उत्तराखण्ड पावर कारपोरेशन लि0

(उत्तराखण्ड सरकार का उपक्रम)

Uttarakhand Power Corporation Ltd.

(A. Govt. of Uttarakhand Undertaking)

CIN : U40109UR2001SGC025867

Email ID: rjmalik@upcl.org, Website: www.upcl.org

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पत्रांक–659/ CS - 18/27 उपाकालि दिनांक 27.05.2019

महाप्रबन्धक (मा0सं0) प्रभारी
उपाकालि
वि0का0वि0ग0सिं0 ऊर्जा भवन
कॉवली रोड,देहरादून।

डायरी सं0 3320
दिनांक 27/05/19

विषयः– मा0 लोक सेवा अधिकरण, देहरादून द्वारा क्लेम पिटशन सं0–01/NB/DB/2017 (राहुल चानना बनाम उत्तराखण्ड राज्य व अन्य) के सम्बन्ध में ।

कृपया उपरोक्त विषयक याचिका का सन्दर्भ ग्रहण करने का कष्ट करें, जिसके माध्यम से मा0 लोक सेवा अधिकरण देहरादून में लम्बित याचिका **(राहुल चानना बनाम उत्तराखण्ड राज्य व अन्य)** में मा0 लोक सेवा अधिकरण द्वारा दिनॉक–22.05.2019. को निर्णय पारित किया गया है । जिसकी सत्यापित प्रति अधिवक्ता श्री एस0के0जैन अधिवक्ता से प्राप्त की गयी है।

अतः उक्त याचिका में पारित निर्णय दि0–22.05.2019 की सत्यापित प्रति आपकों सूचनार्थ प्रेषित। (प्रति सलंग्न)

(आर0 जे0 मलिक)
महाप्रबन्धक (विधि) एवं कम्पनी सचिव

प्रतिलिपिः–

1. श्री एस0 के0 भाटिया, उप–मुख्य, कार्मिक अधिकारी, उपाकालि, वि0का0वि0गबर सिंह ऊर्जा भवन, कांवली रोड, देहरादून को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित।

DY CR II
31.5.19

Sh. Sumit Singhal PO
01/6/19

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BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL AT DEHRADUN

Present: Hon'ble Mr. Ram Singh

------Vice Chairman (J)

Hon'ble Mr. A.S.Nayal

------Member (A)

CLAIM PETITION NO. 01/NB/DB/2017

1. Rahul Channa, S/o Sri Vishambar Nath Channa, R/o H. No. 1000, Street-14, Ramnagar, Roorkee.
2. Shweta Dinkar Rautela, W/o Sri Dinkar Rautela, R/o Quarter No. 1, Type 3, Urja Bhawan, Kanwali Road, Dehradun.
3. Abhinav Rawat, S/o Sri Jagmohan Singh Rawat, R/o Saket Colony, Lane-3, Ajabnpur Kalan, Dehradun.
4. Anuj Kumar Tripathi, S/o Sri Budh Pal Sharma, H.N. 18/3, Suresh Sharma Nagar, Bareilly, Uttar Pradesh.
5. Meenakshi Pant, W/o Sri Nikhil Khanna, R/o 39 Narendra Vihar Ext. Kaulagarh Road, Dehradun.
6. Vivek Upadhyay, S/o Sri Mahesh Upadhyay, Sanjay Colony, R.K. Tent House Road, Kusumkhera, Haldwani.
7. Rohitashu Pandey, S/o Sri B.D.Pandey, R/o Sanjay Colony, R.K. Tent House Road, Kusumkhera, Haldwani.
8. Himanshu Badoni, S/o Sri Dwarka Prasad Badoni, R/o 27-P, Garhi Cannt, Dehradun.
9. Manish Joshi, S/o Sri Bhuvan Chandra Joshi, R/o Joshi Niwas, Amoun, Near Mazar, Tanakpur Road, Khatima.
10. Prashant Mohan Joshi, S/o Sri G.C.Joshi, R/o E-28, Shivlok Colony, Raipur Road, Dehradun.
11. Geeta Pathak, W/o Sanjay Tiwari, R/o Type-IV, Yamuna Colony, Dehradun.
12. Gulshan Bulani, S/o Jeevan Lal Bulani, R/o 27/3, Rana Niwas, near Uma Lodge, Karnprayag.
13. Subhash Kumar, S/o Birendra Prasad, R/o Type IV/03 (FH), Urja Bhawan, Kanwali Road, Dehradun.
14. Vaibav Sharma, S/o Yogendra Sharma, R/o Tulsi Vihar Colony, Gumaniwala, Rishikesh 249204.

