

**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. 21/NB/DB/2018

Ramaa Shankar S/o Late Mewa Lal aged about 55 years, posted in Uttarakhand Jal Sansthan as Assistant Engineer at Central Store Haldwani, District-Nainital (Uttarakhand)

.....**Petitioner**

Versus

1. The State of Uttarakhand through its Principal Secretary (Peyjal), Government of Uttarakhand, Secretariat, Dehradun.
2. The Chief General Manager, Uttarakhand Jal Sansthan, 'B-Block' Jal Bhawan, Nehru Colony, Dehradun, District-Dehradun (Uttarakhand).
3. Shri Priya Darshan Singh Rawat, In-charge Executive Engineer, Uttarakhand Jal Sansthan, Purola, Uttarkashi, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
4. Shri Tarun Sharma, In-charge Executive Engineer, Uttarakhand Jal Sansthan, Udham Singh Nagar, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
5. Shri Suresh Thakur, In-charge Executive Engineer, Uttarakhand Jal Sansthan, Ranikhet, District Almora, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
6. Shri Ajai Kumar, In-charge Executive Engineer, Uttarakhand Jal Sansthan, Jagjitpur, Haridwar, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
7. Shri Ashish Bhatt, In-charge Executive Engineer, Uttarakhand Jal Sansthan, Devprayag, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
8. Shri Nand Kishore, In-charge Executive Engineer, Uttarakhand Jal Sansthan, Bageshwar, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
9. Shri Santosh Kumar Upadhyay, In-charge Executive Engineer, Uttarakhand Jal Sansthan, Haldwani, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
10. Shri Sushil Kumar Saini, In-charge Executive Engineer, Uttarakhand Jal Sansthan, Masoori, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
11. Shri Praveen Kumar, In-charge Executive Engineer, Uttarakhand Jal Sansthan, Chamoli, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.

12. Shri Pramod Kumar Tyagi, In-charge Executive Engineer, Uttarakhand Jal Sansthan, Ramnagar, Nainital, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
13. Shri Sanjai Singh, In-charge Executive Engineer, Uttarakhand Jal Sansthan, Rudraprayag, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
14. Shri Abhishek Kumar Verma, In-charge Executive Engineer, Uttarakhand Jal Sansthan, Ghansali, Tehri, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
15. Shri Manish Semwal, In-charge Executive Engineer, Uttarakhand Jal Sansthan, Dehradun (South), Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
16. Shri Naresh Pal Singh, In-charge Executive Engineer, Uttarakhand Jal Sansthan, Haridwar, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
17. Shri Mukesh Kumar, In-charge Executive Engineer, Uttarakhand Jal Sansthan, Karnprayag, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
18. Shri Abbal Singh Panwar, In-charge Executive Engineer, Uttarakhand Jal Sansthan, Uttarkashi, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
19. Shri Sunil Tiwari, In-charge Executive Engineer, Uttarakhand Jal Sansthan, Nainital, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
20. Shri Vinod Chandra Ramola, In-charge Executive Engineer, Uttarakhand Jal Sansthan, Raipur, Dehradun, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
21. Shri Vishal Kumar, In-charge Executive Engineer, Uttarakhand Jal Sansthan, Pithoragarh, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
22. Shri Namit Ramola, In-charge Executive Engineer, Uttarakhand Jal Sansthan, Pitthuwala, Dehradun, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
23. Shri Baldev Singh, Assistant Engineer, Uttarakhand Jal Sansthan, Pitthuwala, Dehradun, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
24. Shri Satish Chandra Nautiyal, In-charge Executive Engineer, Uttarakhand Jal Sansthan, Tehri, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
25. Shri Satendra Kumar Gupta, In-charge Executive Engineer, Uttarakhand Jal Sansthan, Pauri, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
26. Shri Rajiv Saini, In-charge Executive Engineer, Uttarakhand Jal Sansthan, Lalkuan, Nainital, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
27. Shri Laxmi Chandra Ramola, In-charge Executive Engineer, Uttarakhand Jal Sansthan, Kotdwar, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
28. Shri Yashveer Mall, In-charge Executive Engineer, Uttarakhand Jal Sansthan, Dehradun (South), Dehradun, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.

