

**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. 08/ DB/2014

Sher Singh aged about 51 years S/o Late Raja Ram, Asstt. Accounts Officer, office of Regional Food Controller, Garhwal Region, Dehradun R/o 25, Malviya Nagar, Gali No. 2, Veer Bhadra, District Dehradun..

.....Petitioner

Versus

1. State of Uttarakhand through its Principal Secretary, Finance Department, Subhash Road, Dehradun.
2. Secretary to the Govt. of Uttarakhand, Department of Finance, Anubhag-6, Subhash Road, Dehradun.
3. Director Treasury and Finance Services, Govt. of Uttarakhand, Dehradun.
4. Director, Lekha and Haqdari, Govt. of Uttarakhand, Dehradun.
5. Shri Mohan Ram Arya, Finance Officer, Jalagam, Haldwani.
6. Shri Chandan Ram Arya, Finance Officer, Directorate of Horticulture, Ranikhet.
7. Shir Bachhi Ram Arya, Asstt. Accounts Officer, Horticulture Department, Almora.
8. Shri Roop Chand, Asstt. Accounts Officer, Distt. Project Officer, Sarva Shiksha Karyalaya, Chamoli.
9. Shri Ram Lal, Asstt. Accounts Officer, Distt. Project Officer, Sarva Shiksha Karyalaya, Champawat.
10. Shri L.P.Kotiyal, Asstt. Accounts Officer, Director Treasuries, Pension and Haqdari, Uttarakhand, 23 Luxmi Road, Dalanwala, Dehradun.
11. Shri Vipin Chandra Bhatt, Accounts Officer, DRDA Nainital.
12. Shri Ramesh Chandra Bhatt, Accounts Officer, Vidyalaya Shiksha Avam Pariksha Parishad, Ram Nagar, Nainital.
13. Shri Rajendra Prasad Raturi, Assistant Accounts Officer (Retd.) House No. 53, Latowali, Kankhal, Haridwar.

14. Shri Vijay Singh Rawat, Accounts Officer, Office of Zila Shiksha Adhikari(Basic), Haridwar.
15. Shri Chandra Mohan Singh, Accounts Officer, Zila Shiksha Adhikari(Basic), New Tehri.
16. Shri Sant Ram, Accounts Officer (on deputation) Uttarakhand, Ayurvedic Vishwa Vidyalaya, Harrawala, Haridwar.

.....Respondents.

Present: Sri J.P.Kansal, Ld. Counsel
for the petitioner.

Sri Umesh Dhaundiyal, Ld. A.P.O.
for the respondent Nos. 1 to 4.

JUDGMENT

DATED: FEBRUARY 06, 2018

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

1. The petitioner has filed the present claim petition for seeking the following relief:
 - (a) The impugned orders Annexure-A1, Annexure-A3, Annexure-A4 and Annexure-A6 be kindly held in violation of fundamental, constitutional and civil rights of the petitioner, against law, rules, orders and principles of natural justice and be kindly quashed and set aside.
 - (b) The respondent No.4 be kindly ordered and directed to place the petitioner in the final seniority list of Accounts Officer- Annexure-A5 above the private respondent Nos. 5 to 9, fix the seniority of respondent Nos. 6 to 9 at appropriate place and modify both these final seniority lists suitably.
 - (c) The respondent Nos.1 and 2 be kindly ordered and directed to consider the petitioner for promotion to the post of finance Officer and if he is found suitable to promote him to the post of Finance Officer from the date his junior respondent No.5 has been promoted with all consequential benefits including pay and dearness allowance etc. with interest @ 12% per annum from the date of accrual till the

date of actual payment, and above promotion of respondent No.6 to the post of Finance Officer made vide Annexure-A7 be kindly held illegal and wrong and be kindly quashed and set aside.

(d) 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

(e) Rs. 20,000/- as costs of this claim petition be kindly awarded to the petitioner against the respondents.

2. The petitioner was appointed through direct recruitment as Assistant Accountant in the department of Education vide order dated 08.05.1987 (Annexure: A 10).
3. The private respondent Nos. 5 to 9 were appointed through promotion on the post of Assistant Accountant in the department of Horticulture in the year 1989 and 1990, (Annexure: A 11 to A 14).
4. It is pertinent to mention here that the posts of Junior Accounts Clerk, Accounts Clerk, Assistant Accountant and Accountant are in the Accounts Cadre of various Government departments and the concerned department is the appointing authority for these posts (Annexure: A 9). The appointment/ promotion on these posts of Accounts Cadre are made by each department separately. The seniority lists of persons holding these posts in various departments are also prepared and maintained by the individual department.
5. The promotion from the post of Accountant to Assistant Accounts Officer (for 90% posts of AAO) is made at the State level according to the seniority subject to rejection of unfit under the Uttarakhand Assistant Accounts Officer Service Rules, 2003 (hereinafter referred as the Service Rules of 2003.) The Rules are shown at Annexure: A 21 to the claim petition. According to Rule 5(1) and Rule 8(1) of the said Rules, a combined State level seniority list of "Accountants," who were substantively appointed on the post of Accountant and working in various departments (listed in Appendix 'ख' to the Rules) for a minimum period of five years on the first day of the recruitment year, is required to be prepared for the purpose of promotion from the post of

Accountant working in various departments to the post of Assistant Accounts Officer (AAO) at the State level.

