

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

Present: Hon'ble Mr. Ram Singh

-----Vice Chairman (J)

Hon'ble Mr. A.S.Nayal

-----Member (A)

CLAIM PETITION NO. 20/DB/2019

1. Arun Singh Tomar, aged about 34 years (Male), S/o Sri Soorveer Singh Tomar, Presently posted as Assistant Engineer P.C.M., Dhakpathar, Dehradun, District Dehradun.
2. Vijay Pant, aged about 33 years (Male), S/o Sri Maniram, presently posted as Assistant Engineer (Civil) Office of DGM (CM0GV), UJVNL, Haridwar.
3. Sarika Kuchhal aged 31 years (Female), D/o Sri Maniram, presently posted as Assistant Engineer (Civil) Office of DGM (CM-GV) UJVNL, Haridwar.
4. Avtar Singh, aged about 30 years (Male), S/o Sri Sishupal Singh, presently posted as Assistant Engineer P.C.M. Dhalipur, District Dehradun.
5. Kuldeep Singh, aged about 30 years (Male) S/o Sri Surat Lal, presently posted as Assistant Engineer (Civil) EE (Civil-1st) (SHP) Maneri, Uttarkashi.
6. Nishant Mohan, aged about 29 years (Male) S/o Sri Jagmohan, presently posted as Assistant Engineer (Civil) Office of EE (Civil)-IIInd, UJVNL, Guptakashi, District Rudraprayag.

.....Petitioners

VERSUS

1. State of Uttarakhand through Secretary, Energy (Urja) Government of Uttarakhand, Secretariat, Dehradun, Uttarakhand.
2. Uttarakhand Jal Vidyut Nigam Ltd. Maharani Bagh, G.M.S. Road, Dehradun District Dehradun through its Managing Director.
3. General Manager/Deputy General Manager, Human Resources Department (Uttarakhand Jal Vdyut Nigam Ltd.) Yamuna Bhawan, Yamuna Colony, Dehradun, District Dehradun.
4. Board of Directors, Uttarakhand Jal Vidyut Nigam Ltd., Maharani Bagh, G.M.S. Road, Dehradun, District Dehradun through its Chairman.

5. Sri Ram Singh Bisht, S/o Sri Sangram Singh, Presently posted as Assistant Engineer (Civil)(Promoted) Office of Executive Engineer, PCM, Ganga Valley Mayapur, Haridwar.
6. Sri Shanti Pd. Bhatt S/o Sri Vinod Kumar, presently posted as Assistant Engineer (Civil, promoted) Office of the Executive Engineer (Civil) 1st Vyashi Project Dakpatthar, District Dehradun.
7. Sri Arvind Tripathi, S/o Sri Banshidhar Tripathi, Presently posted as Assistant Engineer (Civil, Promoted) at P.C.M., Dhalipur, District Dehradun.

.....Respondents

Present: Sri Pankaj Tangwan &
Sri Deepak Bisht, Ld. Counsel
for the petitioners.

Sri V.P.Devrani, Ld. A.P.O.
for the respondent No. 1

Sri V.D.Joshi & Sri S.K.Jain, Ld. Counsel
for the respondents No. 2, 3 & 4

Sri I.P.Gairola, Ld. Counsel
for the respondents No. 5 to 7

JUDGMENT

DATED: JULY 31, 2019

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

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

"I. To quash the office memorandum passed in the year 2007/2008 which is in the knowledge and possession of the respondent No.2, whereby the four years service in selection grade was relaxed and the impugned final seniority list (Annexure No. 14 to this petition).

II. To restrain the respondents No. 2, 3 & 4 from making promotion against the final seniority list and also direct the respondents No. 2, 3 & 4 to make promotion on the post of Executive Engineer in accordance with the rules and regulations prescribed for that purpose after disposal of the objection of the petitioners, notifying the date of meeting of the Departmental Promotion Committee constituted for the

purpose of promotion on the post of Executive Engineer and same to be communicated to the petitioners.

III. To direct UJVNL to enforce minimum service of 17 years to qualify for the post of Executive Engineer in case one joins the services as Junior Engineer.

IV. To direct UJVNL to make fresh seniority list based on date of advertisement i.e. date of formation of cadre by giving notional seniority rather than date of joining the cadre."