29. Shri Ashok Kumar, In-charge Executive Engineer, Uttarakhand Jal Sansthan, Champawat, District Champawat, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
30. Shri Bilal Yunus, In-charge Executive Engineer, Uttarakhand Jal Sansthan, Didihat, Pithoragarh, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
31. Shri Manoj Kumar Tatma, Assistant Engineer, Uttarakhand Jal Sansthan, Rudrapur, Udham Singh Nagar, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
32. Shri Ravi Shankar Loshali, Assistant Engineer, Uttarakhand Jal Sansthan, Haldwani, Nainital, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
33. Shri Rajendra Pal, Assistant Engineer, Uttarakhand Jal Sansthan, New Tehri, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
34. Shri Pradeep Singh Kunwar, Assistant Engineer, Uttarakhand Jal Sansthan, Massoorie, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
35. Shri Awadesh Kumar, Assistant Engineer, Uttarakhand Jal Sansthan, Ranikhet, Almora, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
36. Km. Monika Verma, Assistant Engineer, Uttarakhand Jal Sansthan, Pitthuwala, Dehradun, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
37. Shri Kailash Chandra Painuli, Assistant Engineer, Uttarakhand Jal Sansthan, New Tehri, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
38. Shri R. K. Vermam, Assistant Engineer, Uttarakhand Jal Sansthan, Champawat Division Champawat, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
39. Shri Ajai Pal Singh, Assistant Engineer, Uttarakhand Jal Sansthan Maintenance Division, Dehradun, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
40. Shri J. P. Singh, Assistant Engineer, Uttarakhand Jal Sansthan, Ram Nagar, Nainital, Uttarakhand through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
41. Shri Virendra Singh, Assistant Engineer, Uttarakhand Jal Sansthan, Uttarkashi, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
42. Shri B. C. Pal, Assistant Engineer, Uttarakhand Jal Sansthan, Nainital, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
43. Shri H. C. Pal, Assistant Engineer, Uttarakhand Jal Sansthan, Udham Singh Nagar, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
44. Shri Rajendra Pd. Mamgain, Assistant Engineer, Uttarakhand Jal Sansthan, Central Store, Dehradun, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
45. Shri Shri Ramendra Kumar Srivastava, Assistant Engineer, Uttarakhand Jal Sansthan, Lalkuan, Nainital, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.

46. Shri Rajesh Kuamr Nirval, Assistant Engineer, Uttarakhand Jal Sansthan, Haridwar, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun
47. Sri Amit Kumar, Assistant Engineer, Uttarakhand Jal Sansthan, Rudra Prayag, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
48. Shri Shiv Kumar Rai, Assistant Engineer, Uttarakhand Jal Sansthan, Kotdwar, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
49. Shri Vipin Kumar, Assistant Engineer, Uttarakhand Jal Sansthan, Karn Prayag, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
50. Shri Madan Sain Verma, Assistant Engineer, Uttarkhand Jal Sansthan, Haridwar, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
51. Shri Anish M. Pillai, Assistant Engineer, Uttarakhand Jal Sansthan, Rudra Prayag, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
52. Shri Sanjai Kumar Srivastava, Assistant Engineer, Uttarakhand Jal Sansthan, Maintenance Division, Vikas Nagar, Dehradun, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
53. Shri Shri Sandeep Chaturvedi, Assistant Engineer, Uttarakhand Jal Sansthan, Gopeshwar, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
54. Shri Vinod Kumar Srivastava, Assistant Engineer, Uttarakhand Jal Sansthan, Lalkuan, Nainital, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
55. Shri Prashant Bhardwaj, Assistant Engineer, Uttarakhand Jal Sansthan, Haridwar, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
56. Shri Shishu Pal Singh, Assistant Engineer, Uttarakhand Jal Sansthan, Ram Nagar, Nainital, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
57. Shri Neeraj Tiwari, Assistant Engineer, Uttarakhand Jal Sansthan, Ranikhet, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
58. Shri Rakesh Kumar, Assistant Engineer, Uttarakhand Jal Sansthan, Haridwar (Ganga), Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
59. Shri Manoj Kumar Gangwar, Assistant Engineer, Uttarakhand Jal Sansthan, Ram Nagar, Nainital, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
60. Sri Arun Kumar, Assistant Engineer, Uttarakhand Jal Sansthan, Maintenance Division, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
61. Shri Vinesh Kumar, Assistant Engineer, Uttarakhand Jal Sansthan, Maintenance Division, Dehradun, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
62. Shushri Nisha Gautam, Assistant Engineer, Uttarakhand Jal Sansthan, Dehradun Uttar District Dehradun, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.

