

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

Present: Hon'ble Mr. Ram Singh

----- Vice Chairman (J)

Hon'ble Mr. D.K.Kotia

-----Vice Chairman (A)

**CLAIM PETITION NO. 92 OF 2011**

1. Ahmed Ali, S/o Late Mohd. Yusuf Khan, Under Secretary, Department of Forests & Environment, Labour and Employment, Secretariat Complex, Dehradun.
2. Sudhir Kumar Pant, S/o Shri M.D.Pant, Under Secretary, Department of Animal Husbandry, Secretariat Complex, Dehradun.
3. Pratap Singh Sahi, S/o Late Sri B.D.Sahi, Under Secretary, Department of Planning, Secretariat Complex, Dehradun.
4. Smt. Asha Chaurasia, W/o Sri K.K.Chaurasia, Under Secretary, Finance, Secretariat Complex, Dehradun.

.....Petitioners

**VERSUS**

1. The Principal Secretary to Govt. of Uttarakhand, Department of Secretariat Administration, Uttarakhand Sachivalaya, 4, Subhash Road, Dehradun.
2. The Additional Secretary to Govt. of Uttarakhand, Department of Secretariat Administration, Uttarakhand Sachivalaya 4, Subhash Road, Dehradun.
3. Shri Kstrapati Patni, Under Secretary, Department of Finance, Uttarakhand Sachivalaya, 4 Subhash Road, Dehradun.

4. Shri Madan Mohan Semwal, Under Secretary, Department of Energy, Uttarakhand Sachivalaya 4, Subhash Road, Dehradun.
5. Sri Rajendra Kumar Tomar, Under Secretary, Department of Food & Civil Supplies, Uttarakhand Sachivalaya 4, Subhash Road, Dehradun.
6. Shri Bedi Ram, Under Secretary, Department of Estate and Higher Education, Uttarakhand Sachivalaya, 4 Subhash Road, Dehradun.
7. Shri Sanjeev Kumar Sharma, Under Secretary, Department of Gopan, Uttarakhand Sachivalaya, 4 Subhash Road, Dehradun.
8. Dr. Shailesh Kumar Pant, Under Secretary, Department of Housing, Uttarakhand Sachivalaya, 4, Subhash Road, Dehradun.
9. Shri Laxman Singh, Under Secretary, Department of Personnel, Uttarakhand Sachivalaya, 4, Subhash Road, Dehradun.
10. Shri Ram Roop Singh, Under Secretary, Department of Education, Uttarakhand Sachivalaya, 4, Subhash Road, Dehradun.
11. Shri Omkar Singh, Under Secretary, Department of Medical Education, Uttarakhand Sachivalaya, 4, Subhash Road, Dehradun
12. Shri Hariom, Joint Secretary, Department of Planning, Uttarakhand Sachivalaya, 4, Subhash Road, Dehradun
13. Shri Ravindra Kumar Chauhan, Under Secretary, Dpartment of Social Welfare, Uttarakhand Sachivalaya, 4, Subhash Road, Dehradun.
14. Sri Virendra Pal Singh, Deputy Secretary, Department of Personnel, Uttarakhand Sachivalaya, 4, Subhash Road, Dehradun.
15. Shri Lalit Mohan Arya, Joint Secretary, Department of SAD, Uttarakhand Sachivalaya, 4, Subhash Road, Dehradun.
16. Sri Kabindra Singh, Under Secretary, Department of Education, Uttarakhand Sachivalaya, 4, Subhash Road, Dehradun.
17. Sri Sanjay Singh Tolia, Under Secretary, Department of Irrigation, Uttarakhand Sachivalaya, 4, Subhash Road, Dehradun.
18. Shri Mahaveer Singh Chauhan, Under Secretary, Department of Home, Uttarakhand Sachivalaya, 4, Subhash Road, Dehradun.

19. Shri Pradeep Kumar Joshi, Under Secretary, Department of Finance, Uttarakhand Sachivalaya, 4, Subhash Road, Dehradun.
20. Shri Shyam Singh, Under Secretary, Department of Secretariat Administration, Uttarakhand Sachivalaya, 4, Subhash Road, Dehradun.
21. Shri Krishan Singh, Under Secretary, Governor Secretariat, Uttarakhand Sachivalaya, 4, Subhash Road, Dehradun.
22. Shri Santosh Badoni, Under Secretary, Department of Revenue, Uttarakhand Sachivalaya, 4, Subhash Road, Dehradun.
23. Shri Sunil Singh, Under Secretary, Department of Technical Education, Uttarakhand Sachivalaya, 4, Subhash Road, Dehradun.
24. Shri Vikram Singh Yadav, Samiksha Adhikari, Department of Language, Uttarakhand Sachivalaya, 4, Subhash Road, Dehradun.
25. Shri Nandan Singh Dungriyal, Under Secretary, Department of General Administration Department, Uttarakhand Sachivalaya, 4, Subhash Road, Dehradun.
26. Smt. Mahima, Under Secretary, Department of PWD, Uttarakhand Sachivalaya, 4, Subhash Road, Dehradun.
27. Shri Surendra Singh, Under Secretary, Department of Industries, Uttarakhand Sachivalaya, 4, Subhash Road, Dehradun.
28. Shri Jai Lal Sharma, Under Secretary, Department of Panchayati Raj, Uttarakhand Sachivalaya, 4, Subhash Road, Dehradun
29. Shri Sompal, Section Officer, Department of Rural Development, Uttarakhand Sachivalaya, 4, Subhash Road, Dehradun.
30. Sri Harish Chandra Pande, Samiksha Adhikari, Department of...., Uttarakhand Sachivalaya, 4, Subhash Road, Dehradun.
31. Shri Ganesh Prasad, Under Secretary, Department of Education, Uttarakhand Sachivalaya, 4, Subhash Road, Dehradun.
32. Shri Dharmendra Singh Payal, Section Officer, Department of Women Empowerment, Uttarakhand Sachivalaya, 4, Subhash Road, Dehradun.

33. Arvind Singh Pangti, Section Officer, Uttarakhand Secretariat,  
Uttarakhand, Dehradun,

.....Respondents.

