

**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. 40/DB/2017

Ajai Pal Singh, Assistant Engineer, Uttarakhand Jal Sansthan, Maintenance Division-Dehradun, District-Dehradun (Uttarakhand).

.....Petitioner

Vs.

1. State of Uttarakhand through its Principal Secretary (Peyjal), Government of Uttarakhand, Dehradun.
2. The Chief General Manager, Uttarakhand Jal Sansthan, B-Block, Jal Bhawan, Nehru Colony, District- Dehradun (Uttarakhand).
3. Shri Priya Darshan Singh Rawat, In-Charge Executive Engineer, Uttarakhand Jal Sansthan, Purola, Uttarkashi.
4. Shri Tarun Sharma, In-Charge Executive Engineer, Uttarakhand Jal Sansthan, Udham Singh Nagar.
5. Shri Suresh Thakur, In-Charge Executive Engineer, Uttarakhand Jal Sansthan, Ranikhet, District Almora.
6. Shri Ajai Kumar, In-Charge Executive Engineer, Uttarakhand Jal Sansthan, Jagjitpur, Haridwar.
7. Shri Ashish Bhatt, In-Charge Executive Engineer, Uttarakhand Jal Sansthan, Dev Prayag.
8. Shri Nand Kishore, In-Charge Executive Engineer, Uttarakhand Jal Sansthan, Bageshwar.
9. Shri Santosh Kumar Upadhyay, In-Charge Executive Engineer, Uttarakhand Jal Sansthan, Haldwani.
10. Shri Sushil Kumar Saini, In-Charge Executive Engineer, Uttarakhand Jal Sansthan, Mussoorie.
11. Shri Praveen Kumar, In-Charge Executive Engineer, Uttarakhand Jal Sansthan, Chamoli.

12. Shri Pramod Kumar Tyagi, In-Charge Executive Engineer, Uttarakhand Jal Sansthan, Ram Nagar, Nainital.
13. Shri Sanjai Singh, In-Charge Executive Engineer, Uttarakhand Jal Sansthan, Rudraprayag.
14. Shri Abhishek Kumar Verma, In-Charge Executive Engineer, Uttarakhand Jal Sansthan, Ghansali, Tehri.
15. Shri Manish Semwal, In-Charge Executive Engineer, Uttarakhand Jal Sansthan, Dehradun (South).
16. Shri Naresh Pal Singh, In-charge Executive Engineer, Uttarakhand Jal Sansthan, Haridwar.
17. Shri Mukesh Kumar, In-Charge Executive Engineer, Uttarakhand Jal Sansthan, Karn Prayag.
18. Shri Abbal Singh Panwar, Assistant Engineer, Uttarakhand Jal Sansthan, Uttarkashi, through Chief General Manager, Uttarakhand Jal Sansthan, B-Block, Jal Bhawan, Nehru Colony, Dehradun.
19. Shri Sunil Tiwari, In-Charge Executive Engineer, Uttarakhand Jal Sansthan, Nainital.
20. Shri Vinod Chandra Ramola, In-Charge Executive Engineer, Uttarakhand Jal Sansthan, Raipur, Dehradun.
21. Shri Vishal Kumar, In-Charge Executive Engineer, Uttarakhand Jal Sansthan, Pithoragarh.
22. Shri Namit Ramola, In-Charge Executive Engineer, Uttarakhand Jal Sansthan, Pitthuwala, Dehradun.
23. Shri Om Prakash Bahuguna, In-Charge Executive Engineer, Uttarakhand Jal Sansthan, Kotdwar, District Pauri Garhwal.
24. Shri Baldev Singh, In-Charge Executive Engineer, Uttarakhand Jal Sansthan, Pitthuwala, Dehradun.
25. Shri Satish Chandra Nautiyal, In-Charge Executive Engineer, Uttarakhand Jal Sansthan, Tehri.
26. Shri Satendra Kumar Gupta, In-Charge Executive Engineer, Uttarakhand Jal Sansthan, Pauri, District- Pauri Garhwal.
27. Shri Rajiv Saini, In-Charge Executive Engineer, Uttarakhand Jal Sansthan, Lalkuan, Nainital.
28. Shri Laxmi Chandra Ramola, In-Charge Executive Engineer, Uttarakhand Jal Sansthan, Kotdwar.
29. Shri Yashveer Mall, In-Charge Executive Engineer, Uttarakhand Jal Sansthan, Dehradun (South), Dehradun.

30. Shri Ashok Kumar, In-Charge Executive Engineer, Uttarakhand Jal Sansthan, Champawat, District-Champawat.
31. Shri Bilal Yunus, In-Charge Executive Engineer, Uttarakhand Jal Sansthan, Didihat, Pithoragarh.
32. Shri Manoj Kumar Tamta, Assistant Engineer, Uttarakhand Jal Sansthan, Rudrapur, Udham Singh Nagar, through Chief General Manager, Uttarakhand Jal Sansthan, B-Block, Jal Bhawan, Nehru Colony, Dehradun.
33. Shri Ravi Shankar Loshali, Assistant Engineer, Uttarakhand Jal Sansthan, Haldwani, through Chief General Manager, Uttarakhand Jal Sansthan, B-Block, Jal Bhawan, Nehru Colony, Dehradun.
34. Shri Rajendra Pal, Assistant Engineer, Uttarakhand Jal Sansthan, New Tehri, through Chief General Manager, Uttarakhand Jal Sansthan, B-Block, Jal Bhawan, Nehru Colony, Dehradun.
35. Shri Pradeep Singh Kunwar, Assistant Engineer, Uttarakhand Jal Sansthan, Mussoorie, through Chief General Manager, Uttarakhand Jal Sansthan, B-Block, Jal Bhawan, Nehru Colony, Dehradun.
36. Shri Awadhesh Kumar, Assistant Engineer, Uttarakhand Jal Sansthan, Ranikhet, Almora, through Chief General Manager, Uttarakhand Jal Sansthan, B-Block, Jal Bhawan, Nehru Colony, Dehradun.
37. Km. Monika Verma, Assistant Engineer, Uttarakhand Jal Sansthan, Pitthuwala, Dehradun, through Chief General Manager, Uttarakhand Jal Sansthan, B-Block, Jal Bhawan, Nehru Colony, Dehradun.
38. Shri Premji Srivastava, Assistant Engineer, Uttarakhand Jal Sansthan, Champawat.
39. Shri Kailash Chandra Painuli, Assistant Engineer, Uttarakhand Jal Sansthan, New Tehri, through Chief General Manager, Uttarakhand Jal Sansthan, B-Block, Jal Bhawan, Nehru Colony, Dehradun.
40. Shri R.K.Verma, In-Charge Executive Engineer, Uttarakhand Jal Sansthan, Champawat.
41. Shri J.P.Singh, Assistant Engineer, Uttarakhand Jal Sansthan, Ram Nagar, District Nainital.
42. Shri Virendra Singh, Assistant Engineer, Uttarakhand Jal Sansthan, Uttarkashi.
43. Shri B.C.Pal, Assistant Engineer, Uttarakhand Jal Sansthan, Nainital.
44. Shri H.C. Pal, Assistant Engineer, Uttarakhand Jal Sansthan, Udham Singh Nagar.
45. Shri Rajendra Pd. Mamgain, Assistant Engineer, Uttarakhand Jal Sansthan, Central Store, Dehradun.
46. Shri Ramendra Kumar Srivastava, Assistant Engineer, Uttarakhand Jal Sansthan, Lalkuan, Nainital.

