

**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. 16/NB/DB/2018

1. Chandan Ram, Aged about 54 years, S/o Sri Gusain Ram, Vegetable Specialist, Directorate Horticulture and Food Processing Uttarakhand, Chaubatia, District Almora.
2. Nand Kishore Arya, Aged about 58 years, S/o Sri Prem Ram, District Horticulture Officer, Champawat.
3. Satya Prakash, Aged about 55 years, S/o Late Dali Ram, Horticulture Officer, Uttarakhand Decentralized Watershed Development Project (UDWP), Post Office, Buakhal, District Pauri Garhwal.

.....Petitioners

VERSUS

1. State of Uttarakhand through Secretary, Horticulture, Govt. Secretariat, Dehradun.
2. Director, Horticulture and Food Processing Uttarakhand, Chaubatia, District, Almora.
3. State of Uttar Pradesh through Secretary, Horticulture, Govt. Secretariat, Lucknow.
4. Sri Praphakar Singh, Nursery Development Officer, Rudrapur, Post Office Rudrapur, District Udham Singh Nagar.
5. Sri Ram Swaroop Verma, Nursery Development Officer, Dhakrani, District Dehradun.
6. Sri Mahendra Pratap Sahi, Senior Horticulture Inspector, Office of Chief Horticulture Officer, Dehradun.
7. Sri Dinesh Kumar Tiwari, District Horticulture Officer, Tehri Garhwal, Tehri.
8. Sri Yogendra Singh, Potato and Vegetable Development Officer, Tehri.
9. Sri Shambhu Nath, Horticulturist, Kotdwar, District Pauri Garhwal.
10. Sri Pramod Kumar, Superintendent Govt. Garden, Dhunagiri, Post Office, Dunagiri, District Almora.

11. Sri Dharajeet Singh, Potato and Vegetable Development Officer, Chamoli.
12. Sri Trilokinath Pandey, Extension Service Officer in the Office of Joint Director, Horticulture and Food Processing, Bhowali, Nainital.
13. Sri Gyanendra Pratap Singh, Senior Horticulture Inspector, Horticulture Mobile team Center, Roorkee, Haridwar.
14. Sri Satish Kumar Sharma, Senior Horticulture Inspector, Office of Chief Horticulture Officer, Udham Singh Nagar.
15. Sri Ganga Ram Singh, Senior Horticulture Inspector, Govt. Garden, Mudyani, District Champawat.
16. Sri Ramkushal Singh, Senior Horticulture Inspector, Govt. Nursery, Rudrapur, District Udham Singh Nagar.
17. Sri Nem Singh, Senior Horticulture Inspector, Horticulture Mobile Team Center, Bhadrabad, District Haridwar.
18. Sri Rajesh Tiwari, Senior Horticulture Inspector, Vidhan Sabha, Dehradun.
19. Sri Arvind Kumar Rai, Senior Horticulture Inspector, Horticulture Mobile Team Center, Machhor, Post Office Machhor, District Almora.
20. Sri Satya Dev Gautam, Senior Horticulture Inspector, Office of Chief Horticulture Officer, Udham Singh Nagar.
21. Sri Om Prakash Singh, Senior Horticulture Inspector, Office of Chief Horticulture Officer, Haridwar.
22. Sri Triloki Rai, Senior Horticulture Inspector, Horticulture Mobile Team Center, Rudrapur, District Udham Singh Nagar.
23. Sri Anil Kumar Mishra, Additional Horticulture Officer in the Office of Chief Horticulture Officer, Uttarkashi.
24. Sri Rajendra Kumar Singh, Senior Horticulture Inspector, Horticulture Mobile Team Center, Bazpur, District Udham Singh Nagar.
25. Sri Onkar Singh, Assistant Development Officer, Horticulture, in the Office of Chief Horticulture Officer, Haridwar.
26. Sri Ghanand Vashisht, Senior Horticulture Inspector, Office of District Horticulture Officer, Office of District Horticulture Officer, Rudraprayag.
27. Sri P. D. Dhoundiyal, Senior Horticulture Inspector, Office of District Horticulture Officer, Pauri Garhwal, Pauri.
28. Sri Chandra Prakash Chamoli, Senior Horticulture Inspector, Horticulture Mobile Team Center, Gauchar, District Chamoli.
29. Sri Dhruv Chandra Singh Rautela, Senior Horticulture Inspector, Development Block Haldwani, District Nainital.
30. Sri Dinesh Chandra Chamola, Senior Horticulture Inspector, Horticulture Mobile Team Center, Narayanbagad, District Chamoli.
31. Sri Dungar Singh Mewari, Senior Horticulture Inspector, Govt. Horticulture Orchard, Satbunga, District Nainital.