Present: Sri M.C.Pant, Ld. Counsel  
for the petitioners  
Sri Umesh Dhaundiyal, Ld. A.P.O.  
for the respondents No. 1 & 2  
Sri J.P.Kansal, Ld. Counsel  
for the respondent No. 5  
Sri Jugal Tiwari, Ld. Counsel  
for the respondents No. 9 & 28  
Sri R.K.Garg, Ld. Counsel  
for the respondents No. 11,20 and 21.  
None for the other respondents.

### **JUDGMENT**

**DATED: DECEMBER 12, 2017**

**(HON'BLE MR. D.K.KOTIA, VICE CHAIRMAN (A))**

1. The petitioners have filed the present claim petition for seeking the following relief:

*“(i) To issue order or direction for quashing the impugned final seniority list dated 24<sup>th</sup> October, 2011 pertaining to the cadre of Reviewing Officer in the Secretariat by which the petitioners’ seniority has been wrongly fixed below the private respondents alongwith its effect and operation also after calling the entire records from the respondents.*

*(ii) To order or direction to the respondents to review the promotion order dated 16.11.2011 and all other promotions made available to the private respondents ignoring the*

*seniority of the petitioners and to consider the petitioners for the promotion on the post of Deputy Secretary and higher post from the date the same has been given to the private respondents along with all consequential benefits.*

*(iii) To issue appropriate order or direction directing to the respondents to redraw the seniority list of Reviewing Officer and place the petitioners at the appropriate place and above the private respondents on the basis of their promotion under the quota rule and against the selection year 1996-97 and on the basis of their continuous officiation as Reviewing Officer since 1986 along with all consequential benefits and seniority.*

*(iv) Any other relief which the court deem fit and proper in the circumstances of the case.*

*(v) Cost of the petition be awarded to the petitioners."*

2.1 The petitioners were initially appointed as typists in the Secretariat in the erstwhile state of Uttar Pradesh in the year 1979. Thereafter, the petitioners were appointed as Lower Division Assistant (LDA) on 23.07.1990. After that the petitioners were promoted to the post of Upper Division Assistant (UDA) on 20.12.2000 in consultation with the U.P. Public Service Commission (U.P. PSC) in accordance with the relevant rules. The promotion of the petitioners to the post of UDA on 20.12.2000 was made against the substantive posts in promotion quota pertaining to the recruitment years 1996-97 and 1998-99.

2.2 The petitioners have contended that before their appointment on the post of UDA on 20.12.2000, they worked as UDA in officiating capacity. It has also been stated by the petitioners that recognizing their work in officiating capacity, they

were also given promotional pay scales after 8 years and 14 years of continuous service.

2.3 The relevant service rules in respect of UDA are U.P. Secretariat Ministerial Staff Rules, 1999. Hereinafter, these rules have been referred as "Service Rules of 1999". The Service Rules of 1999 provide direct recruitment as well as promotion through the U.P. PSC on the post of UDA.

2.4 Private respondents No. 3 to 28 were appointed on the post of U.D.A. by the method of Director Recruitment in the years 1996-97, 1997-98 and 1998-99.

2.5 The petitioners as well as private respondents (No. 3 to 21) were promoted from the post of the UDA to the post of Section Officer in June, 2001 and they were confirmed on the post of Section Officer in September, 2004. It is pertinent to mention that the promotion from the post of UDA to the higher posts (section officer, under secretary, deputy secretary, joint secretary, etc.) are made from the feeding cadre of the UDA and criterion for promotion is "Seniority subject to rejection of unfit."

2.6 A final seniority list of UDAs was issued on 9<sup>th</sup> December, 2004 (before that no seniority list existed in respect of the petitioners and the private respondents) and in this list the private respondents were shown above the petitioners.

2.7 The private respondents No. 3 to 23 were promoted from the post of Section Officer to Under Secretary on the basis of the seniority list of 9<sup>th</sup> December, 2004 on 10<sup>th</sup> December, 2004.

2.8 The petitioners made representation against the seniority list of 9<sup>th</sup> December, 2004 and the state respondents (after inviting objections) issued a revised final seniority list on

03.05.2006. In the seniority list of 3<sup>rd</sup> May, 2006, the petitioners were shown above the private respondents.

2.9 After the issuance of the final seniority list on 3<sup>rd</sup> May, 2006, the petitioners were promoted from the post of Section Officer to the post of Under Secretary on 5<sup>th</sup> May, 2006 with effect from 10.12.2004, the date from which the private respondents were promoted to the post of Under Secretary.

2.10 It may be mentioned here that in the claim petition, the dispute pertains to the issue of seniority between promotees and the direct recruits. In brief (to be discussed in detail in the later part of the order), the petitioners contend that though their appointment order on the post of UDA is dated 20.12.2000 yet it mentions selection years 1996-97 and 1998-99 and, therefore, they are to be treated as substantively appointed in the years 1996-97 and 1998-99 against the vacancies of promotion quota in these years. On the other hand, the private respondents state that the date of substantive appointment of the petitioners is the date of the issuance of the appointment order on 20.12.2000 and since the private respondents were directly recruited in 1996-97, 1997-98 and 1998-99, the dates of their substantive appointment pertain to these years and, therefore, they are senior to the petitioners.

2.11 The petitioners have contended that the final seniority list of 03.05.2006 was challenged by some of the private respondents before the Hon'ble High Court at Nainital (W.P. Nos. 150/2006 S/B and 158/2006 S/B) and the counter affidavits (Annexure: A17) filed by the State Government fully supported the contentions of the petitioners.

2.12 Subsequent to this, the Government of India made a final allocation of UDAs (now known as Samiksha Adhikari) in respect of Uttarakhand State on 07.08.2009 and 21.01.2010 (Annexures: A18 and A19).

2.13 The state respondents thereafter, cancelled the seniority list of 03.05.2006 and issued a fresh seniority list on 06.08.2010 wherein private respondents were shown above the petitioners.

2.14 The petitioners submitted representation for cancellation of the seniority list dated 06.08.2010. The state respondents then cancelled the seniority list of 06.08.2010 on 14.02.2011.

2.15 The state respondents thereafter, issued a fresh tentative seniority list on 13.07.2011 and invited objections on it. After considering the objections received, the state respondents issued a final seniority list of UDAs on 24.10.2011 (Annexure: A1). In this final seniority list of 24.10.2011, the private respondents (direct recruits) were shown above the petitioners (promotees).

