

**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. 19/DB/2016**

Smt. Jyoti S.Kumar, aged about 43 years, Chief Agriculture Officer, Niranjanpur Sabji Mandi, Dehradun.

**vs.**

1. State of Uttarakhand through Secretary, Agriculture, Secretariat Dehradun.
2. The Principal Secretary, Agriculture, Govt. of Uttarakhand, Dehradun
3. Sri Dinesh Kumar, Chief Agriculture Officer, Chamoli
4. Sri P.K. Singh, Chief Agriculture Officer, Udham Singh Nagar.
5. Dr. Abhay Saxena, Chief Agriculture Officer, Pithoragarh.

Present: Smt. Anupama Gautam and Sri Arjun Singh Bisht, Counsel for the petitioner.  
Sri Umesh Dhaundiyal, A.P.O., for the respondents.

**WITH**

**CLAIM PETITION NO. 30/DB/2017**

Ajay Kumar s/o Sri Parshuram, Deputy Director (HR) directorate of Agriculture Uttarakhand, Presently posted as on Deputation as Deputy director (M&E) Watershed Directorate, Indira Nagar, Dehradun.

**vs.**

1. State of Uttarakhand through Additional Chief Secretary, Agriculture, Civil Secretariat , Dehradun.
2. Director, Agriculture, Directorate of Agriculture, Uttarakhand, Dehradun.
3. P.K. Singh, s/o Abhay Raj Singh, presently posted as Chief Agriculture Officer, Udham Singh Nagar.
4. Dinesh Kumar, s/o Jugnayan Singh, presently posted as Chief Agriculture Officer, Chamoli.

Present: Sri V.P.Sharma, Counsel for the petitioner.  
Sri Umesh Dhaundiyal, A.P.O., for the respondents No. 1 & 2.  
Sri L.K.Maithani, Counsel for respondent No. 4.

**WITH**

**CLAIM PETITION NO. 32/DB/2017**

Suresh Chandra Singh s/o Sri Karan Singh, presently posted as Chief Agriculture Officer, Tehri Garhwal.

**vs.**

1. State of Uttarakhand through Additional Chief Secretary, Agriculture, Civil Secretariat , Dehradun.
2. Director, Agriculture, Directorate of Agriculture, Uttarakhand, Dehradun.
3. Dinesh Kumar, s/o Jugnayan Singh, presently posted as Chief Joint Director (QC) Directorate of Agriculture Dehradun.

Present: Sri V.P.Sharma, Counsel for the petitioner.  
Sri Umesh Dhaundiyal, A.P.O., for the respondents No. 1 & 2.  
Sri L.K.Maithani, Counsel for respondent No. 3.

**JUDGMENT**

**DATED: JUNE 01, 2018**

**Justice U.C.Dhyani (Oral)**

Since the factual matrix of the above noted claim petitions and law governing the field is the same, therefore, all the claim petitions are being decided together, by a common judgment, for the sake of brevity and convenience

2. Claim petition No. 19/DB/2016 has been filed by Smt. Jyoti S.Kumar for following reliefs:

“ (a) That the petitioner be ordered to be placed in the seniority list issued vide notification No. 165(XIII-1/2016-01(18)2001 dated 7.6.2017 be quashed and reorganized placing the petitioner as per the date of her selection by UPSC and in consonance with Rules and Regulations applicable to the petitioner and the respondents No. 3 to 5.

(b) Full cost of the petition.

(c) Any other relief to which the petitioner is found entitled, may very kindly be granted.”

3. Claim petition No. 30/DB/17 Ajay Kumar vs. State & others has been filed by the petitioner for following reliefs:

“ (i) To issue order or direction to the respondent No.1 to quash the impugned seniority list dated 07.06.2017 and redraw the fresh seniority list by placing the name of the petitioner at the appropriate place, above the private respondents No.3 to 4.

(b) Any other relief which the Hon’ble Tribunal deem fit and proper in the circumstances of the case.

(c) To award cost of this petition to the petitioner.”

