

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

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

----- Chairman

Hon'ble Mr. A.S.Nayal

-----Member (A)

CLAIM PETITION NO. 42/DB/2018

Kailash Chandra Peinuly, Assistant Engineer, Uttarakhand Jal Sansthan,
Dehradun.

.....Petitioner.

vs.

1. State of Uttarakhand through Secretary, Pey Jal Uttarakhand Sachivalaya, Subhash Road, Dehradun.
2. Sachiv Incharge Pey jal and Swachhtha Vibhag Anubhag-1, Uttarakhand Sachivalaya, Subhash Road, Dehradun.
3. Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
4. Sri Ashok Kumar, Assistant Engineer, Uttarakhand Jal Sansthan, Dehradun.
5. Sri Manoj Kumar Tamta, Assistant Engineer, Uttarakhand Jal Sansthan, Dehradun.
6. Sri Rajendra Pal, Assistant Engineer, Uttarakhand Jal Sansthan, Dehradun.
7. Sri Avdesh Kumar, Assistant Engineer, Uttarakhand Jal Sansthan, Dehradun.

.....Respondents.

Present: Sri M.R.Saklani, Counsel, for the petitioner.

Sri V.P.Devrani, A.P.O., for Respondents No.1& 2.

Sri B.B.Naithani, Counsel for Respondent No.3.

Sri Deepak Singh, Counsel for Respondents No. 4,5,6 & 7.

JUDGMENT

DATED: MARCH 25, 2019

Per: Justice U.C.Dhyani

Principal relief sought for by the petitioner, in present claim petition is as follows:

“ (1)(a) This Hon’ble Tribunal may be pleased to direct the official respondents to modify the impugned seniority list dated 06.07.2017, so far it relates to petitioner *vis-à-vis* private respondents no. 4 to 7, who are shown in the impugned seniority list dated 06.07.2017 at Sl. No. 49,51, 52 & 55, by treating petitioner senior to these private respondents as per principle of ‘catch up seniority’ by placing the name of the petitioner above the names of respondents no. 4 to 7 in the impugned seniority list keeping in view the provision of the Uttarakhand Jal Sansthan Engineers Service Rules, 2011 with special emphasis on “Explanation” of Rule 6 of Govt. Seniority Rules, 2002.”

2. **The facts**, necessary for adjudication of present claim petition, are as follows:

2.1 The petitioner was initially appointed as Junior Engineer on *ad-hoc* basis in the erstwhile State of U.P. He was allotted State of Uttarakhand on bifurcation of the State. His services were regularized on the post of Junior Engineer *vide* order dated 16.12.1987 (Copy: Annexure A-2). Respondent no. 4 was appointed on the post of Junior Engineer *vide* order dated 20.06.2005 (Copy: Annexure A-4); respondent no. 5 was appointed as Junior Engineer on 20.05.2005 (Copy: Annexure A-3); respondent no. 6 was appointed as such *vide* order dated 06.08.2005 (Copy: Annexure A-5); and respondent no.7 was appointed as Junior Engineer *vide* order dated 20.06.2005(Copy: Annexure A-4). Petitioner was promoted on the post of Assistant Engineer *vide* order dated 09.04.2013(Copy: Annexure A-6), in the appointment year 2012-13. Eligibility for the promotion on the post of Assistant Engineer had been fixed as 10 years’ experience on the post of Junior Engineer, *vide* order dated 24.05.1979 (Copy: Annexure A-7). Ten years’ experience on the post of Junior Engineer for promotion on the post of Assistant Engineer has also been prescribed in Rule 6(3)(kh) of the Uttarakhand Jal Sansthan Engineers Service Rules, 2011(Copy: Annexure A-8) (for short, Rules of 2011). Respondents No.4 to 7, who were appointed on the post of Junior Engineer, were given accelerated promotion on the post of Assistant Engineer. They all belonged to Scheduled Caste Category. They were not eligible for promotion because they did not possess ten years’ experience as Junior Engineer. No requisition was sent for promotion for reservation category, as is evident from order dated 11.03.2011, in the recruitment year 2010-2011(Copy: Annexure A-9). A tentative seniority list of Assistant Engineers was issued *vide* order dated 25.04.2017(Copy:

Annexure A-10). Objections, on the same, were invited. Petitioner filed his objections, contents of which have been given, by formulating a chart, in Para 4.8 of the claim petition. After 20.10.2015, petitioner filed objections again on 31.08.2017 on final seniority list dated 06.07.2017, which has been impugned in the present claim petition. Objections have been brought on record as Annexure: A-14 to the petition.

