

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL  
BENCH AT NAINITAL**

Present: Hon'ble Mr. Ram Singh

----- Vice Chairman (J)

Hon'ble Mr. A.S.Nayal

-----Member (A)

**CLAIM PETITION NO. 28/NB/DB/2018  
(WRIT PETITION NO. 2557/SS/2017, BEFORE HON'BLE HIGH COURT)**

1. Shankar Singh Bhakuni, S/o Late Sri Bahadur Singh Bhakuni, presently posted as Area Rationing Officer, Udham Singh Nagar.
2. Shivanand Kudiyal, S/o Late Sri Kali Ram, presently posted as Area Rationing Officer, Tehri Rail Head, Rishikesh.
3. Girish Chandra Joshi, S/o Sri Shiv Datt Joshi, presently posted as Area Rationing Officer, Nainital.
4. Keshar Singh Dev S/o Late Sri Nain Singh Dev, presently posted as Area Rationing Officer, Udham Singh Nagar.

.....Petitioners

**VERSUS**

1. State of Uttarakhand through Secretary, Food & Supply, Government of Uttarakhand, Dehradun.
2. Commissioner, Food and Supply Department, Uttarakhand at Dehradun.
3. Uttarakhand Public Service Commission, Singhdwar, Kankhal, Haridwar through its Secretary.
4. Sri Rajendra Prasad Bisht, presently working as Supply Inspector in Food & Civil Supply Department, Uttarakhand, Dehradun.
5. Sri Santosh Kumar, Presently working as Supply Inspector in Food & Civil Supply Department, Uttarakhand, Dehradun.
6. Sri Manoj Kumar, presently working as Supply Inspector in Food & Civil Supply Department, Uttarakhand, Dehradun.
7. Sri Garveen Chandra Bhatt, Presently working as Supply Inspector in Food & Civil Supply Department, Uttarakhand, Dehradun.

8. Sri Dharmendra Singh Dhami, Presently working as Supply Inspector in Food & Civil Supply Department, Uttarakhand, Dehradun.
9. Sri Sudhir Tripathi, presently working as Supply Inspector in Food & Civil Supply Department, Uttarakhand, Dehradun.
10. Sri Vivek Shah, Presently working as Supply Inspector in Food & Civil Supply Department, Uttarakhand, Dehradun.
11. Sri Prasant Bisht, Presently working as Supply Inspector in Food & Civil Supply Department, Uttarakhand, Dehradun.
12. Sri Bhagwat Patani, Presently working as Supply Inspector in Food & Civil Supply Department, Uttarakhand, Dehradun.
13. Kumari Hema Bisht, Presently working as Supply Inspector in Food & Civil Supply Department, Uttarakhand, Dehradun.
14. Sri Sunil Prasad, Presently working as Supply Inspector in Food & Civil Supply Department, Uttarakhand, Dehradun.
15. Sri Ashutosh Bhatt, Presently working as Supply Inspector in Food & Civil Supply Department, Uttarakhand, Dehradun.
16. Kumari Shobha Bainjwal, Presently working as Supply Inspector in Food & Civil Supply Department, Uttarakhand, Dehradun.
17. Sri Vinod Chandra Tiwari, Presently working as Supply Inspector in Food & Civil Supply Department, Uttarakhand, Dehradun.
18. Smt. Vindu Negi, Presently working as Supply Inspector in Food & Civil Supply Department, Uttarakhand, Dehradun.
19. Kumari Poonam Rawat, Presently working as Supply Inspector in Food & Civil Supply Department, Uttarakhand, Dehradun.
20. Sri Ravindra Singh Gusain, Presently working as Supply Inspector in Food & Civil Supply Department, Uttarakhand, Dehradun.
21. Kumari Shahin Jahan, Presently working as Supply Inspector in Food & Civil Supply Department, Uttarakhand, Dehradun.
22. Kumari Divya Agnihotri, Presently working as Supply Inspector in Food & Civil Supply Department, Uttarakhand, Dehradun.
23. Sri Ajay Pal Singh, Presently working as Supply Inspector in Food & Civil Supply Department, Uttarakhand, Dehradun.
24. Smt. Deepa Pandey, Presently working as Supply Inspector in Food & Civil Supply Department, Uttarakhand, Dehradun.