6. The contention of the petitioner is that while the petitioner was appointed (through direct recruitment) on the post of Assistant Accountant on 08.05.1987, the private respondents (No. 5 to 9) were promoted to the post of Assistant Accountant in 1989 and 1990 and, therefore, the petitioner is senior to the private respondents. State respondents (No. 1 to 4) have contended that the petitioner and private respondents are not comparable in so far as appointment on the post of Assistant Accountant is concerned. There was not "one" cadre of Assistant Accountant for all the departments. Each department had its own cadre of Assistant Accountant. The petitioner was appointed on the post of Assistant Accountant in the department of Education and the private respondents (No.5 to 9) were promoted to the post of Assistant Accountant in the department of Horticulture. State respondents have further submitted that for the purpose of promotion from the post of Accountant to AAO, the State wise seniority list of the Accountants working in all the departments was to be prepared in order of length of their service from the date of their substantive appointment on the post of Accountant and the same has been prepared and promotions were made in accordance with the Service Rules of 2003.
7. The petitioner has further contended that the posts of Accountant and Assistant Accountant were restructured in the department of Education in the ratio of 80:20 vide G.O. dated 18.09.1993 (Annexure : A 17) thereby, increasing the number of posts of Accountant significantly. The petitioner was (consequent to revision of sanctioned strength) given the pay scale of Accountant vide order dated 07.06.1994 (Annexure: A 18) with retrospective effect from 18.05.1987. The plea of the petitioner is that vide order dated 07.06.1994, the petitioner is deemed to be appointed substantively on the post of Accountant w.e.f. 18.05.1987. State respondents in their reply have contended that the petitioner vide order dated 07.06.1994 was given only the pay scale of

the Accountant w.e.f. 18.05.1987 and he was not substantively promoted on the post of Accountant w.e.f.18.05.1987. Merely by allowing the pay scale, the petitioner cannot be said to be substantively appointed on the post of Accountant from 18.05.1987. The State respondents have further submitted that the date of substantive appointment of the petitioner on the post of Accountant is 07.06.1994. The petitioner cannot be given substantive appointment from retrospective effect.

8. The petitioner has also submitted that a final seniority list of Accountant was issued by the respondent No.3 on 15.03.2002 (Annexure: A 20) and in this list the petitioner was shown above the private respondent Nos. 5 to 9. Respondent No.4 also issued a promotion order dated 27.07.2004 (Annexure: A 22) by which along with others the petitioner was also promoted from the post of Accountant to AAO. The seniority list dated 15.03.2002 and the promotion order dated 27.07.2004 were challenged in the High Court by filing a writ petition. The Hon'ble High Court at Nainital in this writ petition number 721(S/S) of 2004 Ashok Kumar Jain and Another Vs. Government of Uttarakhand and Others (Annexure: A 24) directed on 22.09.2007 to prepare the seniority list of Accountant afresh and, thereafter, make promotions from the post of Accountant to the post of AAO. The relevant part of the order of the Hon'ble High court is reproduced below:-

“According to the Rules, 90% posts are to be filled from amongst the departmental Lekhakar/ Varistha Lekha Parikshak/ Varistha Samparikshak, who have completed 5 years' service on the first date of the year in which the promotions are going to be made and 5% posts are to be filled by way of promotions made amongst Lekhakar/ Sah Varishtha Data Entry Operator/ Varishtha Samparikshak Sah Data Processing working under Director of Treasury and Financial Service Establishment, and who has completed 5 years' service, provided he is confirmed on the aforesaid post.

Rule 8 provides the procedure for making promotion on the post of Assistant Account Officer. Rule 8(1) specifically provides that the promotion shall be made on the post of Assistant Account Officer in accordance with the seniority subject to rejection as unfit. Thus, according to the Rules of 2003 prior to making promotion, seniority is to be considered and without preparing seniority list, promotions cannot be made. As it is the admitted case of the respondents that the final seniority list, which was prepared in the year 2002 on the basis of tentative seniority list, has become invalid in view of the Rules of 2003, as such, there cannot be any final seniority list without any tentative seniority list.

Thus, it is clear case of respondents that there is no seniority list of the Accountant/ Senior Auditor, in fact. The respondents have further stated that for making promotion under the Rule of 2003, seniority list is not required, which is absolutely incorrect. As Rule 8 of the Rules specifically stated about the seniority. On the one hand, the respondents have stated that the promotions have been made strictly in accordance with the Rules 5, , 7 and 8 of Rules of 2003 and on the other hand, it is very clear that they had not complied with the Rule 8 of the Rules.

Since the petitioners have not impleaded those persons, who have been provided promotions in contravention of the Rules and without preparing seniority list as admitted by the respondents, this Court is helpless to quash the promotion order passed by respondents. It is very strange that the authority did not care to see the Rules prior to making promotions and completely ignored Rule 8(1) of the aforesaid Rules and in the counter affidavit, they have stated that they have made the promotions in accordance with the Rules 5, 6, 7 and 8 of Rules of 2003. The promotions have been made in contravention of Rules are proved itself from the respondents' counter affidavit, wherein they have stated that for making promotions, no seniority list is required and further have stated that the earlier seniority list, which was prepared has become invalid.

In these circumstances, the Court is helpless to grant positive relief to the petitioners as the Court cannot quash

the promotion order in absence of those persons who have been provided promotion by the department de hors the Rules as they are not a party before the Court.

Learned counsel for the petitioner has further submitted that post of Assistant Account Officer are vacant and petitioner may also be provided promotion on the post of Assistant Account Officer. If the authority has committed wrong, the Court cannot direct the authority to repeat the wrong. However, considering the facts and circumstances, it is expected from the authority that they will prepare a seniority list and in case the petitioners come within the zone of consideration, the case of the petitioners for promotion on the post of Assistant Account Officer may be considered as per Rules and if some persons, who have been provided promotion de hors the Rules, in fact, were not come within the zone of consideration for promotion as per the seniority list now prepare by the authority, the respondents may take necessary steps in that regard”.

