

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

Present: Hon'ble Mr. Justice U.C.Dhyani

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

**CLAIM PETITION NO. 31/DB/2019**

1. Madan Mohan Singh Pundir, aged about 56 years, s/o Late Sri K.S. Pundir, presently posted as Assistant Engineer, Provincial Division, PWD, Dehradun.
2. Ramesh Kumar Aswal, aged about 57 years, s/o Sri B.S. Aswal, presently posted as Assistant Engineer, PWD, N.H., Dhumakot, Pauri Garhwal.
3. P.D.S. Lingwal, aged about 56 years, s/o Late Sri Deen Dayal Lingwal, presently posted as Assistant Engineer, Provincial Division, PWD, Dehradun.
4. V.P. Nautiyal, aged about 57 years, s/o Late Sri Indu Ballabh, presently posted as Assistant Engineer, Construction Division, PWD, Dehradun.
5. A.K. Chandola, aged about 56 years, s/o Sri Girdhar Prasad, presently posted as Assistant Engineer, PWD, N.H., Dehradun.
6. G.C. Barthwal, aged about 57 years, s/o Late Sri P.D.Barthwal, presently posted as Assistant Engineer, Construction Division-II, ADB, PWD, Dehradun.
7. Sanjay Pant, aged about 53 years, s/o Sri Shiv Prasad Pant, presently posted as Assistant Engineer, Construction Division-II, ADB, PWD, Dehradun.
8. P.S.Negi, aged about 57 years, s/o Late Sri Govind Singh Negi, presently posted as Assistant Engineer, PWD, N.H., Dehradun.
9. S.S.Patwal, aged about 55 years, s/o Sri Madan Singh, presently posted as Assistant Engineer, Temporary Division, PWD, Rishikesh, Dehradun.
10. I.D.Bhatt, aged about 58 years, s/o Late Sri R.N.Bhatt, presently posted as Assistant Engineer, Construction Division, PWD, Laksar, Haridwar.

.....**Petitioners.**

**vs.**

1. State of Uttarakhand through Additional Chief Secretary, Public Works Department, Government of Uttarakhand, Secretariat, Subhash Road, Dehradun.

2. Engineer-in-Chief and HOD, Public Works Department, Yamuna Colony, Dehradun.
3. Mohan Chndra Paladiya, presently posted as Assistant Engineer, Temporary Division, PWD, Berinag, Pithoragarh.
4. Deep Chand Pandey, presently posted as Assistant Engineer, Construction Division, PWD, Almora.
5. Viveka Prasad, presently posted as Assistant Engineer, Construction Division, PWD, Narendra Nagar, Tehri Garhwal.
6. Sanjay Chauhan, presently posted as Assistant Engineer, PMGSY Division, PWD, Kotdwar, Pauri Garhwal.
7. Lalit Kumar Goel, presently posted as Assistant Engineer, Temporary Division, PWD, Laksar, Haridwar.
8. Vinod Kumar Sinha, presently posted as Assistant Engineer, N.H. Division, PWD, Lohaghat, Champawat.
9. Vivek Kumar Saxena, presently posted as Assistant Engineer, Construction Division, PWD, Nainital.
10. Kailash Chandra Joshi, presently posted as Assistant Engineer, PMGSY Division, PWD, Pithoragarh.
11. Praveen Kush, presently posted as Assistant Engineer, Temporary Division, PWD, Rishikesh, Dehradun.
12. Rakesh Prasad Naithani, presently posted as Assistant Engineer, Provincial Division, PWD, Haridwar.
13. Vishal Sharma, presently posted as Assistant Engineer, Office of the Chief Engineer, National Highways, Dehradun.
14. Ajay Kumar, presently posted as Assistant Engineer, Construction Division, PWD, Roorkee, Haridwar.
15. Ravindra Kumar, presently posted as Assistant Engineer, Provincial Division, PWD, Haridwar.
16. Jagdish Singh, presently posted as Assistant Engineer, through Engineer-in-Chief, PWD, Uttarakhand.
17. Dharam Pal Singh Negi, presently posted as Assistant Engineer, through Engineer-in-Chief, PWD, Uttarakhand.
18. Dinesh Chandra, presently posted as Assistant Engineer, through Engineer-in-Chief, PWD, Uttarakhand.
19. Dinesh Mohan Gupta, presently posted as Assistant Engineer, through Engineer-in-Chief, PWD, Uttarakhand.
20. Jagdish Prasad, presently posted as Assistant Engineer, through Engineer-in-Chief, PWD, Uttarakhand.

