

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

Present: Hon'ble Mr. Justice U.C.Dhyani

----- Chairman

Hon'ble Mr. D.K.Kotia

-----Vice Chairman (A)

CLAIM PETITION NO. 35/DB/2014

Avdhesh Kumar s/o Late Om Prakash, presently posted as Assistant Development Officer (Co-operative), Roorkee, District Haridwar .

.....Petitioner

vs.

1. State of Uttarakhand through Secretary, Co-operative, Civil Secretariat, Dehradun.
2. Registrar, Co-operative Societies, Uttarakhand, Dehradun.
3. Additional Registrar, Co-operative Societies, Uttarakhand, Dehradun.
4. Ganga Singh Kunjwal, presently posted as Co-operative Inspector Group-2, through C/o Registrar, Co-operative Societies, Uttarakhand, Dehradun.
5. Naveen Chandra Kandpal, presently posted as Co-operative Inspector Group-2, through C/o Registrar, Co-operative Societies, Uttarakhand, Dehradun.
6. Visheshwar Prasad Nautiyal, presently posted as Co-operative Inspector Group-2, through C/o Registrar, Co-operative Societies, Uttarakhand, Dehradun.
7. Harish Kumar Dirmi, presently posted as Co-operative Inspector Group-2, through C/o Registrar, Co-operative Societies, Uttarakhand, Dehradun.
8. Shiv Singh Chauhan, presently posted as Co-operative Inspector Group-2, through C/o Registrar, Co-operative Societies, Uttarakhand, Dehradun.
9. Yudhveer Singh Kandari, presently posted as Co-operative Inspector Group-2, through C/o Registrar, Co-operative Societies, Uttarakhand, Dehradun.
10. Jagdish Prasad Thapliyal, presently posted as Co-operative Inspector Group-2, through C/o Registrar, Co-operative Societies, Uttarakhand, Dehradun.
11. L.D.Joshi, presently posted as Co-operative Inspector Group-2, through C/o Registrar, Co-operative Societies, Uttarakhand, Dehradun.
12. Bhagwan Ballabh Kothari, presently posted as Co-operative Inspector Group-2, through C/o Registrar, Co-operative Societies, Uttarakhand, Dehradun.

13. Narayan Singh Negi, presently posted as Co-operative Inspector Group-2, through C/o Registrar, Co-operative Societies, Uttarakhand, Dehradun.
14. Balwant Singh Manral, presently posted as Co-operative Inspector Group-2, through C/o Registrar, Co-operative Societies, Uttarakhand, Dehradun.
15. Subhash Chandra Gahtori, presently posted as Co-operative Inspector Group-2, through C/o Registrar, Co-operative Societies, Uttarakhand, Dehradun.
16. Beer Bhan Singh, presently posted as Co-operative Inspector Group-2, through C/o Registrar, Co-operative Societies, Uttarakhand, Dehradun.
17. Man Mohan Joshi, presently posted as Co-operative Inspector Group-2, through C/o Registrar, Co-operative Societies, Uttarakhand, Dehradun.
18. Jeevan Singh Adhikari, presently posted as Co-operative Inspector Group-2, through C/o Registrar, Co-operative Societies, Uttarakhand, Dehradun.
19. Moti Singh Chufal, presently posted as Co-operative Inspector Group-2, through C/o Registrar, Co-operative Societies, Uttarakhand, Dehradun.
20. Govind Saksena, presently posted as Co-operative Inspector Group-2, through C/o Registrar, Co-operative Societies, Uttarakhand, Dehradun.
21. Suresh Chandra Pandey, presently posted as Co-operative Inspector Group-2, through C/o Registrar, Co-operative Societies, Uttarakhand, Dehradun.
22. I.C.S. Bisht, presently posted as Co-operative Inspector Group-2, through C/o Registrar, Co-operative Societies, Uttarakhand, Dehradun.
23. Rajendra Prasad Yadav, presently posted as Co-operative Inspector Group-2, through C/o Registrar, Co-operative Societies, Uttarakhand, Dehradun.
24. Shambhu Dutta Pandey, presently posted as Co-operative Inspector Group-2, through C/o Registrar, Co-operative Societies, Uttarakhand, Dehradun.
25. Keshav Prasad Khare, presently posted as Co-operative Inspector Group-2, through C/o Registrar, Co-operative Societies, Uttarakhand, Dehradun.
26. Puran Chand Pandey, presently posted as Co-operative Inspector Group-2, through C/o Registrar, Co-operative Societies, Uttarakhand, Dehradun.
27. Mohan Ram, presently posted as Co-operative Inspector Group-2, through C/o Registrar, Co-operative Societies, Uttarakhand, Dehradun.
28. Gopal Singh Chand, presently posted as Co-operative Inspector Group-2, through C/o Registrar, Co-operative Societies, Uttarakhand, Dehradun.
29. Lakshman Singh Rawat, presently posted as Co-operative Inspector Group-2, through C/o Registrar, Co-operative Societies, Uttarakhand, Dehradun.
30. Ramesh Chandra Maithani, presently posted as Co-operative Inspector Group-2, through C/o Registrar, Co-operative Societies, Uttarakhand, Dehradun.
31. Sher Singh Negi, presently posted as Co-operative Inspector Group-2, through C/o Registrar, Co-operative Societies, Uttarakhand, Dehradun.

