

17. Indu Bhushan, S/o Sri Prem Lal, presently working as Assistant Development Officer, Horticulture, Vikas Nagar, District Dehradun.
18. Jagdish Lal, S/o Sri Kundan Lal, presently working as Assistant Development Officer, Horticulture, Siddhsaud, District Rudraprayag.
19. Shyam Lal, S/o Sri Pani Ram, presently working as Assistant Development Officer, Horticulture, Kotabagh, District Nainital.
20. Mahesh Chandra Arya, S/o Sri Sher Ram, presently working as Assistant Development Officer, Horticulture, Patlot, District Nainital.
21. Shyam Lal, S/o Sri Sriram, presently working as Assistant Development Officer, Jhankat, Horticulture, District Udham Singh Nagar.
22. Ghanshyam, S/o Sri Indra Lal, presently working as Assistant Development Officer, Horticulture, Nathuwakhan, District Nainital.
23. Jamantu Das, S/o Sri Jogani, presently working as Assistant Development Officer, Horticulture, Vikas Khand, District Uttarkashi.
24. Indrajeet Lal Tamta, S/o Sri Jayanti Lal, presently working as Assistant Development Officer, Horticulture, Dandakhal, District Rudraprayag.

.....Petitioners

Versus

1. State of Uttarakhand, through Secretary, Department of Horticulture, Civil Secretariat, Government of Uttarakhand, Dehradun.
2. Director of Directorate, Department of Horticulture, Uttarakhand, Udyan Bhawan, Ranikhet (Almora).
3. Ravindrajeet Singh, aged about 37 years, S/o Shri Balvindar Singh, R/o posted as Assistant Development Officer, Horticulture, Udham Singh Nagar.
4. Subhash Rayal, aged about 34 years, S/o B P Rayal, R/o posted as Assistant Development Officer, Horticulture, Udham Singh Nagar.
5. Santosh Kumar, aged about 37 years, S/o Jaid Ram Arya, R/o posted as Incharge-Horticulture High Court Campus, Nainital, Uttarakhand.
6. Smt. Prema Rana, W/o Not known, presently working as Assistant Development Officer, Talla Ramgarh, District Nainital.
7. Rajendra Prasad, S/o Not known, presently working as Assistant Development Officer, Tyuni, District Dehradun.
8. Mahavir Singh, S/o Not known, presently working as Assistant Development Officer, District Chamoli.
9. Jagat Ram Semwal, S/o Not known, presently working as Assistant Development Officer, U. S. Dal Kendra Langha, District Dehradun.
10. Mahendra Singh Gusain, S/o Not known, presently working as Assistant Development Officer, S.M.P.P. Dehradun.
11. Yashpal Singh, S/o Not known, presently working as Assistant Development Officer, U.S.D. Bauradi, District Tehri.
12. Pankaj Kumar, S/o Not known, presently working as Assistant Development Officer, U. S. Dal Kendra Hindolakhil, District Tehri.

