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. 37/DB/2015

Jaspal Singh Rana, S/o Late Sri Jagat Singh, Registrar Kanungo, Tehsil Vikasnagar, District Dehradun, permanent resident of 97, Vijay Park, Ballupur Road, Dehradun.

……Petitioner

VERSUS

1. State of Uttarakhand through its Principal Secretary, Revenue Department, Subhash Road, Dehradun.
2. Commissioner & Secretary, Rajsva Parishad, Uttarakhand, Dehradun.
3. Sri Sunder Lal Lekhwar, Tehri
4. Sri Gopal Krishan Kotnala, Garhwal
5. Sri Sushil Kumar, Haridwar
6. Sri Karan Singh, Dehradun
7. Sri Rajendra Kumar Sharma, Dehradun.
8. Sri Kundan Singh Negi, Nainital
9. Shri Prem Ballabh Nautiyal, Uttarkashi
10. Sri Bhuwanchandra Joshi, Nainital
11. Sri Sudesh Chandra, Udham Singh Nagar
12. Sri Surendra Lal, Garhwal
13. Sri Vijendra Kumar, Udham Singh Nagar
14. Sri Suresh Chandra Jaiswal, Garhwal
15. Sri Mohan Lal Arya, Tehri
16. Sri Mangal Mohan, Uttarkashi
17. Sri Bhawani Ram, Bageshwar
18. Sri Vikram Singh Nath, Uttarkashi

19. Sri Rajendra Singh Khanka, Pithoragarh
20. Sri Jagdishh Giri, Champawat
21. Sri Jagdish Singh Rawat, Chamoli
22. Sri Girish Chandra Pokhriyal, Garhwal
23. Sri Harihar Uniyal, Tehri
24. Sri Rameshwar Badoni, Tehri
25. Sri Rajendra Singh Rawat, Tehri
26. Sri Anand Pal, Uttarkashi
27. Sri Jaiveer Ram, Rudraprayag
28. Sri Puran Singh Rawat, Pithoragarh
29. Sri Dhanpal Singh Bhandari, Rudraprayag.

…….Respondents.

Present: Sri J.P.Kansal, Ld. Counsel
for the petitioner
Sri Umesh Dhaundiyal, Ld. A.P.O.
for the respondents No. 1 & 2
Sri Shailendra Singh, Ld. Counsel
for the respondents No. 6

JUDGMENT

DATED: JANUARY 04, 2018

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

1. The petitioner has filed this petition for the relief in following words:

"(a) The petitioner be kindly held senior to private respondent No. 3 to 29 in the Cadre of Registrar Kanungo and the respondent no. 1 and 2 be kindly ordered and directed to place the petitioner in the seniority list of Registrar Kanungos above private respondent o. 3 to 29 and accordingly issue either modified seniority list or a fresh seniority list in supersession of Annexure-A1;

(b) any other relief , in addition to or in modification of above, as the Hon'ble Tribunal deem fit and proper, be kindly granted to the petitioner against the respondents; and

(c) Rs. 20,000/- as costs of this Claim Petition be kindly awarded to the petitioner against respondents."

2. Briefly the facts stated in the petition are that the petitioner was appointed in the cadre of Lekhpal on 28.06.1982 and the private respondents No. 3 to 29 were appointed later in time. According to the petitioner, he was promoted to the cadre of Assistant Registrar, Kanoongo on 25.10.2002 and was made permanent on 01.08.2005. In the year 2006, the cadre of Registrar Kanoongo and Assistant Registrar Kanoongo were merged in the cadre of Registrar Kanoongo and thereafter, their services are governed by the Uttarakhand Registrar Kanoongo Service Rules, 2011 (hereinafter referred to as "relevant Service Rules"). As per relevant Service Rules, their seniority is to be determined as per the provisions of Uttarakhand Government Servant Seniority Rules, 2002 (hereinafter referred to as Seniority Rules) and as per Rule 7 of the Seniority Rules, 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 cadre and accordingly, the petitioner being appointed in the feeding cadre prior to the appointment of the respondents No. 3 to 29, is senior, but respondents No. 2 without issuing provisional seniority list, issued the impugned seniority list dated 07.07.2015 which is illegal, wrong and against the principles of natural justice. Hence, this petition has been filed challenging the impugned seniority list, with the request for a direction to the respondents No.1 & 2 to place the petitioner in the seniority of Registrar Kanoongo above the respondents No. 23 to 29 and accordingly, to issue a modified or fresh seniority list in supersession of the impugned order dated 07.07.2015 and for other consequential relief.