47. Shri Rajesh Kumar Nirval, Assistant Engineer, Uttarakhand Jal Sansthan, Haridwar.
48. Shri Amit Kumar, Assistant Engineer, Uttarakhand Jal Sansthan, Rudraprayag.
49. Shri Shiv Kumar Rai, Assistant Engineer, Uttarakhand Jal Sansthan, Kotdwar.
50. Shri Vipin Kumar, Assistant Engineer, Uttarakhand Jal Sansthan, Karn Prayag.
51. Shri Madan Sain Verma, Assistant Engineer, Uttarakhand Jal Sansthan, Haridwar.
52. Shri Anish M. Pillai, Assistant Engineer, Uttarakhand Jal Sansthan, Rudra Prayag.
53. Shri Sanjai Kumar Srivastava, Assistant Engineer, Uttarakhand Jal Sansthan, Maintenance Division, Vikas Nagar, Dehradun.
54. Shri Sandeep Chaturvedi, Assistant Engineer, Uttarakhand Jal Sansthan, Lalkuan, Nainital.
55. Shri Vinod Kumar Srivastava, Assistant Engineer, Uttarakhand Jal Sansthan, Lalkuan, Nainital.
56. Shri Prashant Bharadwaj, Assistant Engineer, Uttarakhand Jal Sansthan, Haridwar.
57. Shri Shishu Pal Singh, Assistant Engineer, Uttarakhand Jal Sansthan, Ram Nagar, Nainital.
58. Shri Neeraj Tiwari, Assistant Engineer, Uttarakhand Jal Sansthan, Ranikhet.
59. Shri Rahesh Kumar, Assistant Engineer, Uttarakhand Jal Sansthan, Haridwar (Ganga).
60. Shri Manoj Kumar Gangwar, Assistant Engineer, Uttarakhand Jal Sansthan, Ram Nagar, Nainital.
61. Shri Arun Kumar, Assistant Engineer, Uttarakhand Jal Sansthan, Maintenance Division, Dehradun.
62. Shri Vinesh Kumar, Assistant Engineer, Uttarakhand Jal Sansthan, Maintenance Division, Dehradun.
63. Shri Ramaa Shankar, Assistant Engineer, Uttarakhand Jal Sansthan, Haldwani, Nainital.
64. Shushri Nisha Gautam, Assistant Engineer, Uttarakhand Jal Sansthan, Dehradun (Uttar), District-Dehradun.
65. Shri Satyawan Singh Rawat, Assistant Engineer, Uttarakhand Jal Sansthan, Didihat, Pithoragarh.
66. Shri Ramesh Garbyal, Assistant Engineer, Uttarakhand Jal Sansthan, Didihat, Pithoragarh.

67. Shri Bali Ram Chaudhary, Assistant Engineer, Uttarakhand Jal Sansthan, Kotdwar.
68. Shri Vinod Pande, Assistant Engineer, Uttarakhand Jal Sansthan, Maintenance Division, Dehradun.
69. Shri Harish Kumar Bansal, Assistant Engineer, Uttarakhand Jal Sansthan, Rishikesh Ganga.
70. Shri Lokendra Singh Kumai, Assistant Engineer, Uttarakhand Jal Sansthan, Uttarkashi.
71. Shri Bhupendra Singh, Assistant Engineer, Uttarakhand Jal Sansthan, Pitthuwala, Dehradun.
72. Shri Rakesh Kumar Verma, Assistant Engineer, Uttarakhand Jal Sansthan, Kotdwar, District-Pauri Garhwal.
73. Shri Subhash Chandra Juyal, Assistant Engineer, Uttarakhand Jal Sansthan, Dehradun Uttar, Dehradun.
74. Shri Sunil Bisht, Assistant Engineer, Uttarakhand Jal Sansthan, Paudi.
75. Shri Girish Chandra Bhatt, Assistant Engineer, Uttarakhand Jal Sansthan, Dev Prayag.
76. Shri Anand Mohan Kansal, Assistant Engineer, Uttarakhand Jal Sansthan, Dehradun Uttar, Dehradun.
77. Shri Arun Vikram Singh, Assistant Engineer, Uttarakhand Jal Sansthan, Maintenance Division, Rishikesh, Dehradun.
78. Shri Vineet Rawat, Assistant Engineer, Uttarakhand Jal Sansthan, Dehradun Uttar, Dehradun.
79. Shri Shyam Singh Rawat, Assistant Engineer, Uttarakhand Jal Sansthan, Uttarkashi.
80. Shri Bansi Dhar Bhatt, Assistant Engineer, Uttarakhand Jal Sansthan, Ranikhet.
81. Shri Trepan Singh Rawat, Assistant Engineer, Uttarakhand Jal Sansthan, Mussoorie.
82. Shri Chandan Singh Devri, Assistant Engineer, Uttarakhand Jal Sansthan, Almora.
83. Shri Ravi Prakash Dobhal, Assistant Engineer, Uttarakhand Jal Sansthan, Haldwani, Nainital.
84. Shri Daleep Singh Bisht, Assistant Engineer, Uttarakhand Jal Sansthan, Nainital.
85. Shri Mukesh Kumar, Assistant Engineer, Uttarakhand Jal Sansthan, Haldwani, Nainital.