9. The petitioner, thereafter, was informed vide letter dated 09.01.2008 (Annexure: A 23) forwarding the copy of the judgment of the Hon’ble High Court as under: -

“निदेशालय लेखा एवं हकदारी ,
23-लक्ष्मीरोड,डालनवाला ,उत्तराखण्ड
देहरादून।

पत्रांक: 3306/ नि0ले0ह./14(4)-11/2008, दिनांक 7 जनवरी,2008

सेवा में,

श्री शेर सिंह,
वित्तीय परामर्शदाता,
जिला पंचायत हरिद्वार।

विषय: रिट पिटिशन संख्या 721(एस/एस)2004 श्री अशोक कुमार जैन बनाम राज्य सरकार पर माननीय उच्च न्यायालय द्वारा पारित निर्णय एवं इसके क्रम निर्णत शासनादेश के अनुसार आवश्यक कार्यवाही के सम्बन्ध में ।

महोदय,

उपरोक्त विषयक रिट संख्या 721 (एस/एस) 2004 श्री अशोक कुमार जैन बनाम राज्य सरकार में माननीय उच्च न्यायालय द्वारा पारित निर्णय दिनांक 22.09.2007 की प्रति तथा इसके क्रम में निर्गत शासनादेश संख्या 04/XXVII(6)/2008, दिनांक 04 जनवरी, 2008 की प्रति सुलभ संदर्भ हेतु संलग्न की जा रही है। उपरोक्त निर्णयों के क्रम में आपको सूचना दी जा रही है कि अब पूरी चयन प्रक्रिया उत्तराखण्ड सहायक लेखाधिकारी सेवा नियमावली, 2003 में निर्धारित मानकों के

आधार पर नयी ज्येष्ठता सूची बनाकर ही की जानी है। आपकी पूर्व नियुक्ति का विनियमितीकरण तभी सम्भव होगा जब ज्येष्ठता सूची के आधार पर चयन प्रक्रिया पूरी कर ली जायेगी।

संलग्नक—उपरोक्तानुसार।

भवदीय

(एल0एन0 पंत)

अपर निदेशक।”

10. Thereafter, respondent No.4 issued a tentative seniority list of Accountants on 27.03.2008 and the objections were invited on it. The petitioner also filed his objections against the tentative seniority list which were decided on 17.06.2008 (Annexure: A 1) and the same were rejected. A final seniority list of Accountant was issued on 24.06.2008 (Annexure: A 2) in which the petitioner was shown below the private respondents. The objections of the petitioner against the tentative seniority list dated 27.03.2008 are as under:-

प्रत्यावेदक एवं मूल आपत्ति

“(58) श्री शेर सिंह, लेखाकार ने अपने प्रत्यावेदन में मूल रूप में यह अनुरोध किया है कि लेखाकार के पद पर मेरी मौलिक नियुक्ति की तिथि 7.6.2994 दिखायी गयी है। जबकि पत्रांक 516/ दिनांक 15 मार्च,2002 के द्वारा जारी अंतिम कोटिक्रम सूची में मेरी मौलिक नियुक्त 23.5.90 दिखायी गयी थी। 80:20 के आधार पर आदेश दिनांक 7.6.1994 के द्वारा मुझे लेखाकार का पदनाम व वेतनमान दिनांक 18.5.1987 से अनुमन्य हुआ है। अतः लेखाकार के पद पर मेरी मौलिक नियुक्ति की तिथि 18.5.1987 अंकित किया जाय। दिनांक 15 मार्च, 2002 को जारी अंतिम कोटिक्रम सूची में मेरा नाम 45 पर था। श्री मोहन राम, श्री चन्द्रराम, श्री बच्चीराम आर्य, श्री रुपचन्द्र आर्य एवं श्री रामलाल का नाम क्रमांक 59,64,65,66, एवं 70 पर था । इस अनंतिम वरिष्ठता सूची में यद्यपि मेरा नाम 45 पर ही है, परन्तु उक्त अभ्यर्थियों का नाम 33,35,36,37, एवं 42 पर अंकित किया गया है। इस पर मुझे आपत्ति है।”

The above objections of the petitioner against the tentative seniority list were rejected as under:-

प्रत्यावेदन अस्वीकार करने का कारण

“श्री शेर सिंह, लेखाकार क अनुरोध का परीक्षण सुसंगत शासनादेश एवं माननीय उच्च न्यायालय के निर्णय के संदर्भ में किया गया। 80:20 के आधार पर

पूर्वगामी तिथि से प्रदत्त लेखाकार का पदनाम एवं वेतनमान को मौलिक नियुक्ति स्वीकार नहीं किया जा सकता। इस संदर्भ में प्रतिउत्तर अन्य प्रत्यावेदकों द्वारा किये गये अनुरोध पर दिये गये प्रतिउत्तर के समान है। अनंतिम वरिष्ठता सूची में जिन कर्मियों को अपने से ऊपर वरिष्ठता दिये जाने में की गयी आपत्ति इस आधार पर अस्वीकार है, प्रत्यावेदक की नियमानुसार लेखाकार के पद पर मौलिक नियुक्ति नहीं हुयी है , जबकि प्रत्यावेदन में उल्लिखित कर्मियों की अनंतिम वरिष्ठता सूची में अंकित तिथियों को लेखाकार के पद पर मौलिक नियुक्ति का विवरण / प्रमाण सम्बन्धि के विभागाध्यक्ष द्वारा दिया गया है। तदनुसार ही उनकी वरिष्ठता का क्रमांक अंकित है। अतः प्रत्यावेदक का अनुरोध गुण-दोष के आधार पर विचार करते हुए अस्वीकार किया जाता है।”

11. After issuing the final seniority list of Accountants on 24.06.2008, the State respondents made promotions from the post of Accountants (working in various departments) to the post of AAO on 08.12.2008 (Annexure: A 3). The petitioner's name was also there in the list of promotion on the post of AAO. Vide promotion order dated 08.12.2008, the earlier promotions made on 27.07.2004 (Annexure: A 22) were made ineffective in pursuance to the order of the Hon'ble High Court at Nainital dated 22.09.2007. The initial paragraph of promotion order dated 08.12.2008 reads as under: -