63. Shri Satyawan Singh Rawat, Assistant Engineer, Uttarakhand Jal Sansthan, Didihat, Pithoragarh, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
64. Shri Ramesh Garbyal, Assistant Engineer, Uttarakhand Jal Sansthan, Didihat, Pithoragarh, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
65. Shri Bali Ram Chaudhary, Assistant Engineer, Uttarakhand Jal Sansthan, Kotdwar, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
66. Shri Vinod Pande, Assistant Engineer, Uttarakhand Jal Sansthan, Maintenance Division, Dehradun, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
67. Shri Harish Kumar Bansal, Assistant Engineer, Uttarakhand Jal Sansthan, Rishikesh Ganga, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
68. Shri Lokendra Singh Kumai, Assistant Engineer, Uttarakhand Jal Sansthan, Uttarkashi, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
69. Shri Bhupendra Singh, Assistant Engineer, Uttarakhand Jal Sansthan, Pitthuwala, Dehradun, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
70. Shri Rakesh Kumar Verma, Assistant Engineer, Uttarakhand Jal Sansthan, Kotdwar, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
71. Shri Subhash Chandra Juyal, Assistant Engineer, Uttarakhand Jal Sansthan, Dehradun Uttar, Dehradun, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
72. Shri Sunil Bisht, Assistant Engineer, Uttarakhand Jal Sansthan, Didihat, Paudi, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
73. Shri Girish Chandra Bhatt, Assistant Engineer, Uttarakhand Jal Sansthan, Devprayag, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
74. Shri Anand Mohan Kansal, Assistant Engineer, Uttarakhand Jal Sansthan, Dehradun Uttar, Dehradun, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
75. Shri Arun Vikram Singh, Assistant Engineer, Uttarakhand Jal Sansthan, Maintenance Division, Rishikesh, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
76. Shri Vineet Rawat, Assistant Engineer, Uttarakhand Jal Sansthan, Dehradun Uttar, Dehradun, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
77. Shri Shyam Singh Rawat, Assistant Engineer, Uttarakhand Jal Sansthan, Uttarkashi, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
78. Shri Bansi Dhar Bhatt, Assistant Engineer, Uttarakhand Jal Sansthan, Ranikhet, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
79. Shri Trepan Singh Rawat, Assistant Engineer, Uttarakhand Jal Sansthan, Massoori, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.

80. Shri Chandan Singh Devri, Assistant Engineer, Uttarakhand Jal Sansthan, Almora, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
81. Shri Ravi Prakash Dobhal, Assistant Engineer, Uttarakhand Jal Sansthan, Haldwani, Nainital, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
82. Shri Daleep Singh Bisht, Assistant Engineer, Uttarakhand Jal Sansthan, Nainital, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
83. Shri Mukesh Kumar, Assistant Engineer, Uttarakhand Jal Sansthan, Haldwani, Nainital, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
84. Shri Rajesh Kumar, Assistant Engineer, Uttarakhand Jal Sansthan, Haridwar (Ganga), Haridwar, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
85. Shri Lalit Mohan Pande, Assistant Engineer, Uttarakhand Jal Sansthan, Haldwani, Nainital, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
86. Shri Sanjai Kumar, Assistant Engineer, Uttarakhand Jal Sansthan, Haridwar, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
87. Shri Badre Alam, Assistant Engineer, Uttarakhand Jal Sansthan, Udham Singh Nagar, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
88. Shri Abdul Rasheed, Assistant Engineer, Uttarakhand Jal Sansthan, Haridwar (Ganga), Haridwar, Uttarakhand, through Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.