2.2 Legal pleas:

Quota mentioned for direct recruits and promotees on the post of Assistant Engineer, has been fixed as per Rule 6(3) of Rules of 2011. According to such Rule, 50% of the posts of Assistant Engineers are to be filled up by promotion of Junior Engineers. Petitioner's objections, against tentative seniority list, were never considered by respondent no.2, before issuing the impugned final seniority list. No reason has been assigned for not following Rule 20 of the Rules of 2011. Impugned final seniority list has been issued without following the procedure prescribed. A Copy of Rules of 2011 has been brought on record as Annexure A-8 to the claim petition. The names of superannuated employees were not deleted and, therefore, cyclic order, in fixing the seniority, has been badly affected. As per Rule 24(1) of Rules of 2011, the seniority has to be fixed according to the Uttaranchal Government Servants Seniority Rules, 2002 (hereinafter referred to as Rules of 2002). These Rules have overriding effect on all the existing Rules. According to Rule 8 of the Rules of 2002, which is applicable in the present case, when appointments are made through promotion and direct recruitment, the seniority of the incumbents has to be fixed according to date of their original appointments. According to petitioner, respondent no.2, while fixing seniority of the petitioner, has not followed this mandatory provision (of Rule 6 of Rules of 2002). The authorities did not comply with the provisions of Rule 24(1), 24(3) and 24(4) of the Rules of 2011 either. Respondents No. 4 to 7 were given accelerated promotion on the post of Assistant Engineer. They were appointed on the post of Junior Engineer in the year 2005. Petitioner was appointed in the year 1985 (on ad-hoc basis) and his services were regularized in the year 1987. No seniority can be granted to them before they were born in the service. The petitioner ought to have regained his seniority, when he was promoted on the post of Assistant Engineer, *vide* order dated 09.04.2013

(Copy: Annexure A-6), on the principle of 'Catch Up Seniority'. The authorities have illegally placed the petitioner below private respondents in the impugned seniority list, which requires to be interfered with, in terms of explanation to Rule 6 of the Rules of 2002. Private respondents were not eligible for consideration of their names for the purpose of promotion, because they did not possess required length of service in terms of Government Order dated 12.07.2010 (Copy: Annexure A-16). Additional Secretary to the Government, *vide* letter dated 27.1.2011 sent the requisition to Public Service Commission to fix a date to hold the meeting of Selection Committee for the purpose of granting promotion to Junior Engineers. A list of Junior Engineers was also sent to Public Service Commission, but the names of private respondents did not find place in the same. Not only that, they did not possess eligible criteria of having completed ten years on the post of Junior Engineer. Since they have been promoted illegally, therefore, they could not be placed above the petitioner in the impugned seniority list. The petitioner is quite senior to them. Private respondents were granted accelerated promotion. As per the Catch Up principle, the petitioner had regained his seniority in the cadre, no sooner he was promoted on the post of Assistant Engineer. His representation dated 31.08.2017 (Copy: Annexure A-14) has also not been considered by the authority concerned.