25. Smt. Shashikala Rarswan, Presently working as Supply Inspector in Food & Civil Supply Department, Uttarakhand, Dehradun.
26. Smt. Karuna Pant, Presently working as Supply Inspector in Food & Civil Supply Department, Uttarakhand, Dehradun.
27. Sri Vijay Dobhal, Presently working as Supply Inspector in Food & Civil Supply Department, Uttarakhand, Dehradun.
28. Smt. Aarti Dobhal, Presently working as Supply Inspector in Food & Civil Supply Department, Uttarakhand, Dehradun.
29. Sri Veer Vikram Dhuniyal, Presently working as Supply Inspector in Food & Civil Supply Department, Uttarakhand, Dehradun.
30. Sri Manoj Kumar, Presently working as Supply Inspector in Food & Civil Supply Department, Uttarakhand, Dehradun.
31. Sri Bharat Singh Rana, Presently working as Supply Inspector in Food & Civil Supply Department, Uttarakhand, Dehradun.
32. Sri Dev Chandra, Presently working as Supply Inspector in Food & Civil Supply Department, Uttarakhand, Dehradun.
33. Sri Manoj Soni, Presently working as Supply Inspector in Food & Civil Supply Department, Uttarakhand, Dehradun.
34. Sri Gaurav Kumar Arya, Presently working as Supply Inspector in Food & Civil Supply Department, Uttarakhand, Dehradun.
35. Sri Malkeet Singh, Presently working as Supply Inspector in Food & Civil Supply Department, Uttarakhand, Dehradun.
36. Kumari Leena Chandra, Presently working as Supply Inspector in Food & Civil Supply Department, Uttarakhand, Dehradun.
37. Kumari Poonam Devi, Presently working as Supply Inspector in Food & Civil Supply Department, Uttarakhand, Dehradun.
38. Smt. Chitra Rautela Bohra, Presently working as Supply Inspector in Food & Civil Supply Department, Uttarakhand, Dehradun.

.....**Respondents**

Present: Sri Ganesh Kandpal, Ld. Counsel  
for the petitioners.

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

Sri Alok Mehra, Ld. Counsel  
for the respondents No. 4 to 38.

**JUDGMENT****DATED: JANUARY 09, 2019****HON'BLE MR. RAM SINGH, VICE CHAIRMAN (J)**

1. The petitioners have filed this petition for the following reliefs:-

*I. To issue a writ, order or direction in the nature of certiorari to call for the entire record of the case and quash the impugned seniority list dated 17.08.2017 (contained as Annexure No. 12 to the writ petition.).*

*II. To issue a writ, order or direction in the nature of mandamus directing the respondents not to make any promotion from the seniority list dated 17.08.2017.*

*III. To issue a writ, order or direction in the nature of mandamus directing the respondents to issue a fresh seniority list after making a fresh promotional exercise on the post of supply inspector by completing the selection year wise vacancies and determined their seniority on the basis of selection year against which they had been promoted.*

*IV To issue a writ, order or direction in the nature of mandamus directing the respondents to determine the seniority of the petitioner from the date he was granted Adhoc promotion i.e. 05.06.2008."*

2. Briefly stated, the facts of the case are that the petitioners were initially appointed on the post of Clerks in the department of Food & Civil Supplies of the State Government in the various years from 1978 to 1987. The next promotion from the post of Clerk is made to the post of Supply Inspector. The Service rules were framed by the Government of U.P. in 1980. Thereafter, State of Uttarakhand framed its own Rules known as "Uttarakhand Food and Civil Supplies (Supply Branch) Subordinate Service Rules, 2005" (hereinafter referred to as "Service Rules of 2005") (Annexure: 4). According to Rule 5 of the Service Rules of 2005, the source of recruitment for Supply Inspector is 75% by way

of direct recruitment and 25 % by promotion from amongst ministerial staff. Direct recruitment as well as promotion on the post of Supply Inspector is made through Public Service Commission. The criterion for promotion to the post of Supply Inspector is 'seniority subject to rejection of unfit'.

3. The petitioners were promoted to the post of Supply Inspector on *ad hoc* basis by the respondent No. 2 vide Office Order dated 05.06.2008 (Annexure: 1). Vide order dated 11.11.2013 (Annexure: 2), the promotion of the petitioners on the post of Supply Inspector was made as a regular promotion by the respondent No. 2. The respondents also made direct recruitment of 22 Supply Inspectors on 22.11.2013 (Annexure: 7). The petitioners were also promoted on the post of Area Rationing Officer on 28.10.2014 (Annexure: 8).