सत्य प्रतिलिपि
उप-नियन्धक
प्रण्ड लोक सेवा अधिकरण
देहरादून।

34. Rakesh Singh Burfal, S/o Sri B.S.Burfal, R/o Village Darathi, P.O. Rathi, Munsiyari Distt. Pithoragarh.

35. Neeti Vishesh, W/o Sri Vishesh Kumar, J.T.O. (Indoor), B.S.N.L. Telephone Exchange, Police Line, Pithoragarh-262501.

36. Amit Tomar, S/o Sri N.S.Tomar, R/o 25 Shipuram, Paniyala Road, Roorkee.

37. Chandra Mohan, S/o Late Sri Shiv Lal, R/o 18 E.C. Road, Type 4/5 UPCL Colony, Dehradun.

38. Shilpi Saini, W/o Sri Ravikant Saini, R/o E.H.-19, Sector-6, B.H.E.L., Haridwar.

39. Jyotsna Shrestha, D/o Sri M.B.Pradhan, R/o 61, Hathi Barkala, Dehradun.

.....Petitioners

vs.

1. State of Uttarakhand through Secretary, Department of Energy, Secretariat, Dehradun.

2. Uttarakhand Power Corporation Ltd., Gabar Singh, Urja Bhawan, Dehradun through its Managing Director.

3. Director (H.R.), Uttarakhand Power Corporation Ltd., Gabar Singh, Urja Bhawan, Dehradun.

4. Managing Director, Energy/Electricity Department, State of U.P., Shakti Bhawan, Ashok Marg, Lucknow.

5. Secretary, Department of Energy, Civil Secretariat, State of U.P., Lucknow.

6. Sandeep Kumar Sharma, S.D.O., R-APDRP (Part-B), Uttarakhand Power Corporation Ltd. Gabar Singh, Urja Bhawan, Dehradun.

7. Manoj Prakash Singh, S.D.O., E.D.S.D., Rajpur Road, Uttarakhand Power Corporation Ltd. Gabar Singh, Urja Bhawan, Dehradun.