13. Laxman Singh Bhandari, S/o Not known, presently working as Assistant Development Officer, U. S. D. Almora.
14. Km. Himani Kothari, D/o Not known, presently working as Assistant Development Officer, U. S. Dal Kendra Doiwala, District Dehradun.
15. Bhupal Singh Bisht, S/o Not known, presently working as Assistant Development Officer, U. S. D. Chiliyanaula.
16. Km. Neelu Verma, D/o Not known, presently working as Assistant Development Officer, U. S. Dal Kendra Thanau, Dehradun.
17. Bhuwan Chandra Semwal, S/o Not known, presently working as Assistant Development Officer, Vidhan Sabha Dehradun.
18. Neha Rawat, D/o Not known, presently working as Assistant Development Officer, U. S. D. Kotdwar.
19. Jaipal Singh Rauthan, S/o Not known, presently working as Assistant Development Officer, Ra.U. Sikandarpur, Haridwar.
20. Devi Prasad, D/o Not known, presently working as Assistant Development Officer, U. S. Dal Kendra Tapovan, Chamoli.
21. Pramod Kumar Kukreti, D/o Not known, presently working as Assistant Development Officer, U. S. D. Pokhal (Pauri).
22. Kuldip Joshi, D/o Not known, presently working as Assistant Development Officer, Sama, Bageshwar.
23. Deewan Singh Bisht, D/o Not known, presently working as Assistant Development Officer, U. S. D. Danya (Almora).
24. Richa Joshi, D/o Not known, presently working as Assistant Development Officer, U. S. D. Govindpur (Almora).
25. Devendra Swaroop Kandpal, S/o Not known, presently working as Assistant Development Officer, Chamoli.
26. Sanjay Rayal, S/o Not known, presently working as Assistant Development Officer, Gangalehri.
27. Muralidhar Suyal, S/o Not known, presently working as Assistant Development Officer, Ja. Pra. Pariyojana Haldwani.
28. Smt. Lata Tewari, W/o Not known, presently working as Assistant Development Officer, Ji.U.Ka. Almora.
29. Mohan Singh Negi, S/o Not known, presently working as Assistant Development Officer, U.S.D. Piyuda (Nainital).
30. Dr. Puja Uniyal, D/o Not known, presently working as Assistant Development Officer, Office-Potato Development Officer, Uttarkashi.
31. Vikram Singh Rana, S/o Not known, presently working as Assistant Development Officer.
32. Smt. Sohita Joshi, W/o Not known, presently working as Assistant Development Officer, Ji.U.Ka. Dehradun.
33. Bhagwat Singh, S/o Not known, presently working as Assistant Development Officer, U.S.D. Salt (Almora).

34. Mohan Singh Bhaiasauara, S/o Not known, presently working as Assistant Development Officer, U. S. Dal Kendra Shama (Bageshwar).
35. Abhishek Gupta, S/o Not known, presently working as Assistant Development Officer, U. S. D. Dhanolti, Tehri.
36. Puran Singh Parihar, S/o Not known, presently working as Assistant Development Officer, U. S. D. Bageshwar.
37. Somesh Bhandari, S/o Not known, presently working as Assistant Development Officer, U. S. Dal Kendra Joshimath, Chamoli.
38. Bhuwan Chandra Kandpal, S/o Not known, presently working as Assistant Development Officer Directorate, Headquarter.
39. Km. Nisha Bisht, D/o Not known, presently working as Assistant Development Officer, U. S. Dal Kendra Loali Pauri.
40. Km. Janki Pal, D/o Not known, presently working as Assistant Development Officer, U. S. Dal Kendra Champawat.
41. Shweta Joshi, D/o Not known, presently working as Assistant Development Officer, Dehradun.
42. Asha Goswami, D/o Not known, presently working as Assistant Development Officer, U. S. Dal Kendra Kashipur, Udham Singh Nagar.
43. Anjana Arya, D/o Not known, presently working as Assistant Development Officer, U. S. Dal Kendra Pahadpani, Nainital.
44. Prashant Rathore, S/o Not known, presently working as Assistant Development Officer, U. S. Dal Kendra Vithyani, Pauri.
45. Smt. Sheela Shukla, W/o Not known, presently working as Assistant Development Officer, Dhaunalti, Tehri Garhwal.
46. Ravindra Prasad Bhatt, S/o Not known, presently working as Assistant Development Officer, U. S. Dal Kendra Kafnaula, Uttarkashi.
47. Ramesh Chandra Joshi, S/o Not known, presently working as Assistant Development Officer, Ji. U. Ka. Champawat.
48. Jagdish Chandra Tiwari, S/o Not known, presently working as Assistant Development Officer, U. S. Dal Kendra Kashipur.
49. Madan Mohan Nainwal, S/o Not known, presently working as Assistant Development Officer, Nainital.
50. Mahendra Singh Bora, S/o Not known, presently working as Assistant Development Officer, U. S. Dal Kendra Manila-Almora.
51. Kewlanand Kandpal, S/o Not known, presently working as Assistant Development Officer, U. S. Dal Kendra Bhingrada-Champawat.
52. Narayan Singh Bhayeda, S/o Not known, presently working as Assistant Development Officer, U. S. Dal Kendra Gwaldam-Chamoli.
53. Rajendra Singh Mehra, S/o Not known, presently working as Assistant Development Officer, Almora.
54. Aan Singh Bisht, S/o Not known, presently working as Assistant Development Officer, U. S. Dal Kendra Daivithal-Pithoragarh.