32. Kushal Singh Dhama, presently posted as Co-operative Inspector Group-2, through C/o Registrar, Co-operative Societies, Uttarakhand, Dehradun.
33. Devendra Chandra Joshi, presently posted as Co-operative Inspector Group-2, through C/o Registrar, Co-operative Societies, Uttarakhand, Dehradun.
34. Amar Singh Kunjwal, presently posted as Co-operative Inspector Group-2, through C/o Registrar, Co-operative Societies, Uttarakhand, Dehradun.
35. Keshav Prasad Awasthi, presently posted as Co-operative Inspector Group-2, through C/o Registrar, Co-operative Societies, Uttarakhand, Dehradun.
36. Bahadur Singh Jeena, presently posted as Co-operative Inspector Group-2, through C/o Registrar, Co-operative Societies, Uttarakhand, Dehradun.
37. Puraan Chandra Joshi, presently posted as Co-operative Inspector Group-2, through C/o Registrar, Co-operative Societies, Uttarakhand, Dehradun.
38. Yashwant Singh Bisht, presently posted as Co-operative Inspector Group-2, through C/o Registrar, Co-operative Societies, Uttarakhand, Dehradun.
39. Kundan Singh Ladwal, presently posted as Co-operative Inspector Group-2, through C/o Registrar, Co-operative Societies, Uttarakhand, Dehradun.
40. Ashok Kumar Gupta, presently posted as Co-operative Inspector Group-2, through C/o Registrar, Co-operative Societies, Uttarakhand, Dehradun.
41. Gaje Singh Kandari, presently posted as Co-operative Inspector Group-2, through C/o Registrar, Co-operative Societies, Uttarakhand, Dehradun.
42. Darban Singh Pundeer, presently posted as Co-operative Inspector Group-2, through C/o Registrar, Co-operative Societies, Uttarakhand, Dehradun.
43. Girish Chandra Dudi, presently posted as Co-operative Inspector Group-2, through C/o Registrar, Co-operative Societies, Uttarakhand, Dehradun.
44. Jal Singh Rana, presently posted as Co-operative Inspector Group-2, through C/o Registrar, Co-operative Societies, Uttarakhand, Dehradun.
45. Madan Mohan Joshi, presently posted as Co-operative Inspector Group-2, through C/o Registrar, Co-operative Societies, Uttarakhand, Dehradun.
46. Sabar Singh Negi, presently posted as Co-operative Inspector Group-2, through C/o Registrar, Co-operative Societies, Uttarakhand, Dehradun.
47. Kheem Singh, presently posted as Co-operative Inspector Group-2, through C/o Registrar, Co-operative Societies, Uttarakhand, Dehradun.
48. Suman Dutta Sharma, presently posted as Co-operative Inspector Group-2, through C/o Registrar, Co-operative Societies, Uttarakhand, Dehradun.
49. Mahendra Singh Bisht, presently posted as Co-operative Inspector Group-2, through C/o Registrar, Co-operative Societies, Uttarakhand, Dehradun.
50. Dhan Singh Kunjwal, presently posted as Co-operative Inspector Group-2, through C/o Registrar, Co-operative Societies, Uttarakhand, Dehradun.