4. By means of claim petition No. 32/DB/17, petitioner Suresh Chandra Singh prays for following reliefs:

“ (i) To issue order or direction to the respondent No.1 quashing the impugned seniority list dated 07.06.2017 and redraw the fresh seniority list by placing the name of the petitioner at an appropriate place, above the private respondent No.3.

(b) Any other relief which the Hon’ble Tribunal deem fit and proper in the circumstances of the case.

(c) To award cost of this petition to the petitioner.”

5. Brief facts, giving rise to Claim petition No. 19/DB/2016, are as follows:

Petitioner was selected through Public Service Commission in Agriculture Service Class-II, Section-D, Hill Cadre, Operation Branch on 24.03.1999. Respondents No. 4 & 5 were appointed in Agriculture Service, Class-II, Section-C, Agriculture Defence Branch on 11.05.1999. In other words, respondents No. 4 & 5 were appointed after the petitioner, though appointment letters were issued on different dates. The date of appointment of respondents No. 4 & 5 was more than one month after the petitioner.

Date of substantive appointment of respondent No.3 in Class-I is 02.02.2006. Respondent No.3 was promoted in the year 2005-06 in Class-I in Development Branch, in view of availability of proportionate vacancy. Respondent No.3 was initially appointed in Class II,

Development Branch in General Category, before the State of Uttarakhand came into existence and was not allotted Uttarakhand Cadre finally. While, the petitioner was promoted to the Engineering Branch, Class-I in 2005-06. Petitioner is, therefore, senior to respondents No. 3, 4 & 5, as per Rule 7 of the Government Servants Seniority Rules, 2002.

Service law relating to seniority fixation is that, the letter of appointment may be issued on any date, but the seniority will be as per date of selection, which, in the case of the petitioner is, October, 2005, and is earlier to respondents No. 3, 4 & 5. *Proviso* to Rule 9 of the U.P. Agriculture (Group A) Posts Service Rules, 1992 provides that the vacancies will be filled up for Agriculture Service Class-II, as per its attached department and as per the date when the candidate became entitled for appointment. This Rule clearly shows that in the department, substantive appointment is as per ratio of vacancies in Development Branch, Chemistry Branch, Plant Protection Branch and Engineering Branch for Class-I posts. Likewise the Government of Uttarakhand, by way of notification dated 28.02.2002 has affirmed that the promotions, which were made on the basis of dates of substantive appointment in Development Branch and Engineering Branch for Class-I Post, *inter se* seniority shall be kept in order. Respondent No.4 and petitioner, though belong to the same selection year, but belong to different cadre. Her selection is earlier in point of time, therefore, she is senior to others in terms of relevant Rules. As per Rule 7 of the Government Servants Seniority Rules of 2002, in case appointments in different cadres are to be made through promotion, then the same will depend on different feeder cadres, in which substantive appointment order date is to be taken respectively for the Branches with further provision that those, who are selected later, will be junior to those, who selected earlier. This arrangement, according to the petitioner, is being confused with the date of appointment, whereas the importance of date of selection has to predominate as per the respective feeder cadre vacancies ratio. The *proviso* is that, those who have been selected

substantively, will be junior to those, who have selected earlier. In the tentative seniority list of Class-I, name of petitioner figured at Sl. No. 6, but in the final seniority list her name figured at Sl. No.7, which is against law. Petitioner's seniority in Class-I Officers' list must precede that of Shri P.K. Singh, Dr. AbhaySaxena and Shri Dinesh Kumar. Time and again the petitioner moved representation, but till date none of her representations has been responded to.

During pendency of the petition, on 07.06.2017, seniority list has been issued, wherein petitioner has been placed at Sl. No. 6, which is after the names of respondents No. 3 and 4, who are placed at Sl. No. 4 and 5 respectively. Hence, present claim petition.

6. Counter affidavit has been filed by respondents No. 1 & 2. It has been pleaded that the claim petition is barred by limitation, inasmuch as the final seniority list dated 23.04.2010 has been put to challenge in the year 2016. Petitioner and respondents No.3, 4 & 5 had been selected by the same selection process in the same selection year and their *inter se* seniority has been determined as per rule 6 of the Seniority Rules of 2002.

7. Rejoinder affidavit has also been filed on behalf of the petitioner, in which same averments have been reiterated, as have been mentioned in the claim petition.