4. The Supply Inspectors who were appointed by way of direct recruitment, filed a writ petition No. 2153(S/S) of 2014, Vinod Chandra Tiwari & others vs. State of Uttarakhand & others, before the Hon'ble High Court of Uttarakhand (Annexure: 9) and challenged the promotion of the promotees on the ground that their promotion was made without consulting the Public Service Commission. The Hon'ble High Court directed the department of Civil Supplies to send the matter of the promotees (petitioners) to the Public Service Commission for considering their promotion. The relevant part of the judgment of the Hon'ble High Court is quoted below:-

*"12. The main thrust of the argument of the petitioners before this Court is that the promotion of private respondents is void ab-initio, inasmuch, whether it is ad-hoc or regular, a promotion (in the year given i.e. between 2008 to 2013 respectively) could only have been done with active consultation with the State Public Service Commission. Since this has not been done, these promotions are liable to be set aside by this Court. The State Government on the other hand in its counter affidavit in paragraph 14 states that the State Government had sent the information to the State Public Service Commission, but since they have not received any objection from the State Public Service Commission, the State Government*

*has presumed that the State Public Service Commission granted its approval and hence they were promoted.*

*13. In view of this Court this is not a proper consultation as a proper consultation would mean an active participation of the State Public Service Commission through its Members and evaluation of records of the petitioner and even if such promotions have been made on the basis of seniority, subject to rejection of unfit, their service record has to be evaluated which has presently not been done.*

*14. Rule 16 clearly stipulates that promotion exercise has to be done as per the procedure given under Uttaranchal Promotion by Selection in consultation with State Public Service Commission (Procedure) Rule 2002. As per rule 16 of Rules of 2005 criteria has been laid down for promotion which says that selection on the basis of seniority cum merit subject to rejection of unfit. It further provides that the appointing authority has to prepare three lists (1) Scheduled Caste (2) Scheduled Tribes (3) General and thereafter they have to be recommended for appointment subject to the availability of the posts. This procedure has evidently not been followed.*

*15. Since, there is an apparent anomaly in the promotion of the private respondents, both at ad-hoc and at regular level, where the promotions have not been done as per the 2002 Rules and the State Public Service Commission has not been consulted the respondents/ Department and the State Government are hereby directed to furnish the names of such respondents to the State Public Service Commission, who shall examine the candidature and make proper recommendation and thereafter orders be passed in each cases, in accordance with law by the appointing authority.*

*16. Meanwhile, as far as calculation of seniority between the petitioners and the private respondents are concerned assuming for the sake of argument and this only is subject to the final recommendations of the State Public Service Commission, since both the petitioners as well as private respondents have been given appointment in the same selection recruitment year i.e. 2013-2014, their inter se seniority has to be calculated as per Rules 8 of the Uttaranchal Government Servant Seniority Rules 2002. Sub-rule (3) of Rule 8 whereby in seniority the first candidate, who is senior would be promoted and thereafter direct recruitment and so on. It is also made clear that since the private respondents have been working all these years on the post of Supply Inspector i.e. till final decision, they shall continue on the existing posts.*

*17. It is further directed that the Department shall send the matter of the private respondents forthwith to the State Public Service Commission but definitely within a period of three weeks from the date of production of a certified copy of this order and thereafter*

*within three months the State Public Service Commission shall pass consequential order.*

*18. With the aforesaid observations, the writ petition stands disposed.”*

5. Perusal of the above part of the judgment of the Hon'ble High Court, makes it clear that the *ad hoc* promotions of the petitioners in 2008 and regular promotions in 2013 were found *void ab-initio* because these were made without consulting the Public Service Commission and the same were de-hors the Rules. The Hon'ble High Court directed that the department shall send the matter of the promotees (petitioners) to the Public Service Commission, within a period of three weeks and thereafter, within a period of three months, the Public Service Commission shall pass appropriate and consequential order

6. In pursuant to the order of the Hon'ble High Court, the respondents referred the matter of promotion of the promotees (petitioners) to the Public Service Commission, who held its meeting on 23.06.2016 and sent its recommendations to the respondents. Thereafter, Respondent no. 2 issued the promotion order of 54 Supply Inspectors on 22.09.2016 (Annexure: 11), which included promotion of the petitioners also. The recommendations of the Public Service Commission, which were accepted by the respondents, pertained to the vacancies in the selection year 2006-07 to 2013-14.

7. The petitioners have contended that while the selection years of the petitioners were rightly shown against the vacancies but the promotional exercise for the post of Supply Inspector was not undertaken by the respondents correctly in so far as, the vacancies for different selection years are concerned and the petitioners have prayed for to direct the respondents to grant the seniority to the petitioners on the basis of the vacancies in the relevant selection years against which the petitioners should have been promoted. The petitioners have also

prayed for to grant the seniority to them from the date they were granted *ad hoc* promotion to the post of Supply Inspector on 05.06.2008 and also a prayer has been made that the impugned seniority list dated 17.08.2017 (Annexure: 12) issued by the respondents, be quashed and for a direction to issue fresh seniority list after making fresh promotional exercise on the post of Supply Inspector by completing the selection year wise vacancies and determine their seniority on the basis of selection year against which they had been promoted. Petitioners have also sought a direction to the respondents not to make any promotion from the seniority list dated 17.08.2017.