55. Bachi Ram Pandey, S/o Not known, presently working as Assistant Development Officer, U. S. Dal Kendra Vastiya-Champawat.
56. Hukum Singh Bora, S/o Not known, presently working as Assistant Development Officer, Thal.
57. Shyam Singh Rawat, S/o Not known, presently working as Assistant Development Officer, U. S. Dal Kendra Khet.
58. Jagat Chandra Rajwar, S/o Not known, presently working as Assistant Development Officer, U. S. Dal Kendra Khatima.
59. Govind Singh Rawat, S/o Not known presently working as Assistant Development Officer,
60. Manmohan Singh Negi, S/o Not known, presently working as Assistant Development Officer, Bageshwar.
61. Gauri Dutt Joshi, D/o Not known, presently working as Assistant Development Officer, U. S. Dal Kendra Dodam.
62. Kishan Singh, S/o Not known, presently working as Assistant Development Officer, U. S. Dal Kendra Gunaditya.
63. Prem Singh Aeri, S/o Not known presently working as Assistant Development Officer,
64. Narendra Lal Sah, S/o Not known, presently working as Assistant Development Officer, U. S. Dal Kendra Sheraghat.
65. Girish Chandra Verma, S/o Not known, presently working as Assistant Development Officer, U. S. Dal Kendra Shaharphatak.
66. Bhupendra Prasad Joshi, S/o Not known, presently working as Assistant Development Officer, U. S. Dal Kendra Lohaghat.
67. Narayan Singh Bisht, S/o Not known, presently working as Assistant Development Officer, Ji.U.Ka. Dehradun.
68. Mohan Singh Mehta, S/o Not known, presently working as Assistant Development Officer, U. S. Dal Kendra Muani-Dawani, Pithoragarh.

..... Respondents

Present: Sri S.S.Yadav & Dr. N.K.Pant, Advocates for the petitioners.
 Sri Kishore Kumar, A.P.O. for the Respondents No. 1 & 2.
 Sri Devesh Bishnoi, Advocate for the Respondents No. 3,4 & 5.
 Sri D.S.Mehta, Advocate for the Respondent No. 6
 Sri Dinesh Gehtori, Advocate for the Respondents No.7,9,13,15,27,29
 ,31,33,48,50,51,54,55,58,59,62,64,65,& 67.

And

CLAIM PETITION NO. 10/NB/DB/2019

1. Jagdish Chandra Tiwari, Asst. Development Officer Grade II, Udyan Sachal Dal Kendra, Udham Singh Nagar.
2. Mahendra Singh Bora, Asst. Development Officer Grade II, Udyan Sachal Dal Kendra, Manila, District Almora.

3. Bachi Ram Pandey, Asst. Development Officer Grade II, Udyan Sachal Dal Kendra Vastiya, Champawat.
4. K. N. Kandapl, Asst. Development Officer Grade II, Udyan Sachal Dal Kendra Bhingrara, Champawat.