86. Shri Rajesh Kumar, Assistant Engineer, Uttarakhand Jal Sansthan, Haridwar (Ganga), Haridwar.
87. Shri Lalit Mohan Pande, Assistant Engineer, Uttarakhand Jal Sansthan, Haldwani, Nainital.
88. Shri Sanjai Kumar, Assistant Engineer, Uttarakhand Jal Sansthan, Haridwar.
89. Shri Badre Alam, Assistant Engineer, Uttarakhand Jal Sansthan, Udham Singh Nagar.
90. Shri Abdul Rasheed, Assistant Engineer, Uttarakhand Jal Sansthan, Haridwar (Ganga), Haridwar.

.....Respondents

Present: Sri L.K.Verma, Ld. Counsel
for the petitioner
Sri V.P.Devrani, Ld. A.P.O.
for the respondent No. 1
Sri B.B.Naithani, Ld. Counsel
for the respondent No. 2

JUDGMENT

DATE: JUNE 29, 2018

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

1. The petitioner has filed the present claim petition for seeking the following relief:

"1). Issue a writ, order or direction in the nature of certiorari by quashing the impugned seniority list dated 6th July 2017 contained as Annexure-A 5 (Colly).

2). Issue a writ, order or direction in the nature of mandamus directing the Respondents to prepare and issue a fresh seniority list and the petitioner's name be defigured at appropriate serial number in the list by counting his seniority on the basis of his substantive appointment as Junior Engineer dated 3.7.1986 by counting his officiating appointment as Assistant Engineer since 1.10.2007 in continuation to his regular promotion on the post of Assistant Engineer dated 9.4.2013.

3). Issue a writ, order or direction in the nature of mandamus directing the Official Respondents No. 1 & 2 to

hold the DPC & consider the case of the petitioner for regular promotion to the post of Executive Engineer taking into consideration of his continuous officiation on the post of Assistant Engineer for about 9 years & 10 months since 1.10.2007 to regular promotion i.e. 09.04.2013 to till date.

4). Issue any other order or direction which this Hon'ble Tribunal may deem fit and proper under the facts and circumstances of the case.

5). Award the cost of the petition in favour of the petitioner."

2. At the time of hearing, counsel for the petitioner has submitted that the petitioner is not pressing the relief No. 3 stated in paragraph 1 above.

3.1 The petitioner was initially appointed as Junior Engineer on *ad hoc* basis on 03.07.1986 through the Directorate of Local Bodies of Uttar Pradesh and posted at Garhwal Jal Sansthan, district Dehradun. After the creation of the State of Uttarakhand, Kumaon Jal Sansthan and Garhwal Jal Sansthan were merged in Uttarakhand Jal Sansthan and the petitioner became an employee of Uttarakhand Jal Sansthan.

3.2 The petitioner was made In-charge Assistant Engineer on 01.10.2007 (Annexure: A2).

3.3 The petitioner was given regular promotion on the post of Assistant Engineer along with 15 others on the basis of the recommendation of the Departmental Selection Committee by the order of the Governor (signed by the Principal Secretary) under the Uttarakhand Jal Sansthan Engineering Service Rules, 2011 on 09.04.2013 (Annexure: A3).

3.4 Thereafter, the respondent No. 1 (the Government of Uttarakhand) issued a tentative seniority list of Assistant Engineers on 25.04.2015 and invited objections on tentative seniority list before finalizing the seniority list. As many as 37 objections were received

(including the objections raised by the petitioner) and after considering the objections, the respondent No. 1 issued the final seniority list of Assistant Engineers on 06.07.2017 (Annexure: A5). There are in all 117 Assistant Engineers in the seniority list and the petitioner has been placed at serial number 66 in this list. In the column showing the date of substantive appointment on the post of Assistant Engineer, the date of 09.04.2013 has been shown as the date of substantive appointment of the petitioner in the final seniority list.

4. According to the petitioner, the question involved in the claim petition is thus:-

Whether the period of officiating promotion of the petitioner as Assistant Engineer will be counted for the purpose of determining the seniority of Assistant Engineers.

5. After going through the record (claim petition, written statements and rejoinder) and after hearing learned counsel for the petitioner, learned counsel on behalf of respondent No. 2, the Uttarakhand Jal Sansthan and learned A.P.O. for the respondent No. 1, the Government of Uttarakhand, hereinafter, we have discussed the issue raised by the petitioner as mentioned in the preceding paragraph. In spite of sufficient service, none has responded on behalf of private respondents Nos. 3 to 90.

6. Learned counsel for the petitioner has argued that the petitioner was given officiating promotion on the post of Assistant Engineer on 01.10.2007 and he was given regular/substantive promotion as Assistant Engineer on 09.04.2013. The contention of the petitioner is that in view of the judgments of the Hon'ble Supreme Court and the Hon'ble High Court at Nainital, his period of service as officiating Assistant Engineer from 01.10.2007 to 09.04.2013 should have been counted for the purpose of determining the seniority as he has rendered the service as officiating Assistant Engineer uninterruptedly till his regular promotion

on 09.04.2013. **The petitioner has specially relied on the common judgment of the Hon'ble High Court at Nainital in writ petition S/B No. 42 (and S/B No. 177) of 2007 in the matter of Shri Rakesh Kumar Uniyal.**

The case of Shri Rakesh Kumar Uniyal and other judicial pronouncements will be taken up at the later stage.