“इस निदेशालय से सहायक लेखाधिकारी संवर्ग में लेखा कर्मियों का चयन करके निर्गत विज्ञप्ति/पदोन्नति आदेश संख्या दिनांक 27 जुलाई, 2004, के विरोध में दायर रिट पिटीशन संख्या 721/(एस/एस) 2004 पर माननीय उच्च न्यायालय नैनीताल का निर्णय दिनांक 22 सितम्बर, 2007 को पारित हुआ। न्यायालय के निर्णय के अनुपालन हेतु शासन से पत्र संख्या दिनांक 04 जनवरी, 2008 द्वारा निर्देश दिये गये। इसके क्रम में 90 प्रतिशत विभागीय लेखाकारों /ज्येष्ठ लेखा परीक्षकों की प्रदेश स्तरीय पारस्परिक अंतिम ज्येष्ठता सूची कार्यालय ज्ञाप संख्या दिनांक 24 जून, 2008 जारी की गयी।

उक्त ज्येष्ठता सूची से तथा 5-5 प्रतिशत निदेशालय कोषागार एवं वित्त सेवायें तथा निदेशालय लेखा एवं हकदारी की पूर्व स्थिति के अनुसार तैयार पारस्परिक ज्येष्ठता से सहायक लेखाधिकारी सेवा नियमावली, 2003 के प्राविधानों के अधीन सहायक लेखाधिकारी संवर्ग में नियमित चयन के लिये दिनांक 08 दिसम्बर, 2008 को चयन समिति गठित की गयी। चयन समिति की संस्तुति , माननीय उच्च न्यायालय के निर्णय तथा शासन के निर्देश के क्रम में उपलब्ध रिक्तियों के सापेक्ष तात्कालिक पभाव से इससे पूर्व नियमों से अन्यथा (De hors the Rules) की गयी सभी पदोन्नति के आदेशों को निष्प्रभावी करते हुए एतद्द्वारा निम्नलिखितों को

सहायक लेखाधिकारी वेतनमान 7450-225-11500 पुनरीक्षित वेतनमान 9300-34800 के पद पर नियमित पदोन्नति प्रदान कर स्तम्भ -3 में वर्णित पद एवं कार्यालय में तैनात किया जाता है। यह आदेश तात्कालिक प्रभाव से लागू होगा।”

The contention of the petitioner is that he was already promoted on the post of AAO on 27.07.2004 rightly and he has been wrongly placed below the private respondents in the promotion order dated 08.12.2008 without providing him an opportunity of hearing. State respondents have contended that the promotion order dated 08.12.2008 is based on the final seniority list dated 24.06.2008 and the seniority list has been prepared in accordance with the Service Rules of 2003 and the Seniority Rules of 2002 and the petitioner was provided opportunity to submit his objections against the tentative seniority list and the objections of the petitioner were rejected on 17.06.2008 as described in paragraph 10 of this order.

12. The petitioner has also contended that as a result of re-structuring of posts of Accountants and Assistant Accountants in the ratio of 80:20, the Assistant Accountants who were available for the vacancies for the post of Accountants as on 29.07.1992 will be deemed to be promoted on the post of Accountant w.e.f. 29.07.1992 in accordance with the G.O. of Uttar Pradesh dated 10.11.2008 (Annexure: A 26). The plea of the petitioner is that he is covered under the G.O. of U.P. Government dated 10.11.2008 and the petitioner is a deemed promotee on the post of Accountant w.e.f. 29.07.1992. The petitioner has also submitted that the Tribunal has also relied on the G.O. of the U.P. Government dated 10.11.2008 in claim petition No. 48 of 2010 (Annexure: A 28) decided on 03.10.2012 and also in claim petition No. 96/2010 (Annexure: A 31) decided on 19.11.2012. The State respondents (No. 1 to 4) have denied that the petitioner is deemed to be promoted on the post of Accountant w.e.f. 29.07.1992 in accordance with the G.O. of the U.P. Government dated 10.11.2008 as the G.O. of U.P. Government was issued after the creation of the State of Uttarakhand and the same is not applicable in the State of Uttarakhand.

13. The petitioner filed a writ petition No. 382/SS of 2010 against the seniority list dated 24.06.2008 and the promotion order dated 08.12.2008 on 25.05.2010. The Hon'ble High Court at Nainital dismissed the petition on the ground of alternative remedy before the Tribunal vide its order dated 29.07.2013 (Annexure: A 8).
14. State respondent No. 1 to 4 have opposed the claim petition and filed a joint written statement. The contentions of State respondents have already been stated in the preceding paragraphs. In spite of sufficient opportunity, private respondents No. 5 to 9 have not filed any written statement and it was decided to proceed ex-parte against them. Private respondent No.13 also did not file any W.S. in spite of sufficient service. The private respondent No.13 Shri Rajendra Prasad Raturi had already retired on 31.05.2013. Private respondents No. 10,11,12, 14 and 15 have filed the brief written statements and they all have supported the contentions of the State respondents No. 1 to 4. Private respondent No. 16 has also filed the W.S. and he has supported the contentions made by the petitioner. The petitioner has also filed the rejoinder affidavits against the W.S. of the State respondents (No. 1 to 4) and the W.S. of private respondents No. 10, 11, 12, 14, 15 and 16 and the same averments have been reiterated and elaborated which were stated in the claim petition. Petitioner and the State respondents have also filed various documents through the supplementary affidavits. The counsel for the petitioner has also filed the written submissions.
15. We have heard counsels of the parties and perused the record carefully.
- 16.1 Learned Counsel for the petitioner has argued that the petitioner was directly recruited and he was appointed as Assistant Accountant in the Department of Education on 08.05.1987 (Annexure: A 10). The private respondents (No. 5 to 9), who belonged to the Department of Horticulture, were promoted from the post of Senior Accounts Clerk to the post of Assistant Accountant in 1989 and 1990 (Annexure: A 11 to 14). The contention of the petitioner is that since the petitioner is senior to the private respondents on the post of Assistant Accountant,

the petitioner will always be senior to the private respondents (No. 5 to 9).