8. Respondents No. 1 & 2 as well as private respondents No. 4 to 38 have filed their written statements. The substance of the written statements is that the whole promotional exercise to the post of Supply Inspector was made in compliance of the order of the Hon'ble High Court. It has further been contended by the respondents that the petitioners cannot be granted seniority from the date of their *ad hoc* promotion on 05.06.2008 as their promotion was purely on temporary basis, as stop gap arrangement and the same was not made in accordance with the Service Rules of 2005.

9. The respondents have also contended that the vacancies in respect of various selection years have been correctly determined and while recommending the promotion, the Public Service Commission has correctly shown the selection year of the petitioners as per the vacancies and the seniority of the petitioners in accordance with the Service Rules of 2005. It has further been contended by the respondents that the *ad hoc* promotions of the petitioners on 05.06.2008 and their regular promotions on 11.11.2013 had been set aside by the Hon'ble High Court vide its order dated 04.11.2015, as the Public Service Commission was not consulted for *ad hoc*/regular promotion, as per the requirement of Service Rules of 2005. Therefore,



the promotions of the petitioners in 2008 and 2013 are de-hors the Rules.

10. Respondents have also stated that after Consulting the Commission, the petitioners have been promoted substantively on 22.09.2016 (Annexure: 11) and, therefore, they are entitled to get seniority from the date of their substantive appointment only. It is settled proposition of law that no one claim seniority from the date of occurrence of vacancy but can only get seniority from the time, he has been substantively promoted. In view of the order of the Hon'ble High Court, the promotions of the petitioners on the post of Area Rationing Officer on 28.10.2014 also become ineffective. Respondents have also contended that the calculation of year-wise vacancies for promotion in respect of the eligible candidates has no connection to the relief, sought by the petitioners in the claim petition.

11. The seniority of the petitioners has been prepared as per Rule 8 of the Uttarakhand Government Servants Seniority Rules, 2002, which provides that the seniority can be determined from the date of their substantive appointment. However, a proviso to said Rule provides that if the appointment order specified a particular 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.

12. Private respondents have also contended that there was no appointment of the petitioners from back date, hence, seniority can only be given from the date of their substantive appointment i.e. 22.09.2016. There is no infirmity in the seniority list. The petitioners are not entitled for any relief and the petition deserves to be dismissed.

13. None appeared on behalf of respondent No. 3 inspite of sufficient service.

14. Petitioners have also filed rejoinder affidavit and the same averments have been reiterated and elaborated as have been stated in the claim petition.

15. We have heard both the sides and perused the record.

16. Petitioners in their petition have sought the quashing of impugned seniority list dated 17.08.2017 and thereafter, a direction to the respondents to issue a fresh seniority list after making a fresh promotional exercise on the post of supply inspector by completing the selection on year wise vacancies and their seniority should be determined on the basis of selection year of their vacancies and they should be granted the benefit from the date they were given *ad hoc* promotion i.e. 05.06.2008.

17. It is admitted to both the parties that the relevant service Rules is the Service Rules of 2005. Rule 21 of the Service Rules of 2005 clearly provides that the seniority of the persons appointed shall be determined in accordance with the Uttarakhand Governments Servants Seniority Rules, 2002 (hereinafter referred to as "Seniority Rules of 2002"). According to these Rules, where the appointments is by promotion and direct recruitment both, the seniority amongst these persons be determined from the date of order of their substantive appointment according to Rule 8 of the Seniority Rules of 2002. Rule 8 of the Seniority Rules of 2002 is reproduced below for convenience:-

***"8.Seniority where appointments by both promotion and direct recruitment--***

*(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 .....*

(2) .....

(3) *Where appointments are made both by promotion and direct recruitment on the result of any one selection the seniority of promotees vis-a-vis direct recruits shall be determined in a cyclic order the first being a promotee as far as may be , in accordance with the quota prescribed for the two sources.*

.....

