

**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. 11/DB/2013**

Kunwar Singh Rawat S/o Late Shri M.S.Rawat aged about 48 years presently posted as Senior Assistant in the office of DPD UDWDP, Vikasnagar, Dehradun.

.....Petitioner

**Versus**

1. State of Uttarakhand through Secretary (Watershed Management) Civil Secretariat, Dehradun.
2. Chief Project Director, Directorate of Watershed Management, Indira Nagar Forest Colony, Dehradun, Uttarakhand.
3. Shri Lalit Mohan Pant, Pravar Sahayak, Office of Deputy Director, U.D.W.D.P., Gangoli Hat Division, Pithoragarh.
4. Shri Ram Singh Khati, Pravar Sahayak, Office of Deputy Director, U.D.W.D.P., Nainital Division, Haldwani.
5. Shri Santosh Singh, Pravar Sahayak, Office of Deputy Director, U.D.W.D.P., Vikas Nagar Division, Dehradun.
6. Shri Ramakant Duklan, Kanishtha Sahayak, Office of Deputy Director, U.D.W.D.P., Chinyali Saud Division, Chinyali Saud, Uttarkashi.
7. Shri Vikram Singh Aswal, Kanishtha Sahayak, Office of Chief Project Director, Watershed Management Directorate, Dehradun.
8. Shri Ajay Kumar Tyagi, Kanishtha Sahayak, Office of Deputy Director, U.D.W.D.P., Vikas Nagar Division, Vikas Nagar, Dehradun.
9. Shri Bishan Singh Bisht, Kanishtha Sahayak, Office of Project Director, U.D.W.D.P., Kumaun Region, Haldwani.
10. Shri Mayaram Tomar, Pravar Sahayak, Office of Deputy Director, U.D.W.D.P., Vikas Nagar Division, Vikas Nagar, Dehradun.
11. Shri Mahatamaram Verma, Kanishtha Sahayak, Office of Deputy Director, U.D.W.D.P., Agastya Muni Division, Rudra Prayag.
12. Smt. Nirmala Rawat, Pravar Sahayak, Office of Chief Project Director, Watershed Management Directorate, Dehradun.

.....Respondents.

Present: Sri Shashank Pandey Ld. Counsel  
for the petitioner.

Sri Umesh Dhaundiyal, Ld. A.P.O.  
for the respondent Nos.1 & 2.  
Sri Jugal Tiwari, Ld. Counsel  
for Respondent Nos. 6 & 7.

### **JUDGMENT**

**DATED: JANUARY 03, 2018**

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

1. This petition has been filed before the Court with the following prayer:-
  - a. *To direct the Respondent No. 2 to correct the date of appointment for the purpose of seniority of the petitioner from 16.03.1988 to 06.07.1986 in the seniority list dated 26.07.2012 and 06.06.2008.*
  - b. *To place the petitioner in the seniority list at the appropriate place as a result of such correction along with consequential benefits.*
  - c. *Any other relief that the Hon'ble Tribunal may deem fit and proper.*
  - d. *Cost of the petition to the petitioner."*
2. As per the contention raised by the petitioner, he was appointed on ad-hoc basis as Junior Clerk/ Typist vide appointment order dated 04.07.1986 in the respondents' department and joined his services on 06.07.1986. Thereafter, vide order dated 16.03.1988 of Director Project, Pauri Garhwal, he was appointed on regular basis. According to the petitioner, his regularization was made effective from the date of his joining i.e. the date of his first joining of the service on 06.07.1986. It is contended by the petitioner that a tentative seniority list of petitioner vis-à-vis private respondent Nos. 3 to 13 was issued on 02.10.1998, wherein the date of joining of the petitioner for the purpose of seniority was mentioned as 06.07.1986. Thereafter in the another tentative seniority list dated 25.05.2000, the date of joining of the petitioner for the purpose of seniority was same, i.e. 06.07.1986, but, when another tentative seniority list dated 14.11.2007 was issued, his date of joining the service was wrongly mentioned as 16.03.1988 for the purpose of seniority.