8. Briefly put, facts of claim petition No. 30/DB/17 are as follows:

Petitioner was selected through U.P. Public Service Commission and was appointed on 19.04.2000 as Assistant Director (Planning) at Pauri. When the State of Uttarakhand came into being on 09.11.2000, respondent No.3, was allotted the State of Uttarakhand. There are seven Sections in Agriculture Department. They are- Development Section; Plant Protection Section; Marketing Section; Chemistry Section; Botany Section; Engineering Section and Statistic Section.. The candidates are selected through Public Service Commission in their respective branches. Avenues for promotion from Class-II to Class-I,

through DPC, in respect of their Branches depends upon vacant posts. Petitioner was promoted after DPC held on 24.10.2005, in the Cadre of Class-I of Uttarakhand State Agriculture Service. In three Sections, namely, Development Section, Plant Protection Section and Engineering Section, promotion was done on the same date, i.e., 26.10.2005. The petitioner was working as Class-I officer since 2005. He was promoted on 26.10.2005 and respondent No.3 was promoted on 02.02.2006. Services of the petitioner are governed by U.P. Agriculture Class-I Service Rules, 1992 (for short, Service Rules of 1992), which are adopted by the State of Uttarakhand. Respondent No.1 issued a tentative seniority list on 13.12.2016, which is not in accordance with Rules. Petitioner gave objections to the tentative seniority list, but the objections of the petitioner were not considered. Representation of the petitioner was wrongly decided. As per Rule 7 of the Seniority Rules, the petitioner is senior to respondent No.3, because petitioner was promoted on 26.10.2005, whereas respondent No.3 was promoted on 02.02.2006. Respondents No. 1 & 2 published the seniority lists on 23.04.2010 and 07.06.2017, which lists are wrong. It is prayed in the petition that they should be directed to re-draw fresh seniority list, according to law, as per the table given by the petitioner in Paragraph 4.13 of the petition. As per Rule 5(5) of the Service Rules of 1992, seniority must be fixed on the basis of the date of vacancy in that cadre or from the date of initial appointment or from the date when they become eligible for promotion in the cadre. Respondents are going to convene DPC for the post of Joint Director, Agriculture, on the basis of disputed seniority list. Hence, present claim petition.

9. Respondent No. 2 has filed C.A./W.S. It is averred in the C.A. that respondent No.3 was selected in the recruitment year 2005-06, on the basis of recommendations of DPC held on 24.10.2005, on the resultant vacancy of Sri Jagdish Prasad, who was to retire on 31.12.2005. In this way, petitioner and respondent No.3 have been promoted in the same selection. The seniority was fixed on the basis of Rule 7 of the Seniority Rules, 2002. In a nutshell, it is concluded in the C.A. of Respondent

No.2, that *inter se* seniority of the contestants, has been fixed according to Rule 7 of Seniority Rules, 2002.

10. Separate C.A. has been filed by respondent No.4 in which it is pleaded that the petitioner is junior to the answering respondent in the feeder cadre of Class-II. It is admitted that the petitioner was promoted to Class-I on 26.10.2005, whereas answering respondent was promoted on 02.02.2006, but that could happen only because the petitioner belonged to reserved category. Respondent No. 3 has regained his seniority by virtue of Rule 6 of the Seniority Rules, 2002.
11. R.A. has also been filed on behalf of petitioner reiterating the facts of claim petition.
12. Facts, giving rise to the present Claim Petition No. 32/DB/17, are as follows:

Petitioner was selected through U.P. Public Service Commission on 23.03.1999 in Engineering Section. Respondent No.3 was selected on 11.05.1999 in Plant Protection Section. When State of Uttarakhand came into being on 09.11.2000, petitioner, as also respondent No.3 were allotted the State of Uttarakhand. There are seven Sections in Agriculture Department, they are- Development Section; Plant Protection Section; Marketing Section; Chemistry Section; Botany Section; Engineering Section and Statistic Section. The candidates are selected through Public Service Commission in their respective Sections. Avenues for promotion from Class-II to Class-I, through DPC, in respect of their Sections depends upon vacant posts.