..... Petitioners

Versus

1. State of Uttarakhand through Secretary, Horticulture, Civil Secretariat, Dehradun.
2. Director, Department of Horticulture, Uttarakhand, Udyan Bhawan, Ranikhet, District Almora.
3. Ravindra Singh, S/o Sri Balbinder Singh, Asst. Development Officer Grade II, Horticulture, Udham Singh Nagar.
4. Subhas Rayal, S/o Sri B. P. Rayal, Asst. Development Officer Grade II, HORTICULTURE, District Udham Singh Nagar.
5. Santosh Kumar, S/o Jaid Ram Arya, Asst. Development Officer Grade II, Horticulture, High Court Campus, Nainital.
6. Smt. Prema Rana, Asst. Development Officer Grade II, Horticulture, Talla Ramgarh, District Nainital.
7. Rajendra Prasad, Asst. Development Officer Grade II, Horticulture, Tyuni, District Dehradun.
8. Mahavir Singh Rawat, Asst. Development Officer Grade II, Horticulture, District Chamoli.
9. Jagat Ram Semwal, Asst. Development Officer Grade II, Horticulture, Udyan Sachal Dal Kendra, Langha, District Dehradun.
10. Mahendra Singh Gusain, Asst. Development Officer Grade II, Horticulture, S. M. P. P., District Dehradun.
11. Yashpal Singh, Asst. Development Officer Grade II, Horticulture, Udyan Sachal Dal Kendra, Bauradi, District Tehri Garhwal.
12. Pankaj Kumar, Asst. Development Officer Grade II, Horticulture, Udyan Sachal Dal Kendra, Hindolakhil, District Tehri.
13. Km. Himani Kothari, Asst. Development Officer Grade II, Horticulture, Udyan Sachal Dal Kendra, Doiwala, District Dehradun.
14. Bhupal Singh Bisht, Asst. Development Officer Grade II, Horticulture, Udyan Sachal Dal Kendra, Chilianaula.
15. Bhuwan Chandra Semwal, Asst. Development Officer Grade II, Horticulture, Vidhan Sabha, Dehradun.
16. Neha Rawat, Asst. Development Officer Grade II, Horticulture, Asst. Development Officer Grade II, Horticulture, Udyan Sachal Dal Kendra, Kotdwar, District Pauri Garhwal.
17. Sri Devi Prasad Dangwal, Asst. Development Officer Grade II, Horticulture, Udyan Sachal Kendra, Tapova, District Chamoli.
18. Kuldeep Joshi, Asst. Development Officer Grade II, Horticulture, Sama, District Bageshwar.
19. Richa Joshi, Asst. Development Officer Grade II, Horticulture, Udyan Sachal Kendra, Govindpur, District Almora.
20. Sanjay Rayal, Asst. Development Officer Grade II, Horticulture, Gangalahari.
21. Smt. Lata Tiwari, Asst. Development Officer Grade II, Horticulture, District Udyan Kendra, Almora.
22. Dr. Pooja Uniyal, Asst. Development Officer Grade II, Horticulture, Alu Vikash Kendra, Uttarkashi.

23. Smt. Sohita Joshi, Asst. Development Officer Grade II, Horticulture, District Udyan Kendra, Dehradun.
24. Abhisek Gupta, Asst. Development Officer Grade II, Horticulture, Udyan Sachal Dal Kendra, Dhanaulti, District Tehri.
25. Somesh Bhandari, Asst. Development Officer Grade II, Horticulture, Udyan Sachal Dal Kendra, Joshimath, District Chamoli.
26. Km. Nisha Bisht, Asst. Development Officer Grade II, Horticulture, Udyan Sachal Dal Kendra, Loali, Pauri Garhwal.
27. Ravindrajeet Singh, Asst. Development Officer Grade II, Horticulture, Udyan Sachal Dal Kendra, Devidhura, Champawat.
28. Santosh Kumar, Asst. Development Officer Grade II, Horticulture, Udyan Sachal Dal Kendra, Bhateliya, Nainital.
29. Asha Goswami, Asst. Development Officer Grade II, Horticulture, Udyan Sachal Dal Kendra, Kashipur, U. S. Nagar.
30. Anjana Arya, Asst. Development Officer Grade II, Horticulture, Udyan Sachal Dal Kendra, Pahadpani, Nainital.
31. Prasant Rathore, Asst. Development Officer Grade II, Horticulture, Udyan Sachal Dal Kendra, Bithyani, Pauri Garhwal.
32. Smt. Seela Shukla, Asst. Development Officer Grade II, Horticulture, Govt. Alu Prasakaran, Dhanaulti, Tehri Garhwal.
33. Ravindra Prasad Bhatt, Asst. Development Officer Grade II, Horticulture, Udyan Sachal Dal Kendra, Kafnaula, Uttarkashi.
34. Smt. Janki Chandra, Asst. Development Officer Grade II, C/o Director, Horticulture, Udyan Bhawan, Chaubatiya, Ranikhet.

..... Respondents.

Present: Sri Dinesh Gahtori, Advocate for the petitioners.
 Sri Kishore Kumar, A.P.O. for the Respondents No. 1 & 2
 Sri Devesh Bishnoi, Advocate for the Respondents No. 3, 4, 5, 27 & 28.
 Sri D.S.Mehta, Advocate for the Respondent No. 6.