**.....Respondents.**

Present: Sri M.C.Pant & Sri L.K.Maithani, Advocates, for the petitioners.

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

Sri A.S.Jha, Advocate, for Respondents No. 3 to 20.

**JUDGMENT****DATED: SEPTEMBER 30, 2020****Per: Rajeev Gupta, Vice Chairman(A)**

1. This claim petition has been filed by the petitioners for the following reliefs:

*“(a) Issue an order or direction to declare the seniority list dated 08.05.2018 in league with seniority list dated 17.09.2013 as illegal, arbitrary and against the law and quash the same along with its effect and operation also, after calling the entire records from the respondents and also to direct the respondents to re-draw the seniority list, strictly in accordance with law and rule position and in view of the facts as highlighted in the body of the claim petition.*

*(b) Issue an order or direction, directing to the respondents not to proceed for promotional exercise on the basis of the impugned seniority list and also to declare that the petitioners are senior to the private respondents and also entitled for all service benefits, including seniority above to the private respondents along with all consequential benefits and consideration for promotion on the higher post of Executive Engineer, prior to the private respondents, had it been the impugned order was never in existence.*

*(c) Issue any other order or direction which this Hon’ble Tribunal may deem fit and proper in the circumstances of the case.*

*(d) Award the cost of the petition in favour of the petitioners.”*

2. Brief facts of the case are as follows:

The petitioners were appointed as Junior Engineer (Civil) in the respondent department and were initially senior to private respondents No. 3 to 20 as Junior Engineers. The appointments on the post of Assistant Engineer (Civil) are made both by promotion and by direct recruitment as per Uttarakhand Public Works Department Assistant Engineers (Civil) Services Rules, 2003, which have been amended in 2005 and subsequently in 2014 (hereinafter called as ‘Rules’). The initial Rules provided for direct recruitment on 50% posts through Public

Service Commission and the remaining by promotion-45% and 5% from Junior Engineers (Civil) and Junior Engineers (Technical)/Computers respectively from substantively appointed Junior Engineers, who have completed seven years of satisfactory service on the first day of the recruitment year. The amendment made in 2005 in these Rules, reduced the direct recruitment quota to 40% and provided for additional promotion quota of 8.33% to Junior Engineers (Civil)) and 1.67% quota to Junior Engineers (Technical)/Computers who have completed five years of satisfactory service on the first day of the recruitment year and who possess the educational qualification mentioned in Rule 8 of the Rules. Rule 8 specifies the qualifications for direct recruitment which are Bachelor Degree in civil engineering from a University established by law in India or a degree recognized by the Government equivalent thereto or must have passed Section A and B examination of the Institution of Engineers (India) in civil engineering.

The amendment to the rules made in 2005 opened the door for accelerated promotion of Junior Engineers, who possess the requisite qualification of Rule 8 and thereby respondents No. 3 to 20 got accelerated promotions within the selection year 2010-11 while the petitioners got promotion in the selection year 2012-13. The seniority list of Assistant Engineers (Civil) issued subsequently, placed the private respondents above the petitioners.