3. Separate Written Statements/ Counter Affidavits have been filed on behalf of respondents no. 1,3, 4, 5, 6 & 7, denying petitioner's claim.
4. As per the W.S./C.A. of respondent no.1, seniority list dated 06.07.2017 was issued after considering the objections raised by the concerned Assistant Engineers, against the tentative seniority list dated 25.04.2017. Rule 6 of the Rules of 2002 is not applicable to the fact of this case. Private respondents were given promotion as per rules. Petitioner is wrongly placing reliance on Rule 6 of the Rules of 2002. A requisition was sent by respondent no.1 to Public Service Commission. The names of private respondents were included in the eligibility list, for the reason, duly recorded in letter dated 01.01.2011, written by Chief General Manager to Secretary, Pey Jal, Government of Uttarakhand. Private respondents were duly selected through Public Service Commission. The representation of the petitioner was decided at the time of issuing final seniority list. Private respondents were rightly included in the eligibility list.

4.1 **Legal pleas taken by Respondent No.1:**

Rule 6 of the Rules of 2002 is not applicable to the facts of this case. Said Rule states that where appointments are made by promotion and by direct recruitments, in that case, the seniority of persons appointed shall be determined from the date of their substantive appointments, which, in the case in hand, is 2011 for the private respondents and 2013, for the petitioner. ‘Substantive appointment’ means, an appointment made in the cadre of service, which, in the instant case is Assistant Engineer and not Junior Engineer. Definition of substantive appointment has been given in the Rules of 2002, as well as in the Rules of 2011. The private respondents were clearly senior to the petitioner. They were rightly placed above the petitioner in the seniority list. Rule 6 of the Rules of 2002 is not applicable to the facts of instant case. Rule 6 is applicable on single feeding cadre cases. Relevant Rule, which is applicable to the case of the petitioner, is Rule 7, which runs as follows:

“Where according to the service rules, appointments 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.....”

Chief General Manager, Jal Sansthan, in its letter to Secretary, Pey Jal, categorically mentioned that the posts of Assistant Engineers, which were lying vacant, were to be filled up against Reservation Quota in the Uttarakhand Jal Sansthan. An amended proposal was sent for promotion. Names of private respondents were included under Reservation Category and they were given promotion as per Rules.

5. **Legal pleas taken by Respondent No.3:**

Respondent No.3, by separate W.S./C.A., has averred that Rule 6 of the Rules of 2002 is not applicable to the facts of this case. The said Rule states that where appointments are made by promotion and by direct recruitments, in that case, the seniority of persons appointed shall be reckoned with from the date of their substantive appointment, which, in the case in hand is, 2011 for the private respondents and 2013, for the petitioner. Definition of ‘substantive appointment’ has been quoted to say that private respondents were clearly senior to the petitioner. Petitioner has wrongly

relied upon Rule 6 of the Rules of 2002, which has been quoted in Para 9 of the W.S./C.A. In a nutshell, the averments taken by Respondent No.1-State, have been adopted by Respondent No.3.

6. **Legal pleas taken by Private Respondents:**

Respondents No. 4 to 7 have filed W.S./C.A. on similar lines. They are private respondents. It is denied, in their C.A., that seniority has been fixed illegally. According to private respondents, seniority list has been decided strictly in accordance with the Rules. No requisition was sent for promotion from reserved category candidates. When promotion was given to them on the post of Assistant Engineer, reservation in promotion was available to them and the same was given after following due process of law. *Vide* letter dated 12.07.2010, a requisition was sent for filling up the vacant posts of Assistant Engineers. In the said requisition, it was clearly stated that the posts of Assistant Engineers, against Reservation Quota, will be kept vacant. Thereafter, *vide* letter dated 01.01.2011, names of private respondents were included in the eligibility list for the reasons duly recorded in letter dated 01.01.2011, sent by respondent no.3 to Secretary, Pey Jal, Government of Uttarakhand. In the letter itself, it was clearly mentioned that the posts of Assistant Engineers, lying vacant, were to be filled up against promotion quota in Uttarakhand Jal Sansthan. Since it was found that no candidate of Scheduled Caste category was working, therefore, an amended proposal was sent, wherein the names of private respondents were included under Reserved Category and they were given promotion, as per rules.