2. As per the facts narrated in the petition, respondents issued an advertisement on 07.01.2009 for recruitment of Assistant Engineers with different nomenclature on 07.01.2009 for the vacancies of the selection year 2008-09, under the quota of direct recruitment. The petitioners having bachelor degree in Civil Engineering, applied for the same; admit cards were issued to them; they appeared for the examination, but before declaration of result, the said examination was cancelled by the respondents.

3. Thereafter, in continuation of the advertisement dated 07.01.2009, respondents issued an amended advertisement (as clarification to the advertisement dated 07.01.2009), whereby the number of post of Assistant Engineers (Civil) were decreased but other conditions were the same. Opportunity was given to fresh eligible candidates, along with the candidates who applied for the post against the advertisement dated 07.01.2009. Consequently, the petitioners No. 4 to 6 applied for the post of Assistant Engineer (Civil) in response to the amended advertisement and the written examination for direct recruits was held on 04.03.2012. The petitioners were declared successful; they were called for interview and were found suitable and were selected against the post of Assistant Engineer (Civil).

4. The petitioners have contended that, instead to expedite the selection process, initiated in the year 2009 for direct recruitment, the respondent no. 2, UJVNL, started promotional exercise for the post of

Assistant Engineer (Civil) after relaxing the minimum qualifying service for the private respondents vide order dated 24.06.2011 and they were made eligible to be promoted on the post of Assistant Engineer, by giving them undue benefit. The petitioners also contended that the private respondents were already given the benefit of relaxation in the year 2008, by which the eligibility criteria for selection of Junior Engineer for promotion to the post of Assistant Engineer, was relaxed.

5. The private respondents, who were appointed and regularized in 2002, were not eligible for promotion before completion of 10 years of service, out of which 4 years service in selection grade, was earlier relaxed in 2008. After giving further relaxation on 24.06.2011, about 10 years experience as Junior Engineer, the private respondents were promoted on 30.06.2011, which was against the rules.

6. Petitioners also contended that, as per Regulation 5 of the Uttar Pradesh State Electricity Board Assistant Engineer (Civil) Service Regulations, 1970 (hereinafter referred to as 'Service Regulations of 1970'), there are two sources of recruitment for the post of Assistant Engineer, one by 'direct recruitment' in accordance with Rules & procedure, laid down in Appendix 'A' and other one by 'promotion' from Junior Engineer (Civil) in the manner prescribed in Appendix-'B' and for the purpose of promotion, the selection can be made, based on merit with due regard to seniority from amongst the Junior Engineers (Civil), who are confirmed on the post and have rendered at least 10 years of service in the cadre, out of which, 4 years service must be in the selection grade.

7. The petitioners also contended that the respondent No. 2 by issuing Office Memorandum in 2007, already granted a relaxation about 4 years selection grade service. Hence, as per the rules, no other relaxation can be granted to the private respondents, but vide order dated 24.06.2011, the respondent had given another relaxation to the private respondents in the minimum service and within 6 days, their

promotion order was passed. It is also contended that as per the Regulations, without preparing a combined waiting list, appointment order to the post of Assistant Engineer cannot be made. The process for direct recruitment, against the vacancies of 2008-09, was unnecessarily delayed and the petitioners were able to join their duties in November, 2012 and July, 2013.

8. In exercise of the powers under section 79 (c) of the Electricity (Supply) Act, 1948, the Board has framed the Seniority Rules for the employees working in Uttar Pradesh State Electricity Board, with the name as "the U.P. State Electricity Board Seniority Rules, 1998". Rule 8 of the Seniority Rules, 1998 stipulates that where the appointment has to be made from both the sources i.e. direct and promotion, then, the seniority of the employees will be determined from the date of their substantive appointment, subject to the certain provisions. Proviso of Rule 8 further provides that where selection is made by promotion and direct recruitment, an inter-se seniority will be determined in accordance with a rotation wise and promotees and direct recruits will be placed in the seniority list as per their ratio in their quota, and promotees will be placed against first vacancy followed by direct recruitment and further in the same manner, as per their quota.

