

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

Present:           Hon'ble Mr. Ram Singh

----- Vice Chairman (J)

Hon'ble Mr. A.S. NayaI

-----Member (A)

**CLAIM PETITION NO. 15/NB/DB/2017**

1. Sunil Kumar, presently working as Executive Engineer, Irrigation Division, Srinagar, Garhwal.
2. Sanjay Singh, Presently working as Executive Engineer, P.M.G.S.Y. (Irrigation Division), Dehradun.
3. Anil Verma, presently working as Executive Engineer, Avasthapan Khand, Dakpatthar, Dehradun.
4. Dixant, presently working as Executive Engineer, Avasthapan Khand (Punarvas), New Tehri.
5. Rajesh Kumar, presently working as Executive Engineer, P.M.G.S.Y. (Irrigation Division-I), New Tehri.
6. Vijay Kan Maurya, presently working as Executive Engineer, Irrigation Division, Tharali, District Chamoli.
7. Harish Chandra Singh Bharti, presently working as Executive Engineer, Irrigation Division, Nainital.
8. Shiv Narain Singh, presently working as Executive Engineer, P.M.G.S.Y. (Irrigation Division), Purola, District Uttarkashi.

**.....Petitioners**

**VERSUS**

1. State of Uttarakhand through Principal Secretary, Department of Irrigation, Government of Uttarakhand, Dehradun.

2. State of Uttarakhand through Deputy Secretary, Department of Irrigation, Government of Uttarkahand, Dehradun.
3. Engineer-in-Chief, Department of Irrigation, Uttarakhand, Dehradun.
4. Prem Singh Panwar, presently working as Executive Engineer, Irrigation Division, Uttarkashhi.
5. Sanjay Srivastava, presently working as Executive Engineer, Irrigation Division, Pithoragarh.
6. Prashant Vishnoi, presently working as Executive Engineer/Staff officer, Office of Engineer-in-Chief, Irrigation Department, Dehradun.
7. Sharad Srivastava, presently working as Executive Engineer, Irrigation Division, Tehri.
8. Manoj Kumar Singh, presently working as Executive Engineer, P.M.G.S.Y. (Irrigation Division), Srinagar Garhwal.
9. Vikas, presently working as Executive Engineer, Irrigation Division, Purola.
10. Mahesh Kumar Khare, presently working as Executive Engineer, I.R.I., Roorkee, District Haridwar.
11. Ajay Kumar, presently working as Executive Engineer, Irrigation Division, Duggada, Pauri Garhwal.
12. Sanjay Kumar Pathak, Executive Engineer (presently working on deputation as Superintending Engineer) U.R.R.D.A., Dehradun.
13. Mohd. Javed Anwar, presently working as Executive Engineer, Jamrani Dam Division, Haldwani.
14. Ram Babu Singh, presently working as Executive Engineer, Jal Vigyan Khand, Bahadarabad, District Haridwar.
15. Sanjay Raj, presently working as Executive Engineer, Irrigation Division, Sitarganj, District Udham Singh Nagar.
16. Harsh Kumar Katiyar, presently working as Executive Engineer, Pariyojna Khand, Dehradun.

17. Nagendra Bahadur, presently working as Executive Engineer, P.M.G.S.Y. (Irrigation Division), Pithoragarh.

18. Kapil Kumar, presently working as Executive Engineer, I.R.I., Roorkee, District Haridwar.

19. Dinesh Kumar Singh, presently working as Executive Engineer, Irrigation Division, Dehradun.

.....Respondents

Present: Sri S.S.Yadav, Ld. Counsel  
for the petitioners.  
Sri V.P. Devrani, Ld. A.P.O.  
for the Respondents No. 1 to 3.