32. Sri Birendra Singh Rawat, Senior Horticulture Inspector, Govt. Garden, Circuit House, Dehradun.
33. Sri Kamal Kishor Joshi, Senior Horticulture Inspector, Office of Chief Horticulture Officer, Nainital, Bhimtal.
34. Sri Girjanand Semwal, Senior Horticulture Inspector, Office of Chief Horticulture Officer, Dehradun.
35. Sri Jot Singh Bisht, Senior Horticulture Inspector, Office of Horticulturist, Kotdwar, District Pauri Garhwal.
36. Sri Bhuwan Chandra Kandpal, Senior Horticulture Inspector, Directorate Udyan Bhawan, Chaubatia, District Almora.
37. Sri Basant Giri, Senior Horticulture Inspector, Office of Chief Horticulture Officer, Almora.
38. Sri Omkar Gupta, Senior Horticulture Inspector, Horticulture Mobile Team Center, Munikireti, District Tehri Garhwal.
39. Sri Kaur Singh Bisht, Senior Horticulture Inspector, Govt. Potato Farm, Gangalhri, District Dehradun.
40. Sri Dayal Singh Bhandari, Senior Horticulture Inspector, Horticulture Mobile Team Center, Tharali, District Chamoli.
41. Sri Prakash Kishan Sharma, Senior Horticulture Inspector, Govt. Orchard, Kashipur, District Udham Singh Nagar.
42. Sri Bhuwan Chandra Upadhyay, Senior Horticulture Inspector, Directorate, Udyan Bhawan, Chaubatia, District Almora.
43. Sri Diggpal Singh Negi, Senior Horticulture Inspector, Horticulture Mobile Team Center, Agastmuni, District Rudraprayag.
44. Sri Ramesh Chandra Tinsola, Senior Horticulture Inspector, Office of Joint Director, Horticulture, Pauri, District Pauri Garhwal.
45. Sri Surendra Singh Bisht, Senior Horticulture Inspector, Mashroom Center, Jeolikote, District Nainital.
46. Sri Prem Singh Rawat, Senior Horticulture Inspector, Office of Chief Horticulture Officer, Chamoli.
47. Sri Kunwar Singh Rawat, Additional Horticulture Officer, Office of District Horticulture Officer, Rudraprayag.
48. Sri Prem Prakash, Senior Horticulture Inspector, Horticulture Mobile Team Center, Chakrata, District Dehradun.
49. Sri Dayal Singh Negi, Senior Horticulture Inspector, Office of District Horticulture Officer, Rudraprayag.
50. Sri Deergh Pal Singh, Senior Horticulture Inspector, Office of District Horticulture Officer, Tehri Garhwal.
51. Sri Virendra Singh Negi, Senior Horticulture Inspector, Horticulture Mobile Team Center, Ghooghoo Singri, Post Office Khurpatal, District Nainital.
52. Sri Heera Singh Adhikari, Senior Horticulture Inspector, Govt. Plant House Gagar, District Nainital.

53. Sri Mohd. Saklain, Senior Horticulture Inspector, Horticulture Mobile Team Center, Raipur, District Udham Singh Nagar.
54. Sri Ram Kesh Katiyar, Senior Horticulture Inspector, Horticulture Mobile Team Center, Khatima, District Udham Singh Nagar.
55. Sri Rajendra Singh Mahra, Senior Horticulture Inspector, Govt. Orchard, Ramgarh, District Nainital.
56. Sri Jagdish Chandra Kandpal, Senior Horticulture Inspector, Office of Joint Director, Horticulture, Bhowali, District Nainital.
57. Sri Bhagwatpuri Goswami, Senior Horticulture Inspector, Horticulture Mobile Team Center, Gangolihat, District Pithoragarh.
58. Sri Mohan Singh Rawat, Senior Horticulture Inspector, Office of Chief Horticulture Officer, Udham Singh Nagar.
59. Sri Virendra Kumar Pandey, Senior Horticulture Inspector, Horticulture Mobile Team Center, Khet, Post Office Khet (Dharchula), District Pithoragarh.
60. Sri Pooran Singh Adhikari, Senior Horticulture Inspector, Development Block, Okhalkanda, District Nainital.
61. Sri Chandan Singh Bisht, Senior Horticulture Inspector, Directorate, Udyan Bhawan, Chaubatia, District Almora.
62. Sri Girish Chandra Joshi, Senior Horticulture Inspector, Horticulture Mobile Team Center, Kanda, District Bageshwar.
63. Sri Balwant Singh Adhikari, Senior Horticulture Inspector, Office of Chief Horticulture Officer, Almora.
64. Sri Harish Chandra Kandpal, Senior Horticulture Inspector, Horticulture Mobile Team Center, Dwarahat, District Almora.
65. Sri Tribhuvan Chandra Joshi, Senior Horticulture Inspector, Office of Chief Horticulture Officer, Udham Singh Nagar.
66. Sri Ghanshyam Singh Bisht, Senior Horticulture Inspector, Development Block, Kotabag, District Nainital.
67. Sri Arun Kumar Pandey, Senior Horticulture Inspector, Secretariat Beautification, Dehradun.
68. Sri Damodhar Joshi, Senior Horticulture Inspector, Govt. Nursery, Ramnagar, District Nainital.