7. Learned counsel for the respondent No. 2 and learned A.P.O. for respondent No. 1 have refuted the argument of learned counsel for the petitioner and they have stated in their counter argument that the petitioner was given only a temporary charge of Assistant Engineer on 01.10.2007 as an administrative arrangement and in fact no promotion was given to the petitioner at that time. Such arrangements were made from time to time as per exigency of the administration. The petitioner is not entitled to claim benefit of temporary charge of In-charge Assistant Engineer for the purpose of determining the seniority of Assistant Engineers. The petitioner was promoted as Assistant Engineer on regular/substantive basis on 09.04.2013 and as per the Service Rules and the Seniority Rules, the petitioner has rightly been given seniority from the date of his substantive promotion on the post of Assistant engineer on 09.04.2013.

8.1 It would be appropriate at this stage to look at the rule position for determination of seniority among Assistant Engineers in Uttarakhand Jal Sansthan. It is admitted to both the parties (Petitioner as well as State respondents) that the relevant rules are the Uttarakhand Jal Sansthan Engineering Service Rules, 2011 (Annexure: A11) for short the Service Rules, 2011 and the Uttarakhand Government Servants Seniority Rules, 2002, for short the Seniority Rules, 2002 (Annexure: A22). Rule 24 of the Service Rules, 2011 provides that the seniority of the persons is to be determined as per the Seniority Rules, 2002. As the recruitment of Assistant Engineers in Uttarakhand Jal Sansthan is made both by promotion and by direct recruitment, the seniority of persons appointed shall be from the date of the order of their substantive appointments

according to Rule 8(1) of the Seniority Rules, 2002. Rule 8(1) of the Seniority Rules is reproduced below for convenience:-

“8 (1) Where according to the service rules appointments are made both by promotion and by direct recruitment, the seniority of persons appointed shall, subject to the provisions of the following sub-rules, be determined from the date of the order of their substantive appointments and if two or more persons are appointed together, in the order in which their names are arranged in the appointment order:

Provided that if the appointment order specifies a particular back date, with effect from which a person is substantively appointed, that date will be deemed to be the date of order of substantive appointment and, in other cases, it will mean the date of order :

Provided.....”

‘Substantive Appointment’ has been defined under Rule 4(h) of the Seniority Rules, 2002 as under:

“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.”

8.2 A perusal of above rules makes it clear that when appointments are made both by direct recruitment and by promotion, the seniority shall be determined from the date of the order 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. The first proviso to Rule 8(1) also states that if the appointment order specifies a particular back date of substantive appointment, that date will be deemed to be the date of order of substantive appointment and in cases where no back date is specified, the date of appointment order will be the date of substantive appointment.

8.3 In the light of relevant rules of the Seniority Rules, 2002 above, the order dated 01.10.2007 (Annexure: A2) by which the petitioner was appointed as In-charge Assistant Engineer is required to be examined. The Office Order dated 01.10.2007 is reproduced below for convenience:-

“कार्यालय अधीक्षण अभियन्ता, उत्तराखण्ड जल संस्थान
 95- राजपुर रोड, देहरादून-248001
 E.Mail:-seurban_ujs@rediffmail.com
 पत्रांक 1695/अधी.अभि. न./कार्यालय आदेश/ /2007-08 दिनांक 1-10-07

कार्यालय आदेश

दिनांक 01.10.07 को अधिशासी अभियन्ता, दक्षिण, उत्तराखण्ड जल संस्थान, देहरादून के साथ दक्षिण शाखा के अन्तर्गत धर्मपुर जोन की पेयजल व्यवस्था के सुदृढीकरण हेतु हुये गहन विचार-विमर्श के निष्कर्ष में धर्मपुर जोन हेतु सहायक अभियन्ता की तैनाती को अपरिहार्य एवं आवश्यक समझा गया है।

अतः धर्मपुर जोन के अन्तर्गत पूर्णकालिक सहायक अभियन्ता की तैनाती होने तक कार्यहित एवं पेयजल आपूर्ति हित में श्री ए.पी. सिंह, कनिष्ठ अभियन्ता जो शाखा के अन्तर्गत कनिष्ठ अभियन्ताओं में सबसे वरिष्ठ हैं को धर्मपुर जोन में प्रभारी, सहायक अभियन्ता के रूप में कार्य करने की स्वीकृति प्रदान की जाती है।

उक्त आदेश तत्काल प्रभावी होंगे।

अधीक्षण अभियन्ता
 उत्तराखण्ड जल संस्थान,
 देहरादून।”

8.4 The perusal of office order dated 01.10.2007 reveals that it is basically an order to assign the work. The petitioner who is a Junior Engineer has also been asked to work as In-charge Assistant Engineer in addition to his work as Junior Engineer. The petitioner, in fact, has been asked to discharge the duty as In-charge Assistant Engineer while holding the post of Junior Engineer. This is an administrative arrangement made by the Superintending Engineer of Dehradun. The petitioner has been asked to discharge the duty of higher post by giving the designation of “Incharge Assistant Engineer.” The petitioner has called this arrangement as “officiating promotion”. By whatever name it is called, it is admitted to both the parties that the arrangement vide order dated 01.10.2007 is not a “substantive appointment.” Admittedly, the substantive appointment of the petitioner was made vide order dated 09.04.2013.

8.5 In the case of **Gopal Singh Gusain vs. State of Uttarakhand and others, Writ Petition No. 1037 of 2008 (S/S) decided on 31.07.2012, the Hon’ble High Court at Nainital quoting the judgment by the Hon’ble**

Supreme Court in the case of Rudra Kumar Sain and others vs. Union of India and others 2000(8) SCC 25 has held that in the light of the said decision of the Apex Court, the stop gap arrangement and *ad hoc* arrangement is one and the same. The relevant part of the Hon'ble Supreme Court in Rudra Kumar Sain (*Supra*) is as under:-

“16. The three terms “ad hoc” “stop gap” and “fortuitous” are in the frequent use in service jurisprudence.....

17.....

18.....