***Provided that--***

*(i) where appointments from any source are made in excess of the prescribed quota, the persons appointed in excess of quota shall be pushed down, for seniority, to subsequent year in which there are vacancies in accordance with the quota;*

***(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) where, in accordance with the service rules the unfilled vacancies from any source could, in the circumstances mentioned in the relevant service rules be filled from the other source and appointment in excess of quota are so made, the persons so appointed shall get the seniority of that very year as if they are appointed against the vacancies of their quota."*

18. The petitioners have contended that they should have been given the benefit of their *adhoc* services/ appointment from 05.06.2008, for determining the seniority. Whereas, learned A.P.O. has stated that the officiating appointments of the petitioners were *adhoc*, as stop gap arrangement and since the Public Service Commission was not consulted for these *adhoc* promotions, the officiating appointments of the petitioners were de hors the rules and, hence, their period of officiating cannot be counted for determining the seniority. This court agree with this argument that according to Rule 8(1) of the Seniority Rules of 2002, the seniority can be determined from the date of order

of substantive appointment and the petitioners were not substantively appointed in accordance with the Service Rules of 2005 on 05.06.2008, rather after recommendations of the Public Service Commission, their substantive appointments were made on 22.09.2016 and accordingly, their seniority cannot be counted from 05.06.2008.

19. Learned counsel for the petitioners has also argued that their appointment w.e.f. 22.09.2016 was wrongly made because they should have been given appointment according to the Service Rules with back date against the vacancies of the year 2006-07 to 2013-14.

20. As per Rule 4(h) of the Seniority Rules of 2002, 'substantive appointment' is defined as under:-

*“(h) “substantive appointment” means an appointment, not being an ad hoc appointment, on a post in the cadre of the service, made after selection in accordance with the service rules relating to that service.”*

21. Hence, in view of the above situation, the court is of the view that the period of officiating appointment of the petitioners on the post of Supply Inspector, cannot be counted for determining their seniority for the reasons that their substantive appointment was not made w.e.f. 05.06.2008. Furthermore, before making their officiating appointment, the Public Service Commission was not consulted and this matter was decided by the Hon'ble High Court vide judgment dated 04.11.2015.

22. Referring to the same judgment dated 4.11.2015, learned counsel for the petitioners has also raised a point that directions and observations made by the Hon'ble High Court have not been followed while giving appointments in 2016. Furthermore, the provisions of Service Rules of 2005, have been totally ignored while giving substantive appointment to the petitioners in 2016.

23. When we agree that the seniority to the petitioners cannot be granted from the date of their *ad hoc* promotions i.e. 05.06.2008, but we also hold that the appointment of the petitioners, after consultation with the Public Service Commission on 22.09.2016, were also not made, following the provisions of Service Rules of 2005. The relevant provisions of the Service Rules of 2005, relating to appointment is Rule 5, 14, 15, 16, 17 & 18, which read as under:-

“5- भर्ती का स्रोत— (1) सेवा में विभिन्न श्रेणी के पदों पर भर्ती निम्नलिखित स्रोतों से की जायेगी, पूर्ति निरीक्षक—(क) पच्चहतर प्रतिशत आयोग के माध्यम से सीधी भर्ती द्वारा और, (ख) पच्चीस प्रतिशत मौलिक रूप से नियुक्ति नीचे खण्ड (I) और (II) में उल्लिखित श्रेणियों के पदों के पदधारियों में से जिन्होंने भर्ती के वर्ष के प्रथम दिवस को उक्त श्रेणियों में किसी एक या अधिक पदों पर सेवा के पांच वर्ष पूरे कर लिये हों, चयन समिति के माध्यम से पदोन्नति द्वारा।

(I) वरिष्ठ सहायक, सहायक लेखाकार, वरिष्ठ डाटा एन्ट्री ऑपरेटर, लेखा लिपिक और लिपिक/टंकक से पदों के 20 प्रतिशत तक और,

(II) आशुलिपिकों/कम्प्यूटर ऑपरेटर से पदों के 5 प्रतिशत तक

“परन्तु चयन वर्ष 2004-05 में मात्र एक बार के लिए पदों की रिक्तता को दृष्टिगत रखते हुए पदोन्नति कोटा रिक्त पदों के सापेक्ष शत-प्रतिशत होगा।”

(दो) वरिष्ठ पूर्ति निरीक्षक:- मौलिक रूप से नियुक्ति पूर्ति निरीक्षकों में से जिन्होंने भर्ती के वर्ष के प्रथम दिवस को इस रूप के कम से कम 5 वर्ष की सेवा पूरी कर ली हो, चयन समिति के माध्यम से पदोन्नति द्वारा।”