9. It is also contended that vacancies marked for direct recruitment, were for the selection year 2008-09 for which advertisement was issued vide order dated 07.01.2009 and selection process for direct recruitment was in progress, which was delayed on account of amended advertisement and it was completed only in March 2012. Whereas, quota for the promotees was against the vacancy of 2011-12, but their promotion process was completed in haste, after giving them illegal relaxation in the minimum service against the rules. As per the rules, the private respondents were not eligible for promotion before August 2012 (on completion of 10 years of service in the Junior Engineer cadre). The respondents, in arbitrary manner, by giving undue

benefits to the junior engineers (private respondents), relaxed their minimum length of service upto 50 % and they were made eligible to be considered for promotion against the rules.

10. As per the Uttarakhand Government Relaxation in qualifying Service for promotion Rules, 2010, a person can get the relaxation only once in his entire service period whereas, by giving multiple relaxation, the private respondents were promoted. On the other hand, when the petitioners represented for their relaxation in the month of November, 2017 in minimum length of service on the post of Assistant Engineer to the post of Executive Engineer, their request was not considered at all, hence, the attitude of the respondents has been unequal and discriminatory and is against the mandate of the Article 14 and 16 of the Constitution of India.

11. It was also contended that the respondents issued a tentative seniority list, ignoring the provisions of the Seniority Rules, 1998 and the provisions mentioned in the Service Regulations of 1970. In the tentative seniority list dated 28.03.2018, the petitioners' name were nowhere mentioned and private respondents were shown senior. The petitioners were recruited against the vacancy year 2008-09 whereas, the private respondents were recruited against the vacancy of 2011-12. Moreover, their inter-se seniority has not been prepared as per their rota-quota. The selection process for direct recruits was initiated much prior to the initiation of promotional exercise i.e. in the year 2009, while the exercise of promotion of the private respondents was started in 2011. The petitioners should be placed above private respondents in the inter-se seniority list. The respondents no. 2 & 3 by giving undue benefits to the private respondents, issued the tentative seniority list, to which the objections were filed by the petitioners.

12. It has also been contended that for promotion to the post of Executive Engineer, respondents must complete 10 years of service as Junior engineer and 7 years of service as Assistant Engineer, including

one year of training i.e. 17 years of service, is required to become eligible to the next post of Executive Engineer which the respondents do not complete. The objections filed by the petitioners against the tentative seniority list were not rightly considered by the department and respondents issued the final seniority list on 20.12.2018 (Annexure: 14) ignoring the provisions of the Seniority Rules, 1998, and in the final seniority list issued on 20.12.2018 (Annexure: 14), the names of the petitioners have not been shown anywhere hence, the same deserves to be quashed.

13. According to the petitioners, the respondent department cannot make further promotion on the post of Executive Engineer, ignoring the illegal relaxation, and in disobedience to the Regulations, prescribed for this purpose. There is a need to prepare a fresh seniority list after considering the objections of the petitioners, and fresh DPC be constituted for the purpose of promotion. As the respondents were not taking any action as per rules, hence the petitioners approached the Hon'ble High Court in writ petition (S/S) No. 274 of 2018, which was disposed of vide order dated 09.01.2019, on the ground of alternative remedy. Consequently, as per the directions mentioned therein, the petitioners approached this Tribunal for the relief mentioned as above.

14. The State is a formal party. The other respondent department filed their written statement and contended that the petitioners were recruited and appointed to the cadre, after successful completion of their training. The petitioners have now challenged the order about giving relaxation in 2008, but no copy of such order has been filed. The recruitment process started in January, 2009, was cancelled on account of the irregularity committed by the recruiting agency (Technical University) and a fresh advertisement was issued in the month of June, 2011. For promotion of private respondents, relaxation was granted as per the G.O. No. 812 dated 27.05.2011 and till then, the petitioners were not in service. After reorganization of the Electricity Board, the

Corporation was carved out and its Board of Directors is fully competent to make the rules and regulations and to make any amendment therein. As per Article 50 of the Article of Association, the Board of Directors has all powers to make, vary and repeal any bye laws for the regulations of the business of the Company, its officers and servants. The Board of Directors exercised their powers vide its resolution dated 14.07.2007 and w.e.f. 14.02.2007, by which necessity of four years service of selection grade was abolished vide corporations Office Order No. 9085 dated 18.12.2007 (Annexure R-10) and for granting promotion, the Board of Directors in its 57 and 59 Board meetings, again relaxed the minimum eligible service period vide its Office Order dated 24.06.2011. The Board was within their powers to do the same and similar relaxation has also been granted by the Government to its employees.