3. Objection was filed by the petitioner against the tentative seniority list dated 14.11.2007. A committee was constituted to settle the seniority, which finally settled the seniority and final seniority list dated 06.06.2008 was issued in which the name of the petitioner was placed at Sl. No. 32 below the private respondents, whereupon a representation was again submitted by the petitioner to Respondent No.2. On 31.01.2012, a committee was constituted which made certain amendments in the seniority list dated 06.06.2008 and issued another tentative seniority list on 31.03.2012. In the seniority list dated 31.03.2012, the date of joining of petitioner for the purpose of seniority was shown as 16.03.1988 and he was placed below the private respondents. Thereafter fresh representation was submitted by the petitioner but the objection of the petitioner was rejected and final seniority list dated 26.07.2012 was issued. It is contended that, the date of joining of the petitioner has wrongly been shown as 16.03.1988 instead of 06.07.1986 and aggrieved by the same, present claim petition has been filed by the petitioner to direct the Respondent No.2 to correct the date of appointment of the petitioner for the purpose of seniority from 16.03.1988 to 06.07.1986 in the seniority lists dated 26.07.2012 and 06.06.2008 and to place the petitioner at the appropriate place in the seniority list along with such corrections and consequential benefits.
4. The petition has been opposed by the Respondent Nos. 1 and 2 as well as by private Respondent Nos. 6 and 7.
5. Respondent Nos. 1 and 2 have opposed the petition and admitted that the petitioner was appointed on ad-hoc basis vide order dated 04.07.1986, but he was substantively appointed on regular basis vide order dated 16.03.1988 and according to them the seniority has been fixed from the date of his substantive appointment which was made on 16.03.1988. The earlier seniority list in which petitioner was placed at Sl. No. 26, was not final and after inviting objections, the duly constituted committee considered the objections of all the concerned employees and finally in the year 2007 seniority of some other

employees was also decided. Hence, in view of the relevant service rules and The Uttar Pradesh Regularization of Adhoc Appointments (on posts outside the Purview of Public Service Commission) Rules of 1979 (as amended on 03.11.1988 and 07.08.1989) (hereinafter referred to as Regularization Rules, 1979), the date of regularization of the petitioner i.e. 16.03.1988, was considered as date of his substantive appointment. The petitioner was rightly placed at Sl. No. 32 in the seniority list. The petition is also time barred and has no merit and deserves to be dismissed.

6. Respondent Nos. 6 and 7 in their W.S. have contended that for the purpose of computation of seniority the date of appointment under Rule 5 and 7 of the Regularization Rules 1979 (as amended in 1988 and 1989), will be the date on which a person is appointed under these rules and he shall be entitled to the seniority from that date. The petitioner was appointed on ad-hoc basis on 04.07.1986 and he was given regular appointment on 16.03.1988, hence the relevant date for computation of seniority is 16.03.1988 and not 04.07.1986. The tentative seniority lists dated 02.10.1998 and 25.05.2000 have no relevance as those were tentative lists and were never finalized and were open for objections. In the tentative seniority list dated 14.11.2007, the regularization date 16.03.1988 of the petitioner was correctly shown for the purpose of computation of seniority and final seniority list dated 06.06.2008 was rightly settled. There is no basis for considering an employee for the purpose of seniority from the date of his ad-hoc appointment as the Regularization Rules do not permit the same. Thus the information received under the RTI does not help the petitioner and the date of joining in the service book as 06.07.1986 has no legal force in view of the provisions of Regularization Rules and it is the date of regularization on which the substantive appointment was made as per Rules. Denying the contention raised in the petition, respondents have also contended that the regularization order dated 16.03.1988, regularizing the services of the petitioner according to Regularization Rules, does not state that this appointment will relate

back to any earlier date by using the words “नियमित स्थायी नियुक्ति योगदान की तिथि से” and the words “योगदान की तिथि” refers to appointment made under Rule 5 of the Regularization Rules. The present Service Rules of 2009 neither existed when this regularization was made in March, 1988 nor any back date was mentioned in the regularization order. It has been contended that the respondents were appointed according to Uttar Pradesh Adhinasth Karyalaya Lipik Vargiya Karmchari Varg (Sidhi Bharti) Niyamawali 1985 (hereinafter referred to as Service Rules 1985) on 20.08.1986 on substantively vacant post after adopting the regular prescribed procedure under the then relevant service rules. Rule 7(1) of the Regularization Rules of 1979 (amended by 3.11.1988 and 7.8.1989) makes it quite clear that a person appointed under these rules shall be placed below the persons appointed under the then existing Service Rules. It is further stated that appointment made under the Regularization Rules cannot be treated from the back date of ad-hoc appointment as it disturbs the seniority of the employees selected and appointed according to prescribed procedure laid down in the service Rules existing at the relevant time. Respondents have stated that the claim petition has no merit and deserves to be dismissed.