#### भाग- 5 भर्ती की प्रक्रिया.

14. रिक्तियों का अवधारण— नियुक्ति प्राधिकारी भर्ती के वर्ष के दौरान भरी जाने वाली रिक्तियों की संख्या और नियम छ: के अधीन अनुसूचित जातियों, अनुसूचित जनजातियों और अन्य श्रेणियों के अभ्यर्थियों के लिये आरक्षित की जाने वाली रिक्तियों की संख्या भी अवधारित करेगा। आयोग के माध्यम से भरी जाने वाली रिक्तियों की सूचना उनको दे दी जायेगी।

15- सीधी भर्ती की प्रक्रिया—

(1) प्रतियोगिता परीक्षा में सम्मिलित होने की अनुमति के लिये आवेदन पत्र आयोग द्वारा जारी विज्ञापन में प्रकाशित प्रपत्र में आमंत्रित किया जायेगा।

(2) किसी अभ्यर्थी को परीक्षा में तब तक सम्मिलित नहीं किया जायेगा जब तक उसके पास आयोग द्वारा जारी प्रवेश पत्र न हों।

(3) आयोग लिखित परीक्षा के परिणाम प्राप्त होने और सारणीबद्ध करने के पश्चात नियम छ: के अधीन अनुसूचित जातियों, अनुसूचित जनजातियों और अन्य श्रेणियों के अभ्यर्थियों का सम्यक प्रतिनिधित्व सुनिश्चित करने की आवश्यकता को ध्यान में

रखते हुए, उतनी संख्या में अभ्यर्थियों को साक्षात्कार के लिये बुलाया जायेगा, जिसमें लिखित परीक्षा के परिणाम के आधार पर इस संबन्ध में आयोग द्वारा निर्धारित मानक तक पहुंच सके हों। साक्षात्कार में प्रत्येक अभ्यर्थी को दिये गये अंक लिखित परीक्षा में उसके द्वारा प्राप्त किये गये अंकों में जोड़ दिये जायेंगे।

(4) आयोग अभ्यर्थी के की प्रवीणता के क्रम में, जैसा कि लिखित परीक्षा और साक्षात्कार में प्रत्येक अभ्यर्थी द्वारा प्राप्त किये गये अंकों के कुल योग से प्रकट हो, एक सूची तैयार करेगा और उतनी संख्या में अभ्यर्थियों की संस्तुति करेगा जितने वह नियुक्ति के लिये उचित समझेगा। यदि दो या दो से अधिक अभ्यर्थी कुल योग में बराबर-बराबर अंक प्राप्त करें तो लिखित परीक्षा में अधिक अंक प्राप्त करने वाले अभ्यर्थी का नाम सूची में उच्चतर स्थान पर रखा जायेगा और यदि वे लिखित परीक्षा में भी बराबर अंक प्राप्त करें तो अधिक आयु वाले अभ्यर्थी का नाम सूची में उच्च स्थान पर रखा जायेगा। सूची में नामों की संख्या रिक्तियों की संख्या से अधिक नहीं होगी, आयोग उक्त सूची नियुक्ति प्राधिकारी को अग्रसारित करेगा।

16— पदोन्नति द्वारा भर्ती प्रक्रिया—

(क) वरिष्ठ पूर्ति निरीक्षक के पद पर पदोन्नति

(1) पदोन्नति द्वारा भर्ती अनुपयुक्त को अस्वीकार करते हुए ज्येष्ठता के आधार पर चयन समिति के माध्यम से की जायेगी जिनमें निम्नलिखित होंगे—

(एक) आयुक्त.....अध्यक्ष

(दो) अपर आयुक्त, खाद्य एवं नागरिक उत्तरांचल.....सदस्य

(तीन) आयुक्त द्वारा निर्दिष्ट एक अधिकारी— सदस्य

(चार) यदि खण्ड (एक) से (तीन) के अधीन चयन समिति का कोई भी सदस्य अनुसूचित जाति या अनुसूचित जनजाति का न हो तो आयुक्त द्वारा नाम निर्दिष्ट अनुसूचित जाति या अनुसूचित जनजाति का एक अधिकारी। (पांच) यदि खण्ड एक से खण्ड तीन के अधीन चयन समिति का कोई भी सदस्य पिछड़े वर्ग का न हो तो आयुक्त द्वारा नाम निर्दिष्ट पिछड़े वर्ग का एक अधिकारी।

(2) नियुक्ति प्राधिकारी अभ्यर्थियों की पात्रता सूची उत्तरांचल पदोन्नति समिति का गठन (लोक सेवा आयोग के क्षेत्र के बाहर के पदों के लिए) नियमावली, 2002 के उपबन्धों के अनुसार तैयार की जायेगी और उनकी चरित्र पंजिका और उनसे सम्बन्ध ऐसे अभिलेखों के साथ, जो आवश्यक समझे जायें, चयन समिति के समक्ष रखेगा।