The petitioners are challenging the impugned seniority list dated 08.05.2018 in league with seniority list dated 17.09.2013 and the rejection order of their representations. The main contention of the petitioners is that the higher qualification of the AMIE/Degree on the basis of which, accelerated promotions of respondents have been made, is an artificial classification. The Hon'ble High Court of Uttarakhand also declared such rule, by which separate quota for promotion in favour of the AMIE/Degree holders is prescribed for promotion to the post of

Assistant Engineer as void. According to the petitioners, Rule 6 of the Uttaranchal Government Servant Seniority Rules, 2002 (hereinafter referred to as 'Seniority Rules of 2002') is applicable in their case which prescribes the following:

*"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."*

Rule 8 of these rules, is for determination of seniority where appointments are made both by promotion and by direct recruitment. Rule 8(2) reads as follows:

*"8(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."*

The petitioners' contention is that for promotion to the post of Assistant Engineer, there is a single feeding cadre of Junior Engineer and the initial seniority should be regained even though their promotion was done subsequently.

3. Respondents have opposed the petition stating that Rule 6 of the Seniority Rules of 2002 can be applied only when the promotions are made from a single feeding cadre while there are total five separate

cadres and sources of recruitment for the post of Assistant Engineers which are as follows:

- (a) 40% by Direct Recruitment through the Commission.*
- (b) 45% by promotion amongst Junior Engineers (Civil) who have completed 7 years of satisfactory service.*
- (c) 8.33% by promotion amongst Junior Engineers (Civil) who have completed 5 years of satisfactory service and who possess educational qualification as mentioned in Rule 8.*
- (d) 5% by promotion amongst Junior Engineers (Technical)/Computers who have completed 7 years of satisfactory service.*
- (e) 1.67% by promotion amongst Junior Engineers (Technical)/Computers who have completed 5 years of satisfactory service and who possess educational qualification as mentioned in Rule 8.*

These respondents have further contended that the petitioners belong to Cadre as specified in Amended Rule 5(2)(i) (45% of JE (Civil) with 7 years of service). On the other hand, the answering respondents belong to totally different feeding cadres as specified in Rule 5(2)(i-a) i.e. 8.33% of JE (Civil) with 5 years of service and BE/AMIE Degree. Further, Sh. Praveen Kush (Respondent No. 11) and Sh. Dharampal Singh Negi (Respondent No. 17) belong to a yet another Cadre of J.E. (Technical) with BE/AMIE Degree as per Rule 5(2)(ii-a) of Uttaranchal Public Works Departments Assistant Engineer (Civil) (First Amendment) Rules, 2005. The entire petition is based on misrepresentation. Petitioners have sought to portray that all answering respondents belong to the same feeding cadre as themselves. This is incorrect since as per existing Rules, as amended upto 2005, there is clear distinction drawn amongst JE(Civil) and JE (Technical). There is also clear distinction between JE (Civil) and JE (Civil) with educational qualification as per Rule 8. According to these rules, the present case is governed by Rule 8(2) read with Rule 7 of the Seniority Rules of 2002. Rule 7 reads as follows:-

*“7. Where according to the service rules, appointments are to be made only by promotion but from more than one feeding cadres, the seniority inter se of persons appointed on the result of any one selection shall be determined according*

*to the date of the order of their substantive appointment in their respective feeding cadres.*

*Explanation- Where the order of the substantive appointment in the feeding cadre 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 issuance of the order.*

*Provided that where the pay scales of the feeding cadres are different, the persons promoted from the feeding cadre having higher pay scale shall be senior to the persons promoted from the feeding cadre having lower pay scale.*

*Provided further that the persons appointed on the result of a subsequent selection shall be junior to the persons appointed on the result of a previous selection."*

They have stated that the petitioners have been appointed as Assistant Engineers on the result of subsequent selection and in view of the above mentioned proviso in Rule 7, it is clear that the petitioners shall be considered junior to the answering respondents. They have also contended that the petitioners have concealed the fact that answering respondents No. 11 and 17 i.e. Mr. Praveen Kush and Mr. Dharampal Singh Negi belong to a totally distinct Cadre i.e. Junior Engineer (Technical). They have been deliberately misrepresented as Junior Engineer (Civil). This critical fact has been misrepresented to avoid the factual position that promotion is made from distinct sources/cadres to the post of Assistant Engineer.