7. Relying on last proviso to Rule 7 of Rules of 2002, the private respondents submitted that a bare perusal of the same makes it abundantly clear that since the petitioner was promoted in the year 2013 and private respondents were promoted on the post of Assistant Engineer in the year 2011, therefore, petitioner was rightly placed below the answering respondents. The objections raised by the petitioner were echoed by other employees and appropriately dealt with by the Government. Rule 8 of the Rules of 2002 also makes it clear that where appointments are made both by promotion and by direct recruitment, in that case, the seniority of the persons appointed shall be reckoned with from the date of their substantive appointment, which in case in hand is, 2011 for private respondents and

2013, for petitioner. The concept of ‘substantive appointment’ has also been dealt with in the C.A./W.S., on the lines similar to the one taken by respondent no. 1. The paras, dealing with the same, in their respective Counter Affidavits, would say that definition of ‘substantive appointment’ in Rules of 2002 as well as under Rules of 2011, suggests that private respondents are rightly placed above the petitioner in the seniority list. If the names of the private respondents were not mentioned in the first list, the same was clarified by way of amended proposal, in which their names were included under Reserved Category Candidates, therefore, there was no illegality in the same.

8. Rejoinder Affidavit:

Rejoinder Affidavit was filed by the petitioner against the Written Statement of respondent no.3. It was reiterated, among other things, that private respondents were not eligible for promotion on the post of Assistant Engineer when their names were proposed and the requisition was sent to the competent authority. Their names were sent later, but they were not eligible for promotion on the post of Assistant Engineers, for which a minimum ten years’ experience on the post of Junior Engineer was required. Private respondents were not having requisite experience of ten years on the post of Junior Engineer, as per Rule 6(3)(b) of the Rules of 2011, when they were promoted. The petitioner would regain seniority, as was in the feeding cadre of Junior Engineers, as per explanation to Rule 6 of Rules of 2002. No seniority can be granted to the private respondents before they were born in the cadre. Explanation to Rule 6 of the Rules of 2002 would apply and the petitioner should be given seniority over the private respondents.

9. At the stage of final hearing, certain documents were filed on behalf of respondents no. 4 to 6. Petitioner preferred not to file any document in rebuttal.

10. The plea of the petitioner is that although he was promoted later, as compared to private respondents, on the post of Assistant Engineer, yet his seniority *vis-à-vis* private respondents (as Assistant Engineer) will be in accordance with the established seniority in the feeding cadre (of Junior Engineer), as per Rule 6 of Uttarakhand Government Servants Seniority Rules, 2002. According to Rule 6 (and its’ Explanation) of the Seniority Rules of 2002, the petitioner regains seniority of the feeding cadre even

though he gets promotion after the promotion of persons junior to him in the feeding cadre.

11. A person may be posted as Assistant Engineer, either by direct recruitment, or by promotion from the 'feeding cadre' of Junior Engineer. Here, the petitioner, as well as the private respondents were Junior Engineers before being promoted to the post of Assistant Engineers.
12. It would be appropriate to reproduce Rule 6 and Rule 8 of the Seniority Rules of 2002 for elucidating the controversy in hand, as below:-

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.

*Rule 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.....".

(2) The seniority inter-se of persons appointed on the result of any one selection-

(a) through direct recruitment, shall be the same as it is shown in the merit list prepared by the Commission or by the Committee, as the case may be;

(b) by promotion, shall be as determined in accordance with the principles laid down in rule 6 or rule 7, as the case may be, according as the promotion are to be made from a single feeding cadre or several feeding cadres.

(3).....]"

[Emphasis supplied]