*19. The meaning to be assigned to these terms while interpreting provisions of a Service Rule will depend on the provisions of that Rule and the context in and the purpose for which the expressions are used. The meaning of any of these terms in the context of computation of inter-se seniority of officers holding cadre post will depend on the facts and circumstances in which the appointment came to be made. For that purpose it will be necessary to look into the purpose for which the post was created and the nature of the appointment of the officer as stated in the appointment order. If the appointment order itself indicates that the post is created to meet a particular temporary contingency and for a period specified in the order, then the appointment to such a post can be aptly described as *ad hoc* or stop-gap. If a post is created to meet a situation which has suddenly arisen on account of happening of some event of a temporary nature then the appointment of such a post can aptly be described as fortuitous in nature. If an appointment is made to meet the contingency arising on account of delay in completing the process of regular recruitment to the post due to any reason and it is not possible to leave the post vacant till then, and to meet this contingency an appointment is made then it can appropriately be called as a stop-gap arrangement and appointment in the post as *ad hoc* appointment. It is not possible to lay down any straight-jacket formula nor give an exhaustive list of circumstances and situation in which such an appointment (*ad hoc*, fortuitous or stop-gap) can be made. As such, this discussion is not intended to enumerate the circumstances or situations in which appointments of officers can be said to come within the scope of any of these terms. It is only to indicate how the matter should be approached while dealing with the question of inter-se seniority of officers in the cadre.”*

In the case at hand as per the description in paragraphs 8.1 and 8.4 above, the nature of “officiating promotion” of the petitioner on 01.10.2007 to work as In-charge Assistant Engineer in our view is an *ad hoc* appointment as a stop gap arrangement.

8.6 It needs to be examined whether the arrangement, made vide order dated 01.10.2007 (which has been reproduced in paragraph 8.3 of this order) by giving the designation of In-Charge Assistant Engineer to the petitioner, is in accordance with the Service Rules or not. It is admitted by the petitioner (para 4.5 of the claim petition) that before the Service Rules of 2011, the Uttar Pradesh Palika and Jal Sansthan Water Works Engineering (Centralized) Service Rules 1996 (adopted by the State of Uttarakhand in 2002) were applicable for recruitment /promotion of Assistant Engineer in Uttarakhand Jal Sansthan till 02.12.2011 when the Service Rules, 2011 came into force. **While according to the Service Rules of 1996, the appointing authority of the Assistant Engineer is the State Government, the petitioner was given the assignment of In-charge Assistant Engineer by the Superintending Engineer. Thus, the petitioner was not given the officiating promotion by the competent authority. Rule 21 of the Service Rules, 1996 prescribes conditions regarding Selection Committee, criterion, eligibility, zone of consideration, suitability etc. for promotion from the post of Junior Engineer to the post of Assistant Engineer. The petitioner has not been made In-charge Assistant Engineer in accordance with Rule 21 of the Service Rules, 1996. In fact, no provision of Rule 21 was followed when the petitioner was made In-charge A.E.** Uttarakhand Jal Sansthan made regular promotion from the post of Junior Engineer to the post of Assistant Engineer under the Service Rules, 1996 read with Rule-6 of “उत्तराखण्ड लोक सेवा आयोग (कृत्यों का परिसीमन) विनियम, 2003” in consultation with the Public Service Commission and vide Office Memorandum dated 11.03.2011, the promotion order was issued by the Principal Secretary, Department of Peya Jal, Government of Uttarakhand in respect of 26 persons for the selection year 2010-2011. Undisputedly, the petitioner was made In-charge Assistant Engineer without consulting the Public Service Commission. **We are, therefore, of clear view that the petitioner’s “officiating promotion” on the post of Assistant Engineer is de hors the Service Rules and it is on “ad hoc” basis by way of “stop gap” arrangement.**

8.7 It is also an accepted canon of service jurisprudence that the seniority of a person must be reckoned from the date he becomes a “member of the service.” The Rule 2(3) of the Service Rules of 1996 defines “member of service” as under:-

“सेवा के सदस्य का तात्पर्य इस नियमावली के अधीन केन्द्रीयित सेवा के संवर्ग में किसी पद के प्रति आमेलित या नियुक्त व्यक्ति से है।”

As is clear from the description in paragraph 8.6 above, the petitioner was not made In-charge Assistant Engineer on 01.10.2007 in accordance with the Service Rules. The “officiating promotion” of the petitioner was on “ad hoc” basis by way of “stop gap” arrangement. The petitioner became “member of the service” in Assistant Engineer cadre on 09.04.2013 when he was promoted in accordance with the Service Rules. It is well settled that seniority in service is counted only when a person becomes a “member of service” after his appointment in accordance with the Service Rules. From 01.10.2007 to 09.04.2013, the petitioner’s *ad hoc* promotion as stop gap arrangement was de hors the rules and since he was not a member of the service in Assistant Engineer cadre during this period, the same cannot be counted for determining his seniority in Assistant Engineer cadre.

8.8 The petitioner has contended that there were vacancies available and he was made In-charge Assistant Engineer on substantive post on 01.10.2007. He was fully eligible and suitable for promotion on that date and, therefore, he is entitled to get seniority from 01.10.2007. We do not find any force in this argument of learned counsel for the petitioner. No rule provides that a person is entitled for promotion from the date vacancies were available in promotion quota. It would also be pertinent to look at second proviso to Rule 8(3) of the Seniority Rules of 2002 which reads as under:

“Provided that--

(i).....

(ii) where appointments from any source fall short of the prescribed quota and appointment against such unfilled vacancies are made in

subsequent year or years, the persons so appointed shall not get seniority of any earlier year but shall get the seniority of the year in which their appointments are made, so however, that their names shall be placed at the top followed by the names, in the cyclic order of the other appointees;

(iii).....”

It is clear from the second proviso to Rule 8(3) of the Seniority Rules of 2002 above that the seniority cannot be given from an earlier year when the promotions are made against unfilled vacancies in any subsequent year. **The issue whether a person has right to claim seniority when the vacancy arose or whether his seniority will be reckoned from the date of substantive appointment was considered by the Hon’ble Supreme Court in State of Uttarakhand and Another vs. Dinesh Kumar Sharma (2007) 1 SCC 683 where the set of rules were similar to the rules in the present case and the Apex Court in its judgment held that a person cannot claim seniority on promotion from the date of occurrence of the vacancy.**

8.9 The first proviso to Rule 8(1) of the Seniority Rules, 2002 provides that if the appointment order specifies a particular back date of substantive appointment, that date will be deemed to be the date of order of substantive appointment and in cases where no back date is specified, the date of appointment order will be the date of substantive appointment. The first proviso to Rule 8(1) reads as under:-

“Provided that if the appointment order specifies a particular back date, with effect from which a person is substantively appointed, that date will be deemed to be the date of order of substantive appointment and, in other cases, it will mean the date of order.”