परन्तु जहां किसी श्रेणी के पदों पर पदोन्नति एक से अधिक पोषक संवर्गों से की जाती है, वहां पात्रता सूची राज्य स्तर पर व्यक्तियों के नाम पात्रता के क्षेत्र में ज्येष्ठता क्रम में रखकर तैयार की जायेगी जैसा कि उनके अपने अपने पदों पर उनकी मौलिक नियुक्ति के दिनांक द्वारा अवधारित की जाय। और जहां दो या अधिक व्यक्ति एक ही दिनांक को इस रूप में नियुक्त किये गये थे, अधिक आयु वाले व्यक्ति का नाम उच्चतर स्थान पर रखा जायेगा इस प्रकार नाम रखने में एक ही पद धारणा करने वाले व्यक्तियों की परस्पर ज्येष्ठता बाधित नहीं की जायेगी।

परन्तु यह और कि जहां पोषक संवर्गों में पद भिन्न भिन्न वेतनमानों में हो तो उच्चतर वेतनमान वाले व्यक्तियों के नाम पात्रता सूची में पहले रखे जायेंगे और निम्न वेतनमान में पद धारण करने वाले व्यक्तियों के नाम उसके पश्चात रखे जायेंगे।

(3) चयन समिति उपनियम (2) में निर्दिष्ट अभिलेखों के आधार पर अभ्यर्थियों के मामलों पर विचार करेगी और यदि वह आवश्यक समझे तो अभ्यर्थियों का साक्षात्कार भी कर सकते हैं।

(4) चयन समिति चयन किये गये अभ्यर्थी की सूची भर्ती के समय प्रवृत्त सरकार के आदेशों के अनुसार तैयार करेगी और उसे नियुक्ति प्राधिकारी को अग्रसारित करेगी।

(ख) पूर्ति निरीक्षक के पद पर प्रोन्नति

उत्तरांचल (लोक सेवा आयोग चयन संपरामर्श चयोन्नति (प्रक्रिया) ) नियमावली 2002 में निर्दिष्ट शर्तों के अन्तर्गत पदोन्नति की जायेगी।

17. संयुक्त चयन सूची— यदि नियुक्ति सीधी भर्ती और पदोन्नति दोनों ही प्रकार से की जानी हो तो एक संयुक्त चयनसूची तैयार की जायेगी, जिनमें अभ्यर्थियों के नाम नियम 15 और 16 के अधीन तैयार की गयी सूची के अनुकूलपतः लिये जायेंगे, पहला नाम नियम 16 के अधीन तैयार की गई सूची से लिया जायेगा।

18. नियुक्ति—(1) उपनियम (2) के उपबन्धों के अधीन रहते हुए नियुक्त प्राधिकारी अभ्यर्थियों के नामों का उसी क्रम में लेकर जिसमें वे यथास्थिति, नियम 15, 16 या 17 के अधीन तैयार की गई सूचियों में आये हो नियुक्ति करेगा।

(2) जहां भर्ती के किसी वर्ष में नियुक्तियां सीधी भर्ती और पदोन्नति द्वारा की जानी है वहां नियमित नियुक्तियां नहीं की जायेगी जब तक दोनों स्रोतों से चयन न कर लिये जायें और नियम 17 के अनुसार एक संयुक्त सूची तैयार कर ली जाये।

(3) यदि किसी एक चयन के सम्बन्ध में एक से अधिक नियुक्ति के आदेश जारी किये जाये तो एक संयुक्त आदेश भी जारी किया जायेगा जिसमें व्यक्तियों के नामों का उल्लेख ज्येष्ठता क्रम में किया जायेगा। जैसा कि यथास्थिति चयन में अवधारित किये जाये या जैसा कि उस संवर्ग में हो जिससे उन्हें पदोन्नत किये जाये।

यदि नियुक्तियां सीधी भर्ती और पदोन्नति दोनों द्वारा की जाय जो नाम नियम 17 में निर्दिष्ट चक्रानुक्रम के अनुसार रखे जायेंगे।

24. Hence, scheme of appointment laid down in the rules is very clear, which provides that appointments of Supply Inspector are to be made from both the sources, as per Rule 5. The procedure of selection is laid down in Rule -15 is for direct recruitment and Rule 16 is for promotion and thereafter, as per Rule 17, there is a mandatory

requirement, to prepare a joint select list which also provides that the first name in the joint select list, will be of promotees and thereafter, according to their quota, the name will be adjusted.