8. Paryank Pandey, S.D.O. EDSD Nainital, Uttarakhand Power Corporation Ltd.

9. Rakesh Kumar Singh, SDO, EDSD-I, Kotdwar, Uttarakhand Power Corporation Ltd.

10. Shashikant Singh, SDO, EDSD SIDCUL, Haridwar, Uttarakhand Power Corporation Ltd.

11. Manoj Kumar Pandey, SDO EDSD Kaladhungi, Uttarakhand Power Corporation Ltd.

12. Kailash Singh, SDO EDSD Almora-II, Uttarakhand Power Corporation Ltd.

13. Hoshyar Singh Saun, SDO EDSD Lohaghat, Uttarakhand Power Corporation Ltd.

14. Ajay Bhardwaj, SDO EDSD, Haldwani, Uttarakhand Power Corporation Ltd.

15. Anjeev Kumar, SDO EDSD Laksar, Uttarakhand Power Corporation Ltd.

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16. Anuj Agarwal, A.E. (Store), Araghar, Uttarakhand Power Corporation Ltd.
17. Santosh Dabral, AE (Meter), Doiwala, Uttarakhand Power Corporation Ltd.
18. Satish Chadra Joshi, SDO EDSD Ramnagar (Rural), Uttarakhand Power Corporation Ltd.
19. Kulbhushan Kukreti, SDO EDSD Mayapur, Uttarakhand Power Corporation Ltd., Haridwar.
20. Sunil Kumar, SDO, EDSD Vasant Vihar, Uttarakhand Power Corporation Ltd., Dehradun.
21. Khayali Dutt, SDO EDSD Sahastradhara Road, Uttarakhand Power Corporation Ltd. Dehradun.
22. Bhuvnesh Kumar Joshi, SDO EDSD Jagjeetpur, Uttarakhand Power Corporation Ltd., Haridwar.
23. Shailendra Kumar Saini, SDO (Secondary Works), Uttarakhand Power Corporation Ltd. 18-EC Road, Dehradun.
24. Ajay Kumar, SDO EDSD Bhattipur, Uttarakhand Power Corporation Ltd. Haridwar.
25. Mukesh Chandra, AE (Meter), Electricity Test Division, Uttarakhand Power Corporation Ltd. Roorkee.
26. Virendra Singh Bisht, SDO EDSD Bindal, Uttarakhand Power Corporation Ltd. Dehradun.
27. Akshay Kapil, SDO EDSD Manglore, Uttarakhand Power Corporation Ltd. Roorkee.
28. Jagpal Singh, SDO EDSD Araghar, Uttarakhand Power Corporation Ltd., Dehradun.
29. Rajpal, SDO (Vigilance), Uttarakhand Power Corporation Ltd, Gabar Singh Bhawan, Dehradun.
30. Rajeev Kharkwal, AE (IT), Uttarakhand Power Corporation Ltd., Gabar Singh Bhawan, Dehradun.
31. Sanjay Prasad Arya, SDO, EDSD Bhimtal, Uttarakhand Power Corporation Ltd.
32. Kanwal Singh, A.E., EDD Laksar, Uttarakhand Power Corporation Ltd., Haridwar.
33. Rupesh Kumar Nathala, SDO Jwalapur-II, Uttarakhand Power Corporation Ltd., Haridwar.
34. Ompal, SDO EDSD Laljiwala, Uttarakhand Power Corporation Ltd., Haridwar.
35. Prakash Chandra SDO EDSD Kashipur (Rural), Uttarakhand Power Corporation Ltd., Kashipur.
36. Mohan Ram, SDO EDSD Bhawali, Uttarakhand Power Corporation Ltd. Nainital.

37. Ramesh Chandra Arya, SDO, Uttarakhand Power Corporation Ltd. Hydel, Gate, Haldwani.

38. Ami Chand, AE, Electricity Distribution Division, Haridwar, Uttarakhand Power Corporation Ltd., Haridwar.

.....Respondents

Present: Sri L.K.Maithani, Ld. Counsel for the petitioners
Sri V.P.Devrani, Ld. A.P.O. for the respondent No.1
Sri V.D.Joshi & Sri S.K.Jain, Counsels for the respondents No. 2 & 3
Sri Shashank Pandey, Counsel for the respondents No. 5,6,9,14,16,19 & 29

JUDGMENT

DATED: MAY 22, 2019

Hon'ble Mr. Ram Singh, Vice Chairman (J)

1. Through this petition, the promotion of the private respondents, order for granting relaxation to them for promotion on the post of Assistant Engineer, their year of allotment to the services of Assistant Engineers, the seniority on the post of Assistant Engineer, and further promotional exercise, without settling the final seniority, have been challenged.

2. Briefly stated, the petitioners are directly recruited Assistant Engineers in the department of respondents No. 1 to 4, whereas, other private respondents were recruited as Junior Engineers in the department and promoted to the cadre of Assistant Engineer in the year 2009, on the basis of the DPC held on 30.06.2009.

3. As per the contention of the petitioners, private respondents were eligible for promotion, only after completion of 10 years of service as Junior Engineer whereas, they were given 4 years' relaxation against the Rules. The concerned Rules, governing the services of the petitioners and private respondents are "The Uttar Pradesh State Electricity Board Services of Engineers Regulations, 1970" (hereinafter referred to as 'Regulations of 1970').

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4. As per the Rules, the recruitment to the post of Assistant Engineer can be made by direct recruitment, and also by promotion, from amongst the Junior Engineers, in a prescribed ratio. Regulation 15, requires preparation of a combined waiting list for appointment as Assistant Engineers, on the basis of the list received under Rule 6 and the Select List, referred to in Rule 7 of Appendix 'C' of the Regulations of 1970, by taking candidates as per their respective quota.