.....Respondents

Present: Sri K. P. Upadhyay, Ld. Counsel
for the petitioners

Sri V.P. Devrani, Ld. A.P.O.
for the Respondents No. 1, 2 & 3

Sri Vinay Kumar, Ld. Counsel
for the respondents No. 9, 12, 18, 19, 21, 29, 51
& 56.

JUDGMENT**DATED: JUNE 19, 2019****HON'BLE MR. RAM SINGH, VICE CHAIRMAN (J)**

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

- I. To hold and declare that each of the private opposite parties nos. 4 to 68 is junior to each of the applicants herein at the level of Group-I post in the Horticulture Development Branch Subordinate Service.*
- II. To issue an appropriate order and direction setting aside the impugned annexure-1 seniority list dated 23.05.2018 of Group-I employees and restoring the inter-se seniority as declared earlier in the final seniority list dated 10.07.2014 which was based on the final seniority list dated 27.04.1998 of Group-2 employees.*
- III. To issue an appropriate order or direction commanding the official opposite parties not to affect any of the service benefits already accrued and given to the applicants herein including the benefit of promotion to Class II post."*

2. Briefly stated, the petitioners No. 1, 2 & 3, belonging to Scheduled Caste category of employees, were initially appointed on Group-III post of supervisor, in the Horticulture and Food Utilization Department of erstwhile State of U.P., in the year 1983 to 1985 and are governed by the U.P. Horticulture and Food Processing Subordinate Service Rules, 1993 (hereinafter referred to as 'Service Rules of 1993'). The private respondents no. 26 to 68 also Group-III employees, belonging to General Category, were appointed prior to the appointment of some of the petitioners. The Subordinate Services has three categories of posts. The Group-III posts, under Horticulture Development Branch, are to be filled 20% by promotion from eligible Class IV employees and 80% posts are to be filled up by direct recruitment. 50% of Group-II posts are filled by way of promotion and remaining 50% by direct recruitment through Commission and Group-I

posts, 100% by promotion. Thereafter, from the Subordinate Services cadre, the next promotion is, to the Group-B post, under the different rules.

3. The petitioners, who joined Group-III post during the year 1983 to 1985, were promoted to Group-II posts, vide order dated 06.04.1996, whereas, private respondents No. 4 to 25 were direct recruits to Group-II posts in Subordinate Services, in the year 1992, prior to promotion of the petitioners. On the basis of the letter dated 13.03.1997 (Annexure: 7), written by the Government of U.P., it was pointed out that the promotion should be made in the year of occurrence of vacancies and if the delay has been caused, the employees should not be held responsible for that. By this letter, it was expected that the matter should be examined, as per Rules.

4. On the basis of the above letter, the Director of the department, issued an order dated 06.10.1997 (Annexure: 8) whereby the year of vacancy was mentioned, before the names of the employees, with a note that such year of selection, is being recorded for the purpose of determination of seniority. Therefore, according to the petitioners, the seniority list of Group-II employees was rightly issued on 27.04.1998 (Annexure: 9) and the petitioners were given seniority above the direct recruits of 1992. The petitioners were promoted against their quota from Group-II to Group-I in the year 2000 to 2002 whereas, private respondents were promoted later on. On 10.07.2014, the seniority list of Group-I employees was prepared, in which, private respondents No. 4 to 25 were shown as junior, on the analogy of their seniority, given to them in Group-II cadre, on the basis of their selection year.