7. The petitioner has filed rejoinder affidavit and reiterated the same facts as narrated in the claim petition. By filing another affidavit, the petitioner also claimed that the Information Officer under the RTI has clarified the date of appointment as 06.07.1986. The petitioner has also filed another order of the department issued in relation to one Sri Tikaram Mangain, who was appointed on ad-hoc basis on 25.01.1986 and was regularized on 11.03.1988 from the back date i.e. 27.01.1986 and has argued that he be also treated likewise. Respondents have opposed the contention of the petitioner and have argued that any other example issued against the Rules, cannot confer any right upon the petitioner.
8. We have heard Ld. Counsel for both the parties and perused the entire record carefully.

9. The issue for decision before the Court is as to what date of appointment should be considered as the date of substantive appointment for the purpose of seniority of the petitioner. It is an admitted fact that petitioner was appointed to the service after the concerned Service Rules of 1985 were enforced. For the purpose of seniority, Uttar Pradesh Seniority Rules, 1991 were applicable which have been later on substituted by Uttarakhand Rules in 2002 which are almost same and the date of seniority as per Seniority Rules is to be counted from the date of substantive appointment. The petitioner has raised this issue that the date of his substantive appointment should be treated from the date when he was inducted into service on ad-hoc basis i.e. 06.07.1986, whereas the respondents have argued that the ad-hoc appointment of the petitioner was not a regular appointment as per the concerned Service Rules. The ad-hoc appointment of the petitioner was issued in the following terms:-

“ तदर्थ नियुक्ति आदेश

श्री कुँवर सिंह रावत पुत्र श्री मेहर सिंह रावत ग्राम पाली, पो० आँ० गजा, टिहरी गढ़वाल, दैनिक पारिश्रमिक कनिष्ठ लिपिक रुद्रप्रयाग की नियुक्ति कार्य संचालनार्थ तदर्थ रूप से कनिष्ठ लिपिक के पद पर वेतन कम 354-10-425 द०रो०-5-12-514 द० रो०-12-550 में परियोजना प्रबंधक, उप जलागम प्रबंध परियोजना रुद्रप्रयाग के कार्यालय में की जाती है । शासन द्वारा स्वीकृत मंहगाई एवं अन्य भत्ते भी उन्हें देय होंगे । प्रथम योगदान के लिए कोई मार्ग व्यय देय नहीं होगा ।

इस नियुक्ति की शर्तें निम्न प्रकार हैं:-

यह नियुक्ति तदर्थ रूप से कार्य संचालनार्थ हेतु नितान्त अस्थायी है तथा सेवायें बिन पूर्व सूचना के किसी भी समय समाप्त की जा सकती हैं ।

योगदान के समय मुख्य चिकित्साधिकारी द्वारा प्रदत्त स्वास्थ्य प्रमाण पत्र प्रस्तुत करना होगा तभी योगदान सूचना स्वीकृत की जायेगी ।

शैक्षिक योग्यता प्रमाण पत्र भी योगदान के समय प्रस्तुत करने होंगे ।

राज पत्रित अधिकारियों द्वारा प्रदत्त चरित्र प्रमाण पत्र भी प्रस्तुत करने होंगे ।

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डा० अनिल बेरी  
परियोजना निदेशक  
जलागम प्रबन्ध परियोजना,  
पौड़ी”

10. Both the parties admitted that the ad-hoc employees were later on regularized in the State of U.P. under the regularization scheme and for that purpose, the Regularization Rules of 1979 were issued on 14.05.1979 vide notification 19/ii-75-2 Karmik-1 dated 14.05.1979 and this Niyamawali was extended vide order dated 03.08.1988 and 07.08.1989 and the employees appointed on ad-hoc basis till 01.10.1986, were regularized under these Rules.
11. Petitioner was regularized vide order dated 16.03.1988 in the following words:

“परियोजना निदेशक जलागम प्रबन्धक परियोजना पौड़ी गढ़वाल

/15-4-1 दिनांक पौड़ी : कार्य 16 1989

नियमित नियुक्ति आदेश

मुख्य परियोजना निदेशक , जलागम प्रबन्धक निदेशालय देहरादून के पत्रांक 992/5-39 दिनांक 29-9-86 के पत्र में परियोजना प्रबन्धक, रुद्रप्रयाग के कार्यालय में कनिष्ठ लिपिक के पद पर तदर्थ रूप से कार्यरत श्री कुवंरसिंह रावत की नियमित अस्थाई नियुक्ति योगदान की तिथि से की जाती है। यह नियुक्ति नितान्त अस्थाई है, और उनकी सेवायें बिना पूर्व सूचना के किसी भी समय समाप्त की जा सकती है।

डा० अनिल बेरी  
परियोजना निदेशक  
पौड़ी गढ़वाल ।”

12. Ld. Counsel for the petitioner referring to the underlined words has argued that the regular appointment was made from the date of his joining in the department and according to him, his first joining in the department was 06.07.1986 in compliance of the order dated 04.07.1986. Whereas, respondents have argued that the reference of words “योगदान की तिथि से” will have effect only from the date when he joined the regular post after issuance of the order dated 16.03.1988 and this date can never relate back to any earlier date. This Court is of the view that the word “नियमित अस्थायी नियुक्ति योगदान की तिथि से” will have the meaning that, when after appointment on regular basis, the employee will join his duty, then he will be treated to be substantively appointed from that date because in this order no specific back date has been mentioned to give the appointment from back date and

specific date of first joining was not mentioned therein. Furthermore, the law does not permit any regularization from back date because of the reason that such regularization is not permitted for the purpose of seniority under the Regularization Rules.

13. When an employee is not appointed under the regular Service Rules by due process and any ad-hoc employee already working is regularized, his appointment will not be treated under the relevant Service Rules but his appointment will be considered only as per the terms and conditions of the Regularization Rules. This Court is of the view that the Regularization Scheme under the Regularization Rules, 1979 provides for all provisions; Rule 4 provides for regularization of ad-hoc appointments; Rule 5 provides how appointments shall be made; Rule 6 provides that such appointments be deemed to be under the relevant Service Rules and Rule 7 provides how the seniority of such persons will be determined. The Rules 4 to 7 of the said Regularization Rules read as under: -

**“4. Regularization of adhoc appointments : (1) Any person who –**

- (i) was directly appointed on ad hoc basis before January 1, 1977 and is continuing in service as such on the date of commencement of these rules;
  - (ii) possessed requisite qualifications prescribed for regular appointment at the time of such ad hoc appointment; and
  - (iii) has completed or, as the case may be, after he has completed three years continuous service shall be considered for regular appointment in permanent or temporary vacancy as may be available on the basis of his record and suitability before any regular appointment is made in such vacancy in accordance with the relevant service rules or order.
- (2) In making regular appointments under these rules, reservations for the candidates belonging to the Scheduled Castes, Scheduled Tribes, Backward classes and other Page 4 4 categories shall be made in accordance with the order of the Government in force at the time of recruitment.

(3) For the purpose of sub-rule (1) the appointing authority shall constitute a Selection Committee and consultation with the Commission shall not be necessary.

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

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

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

5. **Appointments-** The appointing authority shall, subject to the provisions of sub-rule (2) of rule 4, make appointments from the list prepared under sub-rule (6) of the said rule in the order in which the names stand in the list.

6. **Appointments be deemed to be under the relevant Service Rules etc.-** Appointment made under these rules shall be deemed to be under the relevant Service Rules or orders, if any.

7. **Seniority :-** (1) A person appointed under these rules shall be entitled to seniority only from the date of order of appointment after selection in accordance with these rules and shall, in all cases be placed below the persons appointed in accordance with the relevant service rules, or as the case may be, the regular prescribed procedure, prior to the appointment of such person under these rules. (2) If two or more persons are appointed together, their seniority inter se shall be determined in the order mentioned in the order of appointment.”