13. The submission of Ld. Counsel for the petitioner is that, admittedly, single feeding cadre for promotion to the post of Assistant Engineer is Junior Engineer and Rule 6 of the Seniority Rules of 2002 provides that in case promotions are to be made from a single feeding cadre, the seniority *inter se* of persons so promoted shall be the same as it was in the feeding cadre. It has also been submitted that the 'Explanation' to Rule 6 of the Seniority Rules of 2002 very specifically clarifies 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.
14. In view of Rule 6 and 'Explanation' to Rule 6 of the Seniority Rules of 2002, Ld. Counsel for the petitioner emphasized that since petitioner was senior to the private respondents in the cadre of Junior Engineer, he will be senior in the cadre of Assistant Engineer also and although the respondents were promoted earlier to the petitioner on the post of Assistant Engineer, yet, after the promotion of the petitioner at a later date, the petitioner regains his seniority in the cadre of Assistant Engineer, as it was in the feeding cadre of Junior Engineer.
15. Ld. A.P.O., as well as Ld. Counsel for private respondents, in their counter arguments, have submitted that the cadre of Assistant Engineers is different and it has no connection with the cadre of Junior Engineers. It was submitted by them, that, after promotion to the post of Assistant Engineers, the cadre of private respondents has changed and seniority of the petitioner *vis-à-vis* private respondents, on the post of Junior Engineer, ceases to exist and a fresh seniority list of Assistant Engineers, according to date of their promotion, was prepared. According to them, the seniority of the petitioner and private respondents on the post of Assistant Engineer shall be governed by Rule 7, and not by Rule 6 and its 'Explanation', of the Seniority Rules of 2002.
16. Rule 7 of the Seniority Rules of 2002 is applicable only where the appointments are to be made only by promotion but from more than one feeding cadres. The said Rule is excerpted herein below for convenience:-
- "Rule-7. Where according to the service rules, appointments 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.”

Rule 7 of the Seniority Rules of 2002 would not be applicable in the instant case, for, Rule 7 will be applicable where appointments are to be made only by promotion, but from more than one feeding cadres.

17. The words ‘Cadre’, ‘Feeding Cadre’ and ‘Substantive Appointment’ have been defined respectively in Rule 4(b),(e) and (h) of the Seniority Rules of 2002, as under:-

“4 (b)- “Cadre” means the strength of the service, or part of the service sanctioned as a separate unit;

(e)- “Feeding Cadre” means the cadre of service from amongst the members whereof, promotion is made to a higher service or post under the relevant service rules;

(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.”

18. According to the Uttarakhand Jal Sansthan Engineering Service Rules, 2011, source of recruitment to the posts of Assistant Engineer shall be as follows:

“Assistant Engineer- Recruitment to the posts of Assistant Engineer shall be made from following sources-

(a) 45% posts by direct recruitment through the Public Services Commission;

(b) 50% posts by promotion on the basis of seniority subject to rejection of unfit from amongst such Junior/ Additional Assistant Engineers, who have completed minimum 10 years service on the first July of the year of recruitment;

(c) 5% posts by promotion from amongst such Junior/ Additional Assistant Engineers, who have completed 07 years satisfactory service and who have Graduate Degree in Civil, Electrical or Mechanical Engineering from any University established by Law in India or passed examination of ‘A’ and ‘B’ of Institute of Engineers (recognized) in Civil, Electrical or Mechanical Engineers. Computer Science or equivalent thereto with the prior approval of the Jal Sansthan.

Note: for the calculation of service for promotion on the post of Assistant Engineer, length of service on the post of Junior Engineer and Additional Assistant Engineer shall be counted.

Provided that the appointing authority may, under the prescribed norms as deemed fit by the State Government make appointment by absorption only for once against the vacant posts of direct recruitment from amongst substantively appointed Assistant Engineer working on deputation in Jal Sansthan on the date of commencement of these rules continuously from the date of deputation and who hold the education qualification of the post.”

18.1 Before that, the U.P. Palika and Jal Sansthans Water Works Engineering (Centralized) Service Rules, 1996 appear to be in vogue. Rules of 2011 were framed in supersession of the Rules and orders made in this regard. Rules of 2002, according to Rule 3 of such Rules, shall have effect notwithstanding anything to the contrary contained in any other service rules made hereto before.

19. Rules 2 & 3 of the Seniority Rules of 2002 have overriding effect, on or other Service Rules, in relation to Government servants, in respect of whose recruitment and condition of service, Rules have been made under the proviso to Article 309 of the Constitution of India. Said Rules are excerpted herein below for reference:-

“2- Over-riding effect.—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.