5. There was some litigation before the Hon'ble High Court, whereby, directions were issued by the Hon'ble High Court, to decide the representations of the parties. On 31.01.2018, a letter was issued

by the government to the Director, mentioning therein that seniority list of Group-I of Subordinate Services, issued in 2014, is illegal and against this, directions were issued, to amend the seniority, as per the Uttarakhand Government Servants Seniority Rules, 2002 and issue a fresh seniority list, and also to make available a copy thereof, to the Government. Therefore, a tentative seniority list was issued and objections were invited and the final seniority list dated 23.05.2018 (Annexure: 1) of Group-I employees was issued, rectifying the earlier list of 2014. According to the petitioners, long standing seniority list cannot be disturbed and the petitioners' promotion to Class-II post, was allowed from the date of occurrence of vacancies of their quota, hence, they were granted promotion and seniority from back date i.e. 01.07.1989, prior to the date of appointment of private respondents in 1992. Hence, this petition was filed for the aforesaid reliefs, with the contention that the action of the respondents is not justified and is against the settled principle of law.

6. Petition was opposed by the State respondent as well as by the private respondents, with the contention that some of the respondents were senior in Group-I post to the petitioners and private respondents No. 4 to 25 were directly recruited in Group-II cadre in 1992 whereas, petitioners were promoted to the Group-II cadre on 06.04.1996 and they can only be granted seniority from this date, as it was the date of their substantive appointment in Group-II cadre of Subordinate Service. There is settled law that seniority can only be granted from the date of substantive appointment, and simply by mentioning the year of vacancy against their names, the promotion order issued on 06.04.1996, was not made effective from back date hence, they cannot be given seniority without amending their order of promotion, specifically from back date and the seniority cannot be claimed before their birth in the cadre, as per the Uttar Pradesh Government Servants Seniority Rules, 1991 and the new Seniority Rules

of 2002 i.e., "The Uttarakhand Government Servants Seniority Rules, 2002", which are in paramateria. The seniority can be granted from the date of their substantive appointment and any seniority fixed against the rules, by making wrong interpretation of Government Order can, and was rectified by the department at any time and any seniority order, passed against the seniority rules, is ineffective and on that basis, no right can be accrued to the petitioners.

7. It was contended that as per the Service Rules of 1993, substantive appointment is described in Rule 3(j), which means an appointment, not being an *ad-hoc* appointment on a post made in the cadre of service, made after selection in accordance with the Rules. Rule 22 of the said Rules specifically provides that the seniority of the persons, substantively appointed in any category of posts, shall be determined in accordance with Uttar Pradesh Government Servants Seniority Rules, 1991. Petitioners were appointed substantively in Group-II posts in Subordinate Services, in the year 1996 and not in the year 1988 or thereafter, before the appointment of direct recruits in 1992, and the petitioners can claim seniority on Group-II post only from the date, where they were substantively appointed and became member of the cadre. Perusal of promotion order dated 06.04.1996 of the petitioners, clearly shows that their promotion on Group-II posts has been made on the basis of recommendation of Departmental Promotion Committee and their promotion order nowhere mentions that promotion is being made w.e.f. to an anterior date. As the promotion order is silent on its retrospective effect, therefore, it is deemed that the same is effective from the date of its issuance.

8. As per the settled Rules, seniority cannot be granted from the date of occurrence of vacancy in the cadre, unless the promotion order mentions any prior date. Hence, respondents have contended that the impugned order was passed as per the relevant Service Rules and the Uttar Pradesh Government Servants Seniority Rules, 1991 and the

Uttarakhand Government Servants Seniority Rules, 2002, which are parameteria and the petition deserves to be dismissed.

9. The petitioners through Rejoinder Affidavit, reiterated the facts of the petition and have submitted that the respondents cannot be made senior to the petitioners, superseding their previous seniority list issued in 2014, which was never challenged and was made final. Hence, their petition deserves to be allowed.

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

11. The petitioners and private respondents, who were promoted in the erstwhile State of Uttar Pradesh, are governed by the Service Rules of 1993, which came into existence on 19.06.1993 and these Subordinate Services are having different branches and the branches are divided in three groups. Group-III is the lowest cadre and 20% vacancies are filled up by promotion from the Group-D employees, having required qualification and 80% by direct recruitment. The Post of Group-II are filled 50% by promotion from Group-III post and 50% by direct recruitment through Public Service Commission, whereas, Group-I is purely promotional post from Group-II and thereafter, from Group-I, the persons are promoted to the next gazetted cadre of Group-B (Class-II) service, which is governed by another Service Rules.