3. The petition has been opposed by respondents No. 1 & 2 as well as private respondent no. 6.

4. Respondents No. 1 & 2 opposed this petition on the ground that the petitioner has come up before the court hiding real facts. It has been stated that the petitioner was appointed as Lekhpal on 28.06.1982 and he worked in District Dehradun on the said post till 10.11.1987. Thereafter, he left the job and joined the services in Delhi Development Authority. After one year, the petitioner again moved an application for his reappointment as Lekhpal alleging that the climate of Delhi did not suit him and a request for reappointment was made. Upon his request, vide order dated 14.12.1988, he was appointed afresh on the post of Lekhpal. Hence, the petitioner had a break in service from 11.11.1987 to 13.12.1988 and his substantive appointment in the department was made afresh in the month of December, 1988. Thereafter, he was promoted on 24.10.2002 as Assistant Registrar Kanoongo. The petitioner is not entitled to count his previous services as there was a break in his service. Accordingly, his seniority in the cadre was fixed as per the substantive appointment in the cadre in 1988. The provisional list was also issued and after inviting the objections, this seniority list was issued as per law. Hence, petition deserves to be dismissed.

5. The private respondent no. 6 has opposed the petition on the same lines and has stated that petitioner quit his job in 1987 and he himself admitted it while applying for reappointment on the post of Lekhpal in 1988 that he was relieved on 10.11.1987 and he worked in Delhi Development Authority. Thereafter, he was reappointed on temporary basis on the recommendation of the Tehsildar, Dehradun dated 02.12.1988 by the sanction of S.D.M, Dehradun. The petitioner has accepted his reappointment and joined his services on 14.12.1988 and the seniority list of Lekhpal was issued on 23.03.2002 under the signature of District Collector, Dehradun was correct and the petitioner

was shown below the respondent at Sl. No. 45. This list was never challenged by the petitioner. In the salary bill of Lekhpals for the month of December 1988 and January 1989, the petitioner was also receiving less salary than the respondents, being junior to them after his reappointment in 1988. The probation period of the petitioner was also extended on 11.06.1989 by one year and he was also suspended in 1991 and later on, was reinstated, having an adverse entry in his service record. Regarding the contention of the petitioner, about his attachment on the post of Assistant Registrar Kanoongo on 24.10.1997, the respondent has contended that it was done by ignoring the claim of the Lekhpals' senior to him, which was corrected later on. The petitioner was confirmed as Lekhpal on 11.6.1991 as shown in the seniority list dated 23.3.2002. According to the Seniority Rules, the seniority of the persons, who are appointed by promotion only from a single feeding cadre, shall be the same as it was in the feeding cadre. The petitioner lost his claim from 1982, when he quit his job in 1987 and cannot be treated senior to the answering respondent, who was appointed in 1983 and was confirmed in 1986 so he was senior to the petitioner by all means. Before issuing the impugned seniority list dated 07.07.2015, a provisional seniority list of Registrar Kanoongo cadre, Dehradun was issued in 2012-13 against which respondent field his objections before the District Collector, Dehradun on 19.1.2013 wherein the position of the petitioner shown above the answering respondent, was challenged and the objections put forth by the answering respondent, were accepted. Thereafter, deciding the objections, final seniority list dated 7.7.2015 was issued, which is correct and as per Seniority Rules. The petitioner has no legitimate claim to challenge the same and cannot be declared senior to the answering respondent. The contention of the petitioner is incorrect that before issuing final seniority list, the provisional seniority list was not issued. Being senior in the feeding cadre, the respondents are

senior in the cadre of promotion, hence petition deserves to be dismissed.