51. Nand Kishore Garbal, presently posted as Co-operative Inspector Group-2, through C/o Registrar, Co-operative Societies, Uttarakhand, Dehradun.
52. Rajbar Singh Panwar, presently posted as Co-operative Inspector Group-2, through C/o Registrar, Co-operative Societies, Uttarakhand, Dehradun.
53. Bhuwan Chandra Chaturvedi, presently posted as Co-operative Inspector Group-2, through C/o Registrar, Co-operative Societies, Uttarakhand, Dehradun.
54. Hem Chandra Kala, presently posted as Co-operative Inspector Group-2, through C/o Registrar, Co-operative Societies, Uttarakhand, Dehradun.
55. Girdhari Singh, presently posted as Co-operative Inspector Group-2, through C/o Registrar, Co-operative Societies, Uttarakhand, Dehradun.
56. Harish Chandra Sati, presently posted as Co-operative Inspector Group-2, through C/o Registrar, Co-operative Societies, Uttarakhand, Dehradun.
57. Anis Ahamad, presently posted as Co-operative Inspector Group-2, through C/o Registrar, Co-operative Societies, Uttarakhand, Dehradun.
58. Raghunath Singh Pal, presently posted as Co-operative Inspector Group-2, through C/o Registrar, Co-operative Societies, Uttarakhand, Dehradun.
59. Vijay Singh Rawat, presently posted as Co-operative Inspector Group-2, through C/o Registrar, Co-operative Societies, Uttarakhand, Dehradun.
60. Ramesh Chandra Pant, presently posted as Co-operative Inspector Group-2, through C/o Registrar, Co-operative Societies, Uttarakhand, Dehradun.

.....Respondents.

Present: Sri Shashank Pandey, Counsel
for the petitioner.

Sarvsri U.C.Dhaundiyal &
Sri V.P.Devrani, A.P.O .
for the Respondents No. 1, 2 & 3.

JUDGMENT

DATED: MAY 22, 2018

Justice U.C.Dhyani (Oral)

By means of present claim petition, petitioner seeks following reliefs:

“ (a) Quash the seniority list dated 31st August 2013, contained as annexure No.1 to this claim petition.

- (b) Command the respondents to give the benefits of seniority to the petitioner since of the post of ADO(C)/ Cooperative Inspector Group II since the year 1995, when he was promoted on ad-hoc basis on substantive vacancies.
- (c) Command the respondents to prepare a fresh seniority list in accordance with the government Servants Seniority Rules. .
- (d) Provide to the petitioner any other relief that this Hon'ble Tribunal deems just and proper on the facts and circumstances of the case.
- (e) Provide cost of the claim petition to the petitioner."

2. Brief facts, giving rise to present claim petition, are as follows:

Petitioner, who belongs to Scheduled Tribe Community, was selected, through competitive examination, on the post of Government Cooperative Supervisor and Assistant Registrar (Administration). *Vide* letter dated 04.04.1986, he was posted at Chamoli in the pay scale of Rs.400-615/-. In the selfsame appointment letter, he was placed at Sl. No.46. Copy of the appointment letter has been enclosed with the petition as Annexure No.3. The petitioner gave his joining at Chamoli on 17.04.1986. On 21.04.1986, he was posted as Government Cooperative Supervisor at Development Block Tharali, District Chamoli. The State Government framed Statutory Rules, known as Subordinate Co-operative Service Rules, 1979 (for short, 1979 Rules), for regulating the mode of recruitment and conditions of service of Co-operative Inspectors, Group- I, II and III. According to Rule 3(a), the appointing authority of Co-operative Inspector, Group-I, is Registrar (Respondent No.2). The appointing authority of Co-operative Inspector, Group-II, is Respondent No.3. The posts of Co-operative Inspector, Group-III and Co-operative Supervisor are one and the same. Rule 3 gives inclusive definition of Co-operative Inspector, Group-III.