5. The petitioners have also contended that without preparing the combined waiting list and without following the due procedure, the appointments to the post of Assistant Engineer were made from the Junior Engineers cadre only, after giving multiple relaxations to them, in violation of the Rules. Hence, petitioners have sought the relief for cancellation of DPC proceedings, promotion order dated 30.06.2009 & DPC agenda dated 11.11.2008, relaxation order dated 22.01.2009 (Annexure: 3), Clause(2) and last Clause of Office Memorandum dated 18.12.2007 (Annexure: 1) and also a direction to the respondents department (1 to 4) to withdraw the DPC proceedings and complete the promotion proceeding of the Junior Engineers/private respondents for next promotion on the post of Assistant Engineer as per the Regulations of 1970, and to provide the benefit of seniority to the private respondents only from the date of their regular appointment as Assistant Engineer as per law, excluding their training period and the period of relaxation.

6. The petitioners have also sought a direction for the respondents to prepare the seniority list and select list for promotion to the post of Executive Engineer as per Rule (8) of the Uttar Pradesh State Electricity Board Servant Seniority Rules, 1998, as per the ratio of the vacant post and to direct the respondents No. 2 to 4 to treat the petitioners' candidature for the selection year 2008-09, which was their requisition year of vacancies, sent to the recruiting body and to declare the selection year of the private respondents as 2013-14 instead of

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2008-09, on the post of Assistant Engineer as per the Regulations, 1970. Direction for respondent No. 3 has also been sought to prepare the final seniority list of Assistant Engineers accordingly.

7. The petition was opposed by the respondents on the ground of limitation and also with the contention that for the same relief, the petitioners approached the Hon'ble High Court in W.P. No. (S/B) 394 of 2016, wherein vide order dated 09.11.2016, the Hon'ble High Court, referring the judgment of the Hon'ble Apex Court in **P.S.Sadasivaswamy vs. State of Tamil Nadu (1974 AIR SC, 2271)**, observed that, although there is no period of any limitation for the courts to exercise the powers under Article 226, nor is it that there can never be a case where the courts cannot interfere in the matter after a passage of a certain length of time, but it would be a sound and wise exercise of discretion for the courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons, who do not approach expeditiously for relief.

8. At the stage of recording above finding, learned counsel for the petitioners withdrew their petition and this petition was filed by the petitioners in this Tribunal. It was also contended that in the first instance, no delay condonation application was filed, but at the last stage of hearing, delay condonation application was moved by the petitioners, which, according to the respondents, contains no valid grounds, and the petition is hopelessly time barred.

9. It is also contended that as per Public Services Tribunal Act, the claims can be filed within one year from the date of the order, whereas, petitioners have approached this Tribunal, after a lapse of more than 7 years. Earlier, they also approached the Hon'ble High Court by filing a writ petition No. 394 of 2016, which was withdrawn by them when, they were asked to explain the laches, and now they are trying to mislead the court.

10. On the merits of the petition, the respondents have contended that after bifurcation of the State, assets of the Uttar Pradesh Power Corporation Ltd. situated in the territory of new State, to that extent, came to the share of the State of Uttarakhand along with their employees working therein. Board of Directors of Uttarakhand Power Corporation, adopted the service "Regulations of 1970" for its employees. As the petitioners joined the services in the month of December, 2009 hence, they cannot challenge the events happened prior to their birth in service. Private respondents were already discharging their duties on the post of Junior Engineer, in the years 2006-07, 2007-08 and 2008-09. Because of the decisions in various cases, filed before the courts, and also due to the shortage of staff in the corporation, the relaxations were given, in the minimum qualifying service for promotion to the next posts. As a result of relaxation given on 31.05.2008, 43 Assistant Engineers were promoted to the post of Executive Engineers and such vacant posts of Assistant Engineers were subsequently advertised in February, 2009, against which, the petitioners were appointed. Hence, according to the respondents, the petitioners cannot challenge the power of the Board now, to give relaxation, because they themselves entered the cadre only after such relaxation.

11. The respondents also contended that being a Company, its Board of Directors has unfettered powers to change the service Regulations for proper functioning of the Company. The private respondents were promoted to the post of Assistant Engineers on 30.06.2009 whereas, petitioners entered into the services of department only in December, 2009 hence, they cannot claim seniority against the private respondents.