There is no common seniority list in Class II. The candidates have their seniority in their respective cadres. Petitioner and respondent No.3 were promoted on the recommendation of DPC held on 24.10.2005 in Class-I of Uttarakhand State Agriculture Services. The promotion was done on 26.10.2005 in respect of three Sections, namely, Development Section, Plant Protection Section and Engineering Section. Petitioner and respondent No.3, both were

selected through Public Service Commission in the same selection year, but their *inter se* seniority was not decided on the basis of Rule 7 and Rule 5 of the Seniority Rules of 2002. Petitioner was selected before respondent No.3, but both were promoted in Class-I on 26.10.2005. promotion was done on the same date, i.e., 26.10.2005. Petitioner was placed below respondent No. 3 in the seniority list, which is illegal. Petitioner was promoted on 26.10.2005 and respondent No.4 was promoted on 02.02.2006. The services of the petitioner are governed by U.P. Agriculture Class-I Service Rules, 1992, which was adopted by State of Uttarakhand. Rule 9(2) of the said Rule provide that,

“If more than one order of appointment are issued in the respect of any one selection, a combined order shall also be issued, mentioning the names of the persons in order of seniority as it stood in the cadre from which they are promoted.

Provided that if for posts in the category of Deputy Director of Agriculture, selection has been from more than one section of the Uttar Pradesh Agriculture Class-II Service in the order of appointment shall be arranged in order of the date of occurrence of vacancy available for the concerned sections of the Uttar Pradesh Agriculture Class-II Service.

Provided further that for posts in the category of Deputy Director of Agriculture, the date of appointment shall be the date of occurrence of vacancy available for the concerned section of Uttar Pradesh Agriculture Class-II Service of the date of eligibility for appointment, whichever is later.”

As per Rule 5(5) of U.P. Agriculture Class-I Service Rules, 1992, the seniority must be fixed on the basis of the date of vacancy in that cadre or from the date of initial appointment or from the date when they become eligible for promotion in that cadre. Vacancy for petitioner in Engineering Section is prior to respondent No.4 in Development

Section, therefore, he must be placed below the petitioner. Whereas, respondent No.4 was appointed on 02.02.2006 in Development Section, the petitioner was appointed on 26.10.2005 in Engineering Section, therefore, petitioner must be placed above respondent No.4. Tentative seniority list and impugned seniority list are illegal. Vacancies in Class-I cadre are bifurcated on the basis of ratio in different cadres. The mode of calculation has been given by the petitioner in Para 4.19 of the claim petition. The *inter se* seniority of the petitioner *vis-à-vis* other officers should be fixed as per the table given in Para 4.23 of the petition, according to petitioner. Petitioner has challenged the impugned seniority list dated 07.06.2017 in present claim petition.

13. Respondent No. 2 has filed C.A./W.S.. It is averred in the C.A. that respondent No.3 was selected in the recruitment year 2005-06, on the basis of recommendations of DPC held on 24.10.2005, on the resultant vacancy of Sri Jagdish Prasad, who was to retire on 31.12.2005. In this way, petitioner and respondent No.3 have been promoted in the same selection. The seniority was fixed on the basis of Rule 7 of the Seniority Rules, 2002. In a nutshell, it is concluded in the C.A. of Respondent No.2 that *inter se* seniority of the contestants, has been fixed according to Rule 7 of Seniority Rules, 2002.
14. Separate C.A. has been filed by respondent No.3. It is pleaded that the petitioner is junior to the answering respondent in the feeder cadre of Class-II. It is admitted that the petitioner was promoted to Class-I on 26.10.2005, whereas answering respondent was promoted on 02.02.2006, but that could happen only because the petitioner belonged to reserved category. Respondent No. 3 has regained his seniority by virtue of Rule 6 of the Seniority Rules, 2002.
15. R.A. has also been filed on behalf of petitioner.
16. The Government of Uttar Pradesh has framed the Rules for Group-'A' Services in the Department of Agriculture and the said Rules are known as the Uttar Pradesh Agriculture (Group-A) Posts Service

Rules, 1992. These Rules are also applicable in the State of Uttarakhand. The posts included in Group-'A' are Director, Additional Director, Joint Director and Deputy Director. The post of Deputy Director is also known as Agriculture Service Grade-I. The post of Agriculture Officer Grade-I is filled up by promotion from the persons of Agriculture Service Grade-II. There are as many as 7 Sections (Development, Plant protection, Marketing, Chemistry, Botany and Engineering) in Agriculture Service Grade-II. These sections have their separate cadre strength and separate seniority list.