2.16 Aggrieved by the seniority list of 24.10.2011 as it changed the settled seniority between the petitioners and the private respondents (as per the final seniority list of 03.05.2006), the petitioners have filed this claim petition.

2.17 The petitioners have also filed the supplementary affidavit in support of the claim petition.

3. Main grounds on the basis of which the seniority of UDAs dated 24.10.2011 (Annexure: A1) has been challenged are that the seniority list of UDAs dated 24.10.2011 is not in accordance with the Service Rules as well as the Seniority Rules;



the officiating service of the petitioners on the post of UDA continuously since 1986 or atleast from the years 1996-97 and 1998-99 when the vacancies had arisen in the promotion quota should have been considered for the purpose of ascertaining seniority; the principles of resjudicata (as well as constructive resjudicata) are applicable in this case as the Hon'ble High Court at Allahabad has already held in 1996 (confirmed by the Apex Court in 1997) that the officiating service will be counted for the purpose of seniority from the year when the vacancies arose in the promotion quota; and the seniority list of UDAs dated 03.05.2006 was a settled seniority list and it could not be unsettled after a period of more than five years on 24.10.2011.

4. The claim petition has been opposed by the state respondents No. 1 and 2 and it has been stated in their joint written statement that the impugned seniority list dated 24.10.2011 (Annexure: A1) has been issued after considering and examining the objections filed by the petitioners in respect of tentative seniority list dated 13.07.2011. The final seniority list of UDAs dated 24.10.2011 has been issued in accordance with the relevant Service Rules and the Seniority Rules. The service of the petitioners on the post of UDA in officiating capacity was not made in accordance with relevant service rules and, therefore, the same cannot be counted for the purpose of seniority. The officiating service of the petitioners was made on ad hoc basis as stop gap arrangement without consulting the U.P. PSC. The petitioners were duly selected by the U.P. PSC as per relevant service rules in November, 2000 and their appointment orders were issued on 20.12.2000. Thus, the petitioners were substantively appointed on 20.12.2000 and they have been rightly placed in the seniority list of 24.10.2011. It has also been

contended by the state respondents that though the petitioners were selected by the U.P. PSC in the year 2000 allotting the selection years 1996-97 and 1998-99 yet they were substantively appointed on 20.12.2000 and there is no mention in the appointment order that their appointments are to be treated from the back date and, therefore, the petitioners cannot be provided seniority from the selection years.

5. State respondents No. 1 and 2 have also filed additional W.S. Some of the private respondents have also filed the written statements and the same averments have been made in these written statements which were stated by the state respondents in their joint written statement.

6. The petitioners have also filed the rejoinder affidavits against the written statements of the state/private respondents and the same averments have been reiterated and elaborated which were stated in the claim petition/supplementary affidavit.

7. We have heard all the parties and perused the record carefully.

8. Before the rival contentions of the parties are discussed, it would be appropriate to look at the rule position.

9.1 For the Ministerial staff in the secretariat, the Uttar Pradesh Secretariat Ministerial Staff Rules, 1942 (in short referred as the Service Rules of 1942) were framed. The Service Rules of 1942 were replaced by the Uttar Pradesh Secretariat Ministerial Staff Rules, 1999 (hereinafter referred as the Service Rules of 1999). According to both the service rules, direct recruitment as well as promotion (in a certain ratio) were the source of appointment on the post of UDA. The direct recruitment as well as

promotion were to be made through the U.P. PSC. The criterion for promotion was seniority subject to rejection of unfit. For the appointment, there was a provision in both the rules to prepare a combined list of selection made in a recruitment year comprising of direct recruits and promotees to be arranged in order (taking promotee as the first) so that the quota of direct recruitment and promotion is maintained.

9.2 According to Rule 46 of the Services Rules of 1942, the seniority was to be determined according to the date of substantive appointment. Rule 22 of the Service Rules of 1999 provides for determination of the seniority in accordance with the Uttar Pradesh Government Servants Seniority Rules, 1991.

9.3 After the creation of the State of Uttarakhand, the Government of Uttarakhand framed the Uttarakhand Government Servant Seniority Rules, 2002 (hereinafter referred as the Seniority Rules of 2002) which are identical to the Uttar Pradesh Government Servants Seniority Rules, 1991.

9.4 It would be appropriate to quote the relevant provisions of the Seniority Rules of 2002 below:

*"2. These rules shall apply to all Government servants in respect of whose recruitment and conditions of service, rules may be or have been made by the Governor under the proviso to Article 309 of the Constitution.*

**3. These rules shall have effect notwithstanding anything to the contrary contained in any other service rules made here to before.**

**Definitions**

4. In these rules, unless there is anything repugnant in the subject or context, the expression—

.....

**(h) "substantive appointment" means an appointment, not being an ad hoc appointment, on a post in the cadre of the service,**

**made after selection in accordance with the service rules relating to that service;**

(i) "year" means a period of twelve months commencing from the first day of July of a calendar year.

PART--II  
DETERMINATION OF SENIORITY

.....

**8. Seniority where appointments by both 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 further .....

(2) .....

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

.....

**Provided that--**

(i) where appointments from any source are made in excess of the prescribed quota, the persons appointed in excess of quota shall be pushed down, for seniority, to subsequent year in which there are vacancies in accordance with the quota;

(ii) where appointments from any source fall short of the prescribed quota and appointment against such unfilled vacancies are made in subsequent year or years, the persons so appointed shall not get seniority of any earlier year but shall get the seniority of the year in which their appointments are made, so however, that their names

***shall be placed at the top followed by the names, in the cyclic order of the other appointees;***

*(iii) where, in accordance with the service rules the unfilled vacancies from any source could, in the circumstances mentioned in the relevant service rules be filled from the other source and appointment in excess of quota are so made, the persons so appointed shall get the seniority of that very year as if they are appointed against the vacancies of their quota.”*

10.1 The relevant Service Rules for the post of UDA are the Service Rules of 1942 which were replaced by the Service Rules of 1999. According to the Service Rules of 1999, the seniority of UDAs is to be determined in accordance with the Uttar Pradesh Government Servant Seniority Rules, 1991 (hereinafter referred as the Seniority Rules of 1991). The Uttarakhand Government framed its own Rules, the Seniority Rules of 2002 which are identical to the Seniority Rules of 1991. The fact that the Seniority Rules of 2002 and the Seniority Rules of 1991 are exactly same is admitted to all the parties.