..... Respondents

Present: Sri L.K.Verma, Ld. Counsel
for the petitioner
Sri Kishore Kumar, Ld. A.P.O.
for the Respondent No. 1
Sri Vinod Tiwari, Ld. Counsel
for the respondent No. 2
None for the other respondents

JUDGMENT

DATED: SEPTEMBER 18, 2019

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

1. The petitioner has approached the court for the following reliefs:

“i) Issue an order or direction in the nature of certiorari by quashing the impugned seniority list dated 06.07.2017 issued by respondent No. 1 (contained as Annexure no. 8 to this claim petition).

ii) Issue an order or direction in the nature of mandamus directing the respondents to prepare and issue a fresh seniority list and the petitioner's name be defigured at appropriate serial number in the list by counting his seniority on the basis of his substantive appointment as Junior Engineer dated 10.08.1998 by counting his officiating promotion/appointment as Assistant Engineer since 22.12.2008 in continuation to his regular promotion on the post of Assistant Engineer dated 30.06.2014, especially by considering the regaining of the feeding cadre seniority over the party respondents No. 29, 31, 33 and 35 respectively in accordance with Rule 6 of the Uttaranchal Government Servants Seniority Rules, 2002.

iii) Issue any other writ, order or direction, which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case.

iv) Award the cost of the petition in favour of the petitioner. "

2. Briefly stated, the petitioner on his selection by Public Service Commission as Junior Engineer on 30.11.1992, got appointment to the service, after completing other formalities on 10.08.1998. After reporting on duty on 29.08.1998 at the headquarters, Kumoun Jal Sangthan in Nainital, in the erstwhile State of U.P., petitioner joined at Champawat on 31.08.1998 as per the directions therein.

3. After bifurcation of the State of Uttar Pradesh on 09.11.2000, the services of the petitioner fell in the State of Uttarakhand and finally, in June, 2002, after amalgamation of Garhwal and Kumaoun Jal Sansthans, he continued his service in Uttarakhand Jal Sansthan, as Junior Engineer. The Uttar Pradesh Palika and Jal Sansthans Waterworks Engineering (Centralized) Service Rules, 1996 governing service conditions, were adopted and such rules remained in force till the new rules were framed by Uttarakhand in 2011 known as 'the Uttarakhand Jal Sansthan Engineering Service Rules, 2011'.

4. As per the contention of the petitioner, he was assigned the work of Assistant Engineer, in officiating capacity on 22.12.2008 in Bageshwar Division. His work as officiating Assistant Engineer was also reviewed vide order dated 05.07.2012 and 19.07.2012, when he was formerly appointed Assistant Engineer in officiating capacity. After review of his performance as incharge Assistant Engineer, on 17.08.2013

“the petitioner was directed to work as Assistant Engineer till the regular arrangement of the division was to be made and since 2008, petitioner continued working as Assistant Engineer” till his final promotion on the post of Assistant Engineer, was made on 30.06.2014.

5. Respondent No. 1 issued a combined tentative seniority list of Assistant Engineer of Uttarakhand Jal Sansthan on 25.04.2017 and invited objections from all concerned. In response to above, on 02.05.2017, petitioner submitted detailed objections against the tentative seniority list, but ignoring the objections raised by the petitioner and without disposing the points raised by him in his representation, the respondent No.1 finalized and issued the final seniority list dated 06.07.2017 wherein, the name of the petitioner was placed at sl. No. 18 whereas, his name should have been placed at the top of the list, in view of his continuous working on the post of Assistant Engineer, since 22.12.2008. The date of appointment of other private respondent, shown at sl. No. 1, was shown as 11.3.2011.