17. For promotion to the post of Agriculture Service Grade-I (Deputy Director), every Section of the Agriculture Service Grade-II has prescribed quota. Thus, there are several feeding cadres for promotion to the post of Agriculture Service Grade-I in the form of various Sections of Agriculture Service Grade-II, as have been mentioned above.
18. After promotion from Agriculture Service Grade-II to Agriculture Service Grade-I, the section-wise seniority is done away with and a combined seniority list for Agriculture Service Grade-I is prepared. Further, promotion from the post of Agriculture Service Grade-I (Deputy Director) to the post of Joint Director is made on the basis of the combined seniority list of Agriculture Service Grade-I.
19. The department of Agriculture, Government of Uttarakhand issued a final seniority list of Agriculture Service Grade-I on 07.06.2017 (Annexure: A1). There are 9 persons in this seniority list. The seniority list issued on 07.06.2017 is reproduced herein below for convenience:-

Sl. No.	Name of the officer	Date of substantive appointment on Class-II post	Date of Selection	Selection year	Date of substantive appointment on the Class-I Post	Section
1.	Sri Jagdish Prasad	20.03.1995	24.10.2005	2005-06	26.10.2005	Development Section
2.	Sri Shushil Kumar	23.04.1997	24.10.2005	2005-06	26.10.2005	Development Section
3.	Sri Ram Lal	04.08.1997	24.10.2005	2005-06	26.10.2005	Plant Protection Section
4-	Sri Dinesh Kumar	11.01.1999	24.10.2005	2005-06	02.02.2006	Development Section

5.	Sri P.K.Singh	03.11.1999	24.10.2005	2005-06	26.10.2005	Plant Protection Section
6.	Smt. Jyoti Gulati	17.12.1999	24.10.2005	2005-06	26.10.2005	Engineering Section
7.	Sri Ajay Kumar	16.11.1999	24.10.2005	2005-06	26.10.2005	Engineering Section
8.	Sri Suresh Chandra Singh	19.04.2000	24.10.2005	2005-06	26.10.2005	Development Section
9.	Dr. Ajay Saxena	03.11.1999	05.10.2006	2006-07	07.11.2006	Plant Protection Section

20. The above seniority list has been challenged by three persons, namely, Smt. Jyoti S. Kumar (placed at Sl. No. 6 in the seniority list), Sri Ajay Kumar (placed at Sl. No. 7 in the seniority list) and Sri Suresh Chandra Singh (placed at Sl. No. 8 in the seniority list) by way of separate claim petitions, as has been noted above.

21. Principal grounds on the basis of which the final seniority list of Agriculture Service Grade-I officers has been challenged are that:

- (i) Two *provisos* to Rule 9(2) of the Service Rules of 1992 have not been followed at the time of preparing the final seniority list of Agriculture Service Grade-I. The two *provisos* to Rule 9(2) of the Service Rules of 1992 are quoted herein below for convenience:

*“Provided that if for posts in the category of Deputy Director of Agriculture, selection has been made from more than one selection of the Uttar Pradesh Agriculture Class-II Service, the names in the order of appointment shall be arranged in order of the date of occurrence of vacancies available for the concerned sections of the Uttar Pradesh Agriculture Class II Service:*

*Provided further that for posts in the category of Deputy Director of Agriculture, the date of appointment shall be the date of occurrence of vacancy available for the concerned section of the Uttar Pradesh Agriculture Class-II Service of the date of eligibility for appointment, whichever is later.”*

- (ii) Rule 7 of the Uttaranchal Government Servants Seniority Rules, 2002 (which are identical to the Uttar Pradesh Government Servants Seniority Rules, 1991) has not been followed and the final seniority list of Agriculture Service Grade-I has been prepared in violation of the said Rule. The said Rule-7 of the Seniority Rules, 2002 reads as under:-