10.2 The Seniority Rules of 2002 have over-riding effect. Rule 3 of the Service Rules of 2002 provides as under:

*“3. These rules shall have effect notwithstanding anything to the contrary contained in any other service rules made hereto before.”*

10.3 In the case of **Pawan Pratap Singh and others Vs. Reevan Singh and others (2011)3 SCC 267**, Hon’ble Supreme Court has held that the Seniority Rules of 1991 (which are identical to the Seniority Rules of 2002) over-rides the Service Rules. The paragraph 18 of the said judgment reads as under:

*“18. It must be stated immediately that the recruitment to the posts of Deputy Jailor in the State of Uttar Pradesh is governed by the 1980 Rules which have been framed by the Governor in exercise*

*of the powers conferred by the proviso of Article 309 of the Constitution. 1980 Rules provide for cadre of service, procedure for recruitment to the post of Deputy Jailor, reservation, academic qualifications, determination of vacancies, appointment, probation, confirmation and inter se seniority of person appointed to the service. However, by subsequent Rules, namely, 1991 Rules which too were made by the Governor under the proviso to Article 309 of the Constitution, comprehensive provisions have been made for the determination of seniority of all government servants in the State of Uttar Pradesh. Rule 2 of the 1991 Rules says that these rules shall apply to all government servants in respect of whose recruitment and conditions of service, rules may be or have been made by the Governor under the proviso to Article 309 of the Constitution and Rule 3 gives to the 1991 Rules overriding effect notwithstanding anything to the contrary contained in earlier service rules. In this view of the matter, inter se seniority amongst 1991 and 1994 appointees by direct recruitment has to be determined under the 1991 Rules and Rule 22 of the 1980 Rules has to give way to the 1991 Rules.”*

10.4 Thus, the fixation of seniority in the present case is to be examined according to the Seniority Rules of 2002 as these rules over-ride the Service Rules of 1942 and 1999.

11.1 Learned counsel for the petitioners has argued that the petitioners should have been given the benefit of their officiating appointment from 1985, 1986, 1990 and 1991 for determining the seniority. Learned counsels for the respondents in their counter argument have stated that the officiating appointment of the petitioners were ad hoc promotions as stop gap arrangement and since the U.P. Public Service Commission was not consulted for these ad hoc promotions, the officiating appointments of the petitioners were de hors the rules and, therefore, the period of officiating promotions cannot be counted for determining the

seniority. It has further been submitted by the respondents that according to rule 8(1) of the Seniority Rules of 2002, the seniority is to be determined from the date of order of the substantive appointment and the petitioners were substantively appointed in accordance with the Service Rules after the recommendation of the U.P. P.S.C. on 12.12.2000 and accordingly, they have been rightly placed in the seniority list of 24.10.2011.

11.2 We agree with the contention of the respondents that Rule 8(1) of the Seniority Rules of 2002 recognizes the date of order of the substantive appointment for determining the seniority. Rule 4(h) of the Seniority Rules of 2002 defines “substantive appointment” as under:

*“(h) “substantive appointment” means an appointment, not being an ad hoc appointment, on a post in the cadre of the service, made after selection in accordance with the service rules relating to that service.”*

11.3 The petitioners were appointed on the post of UDA on ad hoc basis and the promotion was not in accordance with the service rules as the U.P. PSC was not consulted at the time of making their officiating appointment. In such a situation, the period of officiating appointment of the petitioners on the post of UDA cannot be counted for determining the seniority.

11.4 In the case of **Nandan Giri vs. State of Uttarakhand and others, Writ Petition (S/B) No. 278 of 2013 decided on 25.06.2015, the Hon’ble High Court at Nainital** in the similar set of Rules has also held that no benefit for seniority can be given with reference to an earlier date on the basis of the ad hoc promotion. The paragraph 18 of the said judgment reads as under:

***“18. We would think that there are even other insuperable obstacles in the path of the applicants claiming the benefit of ad hoc service for reckoning the seniority. In the first place, we notice that the applicants when they were given ad hoc promotions in the year 2007 were not given such promotions after consultation with the Public Service Commission, which was the requirement under the Rules. Therefore, this was a case of an ad hoc promotion which was given de hors the statutory rules. On this short ground itself, no benefit could have been derived in the form of a claim for seniority with reference to an earlier date on the basis of the ad hoc promotion. That apart, as we have already noted, seniority is a principle which is to be determined with reference to Rule 22 which provides unambiguously that seniority must be fixed with reference to the date of substantive appointment. Substantive appointment, in turn, has been expressly defined in Rule 3(I) of the 1983 Rules to exclude ad hoc appointments.”***

12.1 Learned counsel for the petitioners has also argued that the petitioners were appointed on 20.12.2000 against the vacancies for the year 1996-97 and 1998-99. In their appointment orders, these selection years have been mentioned against their names and, therefore, they are entitled to claim seniority from these back years. Counsels for the respondents have refuted the argument and they have stated that the date of order of substantive appointment of the petitioners is 20.12.2000, and, therefore, they are entitled to claim the seniority from this date only. The mentioning of the selection years in the appointment order against their names is of no significance as there is no specific mention in the appointment order that their appointments are to be treated from the back date and, therefore, the petitioners cannot be provided seniority from the selection years.

12.2 It would be appropriate to look at the proviso to the Rule 8(1) of the Seniority Rules of 2002 which reads as under:



***“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.”***

12.3 Perusal of appointment order dated 20.12.2000 reveals that the appointment order does not specify a particular back date from which the petitioners were substantive appointed. The appointment order merely mentions the selection years against the names of the petitioners which indicate the years of vacancies and, therefore, the proviso to Rule 8(1) of the Seniority Rules of 2002 does not provide any benefit to the petitioners and the date of substantive appointment of the petitioners is the date of appointment order i.e., 20.12.2000.