6. It is also contended that the private respondents No. 29, 31, 33 and 35, who were junior to him, in the Junior Engineer cadre, were placed at sl. No. 49, 51, 53 and 55 respectively in the seniority list. They were appointed as Junior Engineer in 2005, whereas, the petitioner was appointed in 1998, and 7 years junior persons, have been shown above the petitioner in the seniority list. The petitioner submitted his representation on 25.09.2017 and again on 08.05.2018, before respondents No. 1 & 2 for review of the seniority list in question, but respondent department paid no attention to the objections of the petitioner, hence, this petition.

7. Respondent No. 2, department, opposed the petition on the ground that other private respondents were granted promotion in the reservation quota, in 2011 prior to the promotion of the petitioner in 2014 and considering their substantive appointment, being earlier, in the Assistant Engineer cadre, seniority list has been decided accordingly.

The petitioner was not promoted as Assistant Engineer in 2008 rather a simple ad-hoc arrangement was made and he is not entitled for any seniority on that basis. The petitioner has wrongly claimed the benefit of Rule 6 of the Uttaranchal Government Servants Seniority Rules, 2002. The objections against the tentative seniority list were not valid and the seniority was finalized following the due process of law and rules. The petitioner was promoted on the post of Assistant Engineer only in 2014 and assigning the duties of Assistant Engineer in 2008, in addition to his duties of Junior Engineer, was a stopgap arrangement to look after the day-today work and it was not a promotion.

8. It is also contended that such type of arrangements are usually made from time to time as per the exigency of administrative need of the department. There is no provision to make officiating promotion on the post of Assistant Engineer in the Jal Sansthan. The relevant rules, applicable in their case, is Rule 7 of the Seniority Rules, 2002 and the Service Rules, 2011, according to which, the seniority can be decided from the date of substantive appointment. The petitioner has no merit and petition deserves to be dismissed.

9. The petitioner by way of rejoinder affidavit, reiterated the facts of his petition and denied the contention of the Counter Affidavit and cited various case laws laid down by the Hon'ble Supreme Court and Hon'ble High Court. The petitioner also claimed that the officiating services rendered by him were uninterrupted since 2008, till his final promotion in 2014 hence, this period should be counted for the purpose of his seniority. The private respondents No. 29, 31, 33 and 35 are the roster point promotees and they were granted promotions on 11.03.2011 to the post of Assistant Engineer. At that time, reservation policy was applicable but after passing the judgment of the Hon'ble High Court in Vinod Prasad Nautiyal & others on 10.07.2012, the provision under Rule 3(7) of the Reservation Rules, were struck down and no consequential seniority could be granted in favour of the roster

point promotes. The private respondents who were admittedly junior to the petitioner, cannot be placed above the petitioner and applying the catch-up rule, the petitioner although promoted later in time, will regain his seniority over his juniors in feeding cadre, hence, placing the private respondents No. 29, 31, 33 and 35 above petitioner, stands in violation of Rule 6 of the Seniority Rules of 2002.

10. It has also been contended that a similar controversy has already been decided by this Tribunal in Claim Petition No. 42/DB/2018, Kailash Chandra Painuly vs. State of Uttarakhand and others vide judgment dated 25.03.2019, wherein it has been decided that the seniority of the promotee Assistant Engineers will be governed by their seniority in the feeding cadre of Junior Engineers. The same judgment was also challenged before the Hon'ble High Court of Uttarakhand and later on before the Hon'ble Supreme Court, wherein, appeal was dismissed and the judgment of the Tribunal was upheld. Rejecting the contention of the respondents, the petition deserves to be allowed.