JUDGMENT

DATED: DECEMBER 30, 2020

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

1. In Claim Petition No.23/NB/DB/2018, the petitioners have sought the following reliefs:

“(i) To set aside/quash the final seniority list dated 04.09.2018 passed by the respondent No. 2 (Annexure No. 1 to this claim petition).

(ii) To direct the respondent Nos. 1 & 2 to prepare a fresh seniority list taking into account of the objections and existing rules and regulations and constitutional mandate in the promotion of Group-I post (Senior Horticulture Inspector) in the Department.

(iii) To direct the respondent nos. 1 & 2 to allot the serial number above to the newly recruited Assistant Development

Officer of the year 2013 batch in the fresh seniority list, thereafter, complete the promotion on the post of Assistant Development Officer of the department concerned.

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

(v) To award the cost of the petition in favour of the applicants."

2. The petitioners of Claim Petition No. 10/NB/DB/2019, have sought the following reliefs:

"1) To set aside the letter dated 17.01.2019, 19.01.2019 and seniority list dated 04.09.2018 as this was prepared without following the Rules.

2) To issue a suitable order or direction, to the respondent No. 2 to issue fresh seniority list of Assistant Development Officers Grade II working in the department strictly in accordance with Rule 9(3) of the Seniority Rules, 2002.

3) To issue any other suitable order or direction which this Hon'ble Tribunal may deem fit and proper under the circumstances of the facts and circumstances of the case.

4) To award the cost of the application in favour of the applicant, otherwise the petitioner shall suffer irreparable loss and injury".

3. Both the claim petitions are connected with each other, same issues have been raised therein, hence, both the Claim Petitions are being decided by this common judgment.

4. In both the petitions, petitioners, who are the promotee officers, have challenged the final seniority list dated 04.09.2018 issued by Respondent No. 2 with the prayer to stay the effect and operation of the same with a direction to issue fresh seniority list, after taking their objections into consideration and, to allow seniority of the petitioners above directly recruits officers of the cadre of Assistant Development Officer Group-II of 2013 batch. In these petitions, there is also a dispute between promotees among themselves, as well as between directly recruits officers and the promotee officers.

5. Briefly stated facts of the Claim Petition No. 23/NB/DB/2018 are that the petitioners were promoted from Group-III to Group-II in Horticulture Department under reservation quota between the years 1999 to 2010 whereas, the candidates of General quota of their cadre were promoted in Group-II in the year 2012. The officers of General cadre regained their seniority in Group-II as they were senior to the promotee officers of reservation quota in feeding cadre.

6. In the mean time, in the recruitment year 2012-13, directly recruited officers also joined the services in May 2013. The concerned Rules, governing the services of the petitioners and respondents are "the Uttar Pradesh Horticulture and Food Processing Subordinate Service Rules, 1993" (hereinafter referred to as the said Rules). According to the cadre structure, 50% quota of Assistant Development Officer Group-II is filled up by promotion and 50% by direct recruitment in their rota-quota, in a cyclic manner. Rule 5 of the said Rules prescribes for the cadre structure wherein there are three groups of services i.e. Group-III, Group-II and Group-I. Present dispute is about the seniority of Group-II officers. As per Rule-5, the recruitment to Group-II officers, is made 50% by promotion from Group-III officers and 50% by direct recruitment through Public Service Commission. The seniority of the persons is to be fixed as per "the Uttarakhand Government Servants Seniority Rules, 2002". The promotee officers of the reserved category got their promotion on different-different dates starting from 1999 till the year 2010 and other general categories candidates were promoted in Group II on 11.12.2012, whereas, directly recruited candidates entered into the service in May 2013. The recruitment year starts from 1st July to 30th June, hence, in this way, the promotee officers of General cadre as well as direct recruitee entered into the service of Group II cadre in the same selection year i.e. 2012-13.

7. When promotion to Group-II was made from candidates of reserved category as well as General category, a tentative seniority list

was prepared on 14.11.2013. After applying the provisions of Rule 6 and 8 of the Seniority Rules of 2002, the General Category candidates, who were senior in the feeding cadre, were given seniority over the earlier promoted candidates of reserved category and their seniority list was finalized on 11.03.2014, which remains undisputed.