4. The petitioners have *inter-alia* stated in R.A. that the entry in service of all the private respondents was on the post of Junior Engineer (Civil) whereas, some of them on the basis of the manipulation, succeeded to become Junior Engineer (Technical) but this does mean that the feeding cadre would be treated separately. In the Supplementary C.A. filed by the private respondents, it has been stated that even prior to creation of State of Uttarakhand, promotions to the posts of Assistant Engineers (Civil) have been done separately from Junior Engineer (Civil) and Junior Engineer (Technical) and prior to 2007 both the posts have been governed by different service rules.

5. In the above Supplementary Counter Affidavit, it has also been stated that some persons junior to Sri M.M.S.Pundir (petitioner No. 1) have been promoted as Assistant Engineer (Civil) in 2000-01 and 2001-02 from degree holder quota and they are now working as Executive Engineers. It has also been stated that in the selection year 2010-11, some petitioners were also in the zone of consideration for promotion against the available vacancies in diploma holder quota, their seniors were finally selected and given seniority above the respondents.

6. The petitioners have stated in their Supplementary Affidavit to the above Supplementary Counter Affidavit of private respondents that in the erstwhile State of U.P., nowhere the persons were allowed to change their cadre from Junior Engineer (Civil) to Junior Engineer (Technical). They have filed Uttarakhand P.W.D.Subordinate Engineers (Junior Engineer, Civil, Technical, Electrical and Mechanical) Service Rules, 2007, which are applicable to both the Junior Engineer (Civil) and Junior Engineer (Technical).

7. During pendency of the case, the issue of accelerated promotion, on the basis of the higher educational qualification, has been adjudicated upon by the Hon'ble Supreme Court, in Civil Appeal No. 10194 of 2013, State of Uttarakhand and others vs. S.K. Singh and others with Civil Appeal No. 11307 of 2013, State of Uttarakhand & others vs. Lalit Mohan Goyal and others, which were decided on 14.10.2019. The relevant portion of the judgment is as follows:

(Civil Appeal No. 11307/2013)

*"35. The appeal concerns the Uttar Pradesh Public Works Department Assistant Engineers (Civil) Services Rules, 2003. The relevant portion of the Rules, providing for accelerated promotion/sub quota for Degree-holders was struck down, relying upon the judgment of the High Court in WP No. 267/2010 (S/B) which order has been set aside by us in CA No. 10194/2013.*



*36. The result of the aforesaid is that this appeal is allowed and the impugned order set aside, upholding the relevant Rule."*

8. The change of cadre of respondents No. 11 and 17 has also been challenged separately in Claim Petition No. 47/DB/2019, Sanjay Pant and others vs. State of Uttarakhand & others before this Tribunal.

9. The order of learned Registrar of Hon'ble Supreme Court passed on 16.01.2020 has also been placed before this Tribunal by which Miscellaneous Application Diary No. 41943 of 2019 in C.A. No. 11307 of 2013 has been refused to be accepted and has been lodged under Order XV Rule 5 of the Supreme Court Rules, 2013. This Miscellaneous application was for clarification of the judgment of the Hon'ble High Court dated 14.10.2019 wherein direction was prayed to be passed to the State of Uttarakhand to publish seniority list in terms of Rule 6 of the Seniority Rules of 2002. As per this order of the learned Registrar, it was stated in this application that though this Hon'ble Court has decided the question of *inter-alia* promotion and the justifiability of quota in favour of Degree-holders the Court has not concluded the issue of 'seniority' decided in the assailed judgment of the High Court. The issue of 'seniority' was raised before the Uttarakhand Public Services Tribunal at Dehradun *vide* Claim Petition No. 31/DB of 2019 (present claim petition). The said application is pending before the Tribunal by which the seniority list dated 08.05.2018 was assailed.