Rule 5 of the Rules of 1979 deals with source of recruitment and provides that 50% of the posts of Co-operative Inspector, Group-I shall be filled up by direct recruitment, and the remaining, by promotion of the Co-operative Inspector, Group-II, in consultation with

Public Service Commission. According to the pleadings, Rule 5 further provides that the recruitment of Co-operative Inspector, Group-II, shall be made by direct recruitment through Public Service Commission as well as by promotion of such Co-operative Inspector, Group-III/Co-operative Supervisor, Group-III and *Gram Sevaks*, those who have passed Intermediate examination. The promotion of the Co-operative Inspector, Group-II is to be made through Public Service Commission. Rule 6 provides that 66% posts of Co-operative Inspector, Group-II shall be filled by direct recruitment and the remaining 34% shall be filled by promotion.

Vide order dated 18.05.1997, petitioner's services, on the post of Government Co-operative Supervisor, in the pay scale of Rs.975-1660/- were confirmed w.e.f. 31.12.1988 (Annexure: A 5). In the year 1992, more than 35% posts of Co-operative Inspectors, Group-D were lying vacant in Hill Districts. Total number of such regular posts were more than 50 in the year 1995. Information sought for by the petitioner under RTI, in this respect, has been brought on record as Annexure: 5A to the claim petition.

Petitioner was promoted to the post of Co-operative Inspector, Group-II/ Assistant Development Officer, in the pay scale of Rs.1350-30-1440-40-1800 E.B. 50-2200 *vide* order dated 30.03.1995. Respondent No.3, in place of making regular promotion of the petitioner, promoted him on *ad-hoc* basis, though he was fully qualified for the post and several regular posts of Co-operative Inspector, Group-II were lying vacant. *Vide* order dated 16.05.1997, 466 Co-operative Inspectors, Group-II were directly recruited in the department. As per Rule 6 of 1979 Rules, there should have been 234 posts for promotion quota. The petitioner had a legal right to be substantively promoted on the post of Co-operative Inspector, Group-II/ ADO (C) from the same date on *Rota Quota Rule*. Since the petitioner was already discharging his duties on that post, and also since there was no seniority list prepared, the petitioner assumed that he is already senior among the newly appointed Co-operative Inspectors, Group-II/ ADO (C).

On 06.11.2000, respondent No.3 issued a final seniority list of Government Supervisors, wherein the name of the petitioner finds place at Sl. No. 153. Although it is claimed by the department that the seniority list was issued on 20.09.2000 and the objections against tentative seniority list were invited up to 31.10.2000, but, in fact, the tentative seniority list was never circulated and, therefore, there was no question of filing any objection by any of the employees on such tentative seniority list. In the final seniority list, issued by Respondent No.3, the names of such persons were placed above the petitioner, who were neither regularized on the post of Government Supervisor, nor promoted to the post of Co-operative Inspector, Group-II. When State of Uttarakhand came into being, 22 Co-operative Inspectors, Group-II, opted to work in the State of Uttarakhand. Name of petitioner finds place at Sl. No. 10 of such option-list. Petitioner was entitled for regular appointment in the year 1992, when he had completed six years of service on the post of Government Supervisor, Group-III, and regular posts of Co-operative Inspectors, Group-II were available. Instead of making regular appointment of petitioner in the year 1992, his services were regularized only on 01.07.2004 and accordingly, he was placed at Sl. No. 227 of the seniority list. Tentative seniority list dated 28.11.2006 was prepared arbitrarily, inasmuch as, there were several persons, who were junior to him, have been shown senior to the petitioner. In such seniority list, petitioner has been placed at Sl. No. 117. It has already been mentioned above that the tentative seniority list was never circulated among the employees concerned. When it was circulated, petitioner, *vide* letter dated 29.12.2006, raised objections regarding discrepancy in the tentative seniority list (Annexure: 12). The objections raised by the petitioner, were rejected *vide* order dated 24.04.2008 (Annexure: 13). A final seniority list was issued *vide* order dated 22.07.2008, wherein name of the petitioner finds place at Sl. No.140 (Annexure: A 14). Although 70 more Government Supervisors were granted regular promotions *vide* order dated 20.12.2012 and these Supervisors were regularized much after the petitioner, still their names

appeared above the petitioner in the final seniority list. In a nutshell, several persons, who were junior to the petitioners, have been shown senior to him in the final seniority list. Petitioner moved a representation against such discrepancy, but to no avail. One such representation of the petitioner, dated 13.09.2013, has been brought on record as Annexure: A 18 to the claim petition. Petitioner has, therefore, no option but to file present claim petition.