8. The department after joining of the direct recruitee, started the process of preparing the seniority list as per the Rules. Several complaints were made to the office of Schedule Caste Commission as well as to the Govt., then a revised tentative seniority list dated 01.05.2017 was issued followed by another revised seniority list dated 03.10.2017 upon which after the orders of the Government, objections filed by the parties against the tentative seniority list, were considered and finalized and final seniority list dated 04.09.2018 was issued, which has been challenged in both the Claim Petitions by the promotee officers.

9. The claim petition No. 23/NB/DB/2018 came up before the Court with the contention that the respondents never decided their objections against the tentative seniority list dated 01.05.2017 and 03.10.2017. A doubt was created that authorities are bent upon to complete the promotional exercise, by placing the names of the petitioners below the directly recruited candidates in May, 2013, which is not correct. The petitioners were promoted in the cadre much before the direct recruits and they were given promotion till 2010 on regular basis and on the basis of their service record. The petitioners and private respondents No. 3 to 5 were directly recruited in Group-III post, and in Group-II, the directly recruited officers have been wrongly shown senior to them. The objections of the petitioners against tentative seniority list dated 01.05.2017 and 03.10.2017 were not being decided hence, the claim petition No. 14/NB/DB/2018 was filed by the petitioners for disposing of their objections. Without deciding the objections of the petitioners and final seniority list dated 04.09.2018 was issued to give favour to the private respondents. Being aggrieved by the final seniority list, this

petition has been filed by the petitioners seeking the reliefs as mentioned above.

10. Some of the parties to the Claim Petition No. 23/NB/DB/2018, have also filed another claim petition No. 10/NB/DB/2019 against the department and the directly recruited officers, with the contention that the petitioners were promoted to the posts of Assistant Development Officer Group-II on 30.11.2013, whereas, the private respondents were directly appointed in the cadre vide order dated 06.12.2013 issued by Respondent No. 2. The recruitment year starts from 1st July to 30th of June of next calendar year, hence, accordingly, the joining of the directly recruited candidates were made in another (later) recruitment year. As per Rule 8 of the Uttarakhand Government Servant Seniority Rules, 2002, it is clearly provided that where appointments are made both by promotion and by direct recruitment, as a result of any one selection, the seniority of promotees *vis-à-vis* direct recruits shall be determined in a cyclic order, the first being promotee, second direct recruits and so on. The final seniority list dated 04.09.2018 issued by the respondents, is also under challenge in another claim petition. Moreover, the direct recruits were recruited in the recruitment year 2013-14 whereas, they have been wrongly placed in the seniority with the promotee officers of 2012-13 and they should have been placed in the seniority with the officers of recruitment year of 2013-14. The petitioners submitted application in the form of objections with the respondents stating that specific date and year was written with the promotees of the year 2012-13, but the direct recruits of 2013-14 are wrongly shown with them. As the wrong has not been corrected, hence, this petition has been filed for the relief sought in the Claim Petition No. 10/NB/DB/2019.

11. Both the claim petitions have been opposed by the State Respondent/ department as well as by the private respondents, who were directly recruited on the Group-II posts.

12. The respondent department has opposed the petitions with the contention that the appointments in the Horticulture Department Group-III were made as per the provisions of the Uttar Pradesh Horticulture and Food Processing Subordinate Service Rules, 1993 as applicable in the State of Uttarakhand, wherein, the year of recruitment has been defined as a period of 12 months, which starts from 1st July and ends with 30th of June of next calendar year. As per the service Rules, the appointment of Group-II post can be made 50% directly through Commission, and 50% by promotion from amongst substantively appointed Group-III officers, who have completed minimum five years of service on first day of year of recruitment. Rule 22 of the said Rules specifically provides that seniority of the substantively appointed employees of any categories of posts, will be determined as per the U.P. Govt. Servants Seniority Rules, 1991 (Now in the Uttarakhand, the Uttarakhand Government Servant Seniority Rules, 2002) which are paramateria to the prior one.