*“7. 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.*

***Explanation--***Where the order of the substantive appointment in the feeding cadre 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 issuance of the order:

*Provided that where the pay scales of the feeding cadres are different, the persons promoted from the feeding cadre having higher pay scale shall be senior to the persons promoted from the feeding cadre having lower pay scale :*

*Provided further that the persons appointed on the result of a subsequent selection shall be junior to the persons appointed on the result of a previous selection.”*

22. It may be noticed that there is marked difference in two *provisos* to Rule 9(2) of the Service Rules, 1992 and Rule 7 of the Seniority Rules, 2002 for determining the seniority of the Agriculture Service Grade-I (Deputy Directors).

23. The first question which arises for consideration of the Court is- which rules will prevail for the purpose of the seniority? Whether Service Rules, 1992 or Seniority Rules, 2002? The Seniority Rules of 2002 have over-riding effect. Rule 3 of the Service Rules of 2002 provides as under:

***“3. These rules shall have effect notwithstanding anything to the contrary contained in any other service rules made hereto before.”***

In the case of **Pawan Pratap Singh and others vs. Reevan Singh and others, (2011)3 SCC 267**, Hon'ble Supreme Court has held that the Seniority Rules of 1991 (which are identical to the Seniority Rules of 2002) over-rides the Service Rules. Paragraph 18 of the said judgment reads as under:

*“18. It must be stated immediately that the recruitment to the posts of Deputy Jailor in the State of Uttar Pradesh is governed by the 1980 Rules which have been framed by the Governor in exercise of the powers conferred by the proviso of Article 309 of the Constitution. 1980 Rules provide for cadre of service, procedure for recruitment to the post of Deputy Jailor,*

*reservation, academic qualifications, determination of vacancies, appointment, probation, confirmation and inter se seniority of person appointed to the service. However, by subsequent Rules, namely, 1991 Rules which too were made by the Governor under the proviso to Article 309 of the Constitution, comprehensive provisions have been made for the determination of seniority of all government servants in the State of Uttar Pradesh. Rule 2 of the 1991 Rules says that these rules shall apply to all government servants in respect of whose recruitment and conditions of service, rules may be or have been made by the Governor under the proviso to Article 309 of the Constitution and Rule 3 gives to the 1991 Rules overriding effect notwithstanding anything to the contrary contained in earlier service rules. In this view of the matter, inter se seniority amongst 1991 and 1994 appointees by direct recruitment has to be determined under the 1991 Rules and Rule 22 of the 1980 Rules has to give way to the 1991 Rules.”*

*(Emphasis supplied)*

24. The challenge of the petitioners to the seniority list of Agriculture Service Grade-I (Deputy Directors) on the basis of two *provisos* to Rule 9(2) of the Service Rules, 1992, therefore, cannot sustain. There is, therefore, no case of the petitioners on the basis of the Service Rules of 1992.

25. Thus, the fixation of seniority in the present case is governed by the Seniority Rules of 2002, as these rules have overriding effect on any other Rules, much less the Service Rules of 1992. The question, which has been posed above, is answered accordingly.

26. The petitioners have also challenged the seniority list on the basis of Rule 7 of the Seniority Rules, 2002. The first paragraph of Rule 7 of the said Rules of 2002 is again being reproduced for convenience, at the cost of repetition, herein below :

*“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.”*

In the present case, according to the Service Rules, 1992, appointment on the post of Agriculture Service Grade-I (Deputy Director) is made only by promotion from Agriculture Service Grade-II. The Service Rules, 1992 also provide that promotion from Grade-II to

Grade-I is made from various Sections of Agriculture Service Grade-II. Thus, there are more than one feeding cadres for promotion to post of Agriculture Service Grade-I. Rule 7 of the Seniority Rules, 2002 provides that *inter-se seniority of persons promoted to the post of Agriculture Service Grade-I on the result of any one selection shall be determined according to the date of the order of the substantive appointment of persons in Agriculture Service Grade-II in their respective Sections (feeding cadres)*. The term 'one selection' which has been used throughout in the Seniority Rules, 2002 has been interpreted by the courts to mean one selection year and the same, according to Rule 4(i) of the Seniority Rules, 2002, is a period of one year from 1<sup>st</sup> July to 30<sup>th</sup> June. It would also be relevant to reproduce the *second proviso* under Rule 7 of the Seniority Rules, 2002 again:-