12. The respondents No. 26 to 68 were recruited in Subordinate Services of Group-III, in which some of the respondents were senior to the petitioners and most of the respondents were senior to the petitioners. Petitioners got promotion in their quota of promotion as Class-II, which was issued on 06.04.1996 and their quota in promotion is 50% whereas, the respondents No. 4 to 25 are direct recruits on Group-II posts and joined the services in 1992, prior to the date of promotion order of the petitioners.

13. The petitioners' case is based on a letter of the Government of Uttar Pradesh dated 13.03.1997 (Annexure-7), which was issued to the Director of department of the State of Uttar Pradesh (respondent No. 3), suggesting that the selection of the promoted employees should be made in the year of vacancy and their seniority should be the same year of vacancy and if the promotional exercise is taken late, the employees are having no fault of their, hence, a request was made to do needful as per the rules. Interpreting this letter, the Director of the department of State of Uttar Pradesh (Respondent No. 3) issued an order dated 06.10.1997, with the following words:-

“निदेशालय के आदेश सं० 124/दो-160/वर्ग-2/30 वि०शा०/दिनांक 6 अप्रैल 1996, आदेश सं० 7896/दो-160/वर्ग-2/30 वि०शा०, दिनांक 27 फरवरी 1997 एवं आदेश सं० 691/दो-160/वर्ग-2/30 वि०शा०, दिनांक 7 मई 1997 जिसके द्वारा निम्नलिखित कर्मचारियों को समूह-2 उद्यान विकास शाखा, के पदों पर प्रोन्नति द्वारा नियमित नियुक्ति प्रदान की गई है, में चयन वर्ष का अंकन नहीं किया गया था।

अतः शासनादेश सं० 300/58-1-97-245/96 दिनांक 13.03.97 के परिपेक्ष्य में सम्यक विचारोपरान्त ज्येष्ठता के दृष्टिकोण से उक्त दिशा के क्रम में निम्न विवरणनुसार चयन वर्ष अंकित किया जा रहा है। तदनुसार कार्यवाही सुनिश्चित करें।

क्र. सं.	कर्मचारी का नाम	क्र.सं.	कर्मचारी का नाम
	चयन वर्ष 1987-88		अनुसूचित जाति/जनजाति के अभ्यर्थी चयन वर्ष 1987-88
1.	सर्व श्री सुन्दर सिंह		चयन वर्ष 1987-88
2.	श्री भुवन चन्द्र जोशी	1	श्री पूरन राम
3.	श्री हर्षवर्धन मिश्रा	2	श्री हरीश चन्द्र आर्या
4.	श्री शम्भू प्रसाद पन्त	3	श्री श्याम लाल
5.	श्री चन्द्रशेखर पन्त	4	श्री हरीश चन्द्र आर्या
6.	श्री हीराबल्लभ भासोवाल	5	श्री लीला राम
7.	श्री उमेश चन्द्र पाण्डे	6	श्री हरी राम
8.	श्री हर्षमणी रतूड़ी	7	श्री जयराम
9.	श्री दुलाप सिंह	8	श्री जयदेव सिंह
10.	श्री रणजीत सिंह बोरा	9	श्री नन्द किशोर
11.	श्री भगोत सिंह बिष्ट		चयन वर्ष 1989-90
12.	श्री गोबिन्द सिंह रावत	1	श्री गिरीजा लाल
13.	श्री दयानन्द जोशी	2	श्री सत्य प्रकाश