12. Other private respondents have also raised the points that the petitioners have not approached this court with clean hands and by concealing the material facts, they did not file the copy of their

appointment orders. Meeting of the DPC was convened as per the prevailing rules and regulations of the Corporation and relaxation was granted to the private respondents in qualifying services by the decision of the Board of Directors, which is the highest decision making body in the Corporation. Such benefit of relaxation was given equally and uniformly to all the members of other cadres also. The Inter-se seniority of the members of service was prepared according to the UPSEB Servants Seniority Regulations, 1998, for the persons who have joined in the same selection year which starts from the 1st July to 30th June for all the cadres. Private respondents were given promotion as per the requirement of quota as per rules and Regulations, prevailing in the Corporation and relaxation was given in exigencies of work in Corporation interest, after approval of Board of Directors and petitioners are not entitled for any relief.

13. The private respondents have also filed their objections against the delay condonation application, filed by the petitioners at the last stage and contended that the Hon'ble High Court in its order dated 09.11.2016, in the writ petition, filed by the petitioner, also found that there is an inordinate delay in filing their writ petition and in the order, the judgment of the Apex Court in P.S. Sadasivaswamy vs. State of Tamil Nadu was also cited.

14. The respondents have also contended that no representation had ever been made by the claim petitioners, individually and Annexure-20 is a representation which was filed by the Uttarakhand Power Engineers Association and it cannot be termed as representations by the petitioners before the appropriate authority as per prevailing service Rules. Hence, in view of this, the petition cannot be entertained and a prayer for dismissal of the same, on merit as well as on the ground of delay has been made.

15. The petitioners through their Rejoinder Affidavit opposed the grounds raised by the respondents and contended that multiple

relaxations were given de-hors the rules. The petitioners, in their Rejoinder Affidavit also submitted that new developments during pendency of the petition took place, as the Managing Director, UPCL issued an inter-se tentative seniority list of Assistant Engineers for the selection year 2008-09, 2009-10, 2010-11, 2012-13 and 2013-14, allegedly as per the Seniority Regulations, 1998 and the petitioners have been placed in the selection year 2009-10, sandwiched with the promoted candidates who availed relaxation and were promoted after 30.06.2009. According to the petitioners, the respondent authority has partially applied the rotation of the quota and the quota for selection year 2008-09 had been fixed, whereas, the rotation should have been done by placing the petitioners in selection year 2008-09 as done by UPPCL. Against such tentative seniority list, petitioners have registered their objections with the management. The petitioners have also contended that, considering the gravity of the situation, the M.D., UPCL has constituted a four-member committee on 23.06.2017 and asked them to submit its report. Petitioners also contended that formation of such Committee is itself an endorsement of the fact that the management of UPCL has accepted at least some merit in the contention of the petitioners. The petitioners have also submitted a detailed petition to the members of the committee and in view of issuance of such tentative seniority list, the additional reliefs have also been sought by the petitioners, with the request that the tentative seniority list dated 06.05.2017 be quashed and the respondents be directed to prepare a fresh seniority list, placing the petitioners in the selection year 2008-09 along with the promoted Junior Engineers who are placed at serial No. 1 to 13 in the seniority list dated 06.05.2017, and the seniority of the private respondents, placed at serial no. 14-56 in the selection year 2008-09, be ascertained only after completing 10 years of service.

16. In view of the admission of the fact of issuance of tentative seniority list on 06.05.2017, both the parties were directed by the court

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to submit the status of finalization of the seniority list but no such final seniority list was ever placed before the court till the last date of hearing, and petitioners have also submitted that without finalizing the tentative seniority list, further promotions are being made hence, a request was made to decide the petition accordingly. Respondents were also directed to file a specific reply in the court, but none of them has filed any final seniority list, rather they orally submitted its non-finalization.

17. In these circumstances, we have heard both the sides and perused the record.

18. The petitioners have firstly challenged the action of relaxation, given by the Board to the private respondents, before promoting them on 30.06.2009 i.e. the last day of the recruitment year 2008-09. Respondents have replied to this with the argument that respondent department is a Company and its Board of Directors is the highest authority for taking policy decisions and the Regulations of 1970 give such powers to the Board. Admittedly, Regulations of 1970 are the relevant Rules for governing the services of the members, which are applicable to the parties and it prescribes for qualification for appointment and also for the seniority. Rule 29 of the Regulations of 1970 provides for powers to relax the rules, which reads as under:-

"29(1) Nothing in these Regulations shall be construed to limit or abridge the power of the Board to deal with the case of any person appointed by the Board and governed by these regulations in such manner as may appear just and equitable.