*“Provided further that the persons appointed on the result of a subsequent selection shall be junior to the persons appointed on the result of a previous selection.”*

27. A perusal of final seniority list dated 07.06.2017 reveals that the seniority list of first 8 persons was prepared in accordance with the date of order of their substantive appointment on the post of Agriculture Service Grade-II for which the meeting of Departmental Promotion Committee (DPC) was held on 24.10.2005 and promotion of these 8 persons, therefore, was made by one selection pertaining to the year 2005-06. The promotion of ninth person (Dr. Ajay Saxena), in the seniority list, pertains to the subsequent selection for which the DPC was held on 05.10.2006 falling in the selection year 2006-07.
28. The contention of Ld. Counsel the petitioners is that while the date of order of appointment of 7 out of 8 persons is also 26.10.2005, the date of order of the substantive promotion of one person, namely, Sri Dinesh Kumar (at Sl. No. 4 in the seniority list) is 02.02.2006. Therefore, Sri P.K. Singh, Smt. Jyoti Gulati *nee* Kumar, Sri Ajay Kumar and Sri Suresh Chandra Singh, who are at Sl. No. 5 to 8 in the seniority list, cannot be placed below Sri Dinesh Kumar. The argument of the petitioners in support of this contention is that while persons placed

at Sl. No. 5 to 8 in the seniority list are promoted on 26.10.2005 (previous selection), Sri Dinesh Kumar was promoted on 02.02.2006 (subsequent selection). It would be very difficult for us to agree with such contention of the learned counsels for the petitioners, in view of Rule 7 of the Seniority Rules, 2002. The DPC of all the first 8 persons took place on 24.10.2005 and promotions of all were made in one selection, as the date of DPC as well as date of issuance of promotion order of first 8 persons, fall in the selection year 2005-06. Therefore, the contention of the petitioners that while persons at Sl. No. 5 to 8 in the seniority list were promoted on the result of a previous selection and Sri Dinesh Kumar at Sl. No. 4 in the seniority list was promoted on the result of subsequent selection is misconceived and cannot be accepted.

29. Ld. Counsel for the petitioners have also contended that the *second proviso* to Rule 7 of the Seniority Rules, 2002 regarding previous and subsequent selection should be interpreted with reference to selection made by the Public Service Commission on the posts of Agriculture Service Grade-II. According to the petitioners, the appointment orders in respect of Smt. Jyoti Gulati, Sri Ajay Kumar, Sri P.K. Singh and Sri Suresh Chandra Singh were issued much after the date of selection by Public Service Commission. We are unable to subscribe to such an argument of the petitioners that the date of selection by the Public Service Commission should be the basis for determining the seniority.

30. It is clear that the Public Service Commission, after selection, only recommends the persons for appointment. Mere selection by Public Service Commission is of no value unless recommendations of the Public Service Commission are accepted and appointment orders are issued to the persons selected by the Commission. Therefore, the date of appointment by the competent authority of the Govt., in such cases, is material.

31. In **State of Uttarakhand and others vs. Siddharth Srivastav & others, 2002 (SCC) L&S, 1092**, the Hon'ble Supreme Court has held that inclusion of names of candidates in select list would not confer on them any right to appointment. Thus, the date of order of substantive appointment/promotion on the post of Agriculture Service Grade-II is required to be used for determining the seniority, rather than the date of selection by the Public Service Commission.
32. For the reasons stated herein above, we find that the seniority list of Agriculture Officers Grade-I has been prepared and finalized in accordance with Rule 7 of the Seniority Rules, 2002 and therefore, no interference is called for in the same.
33. Above noted claim petitions, therefore, fail and are dismissed.  
No order as to costs.

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

**(JUSTICE U.C.DHYANI)**  
CHAIRMAN

*DATE: JUNE 01, 2018*  
*DEHRADUN*

VM