15. Respondents also contended that the multiple relaxations was not granted to the private respondents, as the 4 years compulsory selection grade service was abolished by the Board of Directors and its amendment was incorporated in the rules in all three corporations of Uttarakhand. The petitioners are wrongly interpreting the provisions of Seniority Rules of 1998. After 2014-15, no such relaxation has been given to anyone by the respondents and accordingly, the petitioners were also not granted any such relaxation. The private respondents were given seniority from the date of their regularization/ appointment.

16. It is also contended that as per the Seniority Rules, the petitioners are entitled to get the seniority, only from the date of their appointment in the service and for further promotion to the post of Executive Engineer; minimum service on the post of Assistant Engineer is required. The private respondents were granted relaxation in their promotion to the post of Assistant Engineer as per the Rules and the seniority list has been issued as per the law. The petitioners are having no right to challenge the appointment of private respondents to the

service made prior to their entry in the cadre and the petition deserves to be dismissed.

17. The private respondents in their Counter Affidavit, on the similar line, also contended that selected person cannot get seniority of previous year and the seniority cannot be granted from the date of vacancy. The regularization of the private respondents in the year 2002, cannot be questioned by the petitioners now in the year 2019, and there is no training prescribed for the promotee Junior Engineer (Civil). The selection grade was abolished in the year 2007 by the company and the question of four years service in selection grade, has no relevancy now. The claim petition is vague and carries no meaning. The claim petitioners can get their seniority only in the year 2012-13, as per their appointment in the service. The answering respondents were granted relaxation in qualifying service only once. The training for the post of Assistant Engineer, is prescribed only for the direct recruits and not for the promotees. The tentative seniority list and the final seniority list were issued perfectly according to the Seniority Rules, 1998 and no undue benefit has been given to the private respondents. The alleged requirement of total 17 years of service for promotion to the post of Executive Engineer is misconception derived by the petitioners and it has to do nothing with the rules. No relief can be granted to the petitioners and the claim petition deserves to be dismissed.

18. The petitioners have submitted Rejoinder Affidavit in support of their version and reiterated the facts of their petition. It is also contended that the UJVNL made separate rules for respondents No. 5, 6 & 7 without the authority, delegated by Board of Directors under Article of Association, hence, the seniority of these respondents cannot be clubbed with the direct recruits. The amendment for removal of criteria about selection grade of Junior Engineer (Civil), was not approved by the Board of Directors and it was only for the cadre of Junior Engineer (E&M) branch. The multiple relaxations to respondents no. 5 to 7 was given

illegally on various counts. The appointment and regularization of the respondents No. 5 & 6 is illegal and appointment of respondent No. 7 is without any advertisement and is also illegal as his candidature for the post of Junior Engineer in Uttarakhand, in 2002 was rejected but he got his selection in the UJVNL in the same year without any exam or selection process. The claim petition deserves to be allowed.

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

20. The petitioners have challenged the seniority list, prepared for Assistant Engineers and indirectly, the petitioners also challenged the appointment of the private respondents to the cadre of Assistant Engineer, on the basis of granting them double relaxation, by the office memorandum of the department, passed in the year 2007-08 and 2011 and to restrain the department from making further promotion, on the basis of the seniority list prepared by them.

21. The petitioners are directly recruited candidates for the post of Assistant Engineers whereas, the respondents No. 5 to 7 are the promotee officers to the post of Assistant Engineer from the cadre of Junior Engineer, who were regularized as Junior Engineer on 24.08.2002, 21.08.2002 and 15.11.2002 respectively.

22. The petitioners have contended that the eligibility for promotion from Junior Engineer to Assistant Engineer is, 10 years service as Junior Engineer, in which, previously, it was also required that 4 years' service in the selection grade, must be completed. The petitioners have contended that the eligibility criteria of 4 years' selection grade service was relaxed by making amendment in 2008 and accordingly, amendment was made. It has been contended that as per the prescribed length of service of 10 years, none of the private respondents were eligible for promotion before August, 2012, but the department granted them further relaxation in minimum service, vide resolution dated 24.6.2011

and it has been contended that such relaxation was second relaxation, which cannot be granted as per the law.