### **JUDGMENT**

**DATED: FEBRUARY 13, 2019**

**HON'BLE MR. RAM SINGH, VICE CHAIRMAN (J)**

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

*“(1) To quash the final seniority list dated 20.09.2017 issued by Respondent No. 1 (Annexure No. 4 to this claim petition).*

*(2) To direct the respondent Nos. 1, 2 & 3 to maintain the status-quo till the pendency of the present petition and not to give any effect to the present seniority list issued on 20.09.2017.*

*(3) To direct the respondent Nos. 1, 2 & 3 to not held the DPC for the next promotion on the post of Superintending Engineer amongst the candidates shown in the seniority list dated 20.09.2017 is under challenge before this Hon'ble High Court.*

*(4) To pass any other suitable order as this Hon'ble Tribunal may deem fit and proper under the facts and circumstances of the case.*

*(5) To award the cost of the petition in favour of the applicants.”*

2. Briefly stated, the facts of the case are that, 496 persons were recruited against the direct vacancies of Assistant Engineers during the selection year 1999-2000, but they were given appointment in two phases. 322 persons were appointed to the service vide order dated 05.10.1999 and remaining 174 person were appointed vide order dated 13.03.2000. In the mean time, from promotional quota, the appointments were made on 25.05.2000.

3. After issuing the tentative seniority list, objections were invited and final seniority list dated 20.09.2017 was issued by the respondent No. 1, which has been challenged by the petitioners, on the ground that the seniority should be given from the date of substantive appointment, whereas, it has been fixed differently, referring to the concerned Rules, governing the appointment and seniority.

4. The petition has been opposed by the respondents on the ground that the seniority has been fixed as per the concerned Rules, governing the parties.

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

6. After hearing both the sides, it is evident that the real controversy in this petition is, how-

- (i) the *inter-se* seniority of the persons, selected by one selection process, but appointed by order on different dates, and
- (ii) inter-se seniority of the persons appointed by direct recruitment and promotion,  
is to be settled.

7. It is an admitted fact that matter relates to the recruitment year 1999-2000. In the service Rules known as Uttar Pradesh Engineers Service (Irrigation Department Group-B) Service Rules, 1993 (hereinafter referred to as 'Service Rules of 1993') in

Rule 3(अ), the selection year is to be counted from First day of July to 30<sup>th</sup> June. Rule 14 to 17 of the Service Rules of 1993 prescribe the procedure for selection and according to Rule 17, it is mandatory to prepare a joint select list before giving appointment on the post of Assistant Engineer, as it is to be filled up by direct recruitment as well as from the promotees, as per Rule 5. After preparing a joint select list under Rule 17, appointments can be made under Rule 18 in the order mentioned in the joint select list, maintaining the percentage of quota of direct as well as promotees and also after giving representation to the reserved classes. Rule 18 of the Service Rules of 1993 reads as under:-

“18- नियुक्ति— (1) उपनियम (2) के उपबन्धों के अधीन रहते हुये नियुक्ति प्राधिकारी अभ्यर्थियों के नाम उसी क्रम में लेकर, जिसमें वे यथास्थिति नियम 15,16 या 17 के अधीन तैयार की गयी सूची में आये हों, नियुक्तियां करेगा।

(2) जहां भर्ती के किसी वर्ष में नियुक्तियों सीधी भर्ती और पदोन्नति दोनों द्वारा की जानी है, वहां नियमित नियुक्तियां तब तक नहीं की जायेंगी जब तक कि दोनों स्रोतों से चयन न कर लिया जाय और नियम 17 के अनुसार एक संयुक्त सूची तैयार न कर ली जाय।

(3) यदि कसी एक चयन के सम्बन्ध में नियुक्ति के एक से अधिक आदेश जारी किये जायें तो एक संयुक्त आदेश भी जारी किया जायेगा जिसमें व्यक्तियों के नामों का उल्लेख, ज्येष्ठता क्रम में किया जायेगा जैसी कि यथास्थिति चयन में अवधारित की जाय या जैसी की उस संवर्ग में हो जिसमें उन्हें पदोन्नत किया जाय। यदि नियुक्तियां सीधी भर्ती और पदोन्नति दोनों द्वारा की जाती है तो नाम नियम 17 में निर्दिष्ट चक्रानुक्रम के अनुसार रखे जायेंगे।”

8. According to sub-rule (1), the appointment can be made in the order, settled in the joint select list, prepared under Rule 17. Sub rule (2) of Rule 18 specifically provides that the **appointment shall not be made unless the selection from both the sources are completed and a joint select list as per Rule 17 is prepared. Sub-rule (3) of Rule 18 further provides that if the appointments are made by the order, issued on different date, even then a joint order will be re-issued according to the criteria fixed as per Rule**

**17.** Hence, as per the said Service Rules of 1993, in one selection year, if anyone is given appointment prior to other, without preparing a joint select list, then it will make no difference for the purpose of ascertaining the dates of their substantive appointment and also for seniority.