10. We have heard both the sides, who have also filed their written submissions.

11. It has been argued on behalf of the petitioners that the applicability of Rule 6 of the Seniority Rules of 2002 to the controversy involved in this petition has attained finality according to the judgment of the Tribunal passed in Claim Petition No.115/2007, V.K. Viridi & others vs. State of Uttarakhand & others dated 04.12. 2007 and the

judgment dated 09.08.2017 passed in Claim Petition No. 58/2012, Mulayam Singh vs. State of Uttarakhand & others. The judgment in V.K. Viridi's case was assailed up to the Hon'ble Supreme Court by the State Govt. but they could not succeed. In Mulayam Singh's case, no writ petition has been filed against the Tribunal's order. The judgment dated 14.10.2019 of the Hon'ble Apex Court by which the challenge to separate quota for promotion on the basis of the degree has been upheld has no application in this case because the claim relates to seniority and not to accelerated promotion. Both the diploma holders and degree holders constitute one and the same homogenous cadre which is the feeding cadre for the purpose of promotion to the post of Assistant Engineers. Learned counsel for the petitioners has quoted various rulings in support of his arguments. He has quoted the case of Aruvindra Kumar Garg & others vs. State of U.P. and Another, in writ petition No. 42762 of 2000, wherein it was held that both the diploma holders and degree holders constitute one and same homogenous cadre which is the feeding cadre for the purpose of promotion to the post of Assistant Engineer. He has also quoted K.K.Dixit vs. Rajsthan Housing Board S.C. judgment 2015(1) SCC (L&S) pg. 844, judgments of Hon'ble Apex Court in AIR 1974 (SC) page 1361, Mohamad Sujat Ali vs. Union of India, AIR 1983(SC) pg. 881, H.C. Sharma vs. Municipal Corporation of Delhi, AIR 1987 (SC) page 367, Punjab State Electricity Board vs. Ravindra Kumar Sharma & others in support of his contentions. According to him in nutshell, even the rule making authority has not treated the diploma holder Junior Engineer and degree holder Junior Engineers as separate feeding cadre; rather only a single and common seniority list is prepared which contains all the names of Junior Engineers as per their seniority position on the basis of date of appointment in service. According to him, the claim of private respondents treating them senior on the basis of accelerated promotions is highly impermissible in the eye of law. Recent judgment

dated 19.11.2019 of the Apex Court also recognizes the right of seniority on the basis of initial date of appointment in Civil Appeal No. 8833-8835 of 2019, K. Meghchandra Singh and others vs. Ningam Siro and others. According to him, Rule 7 has no application in this case because degree and diploma holders belong to the same homogenous category for seniority and by virtue of Rule 6, the petitioners are entitled to regain their seniority after promotion on the basis of catch-up principle. The judgment in the case of V.K. Viridi & others and in the case of Mulayam Singh are *res-judicata* and binding upon the Tribunal.

12. The respondents have contended that the very basis of the present claim petition i.e. the judgment passed by the Hon'ble High Court of Uttarakhand does not exist anymore and Hon'ble Supreme Court vide judgment dated 14.10.2019 has clearly laid down the law in this regard. They have further contended that Rule 6 of the Seniority Rules of 2002 applies only when the promotions are made from single feeding cadre. While appointment to the post of Assistant Engineer is from five sources and the present case is governed by Rule 8 (2) read with Rule 7 of the Seniority Rules of 2002. Rule 8 is applicable in cases where appointments are made both by promotion and direct recruitment. Respondents No. 3 to 20 were substantively appointed in the selection year 2010-11 on 30.11.2010, whereas, the petitioners were appointed on 13.08.2013 for the Selection year 2012-13. For the selection year 2010-11, petitioners were not eligible for those available vacancies, which had fallen under 45% of criterion of quota fixed for Junior Engineers (Civil). Therefore, firstly, respondents and petitioners do not fall within the term of any one selection. Petitioners were appointed on the basis of a subsequent selection. The relevant rule in this regard is Rule 8(2), which provides as follows:

*“(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 promotions are to be made from a single feeding cadre or several feeding cadres."*

Upon perusal of Rule 8(2) read with Rule 7 of Seniority Rules of 2002, the following factors are evident:

- (a) Since there are more than one feeding cadre for the purpose of promotion to the post of Assistant Engineer, Rule 8(2)(b) has to be cross referenced with Rule 7 of the Seniority Rules of 2002.
- (b) Rule 7 makes it abundantly clear that for the purpose of inter-se seniority of promotes, only 'any one selection' has to be considered. It is important to highlight that the answering respondents were promoted to the post of Assistant Engineer as per Office Memorandum dated 30.11.2010. This clearly falls within selection year 2010-11. On the other hand, the petitioners were promoted in Selection Year 2012-13. Thus, the petitioners and answering respondents do not fall within 'any one selection.'
- (c) The proviso to Rule 7 makes the position of inter se seniority, amongst promotees, abundantly clear and reads as follows:

*"Provided further that the persons appointed on the result of a subsequent selection shall be junior to the persons appointed on the result of a previous selection."*

In view of this above mentioned proviso to Rule 7, it is clear that the petitioners shall be considered junior to the answering respondents.

- (d) For the selection year 2010-11, petitioners were not eligible for those available vacancies, which had fallen under 45% of

criterion of quota fixed for Junior Engineers (Civil). But those, who were eligible in the selection year 2010-11, got promotion and their *inter se* seniority was fixed above the answering respondents. In other words, since the petitioners were not included in the list of finally selected candidates by Public Service Commission after DPC in Selection Year 2010-11, they cannot claim any inter-se seniority with the answering respondents.

13. Respondents have further contended that the grievance raised by the petitioners (non-degree holders) was summarized by the Hon'ble Supreme Court in its judgment dated 14.10.2019 referred in para 7 above as follows:

*“16.....On a specific query being posed, as to what was the real grievance of the private respondents, learned counsel submitted that the rub lay in the fact that the implementation of the Rules would result in persons with Degree occupying the post of JEs, ranking senior to the persons having Diploma, in the higher post of AEs, despite being junior to the Diploma holders, on account of their having accelerated promotion. Thus, the question would be whether such a grievance can form the basis of the Rule itself being struck down, as violative of Articles 14 & 16 of the Constitution.”*

This grievance raised by non-Degree holders was rejected and it was held that classification between degree and non-degree holders, in granting accelerated promotion avenue is lawful and constitutionally sustainable.

14. It has also been stressed on behalf of the respondents that even though 8.33% and 1.67% quota has been earmarked for junior engineer (Civil) and junior engineer (Technical) who possess degree vide Uttaranchal Public Works Department Assistant Engineer (Civil) (First Amendment) 2005, however, this quota has been carved out leaving 45 % of the total posts to Non-degree holder junior engineer (Civil). This quota of 45% of the total posts in promotion to AE (Civil)

was also present in the original 2003 Rules. Therefore, the quota earmarked for Non-Degree holder Junior Engineer (Civil) has not been reduced in any manner.

15. Learned Counsel for the private respondents in his submissions has argued that the judgment of this Tribunal in the matter of *Mulayam Singh* is not applicable in the instant case and is clearly distinguishable on the basis of a number of reasons. The main reasons stated by him are as follows:

i. There is an inherent contradiction between judgment of Supreme Court (in State of Uttarakhand vs. S.K.Singh-Civil Appeal No. 10194 of 2013 dated 14.08.2019) and this Tribunal in *Mulayam Singh* (Decided on 09.08.2017).

-Hon'ble Supreme Court has upheld the relevant service rules, which permits that degree holders (although junior in terms of date of joining) can be allowed a march over the non-degree holders (who were otherwise senior in terms of date of joining).

-However, interpretation by this Tribunal in *Mulayam Singh*, holds that date of joining shall be the only determining factor.