23. It is also an admitted fact that according to Rule 4 of the Uttarakhand Government Relaxation in qualifying Service for Promotion Rules, 2010 (hereinafter referred to as Relaxation Rules, 2010), the minimum length of service prescribed for promotion may suitably be relaxed up to fifty percent by the Administrative Department in consultation with the Personnel Department of the Government, with the proviso, that such relaxation will be allowed once in entire service tenure of any employee. On that basis, the petitioners have contended that second relaxation about 10 years service as Junior Engineer by the resolution of the Board passed on 24.06.2011, was not permissible hence, promotion of the private respondents in Assistant Engineer cadre, is against the Rules.

24. The private respondents and the department have contended that the condition of 4 years service in selection grade was not a relaxation, but it was an amendment made in the Rules hence, the relaxation granted in 2011 was the first relaxation, which cannot be said to be illegal. Furthermore, it has been argued that the respondents department is a corporate body and its Board of Directors is having every authority to pass any such resolution. This court agree with the argument of the respondents, and it cannot be said that the relaxation in service was double relaxation, on account of the reasons that condition of 4 years selection grade service was removed by making amendment in the rules.

25. As per the Relaxation Rules, 2010, 50% relaxation in minimum qualifying service can be granted. By granting relaxation on 24.06.2011, promotion order of private respondents was issued on 30.06.2011 against the vacancy of their quota occurred in 2011-12. The petitioners have contended that they are direct recruits against the vacancies of 2008-09 and first advertisement for fresh recruitment was issued on

07.01.2009 which was amended on 10.08.2009 and 08.09.2009. Later on, it was amended in April, 2011. The petitioners are graduate engineers; they applied for the same; the examination was held on 04.03.2012 and in November, 2012, they were appointed to the service against the vacancies of direct recruits of 2008-09.

26. The petitioners have contended that respondents No. 1 to 4 adopted a discriminatory attitude towards the direct recruits and unnecessarily given preference to the promotees (Junior Engineer); they were given double relaxation and furthermore, they were hurriedly appointed without following the concerned rules hence, their appointment to the cadre of Assistant Engineers cannot be said to be a substantive appointment in that cadre as per law. Consequently, petitioners have also contended that they cannot be granted seniority on the basis of their promotion made on 30.06.2011, because their appointment to the Assistant Engineer cadre was not a substantive appointment as per the rules.

27. It is admitted to both the parties that the concerned Rules for recruitment of Assistant Engineer are **the Uttar Pradesh State Electricity Board Assistant Engineers (Civil) Service Regulations, 1970**, which were adopted in Uttarakhand. For Electrical & Mechanical, branch Regulations of 1972 were passed, which were not relevant to be discussed in this case.

28. We have gone through the concerned Service Regulations of 1970. The relevant provisions of the same are discussed as below.

29. Regulation 5 in Part-III of the Service Regulations of 1970, prescribed for source of recruitment of Assistant Engineers whereby 65⅓%, by direct recruitment 33⅓% by promotion of Junior Engineer (Civil) and 1⅓% by promotion from confirmed and qualified Computers (S.G.)(Civil) can be filled up. Broadly speaking against one vacancy of promotees, two persons of the direct recruits are to be recruited. The

requirement of the Rules is that the Board shall ascertain the probable number of vacancies likely to occur in the service during the course of the next year. The procedure of appointment is prescribed in Part-V of the Service Regulations of 1970. The appointing authority of the Members of the Service shall be the Chairman. Regulation 15 is very relevant, which reads as under:-

"15. A combined waiting list will be prepared on the basis of the list finally drawn under clause 5 of the Appendix 'A' and the 'Select List' referred to in clause 6 of Appendix 'B' by taking candidates in such a way that every first and fourth vacancy is filled by a promoted officer (J.E. or Computer as the case may be) and the remaining vacancies are filled by trained Engineers."

Regulation 17 provides for appointments, which also reads as under:

*"17(1) A person finally selected for appointment to the Service in the manner prescribed in these regulations shall be appointed thereto by the Appointing Authority (unless he subsequently becomes disqualified for appointment) on the occurrence of a vacancy. **The appointments shall be made in the same order in which the names appear in the Waiting List prepared under regulation 15.***

(2) In case no approved candidate is available for such appointment on the list and it becomes essential to make appointments in the interest of the Board, a person who is eligible for appointment by promotion to the Service under these regulations may be appointed but such an appointment shall not be made for a period exceeding six months without the specific approval of the Board."