12.4 It would also be pertinent to look at second proviso to Rule 8(3) of the Seniority Rules of 2002 which reads as under:

***Provided that--***

*(i).....*

***(ii) where appointments from any source fall short of the prescribed quota and appointment against such unfilled vacancies are made in subsequent year or years, the persons so appointed shall not get seniority of any earlier year but shall get the seniority of the year in which their appointments are made, so however, that their names shall be placed at the top followed by the names, in the cyclic order of the other appointees;***

*(iii).....”*

12.5 It is clear from the second proviso to Rule 8(3) of the Seniority Rules of 2002 above that the seniority cannot be given from an earlier year when the promotions are made against unfilled vacancies in any subsequent year. The petitioners were promoted on 20.12.2000 against the vacancies for the year 1996-

97 and 1998-99. They are not entitled to get seniority of any earlier year (1996-97 or 1998-99). The petitioners are entitled to get seniority of the year 2000-2001 in which their appointments were made and, therefore, the seniority list dated 24.10.2011 has been rightly made and the petitioners are shown in the list at correct places.

12.6 In the case of Nandan Giri Vs. State of Uttarakhand and others (supra), the Hon'ble High Court at Nainital in the similar set of rules in paragraph 17 has held as under:

***“17. The first thing we must do in terms of the rules, which we have adverted to is what is the date of the order of substantive appointment. The order of substantive appointment of the applicants is dated 27.08.2010. The applicants before the Tribunal are in serial Nos. 5 & 6. Their selection year is, undoubtedly, shown as 2003-2004, but there is nothing in the order to indicate that in terms of either proviso to Rule 8 of the Uttaranchal Government Servants Seniority Rules 2002, or in terms of proviso to Rule 22 of the 1983 Rules that the promotion has been given with reference to an anterior date. We are of the view that therefore mere reference to the selection year in the order of appointment would not suffice and it cannot be treated as a case where the proviso either under Rule 8 of the aforesaid seniority rules, or the 1983 Rules would become applicable.”***

12.7 The issue whether a person has right to claim seniority when the vacancy arose or whether his seniority will be reckoned from the date of substantive appointment has been considered by the Hon'ble Supreme Court where the set of rules were similar to the rules in the present case. The Hon'ble High Court at Nainital in Nandan Giri case (supra) has quoted the relevant part of the

judgment of the Apex Court in paragraph 23 of its judgment which reads as under:

**“23. We would think that the issue at hand has been considered by the Apex Court in its judgment, reported in (2007) 1 SCC 683 (State of Uttaranchal and another versus Dinesh Kumar Sharma). Paragraphs 12, 24, 28, 34, 35 and 36 of the same read as follows:-**

*“12. After a perusal of the facts involved here, we feel that the issues that need to be addressed by us in this case are:*

*(i) Whether the respondent has the right to claim promotion and seniority from 1995-96 when the vacancy arose or whether his seniority will be reckoned from the date of substantive appointment which is in the year 1999.*

*(ii) Whether the High Court was justified in overlooking and ignoring the provisions of the U.P. Government Servants Seniority Rules, 1991 and grant a relief in favour of the respondents.*

**24.** *With regard to the issue as to whether the respondent has the right to claim promotion and seniority from 1995-96 when the vacancy arose or whether seniority will be reckoned from the date of substantive appointment which is 1999, it can be observed that an employee will be considered member of a cadre from the date of his/her substantive appointment in the cadre after selection.*

**28.** *It is clear from the above that a person appointed on promotion shall not get seniority of any earlier year but shall get the seniority of the year in which his/her appointment is made. Therefore, in the present fact situation the respondent cannot claim promotion from the date of occurrence of the vacancy which is 1995-96 but can only get promotion and seniority from the time he has been substantively appointed i.e. from 1999. Likewise, the seniority also will be counted against the promotion/appointment in the cadre from the date of issuance of order of substantive appointment in the said cadre i.e. from 19-11-1999.*

**34.** *Another issue that deserves consideration is whether the year in which the vacancy accrues can have any relevance for the purpose of determining the*

*seniority irrespective of the fact when the persons are recruited. Here the respondent's contention is that since the vacancy arose in 1995-96 he should be given promotion and seniority from that year and not from 1999, when his actual appointment letter was issued by the appellant. This cannot be allowed as no retrospective effect can be given to the order of appointment order under the Rules nor is such contention reasonable to normal parlance. This was the view taken by this Court in Jagdish Ch. Patnaik v. State of Orissa, (1998) 4 SCC 456."*

**35.** *Coming to the question whether the High Court was justified in overlooking and ignoring the provisions of the U.P. Government Servants Seniority Rules, 1991 and grant a relief in favour of the respondent, it will be helpful to reproduce the High Court's order:*

*"From the perusal of the aforesaid order, it is clear that the authority has not applied its mind on the facts of the case as stated by the petitioner, in the representation, and has rejected the representation on the ground that since the appointment letter was issued to the petitioner on 19-11-1999, therefore, he is entitled to his seniority from that date. Even if the recruitment year is changed the order of appointment cannot be made with retrospective effect. The authority has failed to appreciate that if the fact of vacancy being accrued in the recruitment year 1995-96 i.e. on 1-5-1996 and second vacancy on 1-6-1996 had come to the knowledge of the Commission, the Commission could have given the promotion to the petitioner w.e.f. these dates, as the petitioner was entitled to the same and the Commission has found him suitable, which is evident from the promotion order dated 19-11-1999. Therefore, this could have consequently affected the consequential benefits available to the petitioner had his promotion being made w.e.f. the date of promotion of falling of vacancy. Therefore, the order dated 1-10-2002 suffers from non-application of mind and is hereby liable to be ignored.*

*The fact that the vacancies had fallen on 1-5-1996 and 1-6-1996 in the recruitment year*

*1995-96 is not disputed by the respondents. The petitioner cannot be made to suffer on account of delay in recommendation by the Director of Agriculture for promotion of the petitioner. The petitioner cannot be held responsible and cannot be made to suffer as such became entitled to be considered for promotion on 1-5-1996. Therefore, the Government is directed to reconsider the matter and send it back to the Commissioner for appropriate orders suitable in the facts and circumstances of the case. Subject to the above, the writ petition is disposed of finally."*