3. C.A./W.S. has been filed on behalf of Respondent No.3. In Para 4 of the C.A., it has been averred that *ad-hoc* promotion was granted to petitioner against prescribed quota reserved for Scheduled Tribes, and as such, the petitioner superseded about 91 incumbents of general category who were senior to him in substantive post of Government Supervisor cadre. It has further been averred in the C.A. that as per Clause (2) of Rule 6 of Co-operative Subordinate Service Rules, 1979, the proportion of recruitment to the post of Co-operative Inspector, Group-II shall ordinarily be so arranged that out of total number of posts in the cadre at any time, 66% posts are held by direct recruits and 34% posts are held by promotees.
4. *Vide* order dated 30.03.1995 the petitioner was promoted on *ad-hoc* basis to the post of Co-operative Inspector, Group-II. A bare perusal of the order dated 30.03.1995 apparently reveals that the said promotion was made on *ad-hoc* basis for a period of one year and most importantly, it was granted against the vacant posts of direct recruitment quota, therefore it is clear that there were no vacant posts under promotional quota in the year 1995. The concerning authorities ignored vital fact that there was no provision of promotion or promotional quota fixed for Government Supervisor to the post of Co-operative Inspector, Group-II. Further, according to 'The Uttar Pradesh Co-operative Department Group-III Subordinate Service Rules, 1977' the petitioner could have been promoted to the post of Group-III (A) as Assistant Co-operative Inspector instead of the post of Co-operative Inspector, Group-II. Even in accordance with the Rule 5 of 1979 Rules, the petitioner was not eligible for promotion to the post of Co-

operative Inspector, Group-II. Further, the petitioner has admitted that his *ad-hoc* promotion was granted due to large number of posts of Co-operative Inspector, Group-II, lying vacant at that point of time. *Vide* appointment order dated 16.05.1997, a batch of 466 persons were given appointment to the post of Co-operative Inspector, Group-II by direct recruitment through Uttar Pradesh Subordinate Service Selection Commission, Lucknow.

5. Since there was no provision for promoting a Government Supervisor to the post of Co-operative Inspector, Group-II, therefore, the aforesaid *ad-hoc* promotion of the petitioner was never regularized during the entire period of his service in U.P. Thus the petitioner continued to serve as *ad-hoc* Co-operative Inspector, Group-II and he was never regularized on the post of Co-operative Inspector, Group-II in the State of Uttar Pradesh. No Government Supervisor, who was promoted to the post of Co-operative Inspector, Group-II, in violation of Rule 5 of 1979 Rules, was ever regularized on the post of Co-operative Inspector, Group-II in the State of U.P. Again *vide* order dated 06.11.2000, the State of U.P. reviewed the final inter se seniority of Government Supervisors whereby deceased, retired or non serving Government Supervisors were excluded from the said list. In the aforesaid seniority list, name of petitioner was placed at Sl. No. 153. On 9.11.2000 when the State of Uttarakhand came into being, there were about 67 persons senior to the petitioner serving as Government Supervisors. However, the petitioner continued to work as *ad-hoc* Co-operative Inspector, Group-II. In the State of Uttarakhand, the Addl. Registrar, Co-operative Societies Uttarakhand *vide* his order dated 24.12.2001, granted *ad-hoc* promotion to 47 Government Supervisors in which 39 Government Supervisors were senior to petitioner in their feeding cadre. Moreover, 16 Co-operative Supervisors (PCU) were also granted *ad-hoc* promotion *vide* separate order dated 24.12.2001. Such *ad-hoc* promotions were granted against the vacant posts of direct recruitment. Thus, it is apparent that there was no vacant post

available against the proportional quota for promotees in the year 2001 too.