9. Rule 21 of the Service Rules of 1993 lays down the provisions, how the seniority will be settled, which reads as under:-

“21- ज्येष्ठता— किसी श्रेणी के पद पर मौलिक रूप से नियुक्त व्यक्तियों की ज्येष्ठता समय-समय पर यथासंशोधित उत्तर प्रदेश सरकारी सेवक ज्येष्ठता नियमावली, 1991 के अनुसार अवधारित की जायेगी।”

10. Accordingly, for the purpose of settling the dispute of seniority, the provisions of Uttar Pradesh Government Servants Seniority Rules, 1991 (hereinafter referred to as ‘Seniority Rules of 1991’), are very relevant. According to these rules, seniority can be fixed as mentioned in part-II i.e. from rule-5 to 8. As the source of recruitment for the post of Assistant Engineer is by both the sources of direct as well as promotees, hence, the relevant Rule is Rule-8, which reads as under:-

“8. उस स्थिति में ज्येष्ठता जब नियुक्तियां पदोन्नति और सीधी भर्ती से की जायं— जहां सेवा नियमावली के अनुसार नियुक्तियां पदोन्नति और सीधी भर्ती दोनों प्रकार से की जानी हों, वहां इस प्रकार नियुक्त व्यक्तियों की ज्येष्ठता उनकी मौलिक नियुक्ति के आदेश के दिनांक से निम्नलिखित उप नियमों के उपबन्धों के अधीन अवधारित की जायेगी और यदि दो या अधिक व्यक्ति एक साथ नियुक्त किये जायं तो उस क्रम में अवधारित की जायेगी जिसमें उनके नाम नियुक्ति के आदेश में रखे गये हैं:

(1) प्रतिबन्ध यह है कि यदि नियुक्ति के आदेश में कोई ऐसा विशिष्ट पूर्ववर्ती दिनांक विनिर्दिष्ट हो जिससे कोई व्यक्ति मौलिक रूप से नियुक्त किया जाय, तो वह दिनांक मौलिक नियुक्ति के आदेश का दिनांक माना जायेगा और अन्य मामलों में इसका तात्पर्य आदेश जारी किये जाने के दिनांक से होगा :

अग्रेतर प्रतिबन्ध यह है कि सीधे भर्ती किया गया कोई अभ्यर्थी अपनी ज्येष्ठता खो सकता है, यदि किसी रिक्त पद का उसे प्रस्ताव किये जाने पर

वह विधिमाम्य कारणों के बिना, कार्यभार ग्रहण करने में विफल रहता है, कारणों की विधिमाम्यता के संबंध में नियुक्ति प्राधिकारी का विनिश्चय अन्तिम होगा।

(2) किसी एक चयन के परिणामस्वरूप—

(क) सीधी भर्ती से नियुक्त व्यक्तियों की परस्पर ज्येष्ठता वही होगी, जैसी यथास्थिति आयोग या समिति द्वारा तैयार की गयी योग्यता सूची में दिखायी गयी हो;

(ख) पदोन्नति द्वारा नियुक्त व्यक्तियों की परस्पर ज्येष्ठता वही होगी जो इस स्थिति के अनुसार कि पदोन्नति एकल पोषक संवर्ग से या अनेक पोषक संवर्गों से होती है यथास्थिति, नियम 6 या नियम 7 में दिये गये सिद्धान्तों के अनुसार अवधारित की जाय।

(3) जहां किसी एक चयन के परिणामस्वरूप नियुक्तियां पदोन्नति और सीधी भर्ती दोनों प्रकार से की जायं, वहां पदोन्नत व्यक्तियों की, सीधे भर्ती किये गये व्यक्तियों के संबंध में ज्येष्ठता, जहां तक हो सके, दोनों स्रोतों के लिए विहित कोटा के अनुसार चक्रानुक्रम में (प्रथम स्थान पदोन्नत व्यक्ति का होगा) अवधारित की जायेगी।