14.	श्री राजेन्द्र सिंह रौतेला		चयन वर्ष 1990-91
15.	श्री हरीश चन्द्र पुरोहित		चयन वर्ष 1991-92
16.	श्री क्षेम सिंह बिष्ट	1	श्री पान सिंह अनु0जनजाति
17.	श्री दीवान सिंह नेगी	2	श्री बची राम
18.	श्री प्रताप सिंह हरड़िया	3	श्री तैश कुमार
19.	श्री सोहबत सिंह पुण्डीर	4	श्री चन्दन राम
20.	श्री भीमसिंह भंडारी		चयन वर्ष 1992-93
21.	श्री रघुवीर सिंह बिष्ट		चयन वर्ष 1993-94
22.	श्री दीवान सिंह मेहरा	1	श्री प्रेमलाल
23.	श्री रमेश चन्द्र जोशी		
24.	श्री देवी प्रसाद भट्ट		
25.	श्री मगनानन्द नोटियाल		
26.	श्री अमोल सिंह भण्डारी		
27.	श्री प्रेम कुमार शर्मा		
28.	श्री प्रेम सिंह नेगी		
29.	श्री गंगा राम देवरानी		
30.	श्री गणेश सती		
31.	श्री कुन्दन सिंह दिगारी		
32.	श्री गुसाई सिंह धपोला		
33.	श्री ब्रजमोहन मलासी		
34.	श्री यशपाल सिंह खत्री		
35.	श्री प्रेम सिंह गुलेरिया		
36.	गंगा दत्त पुराहित		
37.	देवेन्द्र सिंह बिष्ट		
38.	शिव दत्त पाठक		
39.	विजय प्रसाद सत्री		
	चयन वर्ष 1989-90		
40.	सरदार सिंह		
41.	विजय सिंह कठैत		
42.	युगल किशोर निवाड़ी		
43.	मोहन चन्द्र बिष्ट		
44.	उमेश चन्द्र बिष्ट		
45.	दीप सिंह रावत		
46.	राजेन्द्र प्रसाद बडोनी		
47.	हरीश चन्द्र सिंह मेहरा		
48.	कैलाश चन्द्र बिष्ट		
49.	महेन्द्र सिंह अधिकारी		
	चयन वर्ष 1990-91		
50.	देवेन्द्र प्रसाद सेमवाल		
51.	सुरेन्द्र सिंह लिंगवाल		
52.	भीम सिंह खादी		
	चयन वर्ष 1990-91		
53.	रविन्द्र मोहन नैथानी		
54.	बहादुर सिंह तिलाड़ा		
55.	गोबिन्द बल्लभ पन्त		
	चयन वर्ष 1992-93		
56.	शेर सिंह बडथवाल		

	चयन वर्ष 1992-93		
57.	राधाकृष्ण डालाकोटि		
58.	मोहन सिंह जलाल		
59.	पूरन सिंह रावत		
	चयन वर्ष 1994-95		
60.	महेन्द्र सिंह बिष्ट		
61.	उमेश चन्द्र थपलियाल		
62.	कमल किशोर बडोला		
	चयन वर्ष 1995-96		
63.	मेहन प्रासाद पुरोहित		
64.	चन्दन सिंह परमार		
	चयन वर्ष 1996-97		
65.	धीरेन्द्र सिंह नेगी		
66.	जगदीश बाबू राठी		
67.	शेखर चन्द्र सुयाल		
68.	भगवान सिंह रावत		

नोट:-इस सम्बन्ध में यह स्पष्ट किया जाता है कि उक्त चयन वर्ष, कर्मचारियों की ज्येष्ठता निर्धारण के दृष्टिकोण से अंकित किया जा रहा है। अतः इस मामले में किसी प्रकार के कोई वित्तीय लाभ अनुमन्य नहीं होंगे।

(श्रीधर लाल मिश्र)
निदेशक

निदेशालय उद्यान एवं खाद्य प्रसंस्करण, पर्वतीय।
उद्यान भवन, चौबटिया

पत्रांक 3970/दो-160/वर्ग-2/30 वि0शा0/ दिनांक चौबटिया 06.10.1997
प्रतिलिपि: निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित।

1. संबंधित कर्मचारी
2. समस्त जिला उद्यान अधिकारी, पर्वतीय क्षेत्र।
3. समस्त आलू एवं शाकभाजी, विकास अधिकारी, पर्वतीय क्षेत्र।
4. उद्यान विशेषज्ञ, हल्द्वानी/ कोटद्वार।
5. अधीक्षक, राजकीय उद्यान दूनागिरी/चौबटिया/भारसार/रामगढ़।
6. प्रोजेक्ट कोऑर्डिनेटर, इण्डी, डंच मशल्स, परियोजना, ज्योलिकोट।
7. उपनिदेशक, उद्यान एवं खाद्य प्रसंस्करण कुमाउं मण्डल, नैनीताल/गढ़वाल, मण्डल पौड़ी।
8. उपनिदेशक, उद्यान कम प्रभारी अधिकारी, चौबटिया।
9. मुख्य उद्यान विशेषज्ञ, राजकीय घाटी फल शोध केन्द्र श्रीनगर।
10. परियोजना प्रबन्धक भारत इटली फल विकास परियोजना, देहरादून।
11. उपपरियोजना निदेशक, वानिकी, जलागम, प्रबन्ध, परियोजना भीमताल, नैनीताल।
12. उपपरियोजना निदेशक, वन, हैवल, उप जलागम, चम्बा, टिहरी।
13. उप परियोजना निदेशक, वन, टैस्ट जलागम, मुनीकीरेती, टिहरी।
14. मुख्य परियोजना निदेशक, जलागम, प्रबन्ध निदेशालय, उ0प्र0 इन्द्रिरा नगर, देहरादून।
15. व्यक्तिगत पत्रावली।