6. The State Government of Uttarakhand has framed Subordinate Service Rules, 2003, whereby promotion to the post of Co-operative Inspector, Group-II shall be made from Inspectors Group-III. Hence, subsequent to aforesaid Service Rules coming into force in the State of Uttarakhand, a Government Supervisor is now eligible for direct promotion to the post of Co-operative Inspector, Group-II. Addl. Registrar, Co-operative Societies Uttarakhand, *vide* order dated 08.02.2006 regularized the *ad-hoc* promotion of 94 Government Supervisors to the post of Co-operative Inspector, Group-II including the petitioner. Said regularization was made in accordance with the seniority of Government Supervisors after determining year wise vacancies of Co-operative Inspector, Group-II, against the promotional quota. The petitioner was regularized against the vacancy arising in the reserved quota for Scheduled Tribe. Proportion of quota between direct recruits and promotees is 50:50. The proportion of quota between promotees of various feeding cadre is in proportion to their relative strength in the State of Uttarakhand. Up to the year 2003, the 1979 Rules were applicable in the State of Uttarakhand, and therefore, up to year 2003, the prescribed quota between direct recruits and promotees was retained as 66% for direct recruits and 34% for promotees to formulate the year wise vacancy of Co-operative Inspector, Group-II.
7. When 'Uttarakhand Subordinate Service Rules, 2003' came into force and the ratio between direct recruits and promotees was revised as 50-50, year wise vacancies of Co-operative Inspector, Group-II beyond 2003 were calculated on the basis of their proportional quota of 50-50. 50% quota fixed for promotees was further divided between Government Supervisors and Co-operative Supervisors (PCU) in proportion to their relative strength in the State of Uttarakhand.

8. Petitioner being aggrieved by the interim seniority list submitted his representation dated 29.12.2006 raising objections against fixation of his seniority and claimed his seniority w.e.f. the date of his *ad-hoc* promotion to the post of Co-operative Inspector, Group-II. Said representation of the petitioner was rejected *vide* order dated 24.04.2008 on the ground, *inter alia*, that he was not regularized on the post of Co-operative Inspector, Group-II up to 01.07.2007, and as such, his seniority can only be reckoned w.e.f. 01.07.2004 when he was duly regularized on the said post.
9. It is settled principle that a person, senior in the feeding cadre, even though promoted after the promotion of a person junior to him in the feeding cadre, shall, in the cadre to which they are promoted, regain the seniority as it was in the feeding cadre. The petitioner was regularized on 01.07.2004, and therefore, he cannot be placed senior to direct recruits of 1997 batch. *Vide* order dated 09.02.2004, 27 Government Supervisors, 02 Co-operative Supervisors and 01 Farming Supervisors were granted *ad-hoc* promotion against the vacant quota of direct recruitment. *Vide* order dated 07.03.2013, 70 persons, including Government Supervisors, Co-operative Supervisors and Farming Supervisors, who were earlier promoted on *ad-hoc* basis, were also regularized on the post of Co-operative Inspector, Group-II on the basis of availability of posts against promotion quota of their respective feeding cadre. The seniority list dated 26.05.2008 was revised subsequent to regularization and promotions of Inspector, Group-II to Co-operative Inspector, Group-II and as such a tentative seniority list of Co-operative Inspector, Group-II dated 26.11.2012 was issued to invite objections. It is averred in the C.A. that the claim of petitioner is not acceptable because, (i) as per Rules there was no provision of promotion of a Government Supervisor to the post of Co-operative Inspector, Group-II at that point of time. (ii) The aforesaid promotion was granted purely on *ad-hoc* basis against the quota of direct recruitment posts, and, as such, the petitioner was not eligible to be included in the seniority list of Co-operative Inspector, Group-II unless

his *ad-hoc* promotion to the said post is regularized, which was eventually regularized w.e.f. 01.07.2004 when the post against promotion quota arose. (iii) There was no post available against the promotion quota, and, (iv) Seniority of feeding cadre cannot be altered on the promoted post.