दृष्टान्त—(1) जहां पदोन्नत व्यक्तियों और सीधी भर्ती किये गये व्यक्तियों का कोटा 1:1 के अनुपात में हो, वहां ज्येष्ठता निम्नलिखित क्रम में होगी :-

प्रथम	.....	पदोन्नत व्यक्ति
द्वितीय	.....	सीधी भर्ती किया गया व्यक्ति और इसी प्रकार आगे भी।

(2) जहां उक्त कोटा 1:3 के अनुपात में हो, वहां ज्येष्ठता निम्नलिखित क्रम में होगी :-

प्रथम	.....	पदोन्नत व्यक्ति
द्वितीय से चतुर्थ तक	.....	सीधे भर्ती किये गये व्यक्ति
पांचवां	.....	पदोन्नत व्यक्ति
छठा से आठवां	.....	सीधी भर्ती किये गये व्यक्ति और इसी प्रकार आगे भी।

प्रतिबन्ध यह है कि—

(एक) जहां किसी स्रोत से नियुक्तियां विहित कोटा से अधिक की जायं, वहां कोटा से अधिक नियुक्त व्यक्तियों को ज्येष्ठता के लिए उन अनुवर्ती वर्ष या वर्षों के लिए बढ़ा दिया जायेगा जिनमें कोटा के अनुसार रिक्तियां हों;

(दो) जहां किसी स्रोत से नियुक्तियां विहित कोटा से कम हों, और ऐसी न भरी गयी रिक्तियों के प्रति नियुक्तियां अनुवर्ती वर्ष या वर्षों में की जायं, वहां इस प्रकार नियुक्त व्यक्ति किसी पूर्ववर्ती वर्ष की ज्येष्ठता नहीं पायेंगे किन्तु वह उस वर्ष की ज्येष्ठता पायेंगे जिसमें उनकी नियुक्तियां की जायं किन्तु उनके नाम शीर्ष पर रखे जायेंगे, जिसके बाद अन्य नियुक्त व्यक्तियों के नाम चक्रानुक्रम में रखे जायेंगे;

(तीन) जहां सेवा नियमावली के अनुसार, सुसंगत सेवा नियमावली में उल्लिखित परिस्थितियों में किसी स्रोत से बिना भरी गयी रिक्तियां अन्य स्रोत से भरी जायं और कोटा से अधिक नियुक्तियां की जायं, वहां इस प्रकार नियुक्त व्यक्ति उसी

वर्ष की ज्येष्ठता पायेंगे मानों वे अपने कोटा की रिक्तियों के प्रति नियुक्त किये गये हों।”

11. As the appointment of the petitioners and respondents was made in the selection year 1999-2000 then this seniority Rules of 1991 were applicable at that time. However, after formation of State of Uttarakhand, a new Seniority Rules, known as Uttarakhand Government Servants Seniority Rules, 2002 (hereinafter referred as ‘Seniority Rules of 2002’) have been promulgated and in Seniority Rules of 2002, Rule 8 is a paramateria, with Rule 8 of the Seniority Rules of 1991. Rule-8 of the Seniority Rules of 2002 reads as under:-

“8. (1) जहां सेवा नियमावली के अनुसार नियुक्तियां पदोन्नति और सीधी भर्ती दोनों प्रकार से की जानी हों, वहां इस प्रकार नियुक्त व्यक्तियों की ज्येष्ठता उनकी मौलिक नियुक्ति के आदेश के दिनांक से निम्नलिखित उप नियमों के उपबन्धों के अधीन अवधारित की जायेगी और यदि दो या अधिक व्यक्ति एक साथ नियुक्त किये जायं तो उस क्रम में अवधारित की जायेगी जिसमें उनके नाम नियुक्ति के आदेश में रखे गये हैं:

प्रतिबन्ध यह है कि यदि नियुक्ति के आदेश में कोई ऐसा विशिष्ट पूर्ववर्ती दिनांक विनिर्दिष्ट हो जिससे कोई व्यक्ति मौलिक रूप से नियुक्त किया जाय, तो वह दिनांक मौलिक नियुक्ति के आदेश का दिनांक माना जायेगा और अन्य मामलों में इसका तात्पर्य आदेश जारी किये जाने के दिनांक से होगा :

