

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
BENCH AT NAINITAL**

Present: Hon'ble Mr. Rajendra Singh

----- Vice Chairman(J)

Hon'ble Mr. A.S.Rawat

-----Vice Chairman(A)

CLAIM PETITION NO. 52/NB/DB/2021

Priyanka Rani, (Female), Aged about 36 Years, W/o Shri Dilip Kumar, Village & Post–Garhinegi, Tehsil Jaspur, Udham Singh Nagar, presently posted as Tehsildar Kaladhungi, District Nainital.

-----**Petitioner**

Vs.

1. State of Uttarakhand through Principal Secretary, Revenue, Uttarakhand Government, Dehradun.
2. Chairman, Board of Revenue, Uttarakhand, Dehradun.
3. Commissioner and secretary, Board of Revenue, Uttarakhand, Dehradun.
4. Sohan Singh, presently posted as Tehsildar, Tehsil Karnprayag District Chamoli, Uttarakhand.
5. Poonam Pant, presently posted as Tehsildar, Tehsil Ram Nagar, District Nainital, Uttarakhand.
6. Vipin Chandra Pant, presently posted as Tehsildar, Tehsil Kashipur, District US Nagar, Uttarakhand.
7. Nawajis Khaliq, presently posted as Tehsildar, Tehsil Bageshwar (Sadar) District Bageshwar, Uttarakhand.
8. Neelu Chawla, presently posted at Revenue Police and Land Record Survey Training Institute, Almora, District Almora, Uttarakhand.
9. Shalini Maurya, presently posted as Tehsildar, Tehsil Rudra Prayag, (Sadar) District Rudra Prayag, Uttarakhand.
10. Chandra Shekhar, presently posted as Tehsildar, Tehsil Joshimath, District Chamoli, Uttarakhand.
11. Ashish Chandra Ghildiyal, presently posted as Tehsildar, Tehsil Haridwar (Sadar) District Haridwar, Uttarakhand.
12. Dr. Lalit Mohan Tiwari presently posted as Tehsildar, Tehsil Barakot, District Champawat, Uttarakhand.

13. Sreshtha Gunsola, presently posted as Tehsildar, Tehsil Chaubattakhal, District Pauri Garhwal, Uttarakhand.
14. Manjeet Singh Gil, presently posted as Tehsildar, Tehsil Yamkeshwar, District Pauri Garhwal, Uttarakhand.
15. Manju, presently Posted as Tehsildar Tehsil Kirtinagar, District Tehri Garhwal. Uttarakhand.
16. Abrar Ahmad, presently posted as Tehsildar, Tehsil Dharchula, District Pithoragarh, Uttarakhand.
17. Sunil Kumar, presently posted as Tehsildar, Tehsil Shri Nagar, District Rudra Prayag, Uttarakhand.
18. Khushboo Arya, presently Posted as Tehsildar, Tehsil Tanakpur, District Champawat, Uttarakhand.
19. Nitesh Dagar presently Posted as Tehsildar, Tehsil Haldwani, District Nainital, Uttarakhand.
20. Sanjay Kumar, presently posted as Tehsildar, Tehsil Almora (Sadar) District Almora, Uttarakhand.
21. Smt. Rekha, presently posted as Tehsildar, Tehsil Doiwala, District Dehradun, Uttarakhand.
22. Sushila Kothiyal, presently posted as Tehsildar, Tehsil Dhumakot, District Pauri Garhwal, Uttarakhand.

-----**Respondents**

Present: Sri N. K. Papnoi, Advocate, for the petitioner
 Sri Kishore Kumar, A.P.O., for Respondents No. 1, 2 & 3.
 Sri H. M. Bhatia, Advocate for Respondents No. 7 & 8
 Sri Gopal K. Verma & Sri Kishore Rai, Advocates
 for the respondent no. 15.
 None for the respondents no. 4 to 11, 14, 16 to 19, 21 & 22

JUDGMENT

DATED: APRIL 25, 2025

Hon'ble Mr. Rajendra Singh, Vice Chairman (J)
Hon'ble Mr. A.S. Rawat, Vice Chairman (A)

Present claim petition has been filed for seeking the following reliefs:

- i) *To quash or set aside the impugned Office Order No. 11537 तीन-36/नातकोकसू/18-19 dated 23.03.2021 along with enclosed amended final seniority list, by which the seniority of the petitioner has been re fixed / changed after publication of final seniority list i.e. dated 04.12.2018 and also quash or set aside the impugned tentative seniority list of Tehsildar dated 01.06.2021 based on the impugned order*

dated 23.03.2021 by which the seniority of the petitioner has been re-changed in the Tentative Seniority list of Tehsildar with its consequential effect and operation also, keeping in view the facts highlighted in the body of the petition.

ii) To direct the respondent Authorities to correct the placement/seniority of the petitioner in accordance to Final seniority list dated 04.12.2018 which was prepared on the basis of the selection/recommendation of Uttarakhand Public Service Commission, and placing the petitioner at Sl. no. 4 instead of 27;

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

iv) To award the cost of the petition to the petitioner.