The petitioner was promoted to the post of Assistant Engineer on substantive basis vide order dated 09.04.2013. **The perusal of “Promotion Order” dated 09.04.2013 reveals that no back date is specified in the “Promotion Order” of 09.04.2013 and, therefore, according to first proviso of Rule 8(1), the date of order of appointment 09.04.2013 will be the date of the substantive**

appointment of the petitioner. Thus, the petitioner cannot claim the promotion on the post of Assistant Engineer from 01.10.2007 (the back date) for the purpose of seniority.

8.10 The Rule 8(1) of the Seniority Rules of 2002 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 4(h) of the Seniority Rules, 2002 to exclude *ad hoc* appointments and appointments which are dehors the Service Rules, and, therefore, in view of discussion in paragraphs 8.1 to 8.9 above, we reach the conclusion that the petitioner is not entitled to claim the benefit of service from 01.10.2007 (as In-charge Assistant Engineer) for reckoning the seniority. It is beyond doubt that the issue of seniority must be decided with reference to the statutory rules. We are of the view that in the light of clear and categorical rules, there cannot be a case to provide benefit of *ad hoc* service for the purpose of seniority as neither Service Rules nor Seniority Rules permit it.

9.1 Principal ground on the basis of which final seniority list dated 06.07.2017 has been challenged by the petitioner is that the period of officiating promotion (01.10.2007 to 09.04.2013) should have been counted for the purpose of determining his seniority as per the **judgment of the Division Bench of the Hon'ble High Court at Nainital in the matter of Rakesh Kumar Uniyal (writ petition S/B No. 42 of 2007, Rakesh Kumar Uniyal vs. Public Services Tribunal and others and writ petition S/B No. 177 of 2007, Uttarakhand Jal Sansthan vs. Public Services Tribunal and others) decided by a common order dated 01.08.2012.** Learned counsel for the petitioner has pointed out paragraph 9 of the said judgment which reads as under:-

"9. At the same time, the decision of the Government of Uttar Pradesh contained in the Circular of 1990 can only be treated as prospective. It could not be treated in respect of people who have already been asked to discharge duties of a superior post. It has been declared by the Hon'ble Supreme Court that in case, a person has been asked to

discharge duties of a superior post and later he is confirmed or promoted regularly in that superior post and permitted to work in that post uninterruptedly from the date of his initial appointment until the date he has been appointed permanently in the said post, the person concerned shall be entitled to count his seniority from the date he was first asked to discharge the duties of the superior post. The conclusion, therefore, would be, having regard to the facts and circumstances of the case, that the order of the Tribunal cannot be sustained. The same must go, but at the same time, Sri Uniyal will be entitled to count his seniority in the post of Assistant Engineer with effect from 5th December, 1985, inasmuch as, undisputedly he had been permitted to discharge the duties attached to the said post uninterruptedly until he was permanently promoted to the said post on 8th February, 2000.”

9.2 It would be appropriate here to narrate the case of Rakesh Kumar Uniyal in brief.

9.3 The Jal Sansthans were established at various places under the Uttar Pradesh Water Supply and Sewerage Act, 1975. Rakesh Kumar Uniyal joined as Junior Engineer on 04.05.1977 in Garhwal Jal Sansthan (after creation of the state of Uttarakhand on 09.11.2000, Garhwal and Kumaon Jal Sansthan were merged and Uttarakhand Jal Sansthan came into existence in 2002). The State Government was empowered under Section 27 A of the said Act to frame rules including the rules to prescribe the method of recruitment and conditions of service of persons appointed in Jal Sansthans. The State Government did not frame any rules until 3rd December, 1985.

9.4 On 3rd December, 1985, General Manager of the Garhwal Jal Sansthan asked Shri Uniyal to discharge the duties of Assistant Engineer by way of stop gap arrangement. In the letter, by which Shri Uniyal was asked to discharge the duties of Assistant Engineer, it was mentioned that salary of Assistant Engineer will be paid to him on the approval of the State Government. There was neither any approval, nor disapproval on the part of the Government for payment of salary of Assistant Engineer to Shri Uniyal.

9.5 In 1986, the Government of Uttar Pradesh made Rules under section 27 A of the Act of 1975. While making the said rules, no attempt was

made to address the situation, as was prevalent in the case. The said Rules did also not specifically deal with seniority questions.

9.6 **In the circumstances in 1990, the Government of Uttar Pradesh issued a circular and, thereby indicated that seniority will be counted from the date the person starts getting salary in the post, for which seniority is to be determined.**

9.7 Sri Uniyal was substantively promoted to the post of Assistant Engineer on 08.02.2000. Thereafter, a seniority list of Assistant Engineer was issued by Uttarakhand Jal Sansthan in 2005 and his seniority as Assistant Engineer was fixed from 08.02.2000 i.e. the date of his substantive appointment on the post of Assistant Engineer.

9.8 Shri Uniyal approached the Tribunal for his claim for (i) seniority from 05.12.1985 and (ii) salary of Assistant Engineer from 5.12.1985 to 08.02.2000. The Tribunal though allowed salary to Shri Uniyal but rejected his claim for counting his service from 05.12.1985 for seniority purpose because the said circular of 1990 was issued after 05.12.1985 when he started discharging the duty of a superior post of A.E.