-If the judgment of *Mulayam Singh* is applied, it would mean denial of the benefit of law laid down by Supreme Court to the private respondents.

ii. In para 17.2 *Mulayam Singh* Judgment acknowledges that Rule 8 is applicable, but in result only applies Rule 6 and its explanation. Rule 8(2) requires very careful reading. Before advert to Rule 7 and 6, it specifies the word "any one selection". Thus even if Rule 6 is applied, it can be applied only amongst the members of "any one selection".

iii. In Para 18, *Mulayam Singh* Judgment refers to the judgment of this Tribunal in the case of *V.K.Virdi*. This reliance is incorrect. Question of law in *V.K.Virdi* was left open by Hon'ble Supreme

Court. Secondly, there is no discussion in the judgment of *V.K.Virdi* about application of Rules 8 and 7 *vis-à-vis* Rule 6 of the Seniority Rules of 2002.

16. Learned A.P.O. in written submissions on behalf of the respondents No. 1 & 2 has stated that the claim petitioner, *Mulayam Singh* in Claim Petition No. 58/2012, *Mulayam Singh vs. State & others* had died without executing the judgment and order dated 09.08.2017 of the Tribunal and that a Review Petition on behalf of the State was filed before this Tribunal which was dismissed vide order dated 02.12.2019 on the ground that the petition had been filed against a dead person. Thereafter, State Govt. approached the office of learned Advocate General for filing a writ petition against the judgment and order dated 09.08.2017 before Hon'ble High Court of Uttarakhand, but the Standing Counsel of the office of Advocate General advised that a recall application to recall order dated 02.12.2019 with substitution application to substitute the legal heirs of Sri *Mulayam Singh* be filed before the Tribunal and accordingly review/recall application has been filed on which proceedings are going on before the Tribunal. Hence, the judgment and order dated 09.08.2017 passed in Claim Petition No. 58/2012, *Mulayam Singh vs. State of Uttarakhand & others*, has not yet attained finality.

17. We have carefully analyzed the rule position and the submissions of both the sides. The issue of law was left open by the Hon'ble Apex Court in *V.K.Virdi's* case. In *Mulayam Singh's* case, review has been filed. We find that the judgment of this Tribunal in *Mulayam Singh's* case and the interpretation of rule position therein is not applicable in this case in view of the reasons quoted by learned counsel for the respondents and mainly because the judgment in *Mulayam Singh's* case relates to the application of catch up rule in the context of persons who got prior promotions under reservation quota for

Scheduled Tribes *vis-à-vis* later promotion of the general category seniors. It was not in the context of prior promotions of degree holders *vis-à-vis* diploma holders.

18. The judgment dated 14.10.2019 of Hon'ble Apex Court quoted in para 7 above has taken Cognizance of the following fact as mentioned in para 6 thereof:

*"6. The Diploma-holders in the post of JEs felt aggrieved as it would result in some of their juniors, who had Degrees, being promoted earlier and, thus, on their ultimate promotion to the post of AE, would rank senior to them....."*

Relevant part of para 16 of this judgment of Hon'ble Apex Court has already been quoted in para 13 above. Para 29 of the judgment of Hon'ble Apex Court is also reproduced below:

*"29. We did put to the learned counsel for the private respondents if they could have been shut out from promotion, or if the time periods could have been different for promotion, then the result would have been the same as their grievance today, i.e., some of the Degree-holders would rank higher than the Diploma-holders. Thus, this is not something out of the ordinary which has happened, or would result in a situation which can be categorized extraordinary by reason of accelerated promotion to the Degree-holder. "*

These observations open up the avenue for minute examination of the seniority position which might have been over-looked earlier when the rule permitting accelerated promotion on the basis of degree, was struck down by the Hon'ble High Court. Thus a clear case is made out for this Tribunal to examine the rule position thoroughly and give an unequivocal finding on the issue.