16.2 Learned A.P.O. in his counter argument has submitted that each department of the Government had its own Accounts Cadre (Annexure: A 9) and there were four posts in the Accounts Cadre of all the departments ("Junior Accounts Clerk", "Senior Accounts Clerk", "Assistant Accountant" and "Accountant"). The appointments/promotions on these four posts of Accounts Cadre were made department-wise. There was not one State Cadre of Assistant Accountant. Each department had its own separate cadre of Assistant Accountant and appointments/promotions in each department are made by the appointing authority of the concerned department as per vacancies available in the department. The Department of Education and the Department of Horticulture had their own separate and distinct Accounts cadre having their own sanctioned strength and filling up of posts (by appointment/promotion) in both the departments was an independent exercise. The seniority list of various departments in their Accounts Cadre is prepared and maintained by the individual department. The Assistant Accountant of the Education Department cannot be compared with the Assistant Accountant of Horticulture Department for the purpose of seniority as each department has its own cadre and there is no State Cadre of Assistant Accountant. Thus, the argument of learned counsel for the petitioner that the petitioner, who was appointed on the post of Assistant Accountant in Education Department prior to the promotion of the private respondents (No. 5 to 9) on the post of Assistant Accountant in the Horticulture Department, is senior to the five private respondents is misconceived and cannot sustain.

16.3 We incline to agree with the contentions of learned A.P.O. in paragraph 16.2 above. The petitioner and five private respondents belong to different departments and their cadres pertain to their respective departments only. For the purpose of determination of seniority

between the petitioner and the five private respondents on the post of Assistant Accountants, the two departments-- Education Department and Horticulture Department—cannot be combined and put together as each department is a separate unit with its own Accounts Cadre, its own appointment/ promotion on various posts in Accounts Cadre and its own seniority list on the post of Assistant Accountant. The argument of learned counsel for the petitioner that under Rule 8 of the Uttarakhand Government Servant Seniority Rules, 2002, the petitioner is senior to the five private respondents as he was substantively appointed on the post of Assistant Accountant prior to the five private respondents is totally misplaced as the petitioner and the private respondents were appointed/ promoted in different departments having their own separate Accounts Cadre with their own separate seniority lists for the post of Assistant Accountant. The petitioner is concerned with his seniority on the post of Assistant Accountant within the Education Department only and the petitioner is not at all concerned with the employees of the Horticulture Department or for that matter any other department of the State Government as the seniority list of Assistant Accountant is department-wise and not State-wise.

17. Learned counsel for the petitioner has also argued that the Government of Uttar Pradesh issued a G.O. dated 04.08.1998 (Annexure: A 19) by which the minimum length of service required for promotion from the post of Assistant Accountant to Accountant was reduced from 10 years to 3 years and the said G.O. was given retrospective effect from 01.01.1986. The contention of the petitioner is that by this reduced criterion, the petitioner was eligible on 18.05.1990 for promotion from the post of Assistant Accountant to the post of Accountant in the Education Department. The perusal of records reveals that no order of promotion of the petitioner was issued in pursuance to the said G.O.. Moreover, the petitioner has himself stated in the claim petition that the said G.O. dated 04.08.1998 was quashed by the Hon'ble High Court at Allahabad in 2004 in so far it related to retrospective effect from

01.01.1986. Thus, the G.O. dated 04.08.1998 is of no help to the petitioner.

18.1 It would be appropriate at this stage to look at the rules relating to promotion and seniority. Service Rules of 2003 provides source of recruitment on the post of AAO, which is reproduced below:-

“5- भर्ती का स्रोत—

सेवा में पदों पर भर्ती निम्नलिखित स्रोतों से की जायेगी।—

(एक) 90 प्रतिशत मौलिक रूप से नियुक्त नियमावली परिशिष्ट 'ख' में उल्लिखित ऐसे विभागीय लेखाकार/ वरिष्ठ लेखा परीक्षक / वरिष्ठ सम्परीक्षक में से जिन्होंने भर्ती के प्रथम दिवस को कम से कम पांच वर्षों की सेवा पूर्ण कर ली हो एवं मौलिक नियुक्ति के पद पर स्थाई हो, पदोन्नति द्वारा।

(दो) 05 प्रतिशत निदेशक, कोषागार एवं वित्त सेवायें सह स्टेट इन्टरनल ऑडिटर में मौलिक रूप से नियुक्त लेखाकार सह वरिष्ठ डाटा इन्ट्री ऑपरेटर / वरिष्ठ सम्प्रेक्षक सह—डाटा प्रोसेसिंग (निदेशालय कोषागार एवं वित्त सेवायें अधिष्ठान) में से, जिन्होंने भर्ती वर्ष के प्रथम दिवस को कम से कम पांच वर्ष की स्थाई सेवा लिपिक पद पर पूर्ण कर ली हो, अथवा लेखाकार सह डाटा इन्ट्री ऑपरेटर/ वरिष्ठ सम्प्रेक्षक सह—डाटा प्रोसेसिंग के पद पर स्थाई हो, पदोन्नति द्वारा।

(तीन) 05 प्रतिशत निदेशक, लेखा एवं हकदारी में मौलिक रूप से नियुक्त लेखाकार सह वरिष्ठ डाटा इन्ट्री ऑपरेटर/ वरिष्ठ सम्प्रेक्षक सह —डाटा प्रोसेसिंग (निदेशालय कोषागार एवं वित्त सेवायें अधिष्ठान) में से, जिन्होंने भर्ती वर्ष के प्रथम दिवस को कम से कम पांच वर्ष की स्थाई सेवा लिपिक पद पर पूर्ण कर ली हो, अथवा लेखाकार सह वरिष्ठ डाटा इन्ट्री ऑपरेटर / वरिष्ठ सम्प्रेक्षक सह—डाटा प्रोसेसिंग के पद पर स्थाई हो, पदोन्नति द्वारा।