***36. This observation of the High Court in our view is erroneous. The High Court while observing that, "the appellants rejected the representation of the respondent on the ground that since the appointment letter was issued to the respondent on 19-11-1999, he is entitled to his seniority from that date. The authority has failed to appreciate that if the fact of vacancy being accrued in the recruitment year 1995-96 i.e. on 1-5-1996 and second vacancy on 1-6-1996 had come to the knowledge of the Commission, the Commission could have given the promotion to the petitioner w.e.f. these dates, as the petitioner was entitled to the same and the Commission has found him suitable, which is evident from the promotion order dated 19-11-1999", has committed an error in understanding and appreciating Rules 17 and 21 of the Uttar Pradesh Agriculture Group 'B' Service Rules, 1995 and Rule 8 of the U.P. Government Servants Seniority Rules, 1991, which categorically state that the date of "substantive appointment" will be the date that shall be taken for determining promotion, seniority and other benefits."***

13. Learned counsel for the petitioner has also stated that the erstwhile state of U.P. framed the rules known as the "U.P. Secretariat Upper Division Assistant and Lower Division Assistant (Regularization of Officiating Promotion) Rules, 1990." Those who were regularized under the said Rules of 1990 were given seniority in 1993 counting their period of officiating promotion from the year when the vacancies were available in

the promotion quota. The order passed by the U.P. Government in 1993 in this regard was challenged in the Hon'ble High Court at Allahabad in Writ Petition No. 6200 of 1993 and other connected petitions and the Hon'ble Court held that the direct recruits will get seniority from the date on which they joined the service though vacancies for them existed prior to that and the promotees will be fitted into the seniority from the date when the vacancies were available in the promotion quota. The judgment of Hon'ble High Court was confirmed by the Apex Court. Learned counsel for the petitioners has argued that in view of the judgment of the Hon'ble High Court at Allahabad and its confirmation by the Hon'ble Supreme Court, the petitioners should also be entitled for their seniority from the date when vacancies were available in the promotion quota in the year 1996-97 and 1998-99. It is difficult to agree with the contention of learned counsel for the petitioners. The petitioners were never regularized under the said Regularization Rules of 1990. The judgment of the Hon'ble High Court interpreted the Regularization Rules of 1990 for the purpose of seniority and decided the method of providing the seniority to direct recruits and promotees (who were regularized). The petitioners were promoted under the Service Rules of 1999 in consultation with the U.P. PSC and their appointment order was issued on 20.12.2000. The Regularization Rules of 1990 (and the judgments in this regard) are not at all applicable to the petitioners and the argument of learned counsel for the petitioners in this regard cannot be sustained.

14.1 Learned counsel for the petitioners has also argued that the seniority list of 03.05.2006 was a settled list and the

settled seniority list could not be unsettled after more than 5 years on 24.10.2011.

14.2 It has been further contended by learned counsel for the petitioners that in pursuant to the seniority list of 03.05.2006, the petitioners were promoted to the post of Under Secretary on 05.05.2006 with effect from 10<sup>th</sup> December, 2004. Further, promotions of the private respondents and some other persons have also been made on the basis of the seniority list of 03.05.2006 between 2006 and 2011.

14.3 The contention of the petitioners is that by issuing another seniority list on 24.10.2011, the promotion of the petitioners w.e.f. 10.12.2004 will be adversely affected and the same cannot be done after nearly seven years as he was promoted on the basis of the earlier seniority list dated 03.05.2006.

14.4 It has also been contended on behalf of the petitioners that they were deprived of their further promotions on the post of Deputy Secretary and the Joint Secretary which had become due after 10.12.2004 on the basis of the seniority list of 03.05.2006.

14.5 It was also submitted by learned counsel for the petitioners that since the petitioners were placed below the private respondents in the seniority list of 24.10.2011, the private respondents were promoted after 24.10.2011 on the post of Deputy Secretary and further on the post of Joint Secretary at the cost of the petitioners which is discriminatory and in violation of Article 14 and 16 of the Constitution as the settled seniority list of 03.05.2006 was disturbed by the seniority list of 24.10.2011 after more than five years and nearly

after seven years of the promotion of the petitioners w.e.f. 10.12.2004 on the basis of the seniority list of 03.05.2006.

14.6 Learned counsel for the petitioners has also argued that against the seniority list of 03.05.2006, some private respondents filed the Writ Petition 158(SB) of 2006 before the Hon'ble High Court at Nainital. The State Government filed the counter affidavit in this writ petition on 12.07.2006 and defended the seniority list of 03.05.2006 supporting the contentions of the petitioners.

14.7 Learned counsel for the petitioners has also pointed out that the last paragraph of the final seniority list issued on 03.05.2006 reads as under:-

“16.2—उपर्युक्त के अतिरिक्त संलग्न ज्येष्ठता सूची भारत सरकार द्वारा उ०प्र० सचिवालय एवं उत्तरांचल सचिवालय के मध्य कार्मिकों के अन्तिम आवंटन के अधीन परिवर्तनीय है अर्थात् यदि अन्तिम आवंटन के फलस्वरूप ज्येष्ठ कार्मिक उत्तरांचल सचिवालय को आवंटित होते हैं तो तदनुसार ज्येष्ठता सूची को यथा समय आवश्यकतानुसार परिवर्तित/परिवर्धित/परिमार्जित किया जायेगा।”

14.8 The contention of the petitioners is that the seniority list of 03.05.2006 was the final seniority list. The only condition attached to it was that it was subject to the final allocation of the employees to the State of Uttarakhand by the Government of India. The seniority list could be modified to accommodate senior employees if they are allocated to Uttarakhand State after 03.05.2006. Except this, the seniority list attained the finality. The State respondents without any authority changed the inter se seniority of the petitioners and 26 private respondents (Nos. 3 to 23, 25 to 28 and 31) on 24.10.2011 though all (petitioners as well as 26 private respondents) were



already there in the seniority list of 03.05.2006. The petitioners and these 26 private respondents were working in the State of Uttarakhand prior to 2006. The State respondents could not alter the inter se seniority in the seniority list of 03.05.2006 in respect of the petitioners and 26 private respondents by another seniority list on 24.10.2011. The only reason to modify the seniority list could be the allocation of senior employees to the State of Uttarakhand after the seniority list of 03.05.2006. Thus, the change in inter se seniority of persons who were included in the seniority list of 03.05.2006 and that too after more than five years is bad in the eye of law.