अग्रेतर प्रतिबन्ध यह है कि सीधे भर्ती किया गया कोई अभ्यर्थी अपनी ज्येष्ठता खो सकता है, यदि किसी रिक्त पद का उसे प्रस्ताव किये जाने पर वह विधिमान्य कारणों के बिना, कार्यभार ग्रहण करने में विफल रहता है, कारणों की विधिमान्यता के संबंध में नियुक्ति प्राधिकारी का विनिश्चय अन्तिम होगा।

(2) किसी एक चयन के परिणामस्वरूप—

(क) सीधी भर्ती से नियुक्त व्यक्तियों की परस्पर ज्येष्ठता वही होगी, जैसी यथास्थिति आयोग या समिति द्वारा तैयार की गयी योग्यता सूची में दिखायी गयी हो;

(ख) पदोन्नति द्वारा नियुक्त व्यक्तियों की परस्पर ज्येष्ठता वही होगी जो इस स्थिति के अनुसार कि पदोन्नति एकल पोषक संवर्ग से या अनेक पोषक संवर्गों से होती है यथास्थिति, नियम 6 या नियम 7 में दिये गये सिद्धान्तों के अनुसार अवधारित की जाय।

(3) जहां किसी एक चयन के परिणामस्वरूप नियुक्तियां पदोन्नति और सीधी भर्ती दोनों प्रकार से की जायं, वहां पदोन्नत व्यक्तियों की, सीधे भर्ती किये गये



व्यक्तियों के संबंध में ज्येष्ठता, जहां तक हो सके, दोनों स्रोतों के लिए विहित कोटा के अनुसार चक्रानुक्रम में (प्रथम स्थान पदोन्नत व्यक्ति का होगा) अवधारित की जायेगी।

दृष्टान्त—(1) जहां पदोन्नत व्यक्तियों और सीधी भर्ती किये गये व्यक्तियों का कोटा 1:1 के अनुपात में हो, वहां ज्येष्ठता निम्नलिखित क्रम में होगी :-

प्रथम	.....	पदोन्नत व्यक्ति
द्वितीय	.....	सीधी भर्ती किया गया व्यक्ति और इसी प्रकार आगे भी।

(2) जहां उक्त कोटा 1:3 के अनुपात में हो, वहां ज्येष्ठता निम्नलिखित क्रम में होगी :-

प्रथम	.....	पदोन्नत व्यक्ति
द्वितीय से चतुर्थ तक	.....	सीधे भर्ती किये गये व्यक्ति
पांचवां	.....	पदोन्नत व्यक्ति
छठा से आठवां	.....	सीधी भर्ती किये गये व्यक्ति और इसी प्रकार आगे भी।

प्रतिबन्ध यह है कि—

(एक) जहां किसी स्रोत से नियुक्तियां विहित कोटा से अधिक की जायं, वहां कोटा से अधिक नियुक्त व्यक्तियों को ज्येष्ठता के लिए उन अनुवर्ती वर्ष या वर्षों के लिए बढ़ा दिया जायेगा जिनमें कोटा के अनुसार रिक्तियां हों;

(दो) जहां किसी स्रोत से नियुक्तियां विहित कोटा से कम हों, और ऐसी न भरी गयी रिक्तियों के प्रति नियुक्तियां अनुवर्ती वर्ष या वर्षों में की जायं, वहां इस प्रकार नियुक्त व्यक्ति किसी पूर्ववर्ती वर्ष की ज्येष्ठता नहीं पायेंगे किन्तु वह उस वर्ष की ज्येष्ठता पायेंगे जिसमें उनकी नियुक्तियां की जायं किन्तु उनके नाम शीर्ष पर रखे जायेंगे, जिसके बाद अन्य नियुक्त व्यक्तियों के नाम चक्रानुक्रम में रखे जायेंगे;

(तीन) जहां सेवा नियमावली के अनुसार, सुसंगत सेवा नियमावली में उल्लिखित परिस्थितियों में किसी स्रोत से बिना भरी गयी रिक्तियां अन्य स्रोत से भरी जायं और कोटा से अधिक नियुक्तियां की जायं, वहां इस प्रकार नियुक्त व्यक्ति उसी वर्ष की ज्येष्ठता पायेंगे मानों वे अपने कोटा की रिक्तियों के प्रति नियुक्त किये गये हों।”

12. Hence in Rule 8 of both the above Seniority Rules, sub rule (1) provides that subject to the other sub-rule, seniority is to be fixed from the date of substantive appointment, but if the appointments have been made with retrospective date, that date will be treated as the date of substantive appointment. However, this Fundamental Sub rule (1) is subject to the sub-rule (2) and (3) also.