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14. On the basis of this, the petitioners are claiming that their promotion has been made effective from back date, i.e. from the date of vacancy, whereas, respondents have contended that simply by mentioning the year of vacancy, their promotion order issued on 06.04.1996, was not made effective from back date and mentioning of the date, was simply to ascertain the inter-se seniority of the promotee employees and this cannot affect their entry in the cadre *vis-à-vis* the direct recruits, who were already in the cadre from 1992 in a substantive capacity, whereas, the petitioners were promoted vide order dated 06.04.1996 and their promotion order was not amended to make it effective from back date. According to respondents, the substantive appointments of the petitioners cannot be treated in Group-II prior to the year 1996 or from the date of vacancy.

15. We agree with the argument of the learned counsel for the respondents because of the reasons that simply by mentioning the year of vacancy, the promotion order of the petitioners issued on 06.04.1996 was not made effective from back date and cannot be read accordingly. There is settled law that seniority cannot be granted from the date of occurrence of vacancies in the cadre, unless the promotion order are made effective specially by mentioning any such prior date. The petitioners were substantively appointed by promotion on Group-II post w.e.f. 06.04.1996 and that date was not changed to any prior date by any specific order, hence, in view of the court, they are entitled for seniority from the date of order i.e. 06.04.1996 on Group-II post, because of the reasons that the Service Rules of 1993 clearly mentions that seniority of persons, substantively appointed in any category of posts, shall be determined in accordance with the Uttar Pradesh Government Servants Seniority Rules, 1991 from the date when he is substantively appointed, and substantive appointment means, an appointment not being an *ad-hoc* appointment on a post made in the

cadre of service and made after selection, in accordance with service Rules.

16. Unless, the order of the promotion of the petitioners issued on 06.04.1996, was specifically amended, and was made effective from prior date, then simply by mentioning the year of vacancy in the order issued by the Director, cannot make their substantive appointment with prior date. In view of the court, for doing such exercise, it was necessary to give notice to the affected parties, who were in the cadre of Group-II w.e.f. 1992 prior to the promotion order of the petitioners in 1996 and without doing this lawful exercise and without getting any such specific recommendations of DPC, that order cannot be made. Furthermore, the order dated 06.04.1996 was issued on the recommendations of the DPC wherein, no such promotion was recommended from back date, neither amended DPC was held for this purpose, nor any specific order, to make effective the promotion order dated 06.04.1996 was passed by the appointing authority, hence, simply by mentioning the year of vacancy, the substantive appointment of the petitioners on the promotional post, cannot be made effective from back date. Simply by writing the date of vacancy in the seniority list, cannot override the promotion order of the petitioners. Furthermore, there was a clear stipulation in the seniority list, issued in 1998 that date of appointment by promotion has been written only for the purpose of *inter-se* seniority hence, court finds that if such dates were mentioned, the *inter-se* seniority of promotee persons were to be settled accordingly and private respondents No. 4 to 25, who were direct recruits, are not affected by such order. Since, the private respondents No. 4 to 25 borne in the cadre in 1992 and petitioners were borne in the cadre in 1996 hence, they cannot be senior over the persons who borne in the cadre four years prior to the petitioners. Furthermore, the petitioners' promotion from Group-III posts to Group-II posts on 06.04.1996 were made within 50% promotion quota,

whereas, prior to it on 28.02.1992, 50% appointments were made from direct recruits quota of private respondents, hence, contention of the petitioners in this respect, cannot be accepted.

17. The petitioners have contended that initially seniority list dated 10.07.2014 was prepared as per the relevant seniority rules and it cannot be disturbed. Prior to it, the seniority of the Group-II posts was also prepared in 1998. The respondents have contended that the seniority list of 1998 was never circulated and finalized as per law and the order wherein, the selection year was mentioned, was not an amendment, effecting the promotion order of the petitioners from back date hence, there was no need to challenge the same. We are of the view that the order of seniority, if any, which was issued against the seniority Rules of 1991, is totally illegal and does not mature any right to the petitioners, and as per the Rules, the respondents will regain their seniority, in the next cadre even after promoted, later in time.