परन्तु यदि किसी पोषक संवर्ग में पर्याप्त संख्या में उपयुक्त या पात्र अभ्यर्थी पदोन्नति के लिए उपलब्ध न हो तो उन पदों को, इस नियमावली में यथा विनिर्दिष्ट शेष पौषक संवर्गों से भरा जा सकता है।”

According to above Rule 5 of the Service Rules of 2003, it is clear that,

- (i) the only source of recruitment on the post of AAO is promotion;
- (ii) there are three feeding cadres for promotion on the post of AAO (एक) (दो) (तीन) above;

- (iii) under Rule-5 (एक), 90% AAO will be promoted out of Accountants/ Varishtha Lekha Parikshak/ Varishtha Samparikshak of various departments the list of which is given in Appendix 'ख' to the Rules, who were substantively appointed and who have completed 5 years' service on the first date of the recruitment year in which the promotions are made; and
- (iv) Appendix 'ख' to the Service Rules of 2003 gives a list of 53 departments, the Accountants and Varishtha Lekha Parikshak of which are considered for promotion on the post of AAO.

18.2 Rule 8(1) and 8(2) of the Service Rules of 2003 provides as under:-

“8. पदोन्नति द्वारा भर्ती की प्रक्रिया—(1) पदोन्नति द्वारा भर्ती अनुपयुक्त को अस्वीकार करते हुए ज्येष्ठता के आधार पर की जायेगी। इसके लिए चयन समिति निम्न प्रकार गठित की जाएगी।—

- (1) निदेशक , लेखा एवं हकदारी, उत्तरांचल ...अध्यक्ष
- (2) प्रमुख सचिव/ सचिव वित्त द्वारा निर्दिष्ट ऐसा अधिकारी जो सरकार के उप सचिव के स्तर से नीचे के स्तर का अधिकारी न हो। ...सदस्य
- (3) नियुक्त प्राधिकारी द्वारा नाम –निर्दिष्ट राजपत्रित अधिकारी, जिसका स्तर उप-निदेशक के स्तर से नीचे का न हो। सदस्य

(2) नियुक्त प्राधिकारी अभ्यर्थियों की पात्रता सूची समय-समय पर यथासंशोधित उत्तरांचल लोक सेवा आयोग के क्षेत्र के बाहर के पदों पर चयन नियमावली के अनुसार तैयार करेगा और उसे उनकी चरित्र पंजियों और उनसे सम्बन्धित ऐसे अन्य अभिलेखों के साथ जो उचित समझे जाएं, चयन समिति के समक्ष रखेगा:

परन्तु जहां दो या अधिक पोषक संवर्ग हों—

(क) भिन्न –भिन्न वेतनमान होने पर उच्च वेतनमान वालो संवर्ग के अभ्यर्थियों को पात्रता सूची में ऊपर रखा जायेगा।

(ख) समान वेतनमान होने पर अभ्यर्थियों के नाम उनके अपने अपने संवर्ग में मौलिक नियुक्ति के दिनांक के क्रम में रखे जायेंगे , किन्तु यदि दो या अधिक अभ्यर्थियों की मौलिक नियुक्ति का एक ही दिनांक हो तो ऐसी स्थिति में अधिक आयु के अभ्यर्थी को पात्रता सूची में ऊपर रखा जायेगा।”

It is clear from Rule 8(1) and 8(2) of the Service Rules of 2003 that,

- (i) the criterion for promotion to the post of AAO is the seniority subject to rejection of unfit; and

- (ii) in the seniority list under challenge (Annexure: A 2), the pay scale of all the persons is same (Rs.5500-9000/-) and, therefore, as per Rule 8(2) 'ख', for the purpose of promotion to the post of AAO, the names of the persons are required to be taken in the eligibility list in order of the dates of their substantive appointment on the post of Accountant in their departmental cadre.

18.3 The Uttarakhand Government has also framed the "Uttarakhand Government Servant Seniority Rules, 2002 (hereinafter referred to as Seniority Rules of 2002) which are identical to the Uttar Pradesh Government Servant Seniority Rules, 1991. All the parties admit that the Seniority Rules of 2002 are applicable in the case at hand. Since the appointment on the post of AAO is made by promotion only and there are three feeding cadres, the Rule 7 of the Seniority Rules of 2002 is applicable in the present case which is reproduced below :-

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

It is clear from the above quoted rule that when appointments are made only by promotion but from more than one feeding cadres, the seniority shall be determined according to the date of order of their substantive appointment in their respective feeding cadres.

18.4 With reference to the case at hand, the rule position as stated in paragraph 18.1 to 18.3 above makes it clear tht the Service Rules of 2003 and the Seniority Rules of 2002 both provide the same norms for the promotion from the post of Accountant to the post of AAO. The promotion on the post of AAO is required to be made in accordance

with the seniority list of Accountants according to the criterion of seniority subject to rejection of unfit. For determining the seniority, the date of substantive appointment on the post of Accountant is to be taken into account. For preparing the seniority list, the Accountants working in all the departments (the list of which is given in Appendix 'ख' to the Service Rules of 2003) will be arranged in order of dates of their substantive appointments in respective departments to arrive at the State-wise seniority list of Accountants for the purpose of promotion to the post of AAO. The other conditions of eligibility for promotion are that (i) the Accountant has completed 5 years' service; and (ii) he is confirmed on the post of Accountant.