19. It is very clear that Rule 8 of the Seniority Rules of 2002 applies in the present case as appointment for the post of Assistant Engineer is made both by direct recruitment and by promotion. Rule 8 is as follows:

***"8. Seniority where appointments by both promotion 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 of 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 promotes 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.”*

Rule 8(1) clearly states that seniority of persons shall be determined from the date of order of their substantive appointments subject to the provisions of Rules 8(2) and 8(3). The issue of applicability of Rule 6 or Rule 7 is mentioned in Rule 8(2) (b), but this is prequalified by the opening sentence of Rule 8(2), which is ‘the seniority inter-se of persons appointed on the result of any one selection’. This means that Rule 8(2) applies only for consideration of inter-se seniority of persons appointed on the result of any one selection and not on the basis of different selections. In the instant case, as the selection years of the petitioners and private respondents are different, the applicability of Rule 8(2) and thereby Rule 8(2) (b) is not there. Rule 8(3) is about the seniority of promotes *vis-à-vis* direct recruits of any one selection to be in a cyclic order and the same is also not applicable in the issue of seniority of the petitioners *vis-à-vis* respondents as they have been appointed as Assistant Engineers in different selection years. Therefore, only rule 8(1) prescribing seniority from the date of the order of substantive appointments is applicable in the instant case which clearly makes the private respondents senior to the petitioners after promotions to the post of Assistant Engineer.

20. The issue whether degree holder Junior Engineers and diploma holder Junior Engineers belong to the same and homogenous cadre and have a common seniority list, is also not relevant here because Hon'ble Apex Court has upheld the distinction on the basis of educational qualification and consequent accelerated promotion of the degree holder Junior Engineers which makes the private respondents get promotion earlier than the petitioners though they are junior to them in the seniority list of Junior Engineers. As analyzed above, their date of substantive appointment as Assistant Engineer being earlier makes the private respondents senior to the petitioners, who got promoted as Assistant Engineer later, according to Rule 8 of the Seniority Rules of 2002.

21. In the instant case, the earlier promotion of private respondents is on the basis of a valid distinction based on their educational qualification and according to Rule 8 of the Seniority Rules of 2002, they become senior to the petitioners in the cadre of Assistant Engineer. The case law mentioned by the learned counsel for the petitioners does not point out anything to enable the restoration of initial seniority of the petitioners after their promotion. It is also notable that Assistant Engineers form a separate cadre which has entry both by direct recruitment and promotion from Junior Engineers and is governed by its own Service Rule, which is different from that of Junior Engineer. In the cadre of Assistant Engineer, the date of entry is relevant for seniority as per Seniority Rules of 2002 which is in line with the judgment dated 19.11.2019 of Hon'ble Apex Court in Civil Appeal No. 8833-8835 of 2019, K. Meghchandra Singh and others vs. Ningam Siro and others.

22. The issue of Junior Engineer (Technical) and Junior Engineer (Civil) being the same cadre or different cadres is also not significant in the instant case, as neither Rule 6 nor in Rule 7 comes in the picture by

way of non-applicability of Rule 8(2)(b) of the Seniority Rules of 2002. As stated earlier, the change of cadre of respondents No. 11 and 17 has been challenged separately in Claim Petition No. 47/DB/2019, Sanjay Pant & others vs. State of Uttarakhand & others wherein, their promotion is also challenged. If, as a result of consideration of the issues therein, the status of these respondents is found to be that of Junior Engineers (Civil) with degree qualification, consequential changes in the selection years and seniority of some engineers might take place.

23. With the above observations, we find that the reliefs prayed in the claim petition cannot be granted and the claim petition is liable to be dismissed.

**ORDER**

The claim petition is hereby dismissed. No order as to costs.

**(RAJEEV GUPTA)**  
VICE CHAIRMAN (A)

**(JUSTICE U.C.DHYANI)**  
CHAIRMAN

*DATED: SEPTEMBER 30, 2020*  
*DEHRADUN.*  
*KNP*