30. Hence, as per above regulations, the appointments on the post cannot be made without preparing the combined waiting list under Rule 15 as per Appendix 'A' (direct recruits) and as per the select list Appendix 'B' (for promotees), and the Rules specifically provide that the appointments shall be made in the same order, in which the names appear in the waiting list, prepared under Regulation 15 hence, for regular appointments, the requirement of law is that the appointment can only be made in the order as specifically fixed in the combined

waiting list. Sub-rule (2) of Rule 17 specifically mentions for a situation when the approved candidate in the waiting list is not available and it becomes essential to make appointments in the interest of the Board, then such an appointment from eligible person from promotion to the service may be made, but such appointment shall not be made for more than a period of six months hence, the temporary appointment as per this rule, without preparing combined waiting list can go long only up to six months.

31. In the present case, before the court, process for recruitment of direct recruits against the vacancies of the year 2008-09 was in progress but without waiting for such selection, the promotion process from junior engineer cadre, who did not normally complete their minimum qualification of 10 years, was started and they were granted relaxation on 24.06.2011. They were also given appointment on promotion within a week on 30.06.2011 without preparing a combined waiting list and without following the procedure of Regulations 15 and 17. Hence, in such circumstances, the implication of law is that the appointment of the private respondents on promotion to the post of Assistant Engineer, was made effective only for a period of six months temporarily and that cannot be said to be a substantive appointment as per law and it can simply be said an *ad hoc* arrangement. It is to be noted that there is no such specific approval of the board of such process.

32. Regulation 18 of the said Regulations is very important, which prescribes for seniority, it reads as under:-

“18 (1) the seniority of officers on their appointment to the Service shall be determined according to the date of the order of appointment in a substantive vacancy in the cadre of the Service:

Provided firstly that if two or more candidates are appointed on the same date, their seniority inter-se shall be determined according to the order in which their names appear in the orders of appointment issued by the Board:

Provided secondly that the Board may direct that an officer whose period of probation is extended for failure to prove his fitness for confirmation be placed in the seniority list next below the last confirmed member:

Provided thirdly that the relative seniority of members of the Service who are appointed by direct recruitment shall be in accordance with the order of preference in which they are placed by the Selection Committee at the time of selection, as approved by the Board (See clause 5 of Appendix 'A'):

Provided fourthly that between candidates who are appointed by direct recruitment and who are recruited by promotion in the same year, the seniority shall be determined in the order in which their names are arranged in the Combined Waiting list prepared under regulation 15:

Provided fifthly that if, in any year, it has not been possible to prepare the Combined Waiting List due to late selection either from J.E. (Civil) or from Computer (S.G.) (Civil) or from outside or due to any other unavoidable reasons, the names in the gradation list shall be arranged in the same order in due course in respect of the vacancies allotted to each of the categories of candidates in that particular year, as in the Combined Waiting List, and seniority determined accordingly.

(2) The seniority of candidates, inter-se appointed in a temporary or officiating capacity on the basis of a regular selection in accordance with the provisions of these regulations shall also be determined mutatis mutandis under the provisions of sub-regulation (1). "

33. The court finds that the very basis of this rule of Seniority for its application, presumes a prior substantive appointment from both the cadres as per the Rules, after preparing a combined waiting list. On that basis, it has been provided that the seniority of the officers shall be determined according to the date of the appointment in a substantive capacity, in the cadre of the service, because the requirement of the rules is that a person recruited from different cadre will find their place in a rota-quota system, as per their quota in rules and their names should be arranged in such a manner that first candidate will be of

promotee then second and third will be a direct recruits and again fourth a promotees and so on sequence-wise.

34. Fifth proviso to Rule 18 of the Service Regulations of 1970 deals with the situation when without preparing a combined waiting list, the appointments from any source have been made and it provides that if it is not possible to prepare a combined waiting list due to late selection either J.E. (Civil) or Computer (S.G.) or outside (direct) or due to any other unavoidable reasons, the names in the gradation list shall be arranged in the same order in due course in respect of the vacancies allotted to each of the categories of candidates in that particular year, as in the Combined Waiting List, and seniority shall be determined accordingly.

35. Hence, it is the further requirement of the law that even if, the Junior Engineers were promoted to the post of Assistant Engineer on 30.06.2011, without preparing a combined waiting list, then after making appointments from the direct recruits in due course of time, their names in the gradation list must have been arranged quota-wise by preparing a combined waiting list and only thereafter, the substantive appointments of the persons shall be considered and on that basis, the seniority shall be determined. This was not followed at all in this case.