19.1 Learned counsel for the petitioner has also argued that the petitioner was given the pay scale of Accountant by the Education Department vide order dated 07.06.1994 (Annexure: A 18) w.e.f. 18.05.1987 and, therefore, the petitioner is deemed to be promoted substantively from the post of Assistant Accountant to the post of Accountant with retrospective effect from 18.05.1987. It is submitted by the learned counsel for the petitioner that for the purpose of promotion to the post of Assistant Accounts Officer (AAO) under the Uttarakhand Assistant Accounts Officer Service Rules, 2003, he should have been placed in the seniority list (and promoted) on the post of AAO taking date of 18.05.1987 as the date of substantive appointment on the post of Accountant in the department of Education.

19.2 Learned A.P.O. in his counter argument has stated that vide order dated 07.06.1994, the Education Department has given to the petitioner only the pay scale of the Accountant w.e.f. 18.05.1987. The petitioner was not given any substantive promotion w.e.f. 18.05.1987 by the Education Department vide order dated 07.06.1994. Learned A.P.O. has submitted that the date of substantive appointment of the petitioner on the post of Accountant is 07.06.1994. Merely by allowing the pay scale, the petitioner cannot be said to be substantively promoted on the post of Accountant w.e.f. 18.05.1987. It has also been contended by learned

A.P.O. that according to the Rules and the G.O. dated 26.05.2000 (Annexure: 2 to the W.S.), pursuant to the re-structuring (in the ratio of 80:20), the promotion on the post of Accountant could not be given from the back date. The said G.O. reads as under:-

“संख्या: एस-3 -1228 / दस-2000

प्रेषक,

श्री ए०पी०वर्मा,
अनुसचिव,
उत्तर प्रदेश शासन।

सेवा में,

निदेशक,
कोषागार ,उ०प्र०,
लखनऊ।

वित्त (सेवायें) अनुभाग -3

लखनऊ : दिनांक 26 मई, 2000

विषय- लेखा संवर्ग में 80:20 का अनुपात लागू किये जाने से सीधी भर्ती के अन्तर्गत नियुक्त लेखाकारों के वरिष्ठता का निर्धारण।

महोदय

“.....इस प्रकार 80:20 के अनुपात के आधार पर व्यवस्थिति करने पर संबंधित कर्मी स्वमेव नये पद के धारक नहीं हो जायेंगे अपितु संगत सेवा नियमावली में निर्धारित प्रक्रिया के अनुसार उक्त पद पर उनकी मौलिक नियुक्ति भी आवश्यक होगी। यह किन्हीं भी परिस्थितियों में पूर्वगामी तिथि से नहीं हो सकती। इसके अतिरिक्त वे०आ०-1 के शासनादेश दिनांक 30.12.96 के साथ पठित शासनादेश दिनांक 3.6.97 में पदों के 80:20 के अनुपात में विभाजन के फलरूप लेखाकार, वरिष्ठ सम्प्रेक्षक के पदों पर तैनात होने वाले पदधारकों के वेतन निर्धारण हेतु इन पदों को स्थानापन्न पद माने जाने के ही आदेश हैं। इन पदों पर मौलिक नियुक्ति / तैनाती संगत सेवा नियमावली के अनुसार ही होगी तथा ऐसे पद धारकों की ज्येष्ठता भी उसी सेवा नियमावली के अनुसार उनकी मौलिक नियुक्ति की तिथि से ही निर्धारित होगी।

इस प्रकार लेखा संवर्ग में 80:20 के लाभार्थियों व सीधी भर्ती के लेखाकारों की वरिष्ठता का निर्धारण उनकी मौलिक नियुक्ति की तिथि से ही किया जाना है।

अतः आपसे अनुरोध है कि कृपया उपरोक्तानुसार मामले में कार्यवाही सुनिश्चित कराने का कष्ट करें तथा कृत कार्यवाही से शासन को भी अवगत करायें।”

ह० /

ए०पी०वर्मा
अनुसचिव।”

19.3 After perusing the record, we find that the petitioner has been given only the pay scale of Accountant by the Education Department w.e.f.

18.05.1987 vide order dated 07.06.1994. The above G.O. dated 26.05.2000 which is consistent with the Seniority Rules of 1991 and the Seniority Rules of 2002 makes it clear that “इस प्रकार 80:20 के अनुपात के आधार पर व्यवस्थित करने पर सम्बन्धित कर्मी स्वयमेव नये पद के धारक नहीं हो जायेंगे अपितु संगत सेवा नियमावली में निर्धारित प्रक्रिया के अनुसार उक्त पद पर उनकी मौलिक नियुक्ति की आवश्यकता होगी । यह किन्हीं भी परिस्थितियों में पूर्वगामी तिथि से नहीं हो सकती।” In view of this, the argument of learned counsel for the petitioner that he was substantively appointed by the Education Department on the post of Accountant with retrospective effect from 18.05.1987 cannot be accepted. We also find that the petitioner has only been given the pay scale of Accountant and he was not promoted by the Education Department on the post of Accountant vide order dated 07.06.1994. Learned counsel for the petitioner could also not demonstrate that the petitioner was promoted on the post of Accountant w.e.f. 18.05.1987 in accordance with the Service Rules. The initial paragraph of the order dated 07.06.1994 (Annexure: A 18) also makes it clear that only pay scale of the Accountant was given to the petitioner and he was not promoted w.e.f. 18.05.1987. The initial paragraph of order dated 07.06.1994 reads as under:-

“कार्यालय शिक्षा निदेशक, उत्तर प्रदेश इलाहाबाद
आज्ञा संख्या प्रबन्ध/ 28 /29-5 (1)/94-95 दिनांक 07.06.94
विज्ञप्ति / स्वीकृति।

शासनादेश संख्या 4498/15-2-93-27(59)/83 दिनांक 18 सितम्बर, 1993 के संलग्नक के अनुसार शासन द्वारा लेखाकार /सहायक लेखाकार के कुल सम्मिलित पदों के प्रतिशत के आधार पर पुर्नगठित किये जाने के फलस्वरूप गठित समिति द्वारा लिये गये निर्णय के अनुसार ज्येष्ठता में निम्नलिखित सहायक लेखाकारों वेतनमान रू0 1200-2040 को लेखाकार के पद का वेतनमान रू0 1400-2600 उनके नाम के सम्मुख स्तम्भ -5 में अंकित तिथि (which is 18.05.1987 in case of the petitioner)से स्वीकृत किया जाता है।”

Thus, we are of the definite view that the petitioner cannot claim his substantive promotion on the post of Accountant from 18.05.1987.