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

12. In the present petition, two points are involved- firstly, whether the length of service on adhoc/officiating promotion/appointment of the petitioner can be counted for the purpose of determining the seniority of the petitioner and secondly, whether the petitioner will regain his seniority following the catchup rule vis-à-vis the other promotee officers who were junior in the feeding cadre.

13. Admittedly, the petitioner after following due process of selection through Public Service Commission, was appointed as Junior Engineer on 10.08.1998 and he reported on duty on 29.08.1998 and assumed charge on 31.08.1998 at the place where he was directed to take up the charge, in the erstwhile State of Uttar Pradesh. After inception of the State of Uttarakhand on 09.11.2000, his services were

allotted to Uttarakhand and later on after merger of Garhwal and Kumaoun Jal Sansthan, he became an employee of the Uttarakhand Jal Sansthan after 2002.

14. The petitioner was granted officiating promotion as incharge Assistant Engineer on 22.12.2008 and he was assigned such duty in addition to his duties as Junior Engineer, Bageshwar Division. His cadre was finally allocated to Uttarakhand on 27.02.2012 and petitioner continued to perform his duty of Officiating Assistant Engineer alongwith his own post. His performance as Incharge Assistant Engineer was also reviewed vide order dated 05.7.2012, 19.07.2012 and again on 17.08.2013. He was specifically ordered to work as incharge Assistant Engineer. It is the contention of the petitioner that since assigning him the officiating work of Assistant Engineer on 22.12.2008, he continued to perform such duties uninterruptedly till 30.06.2014 when he was regularly promoted in Assistant Engineer cadre. In such circumstances, the petitioner has contended that in view of the various judgments of the Hon'ble High Court and Hon'ble Supreme Court, all his officiating period as Assistant Engineer starting from 2008, till his regular promotion in 2014 will also be counted for the purpose of his seniority. The petitioner has cited the following case laws:-

- (i) Baleshwar Das and others vs. State of U.P. & others (1980)4 SCC, 226.
- (ii) P.G.Doval and others vs. Chief Secretary, Govt. of U.P. & others (1984)4 SCC, 229.
- (iii) Delhi Water Supply and Sewerage Disposal Committee & others vs. R.K.Kashyap & others, 1989 Supp (1) SCC, 194.
- (iv) The Director Recruits Class-II Engineering Officers Association & others vs. State of Maharashtra & others, AIR 1990 Supreme Court, 1607.
- (v) Rajbir Singh and others vs. Union of India & Ors, AIR 1991 Supreme Court 518.
- (vi) Dr. P.C.Agarwal and Ors vs. State of U.P. & Ors (1993) 1 UPLBEC 218.
- (vii) Keshav Deo and another vs. State of U.P. & others, AIR 1999 Supreme Court, 44.
- (viii) L.Chandra Kishore Singh & ors vs. State of Manipur & ors (1999)8 SCC, 287.
- (ix) Chandra Prakash and others vs. U.P. & Anr. (2002) 4 SCC, 234.
- (x) Chief Commissioner of Income Tax & ors vs. V.Subha Rao & ors, 2004 SCC (L&S)201.

- (xi) Virendra Kumar Verma vs. the State of Uttarakhand & ors. 2005 (1) U.D. 351.
- (xii) Hansa Datta Pandey & ors vs. State of Uttarakhand & ors, 2011 (2) U.D. 354.
- (xiii) Sisir Kumar Ghosh vs. State of West Bengal & ors. 2018 SCC Online Call 348.
- (xiv) B.K.Pavitra & ors vs. UOI & ors (2017)4 SCC 620.
- (xv) S.Panneer Selvam & Ors vs. Govt. of T.Nadu & Ors (2015) 10 SCC, 292.