9.9. **The Hon'ble High Court vide its judgment dated 01.08.2012 did not allow the claim of Shri Uniyal for salary. Further, the Hon'ble High Court held that the circular of 1990 can be treated as prospective and it could not be applied to the persons who had already been asked to discharge duties of a superior post and the Hon'ble High Court allowed the seniority to Shri Uniyal from 05.12.1985. Observing this, the Hon'ble High Court held that *"It has been declared by the Hon'ble Supreme Court that in case, a person has been asked to discharge duties of a superior post and later he is confirmed or promoted regularly in that superior post and permitted to work in that post uninterruptedly from the date of his initial appointment until the date he has been appointed permanently in the said post, the person concerned shall be entitled to count his seniority from the date he was first asked to discharge the duties of the superior post."***

10. **Hon'ble High Court at Nainital discussed the case of Rakesh Kumar Uniyal in the case of Nandan Giri vs. State of Uttarakhand and others in writ petition S/B No. 278 of 2013 and two other connected cases and the Division Bench of the Hon'ble High Court in paragraph 21 and 22 of the judgment dated 25.06.2015 held as under:**

*“21. Then, we pass on the consideration of a Bench decision of this Court in Writ Petition (S/B) No. 42 of 2007 (Rakesh Kumar Uniyal versus Public Service Tribunal and others), decided on 01.08.2012. That is a case, no doubt, where the Tribunal has granted the relief of seniority with reference to an earlier date of ad hoc appointment. That was challenged by the employer. Salary however, payable for higher post was not given. That was challenged by the employee. Both petitions came to be decided by a common judgment. **There was, in fact, a circular involved in that case, which provided for seniority to be determined with reference to the date on which the higher pay was enjoyed by the employee but we must acknowledge that in Paragraph 9, which incidentally has been relied on by the Tribunal, it has been held as follows :-***

“9. At the same time, the decision of the Government of Uttar Pradesh contained in the Circular of 1990 can only be treated as prospective. It could not be treated in respect of people who have already been asked to discharge duties of a superior post. It has been declared by the Hon'ble Supreme Court that in case, a person has been asked to discharge duties of a superior post and later he is confirmed or promoted regularly in that superior post and permitted to work in that post uninterruptedly from the date of his initial appointment until the date he has been appointed permanently in the said post, the person concerned shall be entitled to count his seniority from the date he was first asked to discharge the duties of the superior post. The conclusion, therefore, would be, having regard to the facts and circumstances of the case, that the order of the Tribunal cannot be sustained. The same must go, but at the same time, Sri Uniyal will be entitled to count his seniority in the post of Assistant Engineer with effect from 5th December, 1985, inasmuch as, undisputedly he had been permitted to discharge the duties attached to the said post uninterruptedly until he was permanently promoted to the said post on 8th February, 2000.”

Here we must notice that the Court has proceeded to specifically refer to a circular as applicable to the facts of the case. It is also found that there is no statutory rule, which governs the situation. It is, thereafter, that the Court proceeded to hold what it has held in paragraph 9 above.

22. There is no reference to any particular judgment of the Apex Court as such. We have noticed that the question of seniority must be determined with reference to the specific rules applicable to any service. There cannot be a general principle de hors the rules."

11. In view of description in paragraphs 9 and 10 above, the case of Rakesh Kumar Uniyal is of no help to the petitioner. Hon'ble High Court at Nainital decided the case of Rakesh Kumar Uniyal on the basis of the fact that no statutory rules were in existence to govern the situation in 1985 and, therefore, Hon'ble High Court decided the matter of Rakesh Kumar Uniyal for counting the seniority from the date (05.12.1985) he was asked to discharge the duties of the superior post on the basis of general principles. In the case at hand, when the petitioner was asked to discharge the duties of the superior post, the Service Rules as well as Seniority Rules (as described in paragraph 8 of this order) were there to govern the situation and according to rule position, the petitioner cannot claim counting of his seniority for his officiating promotion from 01.10.2007 to 09.04.2013. The question of seniority must be determined with reference to the statutory rules and there cannot be a general principle de hors the rules. The case of Rakesh Kumar Uniyal is, therefore, clearly distinguishable from the present case because of the following reasons:-

- (i) There were no service/seniority rules available on 03.12.1985 when Shri Uniyal was asked to discharge the duty of a superior post.
- (ii) The rules which were framed in 1986 did not deal with the issue of seniority.
- (iii) While the circular of 1990 which prescribed the seniority from the date the person gets salary of the superior post was prospective, Shri Uniyal was asked to discharge duty of a superior post on 03.12.1985.
- (iv) Since there were no rules/circular for determining the seniority, the Hon'ble High Court decided the matter on the basis of general principle of the seniority.

12. In the case of **Nandan Giri vs. State of Uttarakhand and others (supra)**, the **Hon'ble High Court at Nainital** in the similar set of Rules (as in the present case) has also held that no benefit for seniority can be given with reference to an earlier date on the basis of the ad hoc promotion. The paragraph 18 of the said judgment reads as under:

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

13. Learned counsel for the respondents has also submitted that admittedly, the petitioner accepted the substantive promotion given to him on 09.04.2013. Admittedly, the order of promotions dated 09.04.2013 was not challenged. Nor there is any challenge to either the Service Rules or the Seniority Rules. Hon'ble High Court at Nainital, in the case of Nandan Giri (supra) where the facts, circumstances and the sets of Rules were similar to the present case in hand, has also observed as under:-

“We may incidentally also notice that the applicants did not even challenge the orders of promotions to the extent that they were not given retrospective dates in terms of the rules applicable and accepting the date 27.08.2010, as the date of substantive appointment, they could not possibly claim seniority with reference to ad hoc service.”

14.1 Learned counsel for the petitioner has placed heavy reliance on the judgment of the Constitution Bench of the Hon'ble Supreme Court in **Direct Recruit Class II Engineering Officers' Association vs. State of Maharashtra (1990)2 SCC 715** and contended that the service of the petitioner (as In-charge Engineer) from **01.10.2007** till the date of

substantive appointment (09.04.2013) must be taken into consideration for the purpose of fixing the seniority of the petitioner.

14.2 The propositions laid down by the Constitution Bench in the aforesaid case are set out in Paragraph 47 of the judgment. We are concerned with only Conclusions (A) and (B) which read as follows:-

“(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. **The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop gap arrangement, the officiation in such posts cannot be taken into account for considering the seniority.**

(B) If the initial appointment is not made by following the procedure laid down by the rules but appointee continues in the post uninterruptedly till the regularization of his service in accordance with the rules, the period of officiating service will be counted.”

14.3 The contention of learned counsel for the petitioner is that the case of the petitioner is covered by the conclusion (B) above of the said judgment of the Hon’ble Supreme Court and, therefore, the petitioner is entitled for counting his service as In-charge Assistant Engineer for seniority purpose from 01.10.2007 to 09.04.2013.