6. We have heard both the parties and perused the record.

7. It is an admitted fact that the petitioner first joined his service as Lekhpal in Dehradun on 28.06.1982, whereas, respondents joined the services in 1983 and were confirmed in 1986. The petitioner in his petition concealed this fact that he left that job in 1987 and joined another service as Lekhpal in Delhi Development Authority. There is no such record that the petitioner was ever relieved with the consent of the respondents No. 1 and 2 maintaining lien in the service at Dehrdaun. The petitioner has failed to file any such documents which can prove that he retained his lien and was sent on any such deputation, rather it is an admitted and proven fact that petitioner finally left his job on 10.11.1987 and joined another service in Delhi. He was not sent on any deputation with any permission from his employer so he was not retaining any his lien in the service. The government servant cannot be permitted to leave his job at his own will, without the permission of his employer and can come back at any time and claim his seniority from back date.

8. In this case, the record reveals that after serving for one year from 1987 to 1988 in Delhi, the petitioner again applied for his appointment as Lekhpal in Dehradun and he moved his application with the following words:-

"सेवा में,
श्रीमान परगनाअधिकारी,
देहरादून।

द्वारा उचित माध्यम तहसीलदार देहरादून।

विषय– लेखपाल पद पर वापस तहसील देहरादून में नियुक्ति के सम्बन्ध में।

महोदय,

निवेदन है कि प्रार्थी 28 जून 1982 से तहसील देहरादून में लेखपाल के पद पर कार्यरत था, प्रार्थी को 10 नवम्बर 1987 ई0 को तहसील देहरादून से कार्यमुक्त कर दिया गया था और मैं दिल्ली विकास प्राधिकरण में कार्यरत हूॅ। मुझे दिल्ली की जलवायु माफिक नहीं है और मेरा स्वास्थ्य ठीक नहीं रहता है। मै पुनः अपनी तहसील देहरादून में वापस आना चाहता हूॅ।

अतः श्रीमान जी से निवेदन है कि प्रार्थी को तहसील देहरादून में कार्यभार दिलाने के आदेश निर्गत करने की कृपा करें।

(जसपाल सिंह राणा)
लेखपाल
तहसील देहरादून,
देहरादून।"

In clear terms, his application was for his reappointment, upon which, an office note was prepared by Tehsildar, Dehradun in the month of December and accepting the recommendation of Tehsildar, SDM, Dehradun passed his appointment letter, assigning him area of posting in Kanwali Kshetra. His order of reappointment reads as under:

"परगनाधिकारी
महोदय,

संलग्न प्रार्थनापत्र श्री जसपाल सिंह राणा का अवलोकन करने की कृपा करें। प्रार्थी ने तहसील देहरादून में लेखपाल के पद पर नियुक्ति हेतु आवेदन किया है। श्री राणा तहसील देहरादून में 22 जून 1982 से 10 नवम्बर 1987 तक लेखपाल के पद पर कार्य कर चुका है। श्री राणा ने 10 नवम्बर 1987 को कार्यमुक्त होकर देहली विकास प्राधिकरण में पटवारी के पद पर चला गया था । प्रार्थी का कहना है कि उसको देहली की जलवायु अनुकूल नहीं है।

प्रार्थी लेखपाल प्रशिक्षण प्राप्त है तथा शैक्षणिक योग्यता बी0ए0 है। प्रार्थी 22 जून 1982 से 10 नवम्बर 1987 तक तहसील देहरादून में लेखपाल के पद पर कार्य कर चुका है। इस अवधि में प्रार्थी का कार्य श्रेष्ट रहा है। वर्तमान में तहसील देहरादून में 10 लेखपाल क्षेत्र रिक्त है। जिनका विवरण निम्न प्रकार है।

1. विन्हार पूर्व
2. विन्हार पश्चिम
3. फतेहपुर
4. कासवाली कोठरी
5. सोरना
6. क्यारकुली भट्टा
7. गुजराडा मान सिंह
8. सरौना
9. सिधवाल गांव
10. मारखमग्रान्ट

A अतः प्रार्थी का उपरोक्त क्षेत्रों में से किसी एक क्षेत्र में लेखपाल पद पर नियुक्ति हेतु संस्तुति की जाती है।

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तहसीलदार
देहरादून।

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A पर अनुमोदित नियुक्ति की जाती है। कार्यक्षेत्र कांवली
ह0
परगनाधिकारी
देहरादून।

On the basis of sanction of appointment by SDM, the appointment letter dated 14.12.1988 was issued, which reads as under:

"कार्यालय– तहसीलदार– देहरादून।
सं0 मेमो/र0का0/नियुक्ति दिनांक 14.12.88
आदेश

परगनाधिकारी महोदय के आदेश दि0 08.12.88 के अनुसार श्री जसपाल सिंह राणा S/o जगतसिंह ग्राम सरडनी जिला पौड़ी की नियुक्ति लेखपाल पद पर क्षेत्र कांवली में की जाती है। यह नियुक्ति पूर्णतया अस्थाई है। और कभी भी बिना कारण बताये समाप्त की जा सकती है।

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तहसीलदार
देहरादून।

प्रतिलिपिः–

1. भूलेख अधिकारी देहरादून को सूचनार्थ
2. कोषाधिकारी देहरादून को सूचनार्थ।
3. व्यक्तिगत पत्रावली हेतु
4. श्री जसपाल सिंह राण को सूचनार्थ

तहसीलदार
दे0दून।

9. Thereafter, in compliance of the Sub Divisional Magistrate order dated 14.12.1988, the petitioner submitted his joining report on 14.12.1988, which reads as under:

"द्वारा– उचित माध्यम
सेवा में,
श्रीमान तहसीलदार महोदय
तहसील देहरादून।

विषय– पद ग्रहण हेतु आवेदन पत्र

महोदय,
निवेदन है कि परगनाधिकारी महोदय के आदेश दिनांक 8.12.88 के अनुपालन में प्रार्थी आपके अधीन तहसील देहरादून में कार्यभार संम्भालने के लिए उपस्थित है।
अतः निवेदन है कि प्रार्थी को पद ग्रहण करने की स्वीकृति प्रदान करने की कृपा करें।

धन्यवाद।

प्रार्थी
(जसपाल सिंह राणा)
लेखपाल
तहसील देहरादून।

This court is of the view that petitioner left his job in 1987 and lost his continuity in service and consequently, has lost his claim of any seniority and he was reappointed as fresh on 14.12.1988 as Lekhpal in Dehradun.

10. The petitioner in his petition has concealed all these facts, which respondents have proved by filing relevant documents to which

petitioner cannot deny. The petitioner had accepted his reappointment on 14.12.1988 as Lekhpal, hence, his substantive appointment to the cadre will be deemed to be made w.e.f. 14.12.1988 and according to the Seniority Rules, the seniority in the cadre of Registrar Kanoongo, which is the promotion cadre from Lekhpal, shall be decided on the basis of the seniority of the persons of the feeding cadre i.e. Lekhpal.

11. It is an admitted and proven fact that the respondents who continued in service as Lekhpal from 1983 ranked senior to the petitioner, who rejoined the services in 1988. The seniority list of Lekhpals was issued on 23.3.2002 by District Collector, Dehradun which was never challenged by the petitioner. In that seniority list, the petitioner was shown junior to the respondents, hence, he cannot claim his seniority in the cadre of Registrar Kanoongo differently from that of his feeding cadre and when a provisional seniority list for Registrar Kanoongo cadre of Dehradun was issued in 2012-13 by the department, that was challenged by the respondents. In that list, the petitioner was wrongly shown above the respondents and his appointment on substantive basis, was wrongly shown from 1982. Consequently, the objections of the respondents were accepted and treating the appointment of the petitioner as Lekhpal from 1988, the final seniority list dated 7.7.2015 of the cadre of Registrar Kanoongo was issued, wherein the petitioner is shown junior to the respondents, as he was junior in the seniority list of Lekhpals.

12. It is an admitted fact to both the parties that the post of Registrar Kanoongo is a promotional post from Lekhpal. This court is of the view that the petitioner cannot claim his seniority from 1982 rather he is entitled for his seniority from the date of his reappointment i.e. 14.12.1988. As the petitioner was appointed later in time than the private respondents, hence, he stood junior to the private respondents in the feeding cadre of Lekhpal. This court is of the view that the petitioner did not come up with all the facts in his petition and he

approached the court by concealing the real facts which were clearly stated by the respondents. We are of the view that the substantive appointment of the petitioner in the cadre of Lekhpal will be counted from 14.12.1988 and accordingly, being junior to the private respondents, he cannot claim seniority in the cadre of Registrar Kanoongo above private respondents and impugned seniority list dated 07.07.2015 issued by the department is as per law and as per provisions of concerned Seniority Rules. Petitioner is not entitled for any relief and his petition being devoid of merit, is liable to be dismissed.

ORDER

The 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

KNP