13. Sub-rule (2) specifically provides that the seniority of the persons, directly selected **by a single selection process, will remain the same as per the select list, prepared by the Public Service Commission.** It means, if out of one selection process, the persons are appointed by different order on different dates, their seniority, fixed as per the list prepared by the Commission, will continue and it will not be affected by the different dates of appointment. This sub-rule further provides that inter-se seniority of promotee officers will remain the same, which was in their feeding cadre.

14. In the present case, petitioners have claimed their seniority above the other respondents, who were senior to them in the select list, prepared by the Commission, on the basis of the fact that they were given appointment on 05.10.1999, prior to other persons senior in the select list, who were given appointment on 13.03.2000, on later date. The petitioners were given appointment prior to some of their seniors due to the reservation quota and some of the respondents, who were senior to them in one selection process, were given appointment later in time i.e. on 13.03.2000 (in the same selection year).

15. The respondents have argued that they have settled the seniority as per the Rules. Whereas, petitioners are claiming that they should be placed senior to the other direct recruits, who were, although senior in the merit list, but given appointment at later date. This court finds that the claim of the petitioners is not sustainable, in view of the provisions of sub-rule (2) of rule 8 of both the seniority Rules.

16. Respondents have fixed the seniority of promotees in view of sub rule (3) of Rule 8 of the Seniority Rules, which provides that the inter-se seniority of the direct recruits and promotees will be settled as per their place in their quota of direct and promotees,

according to the examples as laid down in sub-rule (3) of Rule 8. The petitioners have also claimed the seniority vis-à-vis the promotees, appointed on 25.05.2000 in the same selection year of 1999-2000, on the ground that they were substantively appointed prior to them.

17. This court is of the view that the requirement of Rule 8 of the Service Rules of 1993 is very specific that in the same selection year, the appointment can be made, only after preparing a joint select list as per Rule 17 and if the appointments are made on different dates, there is also a requirement of the law that their names will be re-settled in the select list, as per the requirement of the Rule 17. Even if, the appointing authority has not prepared such joint list, the petitioners cannot claim seniority against the Rules. We are of the view that the respondents have settled the inter-se seniority of the direct recruits as well as inter-se seniority of the promotees (the petitioners) and the direct recruits as per law rules and law.

18. We do not agree with the argument of learned counsel for the petitioners that the seniority as per Rule 8(1) of the Service Rules of 1991 is to be settled from the substantive date of appointment because of the reasons that sub-rule 1 of Rule 8 of the Seniority Rules of 1991 and of 2002 specifically provides that the seniority will be settled according to the date of substantive appointment, but **it will be subject to the other Sub rules of Rule-8.** Sub rule (2) and (3) of Rule 8 provides that a person, selected in the same selection process, will continue to be senior as per the select list, even if he was appointed on some later date and Sub-rule (3) of Rule 8 specifically provides that the seniority of the promotees vis-à-vis direct recruits would be settled as per their prescribed quota in the Rules. In the Services Rules of 1993, the quota of direct recruits and promotees is specifically provided in

Rule 5 as 66-2/3 % quota for direct, selected through Commission and 33-1/3% for the promotees. The reference by petitioners about the judgment of the Hon'ble High Court of Goa, has no relevance with the present case as the facts and circumstances of that case are totally different.

19. In the present case, the Rules are very specific and clear and the impugned seniority has been settled according to the concerned service rules and the seniority rules. The petition has no merit and deserves to be dismissed.

**ORDER**

The claim petition is hereby dismissed.

No order as to costs.

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

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

*DATE: FEBRUARY 13, 2019*  
*NAINITAL*

KNP