14.4 We, however, cannot agree with the contention of learned counsel for the petitioner. In our considered opinion, the case of the petitioner is not covered by the conclusion (B) of the said judgment.

14.5 The case of the petitioner falls within the corollary in conclusion (A) as the initial appointment of the petitioner on 01.10.2007 is only ad hoc and not according to rules made only as a stop gap arrangement as described in preceding paragraphs and, therefore, the officiating promotion of the petitioner on the post of Assistant Engineer from 01.10.2007 to 09.04.2013 cannot be taken into account for counting the seniority.

15. Counsel for the petitioner has also referred the following case laws in support of his case for counting the period of “officiating promotion” for the purpose of seniority:-

- 1) Baleshwar Dass and others vs. State of U.P. & others (1980)4 Supreme Court Cases, 226,
- 2) G.P. Doval and others vs. Chief Secretary, Government of U.P. & others (1984) 4 Supreme Court Cases 329.
- 3) Delhi Water Supply and Sewage Disposal Committee and others vs. R.K. Kashyap and others, 1989 Supp (1) SCC, 194.
- 4) Keshav Deo and another vs. State of U.P. and others, AIR 1999 Supreme Court, 44.
- 5) L.Chandra Kishore Singh vs. State of Manipur (1999)8, SCC, 287.
- 6) Chandra Prakash and others vs. State of U.P. and another (2002) 4 SCC, 234.
- 7) Chief Commissioner of Income Tax and others vs. V. Subba Rao and others , 2004 SCC (L&S)201,
- 8) Virendra Kumar Verma vs. The State of Uttaranchal and others, 2005(1) U.D., 351.
- 9) Hansa Dutt Pandey & others vs. State of Uttarakhand & others, 2011 (2) U.D., 354.
- 10) Rakesh Kumar Dixit vs. State of Uttarakhand & others, decided by Hon’ble High Court of Uttarakhand on 27.02.2012.
- 11) Rakesh Kumar Uniyal vs. State of Uttarakhand & others, Decided by Hon’ble High Court of Uttarakhand on 01.08.2012.
- 12) Sisir Kumar Ghosh vs. State of W.B., 2018 SCC Online Cal 348.
- 13) Dr. P.C. Agarwal and others vs. State of U.P. another (1993)1 UPLBEC, 718.
- 14) Rajbir Singh and others vs. Union of India and others, AIR 1991 Supreme Court, 518.

We have gone through the above cases and are of the opinion that the facts, circumstances and set of rules in these cases are entirely different compared to the case in hand and, therefore, these case-laws are not applicable in the present case and these are of no help to the petitioner.

16. **For the reasons stated in paragraphs 6 to 15 of this order, we hold that the period of “officiating promotion” of the petitioner as**

Assistant Engineer from 01.10.2007 to 09.04.2013 cannot be counted for the purpose of determining the seniority of Assistant Engineers.

17.1 The petitioner has also stated in paragraph 4.11 of the claim petition that the private respondents No. 30, 32, 34 and 36 who are placed at Sl. No. 49, 51, 53 and 55 in the seniority list dated 06.07.2017 were junior to the petitioner in the feeding cadre of Junior Engineers. While the petitioner was appointed as Junior Engineer in 1986, the aforesaid private respondents were appointed on the post of Junior Engineer in 2005. Learned counsel for the petitioner has argued that these 4 private respondents were promoted as Assistant Engineer on substantive basis through the Departmental Promotion Committee on 11.03.2011 at roster points under reservation quota. Since the petitioner is senior to these persons in the feeding cadre of Junior Engineer, by applying the “catch-up” principle under Rule 6 of the Seniority Rules, 2002, the petitioner regains his seniority after his promotion on the post of Assistant Engineer on 09.04.2013. Learned counsel for the respondent No. 2 has refuted the argument of learned counsel for the petitioner in this regard. It has been stated by learned counsel for the respondent no. 2 that the petitioner has not sought any relief regarding regaining of his seniority and, therefore, the contention of learned counsel for the petitioner cannot be considered by the Tribunal merely on the basis of mentioning the “catch-up” rules in one of the paragraphs of the claim petition in a cursory manner.

17.2 On perusal of record, we find that the petitioner did not make any objection on the tentative seniority list dated 25.04.2015 regarding the issue of “catch-up” rule. The petitioner also submitted representations on 12.06.2017 and 30.06.2017 (Annexure: A-1 (Colly)) against the tentative seniority list but in these representations also, the petitioner did not raise the issue of regaining the seniority *vis-à-vis* aforesaid 4 persons. In the claim petition also, the petitioner has not shown the seniority list of Junior Engineers (feeding cadre) in which the petitioner was senior to the private respondents No. 30, 32, 34 and 36. As the counsel for the petitioner has not

been able to demonstrate the applicability of rule 6 of the Seniority Rules, 2002 through appropriate material and documents, we find ourselves unable to adjudicate upon the issue on the basis of the record made available to us by the petitioner.

17.3 In spite of the position stated in paragraph 17.2 above, we, however, in the interest of justice, feel it proper that the petitioner should be allowed an opportunity to raise this issue of regaining of seniority by application of the “catch-up” rule by submitting a representation before the competent authority and the same should be decided within a reasonable period of time by the competent authority.

18. In view of the analysis and reasons stated in paragraphs No. 6 to 16 above, the claim petition is devoid of merit and is liable to be dismissed. However, for the issue related to regaining of seniority as per “catch-up” principle under Rule 6 of the Seniority Rules, 2002 as stated in paragraph 17 of this order, the petitioner is allowed an opportunity to make a representation to the respondents and the respondents are directed to decide the same.

ORDER

The claim petition is hereby dismissed. However, for the issue related to regaining of seniority as per “catch-up” principle under Rule 6 of the Seniority Rules, 2002 as stated in paragraph 17 of this order, the petitioner is allowed an opportunity to make a representation to the respondents within a period of three weeks from today and thereafter, the respondents are directed to decide the representation within 10 weeks’ after the representation is received. No order as to costs.

(RAM SINGH)
VICE CHAIRMAN (J)

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

DATE: JUNE 29, 2018
DEHRADUN
KNP