Provided that where any of the forgoing regulations is applicable in the case of any person, the case shall not be dealt with in a manner less favourable to him than that provided by that regulation.

(2) when, in the opinion of the Board, it appears necessary to do so, the Board may make any appointment or appointments to the service in relaxation of these regulations or in partial relaxation of any or some of the regulations and, in case of any appointment which is not in strict accordance with these regulations, the Board shall be deemed to have made the appointment in relaxation of these Regulations."

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In view of the above, the arguments of the respondents appear to be acceptable that the Board may make any appointments to the services, in relaxation to these Regulations or in partial relaxation of any or some of the regulations. On this count, the contention of the petitioners cannot be accepted and the relaxations granted by the Board of Directors, is not liable to be quashed by this court and this court cannot go into the subjective satisfaction of the Board.

19. Regarding appointment and seniority of the petitioners and private respondents for the post of Assistant Engineers, the petitioners have argued that the appointments to the service from direct as well as promotees can be made only as per the provisions of the Regulations of 1970. We do agree with this argument.

20. Regulation 5 of the said Regulations of 1970, prescribes the source of recruitment according to which, the quota of direct and promotees is also fixed. Regulations 15 and 17 are also relevant regulations for the appointment to the services on various posts, and the post of Assistant Engineer is the entry level cadre. Regulations 15 and 17 read as under:-

*"15- **Combined Waiting List For Assistant Engineers**- A combined waiting list will be prepared on the basis of the list received under Rule 6 of the Appendix 'B' and the 'Select List' referred to in Rule 7 of Appendix 'C' by taking candidates in such a manner that every 1st and 4th vacancy is filled by a promoted officer (J.E. or Computer as the case may be) and the remaining vacancies are filled by Trained Engineer.*

*17. **Appointment to the Cadre of Assistant Engineer**- (1) A persons finally selected for appointment to the service in the manner prescribed in these Regulations shall be appointed thereto by the appointing authority (unless he subsequently becomes disqualified for appointment) on the occurrence of vacancy. The appointments shall be made in the same order in which the names appear in the combined waiting list prepared under Regulation 15.*

(2) In case no approved candidate is available for such appointment on the list and it becomes essential to make appointment in the interest of the Board, a person who is eligible for appointment by promotion to the Service under these Regulations, may be appointed, but such an appointment shall

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not be made for a period exceeding four months, without the specific approval of the Board."

Hence, as per the requirement of law, a combined waiting list should be prepared, on the basis of the list received under Rule 6 of Appendix 'B' (for direct recruits) and select list referred to in Rule 7 of Appendix 'C' (for promotees), by taking candidates in a cyclic manner and every 1st and 4th vacancy is to be filled by a promotee officer and other by direct recruits. The requirement of Regulation 17 is very specific that person selected for appointment, can be appointed on occurrence of vacancy in the order, in which their names are arranged in the combined waiting list under Regulation 15. Sub-rule (2) of Regulation 17 further makes it clear that an appointment beyond this procedure, can be made effective only for a period of four months and thereafter, the approval of the Board is necessary.

21. Learned counsel for the petitioners argued that while promoting the private respondents on 30.06.2009, no combined waiting list for appointment to the cadre of Assistant Engineer was prepared, whereas, in the same selection year, the procedure for selection of direct recruits was going on and against the vacancies of selection year 2008-09 en-block appointment of promotee officer was made. Moreover, the petitioners have also argued that even if such appointments were made, then for the requirement of law, their names should have been arranged in the combined waiting list, as per the provisions of Regulation 15, for the purpose of ascertaining the seniority.