15. We find that the contention of the petitioner is fully supported by the law laid down by the Hon'ble Courts in the judgments cited above and it is specifically clear that the petitioner who performed the duties of Assistant Engineer continuously from 2008 uninterruptedly, his length of such service will be counted for the purpose of seniority. In view of the judgment of the Hon'ble Apex Court and also the judgment of the Hon'ble High Court of Uttarakhand, passed in Virendra Kumar Verma vs. The State of Uttaranchal and others, 2005 (1) U.D., 351 and in Hansa Dutt Pandey & others vs. State of Uttarakhand & others, 2011 (2) 354, it was specifically laid that where an irregular appointment is regularized, in the absence of a contrary provision in the Rules, the regularization would relate back to the date of original appointment, provided the irregular appointee uninterruptedly continued such service till his regularization. Even in the cases of probation or officiating appointments, followed by confirmation thereof, unless there is a contrary rule, the service rendered as officiating appointment or probation cannot be ignored for determining the place in the seniority list. (1990) 2 SCC, 715 and (2010)6 SCC, 791 were also relied upon by the Hon'ble High Court.

16. Hence, this court finds that the petitioner is entitled for counting his complete length of service starting from the year 2008 for granting seniority to him in the cadre of Assistant Engineer, whereas, in the seniority list issued on 06.07.2017, he has been denied such benefits. To this extent, the plea of the petitioner deserves to be allowed.

17. For the second point, i.e. whether the petitioner will regain his seniority *vis-à-vis* the other promotee Assistant Engineers, from the cadre of Junior Engineer, petitioner has contended that such controversy has already been settled by this Tribunal in claim petition No. 42/DB/2018, K.C.Painuly vs. State of Uttarakhand & others. The present case is also squarely covered by the same facts and law. The petitioner has also referred to other decision of this Tribunal, passed Claim petition No. 115/2007, V.K.Virdi vs. State & others, decided on 04.12.2007 wherein, it was held that the seniority of the promoted Assistant Engineers will be governed by their seniority in the feeding cadre of the Junior Engineers. Against the judgment dated 04.12.2007 of the Tribunal, a writ petition bearing no. 68/2008 was also filed before the Hon'ble High Court at Nainital, wherein the decision of the Tribunal was upheld and the appeal of the State was dismissed on 07.10.2010 and the SLP of the State Government before the Hon'ble Supreme Court was also dismissed. The present case is also squarely covered by the judgment the Hon'ble High Court that the seniority in the feeding cadre is what matters and a person, senior in the feeding cadre, regains his seniority even though promoted on the higher post later. In the present case, some of the private respondents who were junior to the petitioner in Junior Engineer cadre, got promotion earlier in reservation quota. However, considering the regular promotion of the petitioner in 2014, which will be made effective from 2008, the petitioner will regain his seniority over his promotee colleagues, who got promoted earlier in time but were junior in the feeding cadre i.e. Junior Engineer cadre because in this case, the seniority will be governed by Rule 6 and 8 of the Uttarakhand Government Servants Seniority Rules, 2002. Rule 6 & 8 (and its explanation) of the Seniority Rules of 2002, read as under:

“6. Seniority where appointment by promotion only from a single feeding cadre--

Where according to the service rules, appointments are to be made only by promotion from a single feeding cadre, the seniority inter se of persons so appointed shall be the same as it was in the feeding cadre.

Explanation--A person senior in the feeding cadre shall even though promoted after the promotion of a person junior to him in the feeding cadre shall, in the cadre to which they are promoted, regain the seniority as it was in the feeding cadre.

8. Seniority where appointment by promotion only from and direct recruitment--

(1) Where according to the service rules appointments are made both by promotion and by direct recruitment, the seniority of persons appointed shall, subject to the provisions of the following sub-rules, be determined from the date of the order of their substantive appointments and if two or more persons are appointed together, in the order in which their names are arranged in the appointment order:

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

Provided further that a candidate recruitment directly may lose his seniority, if he fails to join without valid reasons, when vacancy is offered to him the decision of the appointing authority as to the validity of reasons, shall be final.