18. Respondents have also argued that after 1998 till 2014, no seniority list was issued and circulated hence, there was no occasion to challenge the same and regarding the seniority list of 2014, objections were filed and litigation was pending before the Court and in view of the direction of the Court, passed in October, 2015, the petitioners had challenged the seniority list dated 17.08.2013. There was another seniority list dated 18.02.2012 in existence, on the basis whereof promotional exercise was being under taken and the final seniority list dated 10.07.2014 was prepared against the rules and such illegality was rectified by the respondent department, as the previous order was not as per Rules.

19. This court finds that the initial appointment of the petitioners on Group- II post was wrongly interpreted, prior to 1992, while it was made on 06.04.1996. Such illegal interpretation can be corrected accordingly, because of the reasons, that on the basis of any executive

order and wrong interpretation, the seniority list issued in violation of the Seniority Rules, 1991 of U.P. and the Uttarakhand Government Servants Seniority Rules, 2002, does not give any legal rights to the petitioners to claim seniority against the Service Rules. As the matter of finalization of seniority of 2002 and 2014, was also sub-judiced before the Hon'ble High Court for settling the seniority and deciding the representation. On the basis of the representation, direction was also sought by the department from the Government.

20. The order of the Government dated 31.01.2018 also clarifies that vide letter No. 408/दो-17-1/17-18 of the Director, Horticulture dated 01.12.2017, direction was sought by the Director from the Government to finalize the seniority list of the persons of Group-II. In response to that, it was pointed out by the government that the seniority list of Subordinate Services issued in 2014, is defective and against the rules, hence, a direction was issued to correct the same and to issue a new seniority list to settle it afresh as per the Uttarakhand Government Servants Seniority Rules, 2002. On the basis of that, an order dated 28.03.2018 (Annexure: 19) was issued and objections were invited and after considering the objections, the impugned final seniority list was issued on 23.05.2018 (Annexure: 1). This court finds that the previous seniority list was not as per the relevant Seniority Rules and the impugned seniority list was issued, which is in accordance with the Uttar Pradesh Government Servants Seniority Rules, 1991 and the Uttarakhand Government Servants Seniority Rules, 2002.

21. The court is of the view that previous seniority list was issued on the analogy that promotion orders of the petitioners was made effective from back dates, prior to the entry of the respondents in the services. The contention of the petitioners that they were allocated and granted promotion prior to the date of their promotion order cannot be accepted because the order dated October, 1997, does not shift the date of their promotion prior to 1996 i.e. to the date of their vacancy.

Mere, existence of vacancy in a particular cadre and uniting it in seniority, cannot make them senior, unless their promotion order was amended as per law. Their claim for promotion on Group-II post was determined only in the year 1996.

22. The contention of the petitioners that their long standing seniority cannot be unsettled, cannot be accepted in this case, because of the reasons that a final seniority list which was made in violation of the statutory provisions, provided for determination of seniority, is illegal and that illegality can be rectified at any point of time, if issued in violation of statutory provisions by the authority. It has been argued that it is settled law that illegal order is always illegal.

23. The court also finds that there is no pleading in the claim petition that their promotion was made from the date of occurrence of vacancy and in their case, only the year of vacancy was mentioned by separate order. Neither the order of the Government, suggesting such exercise can be passed in contravention of the statutory provisions, governing the seniority i.e. the Uttar Pradesh Government Servants Seniority Rules, 1991 nor it has any legal effect on seniority. However, the order of promotion can be made effective from the back date, if it is specifically mentioned in the promotion order itself and the promotion order dated 06.04.1996 does not mention for such promotion from back date, neither it was amended in any lawful manner. It is not the case of the petitioners that final seniority list of 1998 and 2014 was in conformity with the Seniority Rules of 1991 and the Uttarakhand Government Servants Seniority Rules, 2002, hence, the contention of the petitioners, cannot be accepted now. The impugned seniority list of 2002 was prepared by the department in terms of the seniority Rules of 2002 on the basis of the date of promotion of the petitioners and the private respondents on Group-II posts. The petitioners cannot claim the seniority from the date, when they were not borne in the cadre and they cannot be granted such

seniority prior to the date of their birth in the cadre, in the absence of specific order.

24. Different citations of the case, submitted by the petitioners, do not help to them in this case because of the reasons that previous seniority list was settled in clear violation of seniority rules and the rectification of such illegality by the department, particularly when issue remained sub-judice before the court from time to time, and now they cannot claim relief on the basis of any such action which is against the law.

25. Considering all the circumstances, we are of the view that 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: JUNE 19, 2019
NAINITAL
KNP