3. These rules shall have effect notwithstanding anything to the contrary contained in any other service rules made here to above.”

20. Rule 24 of the Uttarakhand Jal Sansthan Engineering Service Rules, 2011 prescribes that the seniority of any person shall be fixed in accordance with the Uttarakhand Government Servants (Fixation of Seniority) Rules, 2002, as under:

Seniority- 24 (1) Except as hereinafter provided the seniority of any person shall be fixed in accordance with the Uttarakhand Government Servants (Fixation of Seniority) Rules, 2002. If two or more persons are appointed together, by such order in which their names are arranged in the appointments order:

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

(2) The seniority *inter se* of persons appointed directly on the result of any one selection, shall be the same as determined by the selection committee or commission, as the case may be.

Provided that a candidate recruited directly may lose his seniority, if he fails to join without valid reasons when vacancy is offered to him.

(3) The seniority *inter se* of persons appointed by promotion shall be the same as it was in the cadre from which they were promoted.

(4) Where appointments are made both by promotion and direct recruitment or from more than one source and the respective quota of the sources is prescribed, the *inter se* seniority shall be determined by arranging the names in a cyclic order in a combined list, prepared in accordance with Rule 20 in such manner that the prescribed percentage is maintained.”

[*Emphasis supplied*]

- 20.1. The aforesaid Rule says, in unequivocal terms, that the seniority *inter se* of persons appointed by promotion shall be the same as it was in the cadre from which they were promoted. The petitioner and private respondents, both were Junior Engineers, before being promoted to the post of Assistant Engineer. It is not a case in which the appointments are made both by promotion and direct recruitment or from more than one source, therefore, sub rule (4) of Rule 24 of the Rules of 2011 is not applicable to the facts of the instant case. Instead, sub rule (3) of the Rule 24 of the Rules of 2011 would be applicable, giving clear cut edge to the petitioner.
21. On a careful perusal of the facts, which have been brought on record, coupled with the Rule position, this Court finds that single feeding cadre of the petitioner and private respondents is Junior Engineer. The petitioner, who was admittedly senior in the feeding cadre of Junior Engineer, was promoted on the post of Assistant Engineer, after the promotion of the private respondents, who were admittedly junior in the feeding cadre. The petitioner, therefore, should regain his seniority, in the cadre of Assistant Engineers, as it was in the feeding cadre of Junior Engineers, according to ‘explanation’ appended to Rule 6 of the Seniority Rules of 2002.
22. It has been argued by Ld. A.P.O. that Rule 8(1) of the Seniority Rules of 2002 provides that the seniority is to be determined from the date of

the order of substantive appointment. Since the private respondents were promoted substantively, earlier to the petitioner, therefore, they are senior to the petitioner. This submission of Ld. A.P.O. does not hold water in view of Rule 8(1) of the Seniority Rules of 2002. Rule 8(1) clearly provides that determination of seniority from the date of substantive appointment is subject to the provisions of sub rule 8(1), i.e., Rule 8(2) (a), Rule 8 (2) (b) and Rule 8(3). Rule 8(2) (b) also provides that the seniority is to be determined as per the principles laid down under Rule 6 or Rule 7. It is, therefore, manifestly clear that, for determination of seniority, Rule 8(1) is to be read with and is subject to Rule 8(2) Rule 8(3), Rule 6 and Rule 7 of the Seniority Rules of 2002.