2. Brief facts of the case are that:-

2.1 The petitioner is challenging and assailing the impugned order No. 11537/3- 36/ N.T.S.L/ 2018-19 dated 23.03.2021 by which the seniority of the petitioner has been re fixed / changed after publication of final seniority list of Naib Tehsildar i.e. dated 04. 12. 2018.

2.2 The Public Service Commission has recommended the names of 29 successful candidates to the Uttarakhand Gov. for the post of Naib Tehsildar. The petitioner has been placed at Sl. No. 4 in the merit list.

2.3 The respondent No. 2 vide order No. 4893/R.B.-T.Na.T./Na.T.-Prashikshan/2013, dated 08.08.2013 issued orders to the selected candidates for mandatory training of four and half month at Revenue Police and Land Record Survey Training Institute, Almora, as per Rule-18 of **Uttarakhand Subordinate Revenue Executive (Naib Tehsildar) Service Rules, 2009**. It was mentioned in the order that if the candidates do not join till 22.08.2013, then their candidature will be cancelled without any prior notice.

2.4 After receiving the order dated 08.08.2013, the petitioner represented the respondent No. 2 vide representation dated

20.08.2013 requesting that she has qualified the preliminary examination of Civil Services and preparing for main examination, thus she may be exempted from the training, which is scheduled to be held w.e.f. 22.08.2013. The respondent No. 2 by taking sympathetic view, granted time till 15.02.2014 to complete the mandatory training which will be completed till 07.08.2014. While granting the time, the respondent no. 2 made a condition that the time is given on the ground that the petitioner after completing the training will lose the merit position. The petitioner at that time accepted the condition.

2.5 Thereafter, the petitioner vide representation dated 10.02.2014 informed that she is ready to undergo training and requested the respondent no 2 to arrange the mandatory training for her. The respondents vide office memo dated 27.03.2014 directed the petitioner along with other three candidates to join the mandatory training. Only, the petitioner and respondent no. 4 joined the training on 01.04.2014.

2.6 Unfortunately, the petitioner became ill on 09.04.2014 during the training and could not complete her training. But, she continuously intimated to Executive Director, Revenue Police and Land Record Survey Training Institute, Almora and respondent No. 3 about her health status. After recovering, the petitioner again approached the respondent No.2 with all her medical and fitness certificate in regard to her appointment and training and requested to give her appointment on the Post of Naib Tehsildar. After due consideration, the petitioner was appointed on the post of Naib Tehsildar, Nainital on 07.07.2015.

2.7 Respondent no. 3 issued a tentative seniority list of Naib Tehsildar vide letter dated 07.08.2018 and invited objections. The petitioner filed her objections to the tentative seniority list as she was placed at sl. 27 by stating therein that her seniority be fixed as per Rule-5 of the Uttarakhand Govt. Servant Seniority Rules, 2002. Two other Naib Tehsildars namely, Sri Sohan Singh at serial No. 22 and Sri Lalit Mohan Tiwari at serial No. 28, also submitted their objections

in regard to their placement in the tentative seniority list. Respondent no. 2, after deciding the objections, issued the final seniority list on 04.12.2018 following the Rule-5 of the Uttarakhand Govt. Servants Seniority Rules, 2002.

2.8 After issuance of the final seniority list of Naib Tehsildar vide office memo dated 04.12.2018, some persons made representations on 16.10.2019 against the said final list, the respondent no.2 entertained the objections on the final seniority list dated 04.12.2018, called explanation from the petitioner vide letter dated 07.02.2020 almost after more than 14 months, within 15 days. The petitioner filed her reply/representation dated 09.06.2020 based on the provisions of the Uttarakhand Govt. Servant Seniority Rules, 2002. Thereafter, the respondents issued impugned Office Order No. 11537/ तीन-36 / ना०त०को०क०सू० / 18 / 19 dated 23.03.2021 placing the name of petitioner was placed at serial No. 27.