13. According to the respondents, directly recruited candidates were recruited against the vacancies of 2012-13, their selection was completed on 03.05.2013 and therefore, their year of recruitment was 2012-13. Accordingly, department has rightly applied Rule 8(3) in respect of the recruitment year 2012-13 while fixing seniority of the directly recruits candidates with the promotees of 2012-13. The contention of the petitioners is wrong that such directly recruits officers should be placed in the cyclic order in the recruitment year 2013-14. The directly recruited officers, who were selected/recommended on 03.05.2013 and 06.05.2013 were the officers recruited in the year of 2012-13 and were not the appointees of recruitment year 2013-14 because that recruitment year was to start from 01.07.2013. It is also contended that the names of private respondents i.e. the direct recruits were recommended by the Commission to the appointing authority on 03.05.2013 hence, they were rightly placed in the recruitment year 2012-13 in the seniority list of Development Branch Group-II. The respondents prepared the seniority list as per the Uttarakhand Govt. Servants Seniority Rules, 2002 after inviting

the objections and as per the Rules, seniority has been finalized. The contention of the petitioners is wrong that the seniority list was not circulated. The seniority list was circulated; their objections were considered and final seniority list has been finalized as per the rules and the Claim Petition No. 10/NB/DB/2019 has no merit in the eye of law.

14. State Respondent as well as other private respondents also contested the claim petition No. 23/NB/DB/2018, almost with the same contention. They have contended that respondent No. 2 after appointment of promotee officers, circulated a tentative seniority list dated 14.11.2013 and after considering the objections of all the employees finalized the seniority list of promotee officers on 11.03.2014, by which, the officers of the General Category regained their seniority over the candidates of reserved category, who got promotion in Group-II earlier in time under the reservation quota. As per Rule 6 of the Uttarakhand Govt. Servant Seniority Rules, 2002, where the 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. A senior person in the feeding cadre even though promoted after the promotion of a person of reserved category junior to him, in the feeding cadre shall, in the cadre to which they are promoted, regain their seniority as it was in the feeding cadre. Consequently, the State Govt. asked for correction of mistake and seniority was accordingly finalized on 11.03.2014. For remaining 50% posts, for the year 2013 appointment of persons under 50% quota of direct recruitment, on the basis of the recommendations of the Commission was also made.

15. In the year 2017, a tentative seniority list of Subordinate Service Group-II Officers was issued and against which, certain employees made complaints to the Schedule Caste Commission. In pursuance thereof, the Directorate issued a revised tentative seniority list, on the basis of the recommendations of the duly constituted committee. Respondent No. 2 again issued tentative seniority list on 01.05.2017 and 03.10.2017 of

Subordinate Service Group-II Officers and after taking into consideration the objection of parties and the provisions of Rule 6 and 8 of the Seniority Rules for the persons promoted and directly recruits in the recruitment year 2012-13, seniority list was prepared. In the said list, those General Category candidates who were promoted in the year 2012-13 were placed senior to the petitioners (promotee in reserved category) as they were senior in the feeding cadre of Subordinate Service Group-III. Accordingly, petitioners became junior to them as per the provisions of Rule 6 and Rule 8 of the Seniority Rules. Respondents have contended that the seniority amongst promotees as well as direct recruits *vis-à-vis* promotees has been rightly fixed after considering the objections of the parties and as per the provisions of the Seniority Rules. The claim petition has no merit and deserves to be dismissed.

16. On the same lines, private respondents have also contested the petition and have contended that the date of joining on the present post of Assistant Development Grade-II is not relevant for determination of seniority, as the seniority can be decided only from the date of substantive appointment which is mentioned in the appointment order in accordance with the Rules. Such appointments can only be made by preparing a list in cyclic manner, placing the names of direct recruits and promotee in cyclic order as per their rota-quota, and only such appointment can be said to be the 'substantive appointment'. If any person was working on the post without having the 'substantive appointment' as per Rules, his appointment cannot be said to be a 'substantive appointment' and seniority cannot be claimed from that date. The petitioners of Clam Petition No. 23/NB/DB/2018 were junior to their promotee counter-parts of General Category in the feeding cadre, although they were promoted earlier, but as per Rule 6 of the Seniority Rules, General candidates regained their seniority and the direct recruit candidates in seniority list find their place in their quota in cyclic order in the recruitment year 2012-13. It has been contended that the petitions are misconceived, having no merit, and deserve to be dismissed.