10. Principal ground on the basis of which final seniority list dated 31.08.2013 (Annexure: A1) has been challenged by the petitioner is that the period of his *ad hoc* promotion on the post of Cooperative Inspector (Group-II)/Assistant Development Officer (Cooperative) has not been counted at the time of finalizing the seniority list. The petitioner was given *ad hoc* promotion on 30.03.1995 (Annexure: A6) and the regular promotion of the petitioner was made w.e.f. 01.07.2004 (Annexure: A-10). The contention of learned counsel for the petitioner is that the date of promotion of the petitioner has been taken as 01.07.2004 (date of regular promotion) while, he should have been given seniority from 30.03.1995 (date of *ad hoc* promotion). It is also submitted by the learned counsel for the petitioner that in 1995, the vacancies were available in promotion quota and, therefore, he is entitled for his promotion from the date of his *ad hoc* promotion on 30.03.1995 for the purpose of determining his seniority. Learned counsel for the petitioner has, therefore, argued that all those persons, who were appointed through the direct recruitment between 30.03.1995 and 01.07.2004 should have been placed below the petitioner in the final seniority list, while they have been shown above the petitioner in the final seniority list.
11. *Per contra*, it is the submission of Learned A.P.Os. that the date of substantive appointment of the petitioner on the post of Cooperative Inspector (Group-II)/Assistant Development Officer (Cooperative) is 01.07.2004 and the period of *ad hoc* promotion of the petitioner from 30.03.1995 to 30.06.2004 cannot be counted for the purpose of determining the seniority.

12. It is admitted to both the parties that the relevant rules for determination of the seniority are the Uttaranchal Government Servants Seniority Rules, 2002 (which are identical to the Uttar Pradesh Government Servants Seniority Rules, 1991). Learned A.P.O. has pointed out that where appointments are made by both promotion and direct recruitment, the seniority among these persons is determined from the date of the order of their substantive appointment according to Rule 8(1) of the Seniority Rules of 2002. Rule 8(1) of the said Rules reads as under:

“(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:

.....”

‘Substantive appointment’ has been defined under Rule 4(h) of the Seniority Rules of 2002, 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;”

13. A perusal of the above rule makes it clear that when appointments are made both by promotion and direct recruitment, the seniority is determined from the date of substantive appointment and the substantive appointment is an appointment which is not an ad hoc appointment and which has been made after selection in accordance with the Service Rules. In the light of statutory provisions in the form of Rules, we are inclined to agree with the contention of the learned A.P.O. that **the period of ad hoc promotion of the petitioner cannot be counted for the purpose of determining the seniority and only the date of substantive appointment of the petitioner which is 01.07.2004 is to be taken into account for determining his seniority.**

14. Learned A.P.Os. have also argued that according to Subordinate Cooperative Service Rules, 1979, the promotion on the post of

Cooperative Inspector (Group-II)/Assistant Development Officer (Cooperative) is made in consultation with Public Service Commission (which is admitted to the petitioner as per paragraph 4(d)(4(e) to the claim petition). Learned A.P.Os. have stated that admittedly, Uttar Pradesh Public Service Commission was not consulted for ad hoc promotion of the petitioner and, therefore, the ad hoc promotion of the petitioner was made de-hors the rules. Therefore, the same cannot be counted for determining the seniority.

15. In the decision of **Writ Petition (S/B) No. 278 of 2013, Nandan Giri vs. State of Uttarakhand and others, decided on 25.06.2015, Hon'ble High Court of Uttarakhand at Nainital**, in the similar set of facts, has held that no benefit of seniority can be given with reference to an earlier date on the basis of *ad hoc* promotion. Paragraph 18 of said judgment is relevant and 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(l) of the 1983 Rules to exclude ad hoc appointments.”

16. No rule provides that an official is entitled for promotion from the date vacancies were available in promotion quota.
17. Taking a leaf out of the judgment rendered by Hon'ble Mr. K.M. Joseph, Chief Justice, we find that the petitioner cannot derive any benefit of a claim for seniority on the basis of *ad hoc* promotion.
18. Learned counsel for the petitioner has also argued that *vide* order dated 20.10.2012 (Annexure: A15), the respondents have granted

regular promotion to 70 persons on the post of Cooperative Inspector (Group-II)/Assistant Development Officer (Cooperative) who were working on *ad hoc* basis. Though these supervisors were given regular promotion much after the petitioner, yet their names appear above the petitioner in the final seniority list. Learned A.P.Os. have refuted such an argument and stated that the petitioner belongs to Scheduled Tribe category and he was promoted on the post of Cooperative Inspector (Group-II)/Assistant Development Officer (Cooperative) on 01.07.2004 under reservation quota. Above mentioned 70 persons belong to general category and at that time, there were no vacancies for promotion in general quota. Since vacancies in general quota were available only in 2012, therefore, these 70 persons were promoted later on, in 2012 when vacancies were available in general quota. The contention of learned A.P.O. is that, according to Rule 6 (and its explanation) of the Seniority Rules of 2002, an employee, senior in the feeding cadre, who is promoted after the promotion of a person junior to him *regains the seniority* as it was in the feeding cadre. Such rule is reproduced herein below for convenience:

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

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

19. After perusing the record and the rule position stated herein above, we again agree with the argument of learned A.P.Os. that the persons, who were given regular promotion in 2012, have rightly been shown above the petitioner in the final seniority list. Admittedly, the petitioner belongs to the reserved category. The petitioner was promoted on regular basis on the post of Cooperative Inspector (Group-II)/Assistant Development Officer (Cooperative) on 01.07.2004. Thus, the petitioner got accelerated promotion under reservation quota. It may be noted here that admittedly, the feeding cadre for promotion to

the post of Cooperative Inspector (Group-II)/Assistant Development Officer (Cooperative) is 'Government Supervisor'. It is also admitted that the petitioner was junior compared to the persons who got regular promotion in 2012 in the feeding cadre of 'Government Supervisor'. Though the petitioner got the accelerated promotion but he did not get consequential seniority, as, admittedly, there is no provision for the same in the State of Uttarakhand [*Bhajan Singh vs. State of Uttarakhand & others, 2012 (2) U.D. 284 & W.P. (S/B) No. 566 of 2017 Bali Ram Chaudhary vs. State of Uttarakhand, decided by Hon'ble High Court of Uttarakhand on 06.12.2017*]. Other persons who were promoted in 2012, belong to general category and they could be promoted after the promotion of the petitioner subsequently on 20.10.2012 (Annexure: A5) when the vacancies under general quota occurred. Due to catch up principle, provided in explanation to Rule 6 of the Seniority Rules of 2002, these persons of general category regain their seniority as it was in the feeding cadre of 'Government Supervisor' and, therefore, they have rightly been placed above the petitioner in the final seniority list. Thus, *inter-se* seniority between the petitioner and other 70 persons (who were promoted after promotion of the petitioner) has been determined in accordance with Rules.

20. Admittedly, Government of Uttarakhand has never provided for consequential seniority to the reserved category employees as a result of accelerated promotion based on roster point by any rules/policy. **Hon'ble Apex Court in Civil Appeal No. 6631-6632 of 2015 (arising out of SLP (Civil) Nos. 8366-8367 of 2012), S. Panneer Selvam & Ors Vs. Government of Tamil Nadu & Ors along with other Appeals, decided on 27.08.2015, has held as under:**

"35. In the absence of any provision for consequential seniority in the rules, the 'catch up rule' will be applicable and the roster-point reserved category promotees cannot count their seniority in the promoted category from the date of their promotion and the senior general candidates if later reach the promotional level, general candidates will regain their seniority. The Division Bench appears to have proceeded on an erroneous footing that Article 16 (4A) of the Constitution of India automatically gives the consequential seniority in addition to

accelerated promotion to the roster-point promotees and the judgment of the Division Bench cannot be sustained.”

21. Ld. A.P.Os. have further submitted that this Tribunal has no territorial jurisdiction to decide the claim petition, inasmuch as the petitioner is claiming seniority since the year 1995, which can only be granted by State of U.P., in view of the decision rendered by Hon’ble Supreme Court in *State of Uttarakhand and another vs. Umakant Joshi, 2012(1) UD 583*, and subsequent judgment delivered by Hon’ble High Court of Uttarakhand in *Dr. Kamaljeet Singh, and another vs. State of Uttarakhand and others, 2018(1) UD, 337*, which is based on Umakant Joshi’s decision. Since we have decided the claim petition on merits, therefore, we do not feel it necessary to enter into this aspect of the case.
22. For the reasons stated in Paragraphs 12 to 20 above, the claim petition is devoid of merit and the same is liable to be dismissed.
23. The claim petition, therefore, fails and is dismissed. No order as to costs.

D.K.KOTIA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: MAY 22, 2018
DEHRADUN

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