promotion of the private respondents (who were admittedly junior in the feeding cadre), the petitioner regains his seniority in the cadre of Assistant Engineer as it was in the feeding cadre of Junior Engineer according to "Explanation" given under Rule 6 of the Seniority Rules of 2002.
- 17.2 The learned A.P.O. has argued that Rule 8(1) of the Seniority Rules of 2002 provides that the seniority is to be determined from the date of the order of substantive appointments. Since the private respondents were promoted in substantive manner earlier to the petitioner, they are senior to the petitioner. In our view, this argument does not appreciate the provision made in Rule 8(1) of the Seniority Rules of 2002 in its entirety. Rule 8(1) very clearly provides that the determination of seniority from the date of the substantive appointment is subject to the provisions of the sub-rules to the Rule 8(1) i.e. Rule 8(2)(a), Rule 8(2)(b) and Rule 8(3). Rule 8(2) (b) also provides that the seniority is to be determined as per the principles laid down under Rule 6 or Rule 7. It is, therefore, clear that for determination of seniority, Rule 8(1) is to be read with and is subject to Rule 8(2), Rule 8(3), Rule 6 and Rule 7.
- 17.3 A careful reading of "Explanation" to Rule 6 makes it clear that in case promotion of a person senior in the feeding cadre is made after the promotion of a junior in the feeding cadre, the date of promotion loses its significance and the seniority is regained by the person senior in the feeding cadre in spite of his promotion after the promotion of a person junior to him in the feeding cadre.
- 17.4 The petitioner and private respondents both have been promoted on the post of Assistant Engineer though the private respondents were promoted earlier than the petitioner. The present case is not a case



where the petitioner was considered for promotion along with private respondents and found unfit for the promotion. "Explanation" to Rule 6 lays down the principle regarding determination of seniority when juniors in the feeding cadre are promoted earlier than seniors in the feeding cadre. "Explanation" to Rule 6 makes it mandatory to restore the seniority as it was in the feeding cadre. The "Explanation" to Rule 6 clearly establishes the supremacy of the seniority in the feeding cadre irrespective of the date or time of promotion. The Explanation to Rule 6 invariably deals with the promotions made earlier and later at different points of time.

17.5 Thus, in the present case, the petitioner is entitled to regain his seniority after his promotion to the post of Assistant Engineer as he was senior to the private respondents on the post of Junior Engineer which is the post in the feeding cadre for promotion to the post of Assistant Engineer.

18. Ld. Counsel for the petitioner has also referred the case decided by the Public Services Tribunal in claim petition No. 115/2007 wherein it has been held that the seniority of the promoted Assistant Engineers will be governed by their seniority in the feeding cadre of the Junior Engineers. Against the order of the Tribunal dated 04.12.2007, a writ petition bearing No. 68/2008 was filed before the Hon'ble High Court at Nainital and the Hon'ble High Court upheld the decision of this Tribunal and dismissed the petition of the State respondents on 07.10.2010. The State Government also approached the Hon'ble Supreme Court against the order of the Hon'ble Uttarakhand High Court and the Special Leave Petition of the State Government was also dismissed by the Hon'ble Supreme Court on 11.04.2016. After that vide office order of the Public Works Department, Government of Uttarakhand dated 28.09.2016, the order of this Tribunal dated 04.12.2007 passed in claim petition No. 115/2007 was complied with and the seniority of the Junior Engineers in the feeding cadre was duly recognized irrespective of promotions to the higher post at different points of time. The present case is squarely covered by the judgment of the Hon'ble High Court that the seniority in

the feeding cadre is what matters and a person, senior in the feeding cadre, regains his seniority even though promoted on the higher post later. In view of this, in the case at hand, the seniority list of Assistant Engineers, who were promoted from the post of Junior Engineers, will necessarily be fixed in accordance with Rule 6 and 'its Explanation' of the Seniority Rules of 2002.

19. For the reasons stated above, we are of the view that the impugned seniority list (Annexure: A 1) has not been drawn according to the Uttarakhand Government Servants Seniority Rules, 2002, therefore, it cannot be upheld and is liable to be quashed and it is also appropriate to direct the respondents No. 1 and 2 to redraw a fresh seniority list in accordance with the Seniority Rules of 2002.

**ORDER**

The seniority list dated 01.04.2011 (Annexure: A-1) is hereby quashed. The respondents No. 1 and 2 are directed to redraw the seniority of the parties in accordance with Rule-6 and 'its Explanation' of the Uttarakhand Government Servants Seniority Rules, 2002 within a period of four months from today. The petitioner shall also be entitled for consequential benefit, if any, accrues to him. No order as to costs.

**(RAM SINGH)**  
VICE CHAIRMAN (J)

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

*DATE: AUGUST 09, 2017*  
*DEHRADUN*

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