20.1 Learned counsel for the petitioner has also argued that the Uttar Pradesh Government had issued a G.O. dated 10.11.2008 (Annexure: A 26) by which the Assistant Accountants (who were eligible for

promotion) to the post of Accountant will be deemed to be promoted on the post of Accountant w.e.f. 29.07.1992.

20.2 Learned A.P.O. in his counter argument has stated that the said G.O. dated 10.11.2008 was issued by the State of Uttar Pradesh after the State of Uttarakhand came into existence on 09.11.2000 and, therefore, it is not applicable in the State of Uttarakhand. Moreover, pursuant to the G.O. dated 10.11.2008, no order was issued by the State of Uttar Pradesh for promotion of the petitioner from the post of Assistant Accountant to the post of Accountant with effect from 29.07.1992. Furthermore, the Government of Uttarakhand cannot issue any order of promotion of the petitioner from the post of Assistant Accountant to the post of Accountant from the date when the State of Uttarakhand did not exist. Only the State of Uttar Pradesh could issue the order in respect of the petitioner for his promotion w.e.f. 29.07.1992 and no such order has been issued. The State of Uttarakhand can also not issue any direction to the State of Uttar Pradesh with regard to the promotion of the petitioner w.e.f. 29.07.1992 as per the judgment of the Hon'ble High Court at Nainital in writ petition (S/B) NO. 71 of 2013 State of U.P. and Another Vs. Dr. Vinod Kumar Bahuguna. Furthermore, the G.O. dated 10.11.2008 is inconsistent with the Service Rules and the Seniority Rules framed under the proviso to the Article 309 of the Constitution and, therefore, rules framed under the Constitution will prevail.

20.3 Learned A.P.O. has also contended that in the case at hand, the Government of Uttar Pradesh has not been even made a party. He has also referred the case of **State of Uttarakhand and Another Vs. Umakant Joshi (2012) 11 SCC 164**, in which the Hon'ble Supreme Court has held as under:-

“ 11. We have considered the respective submissions. It is not in dispute that at the time of promotion of Class-II officers including Shri R.K. Khare to Class-I posts with effect from 16.11.1989 by the Government of Uttar Pradesh, the case of respondent No.1 was not considered because of the adverse remarks recorded in his Annual Confidential Report and the

punishment imposed vide order dated 23.1.1999. Once the order of punishment was set aside, respondent No.1 became entitled to be considered for promotion to Class-I post with effect from 16.11.1989. That exercise could have been undertaken only by the Government of Uttar Pradesh and not by the State of Uttaranchal (now the State of Uttarakhand), which was formed on 9.11.2000. Therefore, the High Court of Uttarakhand, which too came into existence with effect from 9.11.2000 did not have the jurisdiction to entertain the writ petition filed by respondent No.1 for issue of a mandamus to the State Government to promote him to Class-I post with effect from 16.11.1989, more so because the issues raised in the writ petition involved examination of the legality of the decision taken by the Government of Uttar Pradesh to promote Shri R.K. Khare with effect from 16.11.1989 and other officers, who were promoted to Class-I post vide order dated 22.1.2001 with retrospective effect. It appears to us that the counsel, who appeared on behalf of the State of Uttarakhand and the Director of Industries did not draw the attention of the High Court that it was not competent to issue direction for promotion of respondent No.1 with effect from a date prior to formation of the new State, and that too, without hearing the State of Uttar Pradesh and this is the reason why the High Court did not examine the issue of its jurisdiction to entertain the prayer made by respondent No.1.

12. In view of the above, we hold that the writ petition filed by respondent No.1 in 2008 in the Uttarakhand High Court claiming retrospective promotion to Class-I post with effect from 16.11.1989 was misconceived and the High Court committed jurisdictional error by issuing direction for his promotion to the post of General Manager with effect from 16.11.1989 and for consideration of his case for promotion to the higher posts with effect from the date of promotion of his so called juniors.”

20.4 We entirely agree with the contentions of learned A.P.O. above in paragraph 20.2 and 20.3 of this order and are of the view that to consider the promotion of the petitioner from the post of Assistant Accountant to the post of Accountant w.e.f. 29.07.1992 (prior to formation of the State of Uttarakhand) in pursuant to the G.O. of the Uttar Pradesh dated 10.11.2008, is beyond the jurisdiction of the Tribunal.

20.5 The petitioner has also referred two cases of this Tribunal; claim petition No. 48/10 Bhuvnesh Chandra Vs. State of Uttarakhand and others and claim petition No. 96/10 Maya Devi Vs. State of Uttarakhand and others. We have gone through these cases and find that the facts and circumstances in the cases were entirely different and these cases are not applicable in the case at hand and of no help to the petitioner.

21. In view of analysis in the preceding paragraphs, we reach the conclusion that the seniority list of Accountants has been prepared and the promotions on the post of AAO were made in accordance with the service rules and the seniority rules (which have been mentioned in paragraph 18.1 to 18.4 of this order) by the State respondents and there is no reason for any interference by the Tribunal.
22. For the reasons stated above, the claim petition is devoid of merit and liable to be dismissed.

ORDER

The petition is hereby dismissed. No order as to costs

RAM SINGH)
VICE CHAIRMAN (J)

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

DATE: FEBRUARY 06, 2018
DEHRADUN

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