22. The petitioners have also referred to the Regulation 19 of the "Regulations of 1970", which reads as under:-

*"19-**Seniorty**- The seniority of officers on their appointment to the service shall be determined according to the date of the order of appointment to a particular post in the cadres of the service.*

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Provided firstly that if two or more candidates are appointed on the same date, their seniority inter se shall be determined according to the order in which their names appear in the orders of appointment issued by the Appointing Authority, or in other words, the order in which their names are placed in the 'Select List' or 'Combined Waiting List', as the case may be;

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

Provided thirdly, that the relative seniority of members of the Service who are appointed by direct recruitment shall be in accordance with the order of preference in which they are placed by the Selection Committee at the time of selection, as approved by the Appointing Authority;

Provided fourthly, that as between candidates who are appointed by direct recruitment and who are recruited by promotion in the same year, the seniority shall be determined in the order in which their names are arranged in the combined waiting list prepared under Regulation 15, provided that if in any year, it has not been possible to prepare the combined waiting list due to late selection either from Junior Engineers Service or from Computer (Selection Grade) or found outside or due to any other unavoidable reasons, the names in the gradation list shall be arranged in the same order in due course in respect of the vacancies allotted to each of the categories of candidates in that particular year, as in the combined waiting list and the seniority determined accordingly.

Provided fifthly that the inter-se seniority of Government Officers absorbed in the service of the Board, while officiating in any cadre of the Board's service, shall be the same as on the post held by them in the Government in a permanent/substantive capacity and in the case of those officers who were not permanent on any post at the time of absorption shall be the same as on the lower post held by them after regular selection in an officiating capacity. "

23. According to Regulation 19, the seniority of the persons, appointed to the cadre is to be determined according to the date of the order of appointment to a particular post in the cadres and 4th proviso provides for such a situation, when the appointments from direct recruitment and by promotion, against the vacancies of the same year, was not made through the combined waiting list.

24. The petitioners have argued that the requirement of 4th proviso of Regulation 19 is that the names of the persons in the

gradation list shall be arranged in the same order, in due course in respect of the vacancies allotted to each of the categories of candidates in that particular year, as in the combined waiting list and the seniority determined accordingly. Hence, petitioners have argued that the private respondents, who were promoted by giving double relaxation, cannot be made en-block senior to the petitioners, who were recruited against the vacancies of same selection year 2008-09, although their appointment was delayed.

25. We find that the petition was opposed by the respondents mainly on two grounds that it is barred by limitation, as it has been filed after a long delay and secondly the appointments of respondents were made in the next selection year, later in time than the private respondents. Petitioners have argued that they have raised their objections in time against the seniority list whenever, it was issued. This court finds that without complying the requirement of Regulation 15, 17 and 19, the appointments of private respondents were made effective on 30.06.2009, i.e. last day of the recruitment year, whereas, the petitioners joined their services in the month of December, 2009, as their appointment was made separately, later in time, although the vacancies were of the previous selection year i.e. 2008-09.

26. During hearing of the petition, it was brought to the notice of the court that a new tentative seniority list of Assistant Engineers has been issued by the respondents on 06.05.2017 and the petitioners have filed their objections against the tentative seniority list; the M.D. UPCL has constituted a four-member committee on 23.06.2017 to consider the objections against the tentative seniority list, and to submit its report.

27. Both the parties accepted before the court that the tentative seniority list issued on 06.05.2017, has not been finalized as yet, hence, this court finds that the matter is under consideration, before the department till today. In these circumstances, it will not be proper for

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the court to decide the matter on its merit, without finalization of the matter at the department level. The petitioners may submit all their detailed objections before the department and its concerned committee, constituted for fixing the seniority. Such committee would finalize the seniority list after deciding their objections, in accordance with relevant provisions and concerned Rules, applicable between the parties, and all the parties will have the opportunity to challenge the same on the basis of their separate cause of action, after finalization of the seniority list.

28. In these circumstances, it is necessary that this petition should be disposed of accordingly, without deciding the issue on its merit, at this stage.

ORDER

The petition is disposed of with the direction that the petitioners may submit the copy of their objections before the department and its committee, constituted for settling the seniority, within a period of 15 days and the respondent department will decide their seniority finally, after considering the objections of the petitioners in accordance with the provisions of law, as expeditiously as possible and without finally settling the seniority of the Assistant Engineers, next promotional exercise should not be undertaken.

Sd/-

(A.S.NAYAL)
MEMBER (A)

Sd/-

(RAM SINGH)
VICE CHAIRMAN (J)

DATED: MAY 22, 2019
DEHRADUN
KNP

PREPARED BY : 23/5/19
CHECKED BY : 23/5/19

सत्य प्रतिलिपि
23-5-19
उप-निबन्धक
उत्तराखण्ड लोक सेवा अधिकरण
देहरादून।