14. Hence, as per Rule 7 of the Regularization Rules, the person appointed under the Regularization Rules, shall be entitled to the seniority only from the date of order of appointment after selection in accordance

with these rules and shall in all cases, be placed below the persons appointed in accordance with the relevant Service Rules, or as the case may be, the regular prescribed procedure, prior to the appointment of such person under these Rules. Hence, Rule 7 leaves no doubt that a person who is regularized under these Regularization Rules, will get seniority only from the date of his regularization and respondents are not permitted to regularize any ad-hoc employee from any back date for the purpose of seniority. Even if the department regularizes any employee from back date but for the purpose of seniority, his regular appointment shall be treated from the date of his regularization.

15. Ld. Counsel for the petitioner has cited example of an employee namely Sri Tikaram Mamgain who was regularized from the back date. This Court cannot decide this issue whether that regularization was legal or illegal but the concerned date for the purpose of seniority will be determined according to Rule 7 of the Regularization Rules, 1979 and that does not permit any earlier date to be considered for the purpose of seniority even if it is mentioned in the Regularization order and, if it is so, that may be relevant for some other purpose but seniority will be computed only as per Rule 7 of the Regularization Rules, 1979. Thus, regularized person cannot become senior to the employees who get prior appointment under the concerned Service Rules.
16. Ld. Counsel for the petitioner has also referred to the documents received under R.T.I. from the department wherein he sought information from the department about the date of his appointment and in the information given, his date of appointment is mentioned as 06.07.1986, thus, he has claimed that department itself is recognizing his date of appointment as 06.07.1986. This Court is of the view that this document is of no help to the petitioner because no person of the department can fix the date of appointment above the rules and it will always be according to Rules. Petitioner's appointment in the department may be treated from 06.07.1986 for other purposes but for the purpose of computation of seniority, his date of appointment will be treated only from the date of his regularization i.e. 16.03.1988.

The whole scheme of appointment to the service under relevant Rules of the petitioner will be effected by the Regularization Rules, 1979; according to which the regularization of his ad-hoc appointment was made as per Rule 4 of the Regularization Rules and then as per Rule 6, his appointment under these rules shall be deemed to be under the relevant Service Rules. Admittedly, petitioner was never appointed under the relevant service rules i.e. Service Rules of 1985 rather he was appointed under the Regularization Rules, 1979 and his date of appointment for the purpose of seniority according to Rule 7 of the Regularization Rules, will be the date after regularization because Regularization Rule says that he shall in all cases be placed below the persons whose appointments were made prior to the appointment under the relevant Service Rules.

17. The fact reveals that after regularization of his ad-hoc appointment, petitioner was regularly appointed on 16.03.1988. The tentative seniority lists dated 02.10.1998 and 25.05.2000, in which he was shown at higher place, was not final and objections were invited against those seniority lists. A committee was constituted in the month of October, 2007 to settle the seniority as per the Regularization Rules and on 14.11.2007, a tentative seniority list was issued against which objection was filed and final seniority list dated 06.06.2008 was issued in which petitioner was placed at Sl. No. 32 below the persons who were already appointed under the relevant Service Rules prior to the regularization of the petitioner. Again a provisional seniority list was issued on 31.03.2012 against which the petitioner filed objection on 10.04.2012. Rejecting the objection of the petitioner, final seniority list was issued on 26.07.2012 in which the date of appointment of the petitioner for the purpose of seniority was mentioned as 16.03.1988. The Court is of the view that this was rightly mentioned as per the relevant Service Rules and the Regularization Rules. The Court is also of the view that as per the Regularization Rules, regularization of the ad-hoc services of an employee, cannot take effect prior to the date of his regularization for the purpose of counting their seniority.

18. For the purpose of seniority in State of Uttar Pradesh, Seniority Rules, 1991 and in the State of Uttarakhand Seniority Rules, 2002 are applicable and it is admitted to both the parties that seniority is to be counted from the date of substantive appointment. Petitioner wants to include his ad-hoc service for the purpose of seniority which is not permissible as per Rules under which he was regularized and his prayer to correct his date of appointment for the purpose of seniority under the concerned Rules cannot be accepted. Thus, the petition has no merit and deserves to be dismissed.

**ORDER**

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

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

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

*DATE: JANUARY 04, 2018*  
*DEHRADUN*

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