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

18. In the both the claim petitions, the final seniority list dated 04.09.2018 has been challenged, although in claim petition No.23/NB/DB/2018, petitioners (promoted under reserved category) have also sought some other reliefs and they have also challenged the seniority of directly recruits as well as of their promotee colleagues (of General Category).

19. As regards the inter-se seniority of the promotee officers from Group-III to Group-II cadre, the petitioners got promotion earlier in the reserved category upto the year 2010 (between 1999 to 2010), whereas, General Category candidates get promoted in Class-II category on 11.12.2012. Petitioners have contended that they were regularly appointed on Group-II post much prior to other promotee and the directly recruited officers hence, they cannot be placed junior to them in the seniority. Whereas, the directly recruits private respondents and the State respondent have argued that the seniority can be given only from the date of substantive appointment.

20. The 'substantive appointment', according to the Rules, can be made only, 50% by direct recruitment and 50% by promotion. When the appointments are made from both the sources jointly, placing them in a cyclic order, that appointment can only be said as a 'substantive appointment'. Any other appointment will be said to be a 'stop-gap arrangement'.

21. As regards the inter-se seniority of the promotee officers, there is no doubt that in the feeding cadre the officers of General Category were senior to the officers of reserved category (Petitioners of Claim Petition No. 23/NB/DB/2018). Although, petitioners got their accelerated promotion in Group-II in reservation quota, but the officers of General Category from Group-III after their promotion to Group-II on 11.12.2012, will regain their seniority as per Rule 6 of the Seniority Rules of 2002 and all such appointments will be treated to be made substantively in the

recruitment year 2012-13. The seniority *inter-se* of the promotee officers was already fixed and finalized vide seniority list dated 11.03.2014, which remained undisputed. Even otherwise, according to the Seniority Rules, the officers of the General Category, who were senior to the officers of reserved category in the feeding cadre, although promoted later, will regain their seniority. Hence, the officers of General Category will regain their seniority in Class-II and will stand senior to the promotee officers of the reserved category i.e. (petitioners of Claim Petition No. 23/NB/DB/2018) and the petitioners cannot claim seniority over the candidates of General Category in this manner.

22. As regards the seniority between direct recruits as well as promotee officers of Class-II category, the things are again very much clear that the promotee officers, who were promoted in December 2012 (recruitment year 2012-13) and the direct recruitee officers, who were recommended for appointment in May 2013 (selected against the vacancy of year 2012-13) will be deemed to be the officers recruited in the recruitment year 2012-13. Even if the joining in service of directly recruits officers is later in time, but their seniority will be fixed along with the promotee officers of the year of 2012-13. In this manner, the year of recruitment of the promotee officers, as well as of direct recruit officers will be deemed to be the same, i.e. recruitment year 2012-13 and their 'substantive appointment' could only be made after arranging their names in cyclic order as per their quota in the concerned service rules. Hence, the contention of the petitioners, that the seniority of the direct recruits should be fixed with the promotees of next year, cannot be accepted.

23. We hold that directly recruits officers were recruited against the vacancy of 2012-13, their selection was finalized in May, 2013, again in the recruitment year 2012-13. As per the Rules, their seniority can only be fixed with the promotee officers of 2012-13. Their appointment in Group-II could only be made after arranging the names of promotee as well as

direct recruitee officers as per their quota in cyclic order, and then only their appointment can be termed as 'substantive appointment'. Hence, without fixing the names of the direct recruits officers, as per their quota with the promotee officers, the appointment cannot be termed as a 'substantive appointment'.

24. We hold that respondents have rightly issued the seniority of the petitioners as well as of private respondents and their seniority has been fixed as per the Rules. The action of the respondent department is as per the said service Rules, the seniority Rules and as per the directions given by the Court in earlier petitions, according to which, representations of the parties were decided with reasons. We find no ground to interfere therein and both the petitions have no merit and deserve to be dismissed. Following order is hereby passed.

ORDER

The claim petitions No. 23/NB/DB/2018 and 10/NB/DB/2019 are hereby dismissed. Costs easy.

Let copy of this judgment be kept on the file of Claim Petition No. 10/NB/DB/2019.

(A.S.NAYAL)
MEMBER (A)

(RAM SINGH)
VICE CHAIRMAN (J)

DATE: DECEMBER 30, 2020
NAINITAL

KNP