36. It has further been argued that for determining the seniority, the applicable rules are the *Uttar Pradesh Rajya Vidyut Parishad Sewak Jeshthta Viniyamawali, 1998*. Rule 8 of this Niyamawali is the relevant rule, which reads as under:-

“8(1) जहां सेवा विनियमों के अनुसार नियुक्तियां पदोन्नति और सीधी भर्ती दोनों प्रकार से की जानी हो 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 किए जाएं तो उस क्रम में अवधारित की जायेगी जिसमें उनके नाम नियुक्ति के आदेश में रखे गए हैं—

प्रतिबन्ध यह है कि यदि नियुक्ति के आदेश में कोई ऐसा विशिष्ट पूर्ववर्ती दिनांक विनिर्दिष्ट हो जिसे कोई व्यक्ति मौलिक रूप से नियुक्त किया जाय, तो

वह दिनांक मौलिक नियुक्ति के आदेश का दिनांक माना जाएगा और अन्य मामलों में इसका तात्पर्य आदेश जारी किये जाने के दिनांक से होगा।

अग्रतर प्रतिबन्ध यह है कि सीधे भर्ती किया गया कोई अभ्यर्थी अपनी ज्येष्ठता खो हो सकता है यदि किसी रिक्त पद का उसे प्रस्ताव किए 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 यथा स्थिति आयोग या समिति द्वारा तैयार की गई योग्यता सूची में दिखाई गई 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 संवर्ग से होती है यथास्थिति, विनियम-6 या विनियम-7 में दिये गये सिद्धान्तों के अनुसार अवधारित की जाय।

(3) जहां किसी एक चयन के परिणामस्वरूप नियुक्तियां पदोन्नतियां और सीधी भर्ती दोनों प्रकार से की जाय 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) 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 कोटो 1 : 3 के अनुपात में हो वहां ज्येष्ठता निम्नलिखित क्रम में होगी—

प्रथम —पदोन्नत व्यक्ति

द्वितीय से चतुर्थ तक —सीधी भर्ती किये गये व्यक्ति

पांचवा—पदोन्नत व्यक्ति,

छठा से आठवा —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 जाएं, 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 कोटो से कम हो, और ऐसी न भरी गई रिक्तियां के प्रति नियुक्तियां अनुवर्ती वर्ष या वर्षों में की जाएं, वहां इस प्रकार नियुक्त व्यक्ति किसी पूर्ववर्ती वर्ष की ज्येष्ठता नहीं पायेगे किन्तु वह उस

वर्ष की ज्येष्ठता पायेंगे जिसमें ज्येष्ठता पायेंगे जिसमें उनकी नियुक्तियां की जाएं किन्तु उनके नाम शीर्ष पर रखे जायेंगे , जिसके बाद अन्य नियुक्त व्यक्तियों के नाम चक्रानुक्रम में रखे जायेंगे।

(तीन) जहां सेवा विनियमावली के अनुसार, संसगत सेवा विनियमावली में उल्लिखित परिस्थितियों में किसी स्रोत से बिना भरी गई रिक्तियां अन्य स्रोत से भरी जाएं और कोटा से अधिक नियुक्तियों की जायें वहां इस प्रकार नियुक्त व्यक्ति उसी वर्ष की ज्येष्ठता पायेंगे मानों वे अपने कोटो की रिक्तियों के प्रति नियुक्त किए गये हों।”

37. This rule further clarifies that in the present case, the seniority can be determined as per their quota in a cyclic manner, which has not been followed in this case and the private respondents have been placed en block senior to the direct recruits on the basis that the direct recruits entered into service in the year 2012, one year later while others were promoted on 30.06.2011.

38. The petitioners have contended that they were recruited against the vacancies of 2008-09 while the private respondents were recruited against the vacancies of 2011-12 and by giving undue favour to the promotees and by giving illegal relaxation, the promotees Junior Engineers were hurriedly appointed without preparing a combined waiting list as per the Rules. The petitioners have contended that they should be given seniority of the year of their vacancies i.e. 2008-09 and the private respondents should be placed below them against the vacancies of 2011-12. The respondents have opposed this contention.