- (2) The seniority inter se of persons appointed on the result of any one selection--
- (a) through direct recruitment, shall be the same as it is shown in the merit list prepared by the Commission or by the Committee, as the case may be;
- (b) by promotion, shall be as determined in accordance with the principles laid down in rule 6 or rule 7, as the case may be, according as the promotion are to be made from a single feeding cadre or several feeding cadres.
- (3) Where appointments are made both by promotion and direct recruitment on the result of any one selection the seniority of promotees vis-a-vis direct recruits shall be determined in a cyclic order the first being a promotee as far as may be , in accordance with the quota prescribed for the two sources.

Illustrations--(1) Where the quota of promotees and direct recruits is in the proportion of 1:1 the seniority shall be in the following order:--

First	.....	Promotee
Second	.....	Direct recruits and so on.

(2) Where the said quota is in the proportion of 1:3 the seniority shall be in the following order :--

First	.....	Promotee
Second to fourth	.....	Direct recruits
Fifth	.....	Promotee
Sixth to eight	.....	Direct recruits and so on.

Provided that--

- (i) where appointments from any source are made in excess of the prescribed quota, the persons appointed in excess of quota shall

be pushed down, for seniority, to subsequent year in which there are vacancies in accordance with the quota;

(ii) where appointments from any source fall short of the prescribed quota and appointment against such unfilled vacancies are made in subsequent year or years, the persons so appointed shall not get seniority of any earlier year but shall get the seniority of the year in which their appointments are made, so however, that their names shall be placed at the top followed by the names, in the cyclic order of the other appointees;

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

18. This court does not agree with the argument of the respondents that in this case, Rule 7 is applicable because Rule 7 is applicable in the case where appointments are made only by promotion, but from more than one feeding cadres. In this case, the appointments, as per Rules, to the post of Assistant Engineers, are made both by promotion and by direct recruitment. As per Sub-rule (2) of Rule 8, the seniority *inter se* of persons appointed by promotion on the result of any one selection, will be governed by part (b) of sub rule (2) of Rule 8 and it shall be determined in accordance with the principles laid down in rule 6 or rule 7, as the case may be. In this case, rule 7 is not applicable, hence, again applying the explanation to Rule 6, the petitioner will regain his seniority over his promotee colleagues, who got promotion in Assistant Engineer cadre earlier to him, but they were junior in the feeding cadre. Admittedly, petitioner was senior to the private respondents in the Junior Engineer cadre and other private respondents got their accelerated promotion in the reservation quota, but after getting promotion in Assistant Engineer, the petitioner will regain his seniority following the 'catch up Rule', and this point has already been decided by this Tribunal in Claim Petition No. 42/DB/2018, Kailash Chandra Painuly vs. State of Uttarakhand & others.

19. Hence, this court finds that the impugned seniority list dated 06.07.2017 has been prepared ignoring both of the above legal position and the name of the petitioner in the above seniority list has not been

placed at the appropriate place. He should be given benefit of the length of his officiating service since 2008. Furthermore, he should find place above his other promotee colleagues who were junior in the feeding cadre, following the catch up rule.

20. We hold that the seniority list has been prepared, not as per the rule and laws so it should be quashed and there is a need for direction to prepare the fresh seniority list as per the observation made in the body of the judgment. Following order is hereby passed.

ORDER

The claim petition is allowed. The impugned seniority list dated 06.07.2017 (Annexure: 8) is hereby quashed. The respondents No. 1 & 2 are directed to redraw the seniority list of the petitioner and of the private respondents afresh by counting his length of continuous officiating period as Assistant Engineer since 22.12.2008, in accordance with Rule 6 and its explanation of the Uttarakhand Government Servants Seniority Rules, 2002, read with Rule 24 of the Uttarakhand Jal Sansthan Engineering Service Rules, 2011, within a period of four months from today. The petitioner will also be entitled for consequential benefits, if any, accrued to him, in law.

No order as to costs.

Sd/-

(A.S.NAYAL)
MEMBER (A)

Sd/-

(RAM SINGH)
VICE CHAIRMAN (J)

DATE: SEPTEMBER 18, 2019
NAINITAL

KNP