23. **A careful reading of ‘Explanation’ to Rule 6 makes it clear that in case promotion of a person senior in the feeding cadre is made after the promotion of a junior in the feeding cadre, the date of promotion loses its significance and the seniority is regained by the person senior in the feeding cadre, in spite of his promotion after the promotion of a person junior to him in the feeding cadre.**
24. **The petitioner and private respondents, both have been promoted on the post of Assistant Engineers, although the private respondents were promoted earlier to the petitioner. Petitioner’s case is not a case where he was considered for promotion along with private respondents and was found unfit or unsuitable for promotion. ‘Explanation’ to Rule 6 lays down the principle regarding determination of seniority when juniors in the feeding cadre are promoted earlier to the seniors in the feeding cadre. ‘Explanation’ to Rule 6 makes it mandatory to restore the seniority of the feeding cadre. ‘Explanation’ to Rule 6 clearly establishes the supremacy of the seniority in the feeding cadre irrespective of the date or time of promotion.**
25. **Thus, in the instant case, the petitioner is entitled to regain his seniority after his promotion to the post of Assistant Engineer, as he was senior to the private respondents on the post of Junior Engineer, which is the post in the feeding cadre, for promotion to the post of Assistant Engineer.**
26. **A reference of decision rendered by this Tribunal in claim petition no. 115/2007, Vinod Kumar Viridi and others vs. State and others, was given by Ld. Counsel for the petitioner. In the aforesaid decision, it was held that the seniority of the promoted Assistant Engineers will be governed by their seniority in the feeding cadre of the Junior Engineers. Against the order**

dated 04.12.2007 of the Tribunal, a writ petition bearing No. 68/2008 was filed before the Hon'ble High Court at Nainital and the Hon'ble High Court upheld the decision of this Tribunal and dismissed the petition of the State of Uttarakhand on 07.10.2010. The State Government also approached the Hon'ble Supreme Court against the order of the Hon'ble Uttarakhand High Court and the Special Leave Petition of the State Government was dismissed by the Hon'ble Supreme Court on 11.04.2016. After that, *vide* office order dated 28.09.2016 of the Public Works Department, Government of Uttarakhand, the order dated 04.12.2007 of this Tribunal, passed in claim petition No. 115/2007, was complied with and the seniority of the Junior Engineers in the feeding cadre was duly recognized irrespective of promotions to the higher post at different points of time. The present case is squarely covered by the judgment of the Hon'ble High Court that the seniority in the feeding cadre is what matters and a person, senior in the feeding cadre, regains his seniority even though promoted on the higher post later. In view of this, in the case at hand, the seniority list of Assistant Engineers, who were promoted from the post of Junior Engineers, will necessarily be fixed in accordance with Rule 6 and its 'Explanation' of the Seniority Rules of 2002.

27. The decisions rendered by Hon'ble Apex Court in B.K.Pavitra and others vs. Union of India and others, 2017 (1) Recent Services Judgments (RSJ), S.Panneer Selvam and others vs. Government of Tamil Nadu and others, 2015(4) RSJ and Sunaina Sharma and others vs. State of Jammu and Kashmir and others, (2018) 11 SCC 413, also appear to be supporting petitioner's case. This Tribunal need not discuss these decisions in detail, for, the Rule position is clearly in favour of the petitioner.
28. For the reasons stated herein above, we are of the view that since the impugned seniority list dated 06.07.2017 (Annexure: A 1) has not been drawn according to the Uttarakhand Government Servants Seniority Rules, 2002, therefore, it cannot be upheld and is liable to be set aside. It will be appropriate to direct the respondents No. 1 to 3 to draw a fresh seniority list of the private respondents, in accordance with the Seniority Rules of 2002 read with Rule 24 of Uttarakhand Jal Sansthan Engineering Service Rules, 2011.

ORDER

The seniority list dated 06.07.2017 (Annexure: A-1) is hereby quashed. Respondents No. 1 to 3 are directed to redraw the seniority of the parties (petitioner and private respondents) in accordance with Rule-6 and its 'Explanation' of the Uttarakhand Government Servants Seniority Rules, 2002 read with Rule 24 of Uttarakhand Jal Sansthan Engineering Service Rules, 2011, within a period of four months from today. The petitioner shall also be entitled to consequential benefits, if any, accrued to him, in law. It is made clear that in the absence of any relief thus sought in this behalf, this Tribunal has not expressed any opinion on the legality or otherwise, of the promotions of the private respondents to the post of Assistant Engineers. No order as to costs.

(A.S.NAYAL)
MEMBER (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: MARCH 25, 2019
DEHRADUN

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