39. After hearing both the parties, the court is of the view that a person recruited, in a particular year, cannot claim seniority from the date of vacancies but can claim seniority from the date of their substantive appointment as per the rules. There is also a provision that their appointments can be made effective from back date as mentioned in the appointment order.

40. As per the Rules, if persons are recruited later in time, but against the vacancies of previous year along with the person of later year vacancies, then as per Rule-8 of the Niyamawali of 1998, they can claim

en-block seniority against the persons who are recruited against the vacancies of later year. It has not been argued that the private respondents were recruited in excess of their quota against the vacancies in the year of their recruitment, but Court finds, that their recruitment by promotion on the post of Assistant Engineer, was not as per the Rules, because they were recruited without following the Regulations 15 and 17 and without preparing the combined waiting list. Their appointments as Assistant Engineers on 30.06.2011 without preparing the combined waiting list will still be treated as a temporary arrangement and as per the requirement of the Fifth Proviso to Rule 18, their names in the gradation list must have been arranged, in the same order, in due course, in respect of the vacancies allotted to each of the categories of candidates, in that particular year, as in the Combined Waiting List, and therefore, the seniority should be determined accordingly.

41. It was further argued before the court that the petitioners, who entered into the service much later in time, after the promotion of the private respondents, cannot challenge the appointment of the private respondents. This court finds that if their rights are affected and the appointment of the promotees to the cadre of Assistant Engineers is not as per the Rules, then their rights, which they will acquire by entering into their services, are being affected, so they are having every right to challenge the appointment or the seniority of the private respondents. The petitioners are having every right to ask for settling the seniority of the private respondents as per law.

42. We are also of the view that without making the adjustment in due course as per Fifth proviso to Rule 18 of the Service Regulations of 1970, the seniority of the petitioners and private respondents cannot be determined in this manner in which it has been determined by the respondents department. The private respondents whose appointments were made without preparing a combined seniority list, cannot be said

to be substantively appointed as per Rules, without making their adjustment in due course as per 5th proviso to Rule 18 of the Regulations of 1970.

43. The court also agrees with the argument of the learned counsel for the respondents that the petitioners cannot claim seniority from the date of the year of vacancies. When the persons are substantively appointed to the cadre as per Rules, they can claim seniority in the year and order in which their names are arranged in the combined waiting list. Rule 8 of the Niyamawali of 1998 specifically provides that when the appointments are to be made by promotion and by direct recruitment, then the seniority shall be determined from the date of their substantive appointment. This Rule also provides that if in the order of appointment, it is given with back date, then the appointment of the persons shall be deemed to be made from that date and appointment can be made retrospectively from that date. In the absence of which, the appointment shall be deemed to be made from the date on which the order of such appointment is made. First proviso to Rule 8 also provides for the situation, when the appointments order of the private respondents can be re-arranged with back date along with direct recruits so as to make it in consonance with the Rules.

44. Hence, the requirement of the law is that, after making substantive appointment as per the rules, on the basis of combined waiting list, the seniority should be decided afresh as per the provisions of law.

45. Consequently, the first relief sought by the petitioners needs not to be allowed. Relief IVth, for settling the seniority afresh needs to be allowed and relief-II also needs to be allowed, that without preparing final seniority list, further promotion to the post of Executive Engineer should not be made, because the entry cadre of service is the cadre of Assistant Engineer and that will affect the seniority of the persons of the higher cadres.

46. It has been argued that the petitioners have not challenged the seniority list specifically. We find that by making request to redraw the seniority, they have challenged the final seniority list dated 20.12.2018 (Annexure: 14), which needs to be set aside and further direction is also necessary required to be passed for correcting the appointment process by reissuing of such orders and for settling the seniority as per the rules and in view of the observation made in the body of the judgment.

ORDER

The claim petition is partly allowed. The final seniority list dated 20.12.2018 (Annexure: 14) is hereby set aside. The respondents No. 1 to 4 are directed to redraw the seniority after correcting the appointment process of the petitioners and of the private respondents by reissuing the orders as per the Rules and in view of the observation made in the body of the judgment. Without finalizing the seniority of Assistant Engineers cadre, as above, further promotion to the next cadre, should not be made.

No order as to costs.

(A.S.NAYAL)
MEMBER (A)

(RAM SINGH)
VICE CHAIRMAN (J)

DATED: JULY 31, 2019
DEHRADUN.
KNP