15.1 In reply to the submissions of learned counsel for the petitioners in paragraphs 14.1 to 14.8 above, learned A.P.O. has stated that the circumstances for issuing another seniority list on 24.10.2011 have been explained in paragraph 8 of the W.S. filed on behalf of respondents No. 1 & 2. The paragraph 8 of the W.S. reads as under:-

“(8) याचिका के प्रस्तर- 4.20 के सम्बन्ध में उल्लेख करना है कि दिनांक 09.12.2004 की वरिष्ठता सूची तथा उक्त सूची को अतिक्रमित कर दिनांक 03 मई, 2006 को जारी की गयी ज्येष्ठता सूची कार्मिकों के उ0प्र0 व उत्तराखण्ड के मध्य अन्तिम आवंटन के अधीन थी। उक्त सूचियों में स्पष्टतः प्राविधानित है कि यदि अन्तिम आवंटन के फलस्वरूप उ0 प्र0 से ज्येष्ठ कार्मिक उत्तरांचल सचिवालय को आवंटित होते हैं तो तदनुसार ज्येष्ठता सूची को परिवर्तित/परिवर्धित/परिमार्जित किया जायेगा। चूंकि तत्समय तक उ0प्र0 राज्य में सम्बन्धित कार्मिकों की वरिष्ठता सूची बनी ही नहीं थी अतः अन्तिम आवंटन के फलस्वरूप उ0 प्र0 राज्य से आने वाले कार्मिकों के सन्दर्भ में वरिष्ठ /कनिष्ठ की स्थिति स्पष्ट नहीं थी। उ0 प्र0 राज्य में ज्येष्ठता सूची दिनांक 05 दिसम्बर, 2009 को जारी की गयी जिसमें विकल्प आदि के आधार पर पूर्व में उत्तराखण्ड आ चुके कार्मिकों की ज्येष्ठता के बारे में उत्तराखण्ड में 03 मई, 2006 को अन्तिम आवंटन के अधीन बनायी गयी ज्येष्ठता सूची के सापेक्ष अत्यधिक भिन्नता पायी गयी। ऐसी दशा में अन्तिम

आवंटन के पश्चात कार्मिकों की वरिष्ठता निर्धारण के सम्बन्ध में पुनर्विचार करना अवश्यम्भावी पाया गया। अतः कार्यालय ज्ञाप दिनांक 13 जुलाई, 2011 द्वारा पुनः अनन्तिम ज्येष्ठता सूची सम्बन्धित कार्मिकों में परिचालित करते हुए कार्मिकों को प्रत्यावेदन / आपत्तियां प्रस्तुत करने का अवसर दिया गया तथा वादीगण एवं अन्य कार्मिकों से प्राप्त आपत्तियों का विस्तापूर्वक परीक्षण कर निस्तारण करते हुए कार्यालय ज्ञाप दिनांक 24 अक्टूबर, 2011 द्वारा अन्तिम वरिष्ठता सूची जारी की गयी है।”

15.2 In his counter argument, learned counsel for the petitioners has submitted that the perusal of paragraph 8 of the W.S.(quoted in paragraph 15.1 above) reveals that the state respondents have admitted that the only condition stipulated in the final seniority list of 03.05.2006 was that the same is subject to the modification to accommodate senior employees if they are allocated to the state of Uttarakhand after 03.05.2006. It is the contention of learned counsel for the petitioners that no other ground/reason could be considered to modify the seniority list of 03.05.2006 in issuing another seniority list on 24.10.2011 after more than five years to disturb the long standing seniority among the petitioners and 26 private respondents.

15.3 It has further been contended by learned counsel for the petitioners that the other reason for issue of the seniority list again (after 03.05.2006) on 24.10.2011 given by the State respondents No. 1 and 2 (which has been quoted in paragraph 15.1 of this order) is far from satisfactory. The state respondents altered the final seniority list of 03.05.2006 because the state of Uttar Pradesh had issued a seniority list on 05.12.2009 and it was quite different from that of the seniority list of 03.05.2006 issued by the State of Uttarakhand. Learned counsel for the petitioners argued that the seniority list of U.P. had nothing to

do with the State of Uttarakhand. The State of Uttarakhand had already prepared its seniority list on 03.05.2006 and it was the final seniority list subject to only one condition that if any senior employee is allocated to the State of Uttarakhand, it will be modified accordingly. The State of Uttarakhand had also framed the Seniority Rules of 2002 for preparing the seniority list of all the departments in the State. The contention of the petitioners is that under these circumstances, the state respondents could not change the seniority list after lapse of more than five years while the set of rules for determination of seniority were in place when the final seniority list was issued on 03.05.2006

16.1 In the light of discussion so far, we would also like to examine the case in view of paragraphs 14 and 15 of this order.

16.2 We are of the definite view that the seniority list dated 24.10.2011 (Annexure: A1) is in accordance with the rules as has been discussed earlier in paragraphs 11, 12 and 13 of this order.

16.3 **While the seniority list dated 24.10.2011 is in order, the question arises whether it is fair and just to alter the seniority list of 03.05.2006 after more than five years on 24.10.2011 from the point of view of the petitioners.**

16.4 The petitioners were given promotions on the post of Under Secretary after the seniority list of 03.05.2006 was issued. As many private respondents had already been promoted on the post of Under Secretary on 10.12.2004 on the basis of the seniority list of 09.12.2004 (which was cancelled and replaced by the seniority list of 03.05.2006), the petitioners' promotion on the post of Under Secretary was made w.e.f. 10.12.2004.