25. Rule 18 of the Service Rules of 2005 is very much important, according to which, the Appointing Authority is required to follow the procedure of appointment. As per this Rule, the appointment can be made as per the joint select list prepared under Rule 17 and Sub-rule (2) of Rule 18 clearly provides that where the appointments are to be made from both the sources (direct and promotes), in that case, the appointment will not be made unless a joint select list from both the sources has been prepared. Hence, sub-rule (2) of Rule 18 clearly prohibits any type of regular appointment in the absence of joint select list.

26. The court finds that when in the year 2013 on 11.11.2013, appointment, exclusively from the promotes, was made before the appointment of direct recruits on 22.11.2013, it was not in accordance with Rule 18 of the Services Rules of 2005. Furthermore, it was declared de-hors the rules by the Hon'ble High Court vide its judgment dated 4.11.2015. The Hon'ble High Court in its order dated 4.11.2015 specifically mentioned that since both the petitioners (promotees) as well as private respondents (direct recruits) have been given appointment in the same selection year i.e.2013-14, their inter-se seniority has to be calculated as per rule 8 of the Uttaranchal Government Servant Seniority Rules 2002 and as per sub-rule (3) of Rule 8, in seniority, the first candidate, would be a promotee and thereafter direct recruitee will be placed as per their quota and so on. Hence, as per the Hon'ble High Court order and the vacancies, the appointments of the petitioners (Promotees) as well as private respondents (direct recruits) were to be given in the same selection year 2013-14, and their seniority will be calculated as per Rule 8 of the Seniority Rules of 2002. But for the purpose of Rule 8 of the Seniority



Rules of 2002, what is substantive appointment that depends on the date of the appointment issued by the appointing authority.

27. Learned counsel for the petitioners has argued that after complying with the directions of the Hon'ble High Court and after getting the approval from the Public Service Commission, the appointments of the petitioners were made in 2016, but for requirement of Rules, that should have been made with back date i.e. from the selection year 2013-14, after completing the requirement of Rule 17 and 18.

28. We are of the view that neither the appointments of the petitioners made on 05.06.2008 was in consonance with the rules, as also held by the Hon'ble High Court nor the appointments of the petitioners in 2016 and the appointments of private respondents (direct recruits) on 22.11.2013 was made after following the requirement of law, as mentioned in Rule 17 and 18 of the Service Rules of 2005. The Hon'ble High Court has also held that the appointment of the petitioners (Promotees) as well as private respondents (direct recruits) pertains to the same selection year 2013-14, hence, accordingly, the appointment of both the promotes and direct recruits should have been made in accordance with Rule 17 and 18 in a cyclic manner as per the provisions of Service Rules. Although, the appointments of the petitioners were made in 2016 but, in view of the fact that the petitioners were continuing on their service on the same post and in view of the Service Rules of 2005 and the order of the Hon'ble High Court, their appointment should have been made effective with retrospective effect in the year 2013-14.

29. As per requirement of the law, for appointment of the petitioners (promotees) as well as private respondents (direct recruits) according to the Service Rules of 2005, there was also a need to prepare a joint select list under Rule 17 and as per Rule 18, there was a

need to give substantive appointment of both the persons accordingly, and thereafter, the seniority list needs to be fixed as per Rule 8 of the Seniority Rules of 2002.

30. Hence, in view of that, the appointment of promotes & direct recruits, as well as the impugned seniority list dated 17.08.2017, is not in accordance with the Service Rules of 2005 and the Seniority Rules of 2002. There is a need for a direction to the respondents to re-exercise the appointment process as per the Service Rules on the post of Supply Inspector for the same selection year i.e. 2013-14 and thereafter, the seniority needs to be determined afresh accordingly. Hence, following order is being passed.

**ORDER**

The claim petition is partly allowed and the impugned seniority list dated 17.08.2017 (Annexure: 12) is hereby set aside. The respondents are directed to modify the appointment orders of the petitioners dated 22.09.2016 (Annexure: 11) and of direct recruits dated 22.11.2013 (Annexure: 7), by preparing a joint select list of the promotees and the direct recruits against the vacancies till the year 2013-14 and to re-issue fresh appointment orders of Supply Inspectors w.e.f. 22.11.2013, by fixing their names in a cyclic manner as per their quota and as per the requirement of the Service Rules of 2005 and in view of the observation made in the body of this judgment, within a period of four months from today. Thereafter, fresh seniority of Supply Inspectors be settled as per the provisions of the Seniority Rules of 2002.

No order as to costs.

**(A.S.NAYAL)**  
MEMBER (A)

**(RAM SINGH)**  
VICE CHAIRMAN (J)

*DATE: JANUARY 09, 2019*  
NAINITAL  
KNP