16.5 In the case of **Shiba Shankar Mohapatra and others Vs. State of Orissa and others, the Hon'ble Supreme Court (in Civil appeal No. 13237-13241 of 2009) 2010(12)SCC 471** has mentioned in paragraph 17 as under:-

*"17. This Court also placed reliance upon its earlier judgment of the Constitution Bench in R.N. Bose v. Union of India & Ors. AIR 1970 SC 470, wherein it has been observed as under:-*

***"It would be unjust to deprive the respondents of the rights which have accrued to them. Each person ought to be entitled to sit back and consider that his appointment and promotion effected a long time ago would not be defeated after the number of years."***

16.6 In the case of Shiba Shankar Mohapatra (supra), it was also observed in paragraph 19 as under:-

*19. The issue of challenging the seniority list, which continued to be in existence for a long time, was again considered by this Court in K.R. Mudgal & Ors. v. R.P. Singh & Ors. AIR 1986 SC 2086. The Court held as under:-*

***"A government servant who is appointed to any post ordinarily should at least after a period of 3-4 years of his appointment be allowed to attend to the duties attached to his post peacefully and without any sense of insecurity..... Satisfactory service conditions postulate that there shall be no sense of uncertainty amongst the Government servants created by writ petitions filed after several years as in this case. It is essential that any one who feels aggrieved by the seniority assigned to him, should approach the Court as early as possible otherwise in addition to creation of sense of insecurity in the mind of Government servants, there shall also be administrative complication and difficulties...."***

16.7 It is also pertinent to note that promotions of the petitioners, private respondents and others have also been made on the basis of the seniority list of 03.05.2006 between 2006 and 2011. Therefore, there is substance in the contentions of the petitioners that the settled seniority list cannot be

unsettled after the lapse of reasonable time. The seniority list of 03.05.2006 was acted upon and the same remained in operation for more than five years.

16.8 In the case of Shiba Shankar Mohaptra (supra), the Apex Court in paragraph 21 has observed as under:-

*“21. In B.S. Bajwa v. State of Punjab & Ors. AIR 1999 SC 1510, this Court while deciding the similar issue re-iterated the same view, observing as under:-*

***“It is well settled that in service matters, the question of seniority should not be re-opened in such situations after the lapse of reasonable period because that results in disturbing the settled position which is not justifiable. There was inordinate delay in the present case for making such a grievance. This was sufficient to decline interference under Article 226 and to reject the writ petition”.***

16.9 In the case of Shiba Shankar Mohaptra (supra), the Hon’ble Supreme Court in paragraph 29 has held as under:-

***“29. Thus, in view of the above, the settled legal proposition that emerges is that once the seniority had been fixed and it remains in existence for a reasonable period, any challenge to the same should not be entertained. In K.R. Mudgal (supra), this Court has laid down, in crystal clear words that a seniority list which remains in existence for 3 to 4 years unchallenged, should not be disturbed. Thus, 3-4 years is a reasonable period for challenging the seniority and in case someone agitates the issue of seniority beyond this period, he has to explain the delay and laches in approaching the adjudicatory forum, by furnishing satisfactory explanation.”***

16.10 We, therefore, agree with the contention of the petitioners that the seniority list of 03.05.2006 had attained the finality subject to the condition described in paragraph 14.7 of this order and, therefore, there was no reason to alter the seniority among the petitioners and 26 private respondents by another seniority list on 24.10.2011. Thus, we are of the view

that the change in inter se seniority of persons who were included in the seniority list of 03.05.2006 and that too after more than five years is unjust, unfair and bad in the eye of law.

16.11 It is also quite relevant to mention the case of **H.S. Vanikani and others Vs. State of Gujrat and others (2010) 4 SCC 301** in which the Hon'ble Supreme Court held as under:-

*"25. Seniority is a civil right which has an important and vital role to play in one's service career. Future promotion of a Government servant depends either on strict seniority or on the basis of seniority-cum-merit or merit-cum-seniority etc. Seniority once settled is decisive in the upward march in one's chosen work or calling and gives certainty and assurance and boosts the morale to do quality work. It instills confidence, spreads harmony and commands respect among colleagues which is a paramount factor for good and sound administration. If the settled seniority at the instance of one's junior in service is unsettled, it may generate bitterness, resentment, hostility among the Government servants and the enthusiasm to do quality work might be lost. Such a situation may drive the parties to approach the administration for resolution of that acrimonious and poignant situation, which may consume lot of time and energy. The decision either way may drive the parties to litigative wilderness to the advantage of legal professionals both private and Government, driving the parties to acute penury. It is well known that salary they earn, may not match the litigation expenses and professional fees and may at times drive the parties to other sources of money making, including corruption. Public money is also being spent by the Government to defend their otherwise untenable stand. Further it also consumes lot of judicial time from the lowest court to the highest resulting in constant bitterness among parties at the cost of sound administration affecting public interest. Courts are repeating the ratio that the seniority once settled, shall not be unsettled....."*

17. For the reasons stated in paragraphs 14, 15 and 16 above, we are of the view that the settled seniority list has been unsettled after the lapse of the reasonable time without any satisfactory explanation.

18. We find that during the pendency of the petition, all the petitioners have retired. It would now not be appropriate at this stage to set aside the seniority list of 24.10.2011 (Annexure: A1). However, it would be fair and just to consider the interest of the petitioners also who are placed in the seniority list of 24.10.2011 below the private respondents. It would be in the interest of justice that the petitioners are given the notional promotion from the date the private respondents, who were below the petitioners in the seniority list of 03.05.2006, were promoted to the posts of Deputy Secretary/Joint Secretary, if the petitioners are found suitable for the promotions in accordance with the relevant rules.

19. For the reasons stated above, the claim petition deserves to be partly allowed.

### **ORDER**

The petition is partly allowed without setting aside the impugned seniority list dated 24.10.2011, which is partly modified in relation to the petitioners. The state respondents No. 1 and 2 are directed to give the notional promotions to the petitioners from the date the private respondents, who were below the petitioners in the seniority list of 03.05.2006, were promoted to the posts of Deputy Secretary and Joint Secretary provided the petitioners are found suitable for the promotions in accordance with the relevant service rules. The notional promotions of the petitioners on the posts of the Deputy Secretary and Joint Secretary will be only for the purpose of calculation of the retiral benefits (pension, gratuity and

leave encashment). No arrears will be paid to the petitioners for the period before the retirement. The arrears of pension will be payable to the petitioners for the period after the retirement also. It is also made clear that this order will not disturb holding of posts/seniority by the private respondents as a result of seniority list of 24.10.2011. The state respondents will comply with these directions within a period of three months from today. No order as to costs.

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

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

*DATE: DECEMBER 12, 2017*  
*DEHRADUN*

KNP