2.9 Although at the time of giving relaxation from training on 20.08.2013, the respondent No.2 put a specific clause in the office memo mentioning that *“she will lose her seniority position as sl. No. 4 to 29, but there was no such kind of provisions or restrictions mentioned in the appointment letter issued in favour of the petitioner.”*

2.10 There was delay in joining of the petitioner, which the appointing authority considered as valid reason under the provisions of the Seniority Rules, 2002 and fixed the seniority as per the list issued by the Commission. Once the seniority list becomes final, the authority concerned has no right to amend that seniority.

2.11 When objections were called by the authority in regard to tentative seniority list, no one has raised any objection in regard to seniority position except three persons (respondents 04, 12 and the petitioner). The respondent No. 2 made discrimination with the petitioner because the respondent no. 02 had considered the reasons of other two persons i.e. respondent No. 4 and 12 are valid reason but

the reasons given by the petitioner did not consider and arbitrarily changed her seniority position.

2.12 Vide letter dated 01.06.2021, the Commissioner and Secretary, Revenue Council, Uttarakhand, Dehradun has issued a tentative seniority list of Tehsildar and invited objections thereon, in which, the petitioner was placed at sl. No. 32. Being aggrieved by the said act of the respondent no. 2, the petitioner has approached this Tribunal with the request to set aside the impugned seniority list of Naib Tehsildar and tentative seniority list of Tehsildars.

3. Private respondents (except respondents no. 13 & 20) have filed their Counter affidavits and submitted that they are senior to the petitioner. Their appointment order(s) was issued after they underwent mandatory training of four and half months, as per Rule 18 of the Uttarakhand Subordinate Revenue Executive (N.T.) Service Rules, 2009. Petitioner's candidature on the post of Naib Tehsildar was cancelled *vide* Office Memo dated 20.03.2015. Despite that, without recalling the Office Memo dated 20.03.2015, she was offered appointment *vide* Office Memo dated 07.07.2015. The petitioner passed the qualifying examination only on 07.05.2018. As such, her date of appointment on the post of Naib Tehsildar would be 07.05.2018, as per condition no. 3 of the appointment order. Rule 3(m) of the Service Rules, 2009 defines 'year of recruitment' which means a period of 12 months commencing on the first day of July of a calendar year, therefore, the year of recruitment of private respondents is 2013-14, while the year of recruitment of petitioner is 2018-19, as such, private respondents are much senior to the petitioner. Petitioner had moved an application on 20.08.2013, expressing her inability to join the mandatory training. She also mentioned that she would accept all the conditions. Beside this, respondent no. 2 *vide* office memo dated 20.08.2013, exempted the petitioner from mandatory training with the condition that she would be placed at sl. no. 29 instead of sl. no. 4 of the list, issued by the Public Service Commission and further, if she fails to complete

mandatory training on being granted another opportunity to do so, her candidature would be cancelled. Petitioner accepted and acted on the office memo dated 20.08.2013, therefore, she has rightly been placed below the private respondents in the seniority list, as per condition no. iii of the office memo dated 20.08.2013. It is further submitted that so far as the challenge made by the petitioner to the tentative seniority list of Tehsildar dated 01.06.2021 is concerned, it is premature and the petitioner may file her objections to the same. The order dated 23.03.2021 in respect of the final seniority list Naib Tehsildar has been issued by the respondent no. 2 after inviting objections and considering the material on record. It is valid order in view of *Proviso* to Rule 8 of the Uttarakhand Govt. Servant Seniority Rules, 2002.

4. C.A./W.S. has been filed on behalf of official respondents no. 2 & 3 and it has clearly mentioned that the facts which are based on the annexures as supporting grounds are accepted and rest are rejected. It is clearly pointed out that while granting the extension for training to the petitioner vide Office Memo 20.08.2013, it was mentioned that extension to undergo training is being given on the condition that in case the petitioner does not join the training on the scheduled period, her candidature will be deemed to be cancelled. She was asked to attend the training at Almora, starting from 01.04.2014 but she left the training on 10.04.2014 on medical ground. She was sent the show cause vide office memo dated 05.07.2014 to explain why her candidature should not be cancelled, despite her being given sufficient time, she did not join. She was asked to submit her reply within a week.

4.1 The appointment of the petitioner, on the post of Naib Tehsildar was cancelled vide Office Memo dated 20.03.2015 along with other candidates. The Revenue Board again issued appointment letter for the post of Naib Tehsildar vide Office Memo dated 07.07.2015. Tentative seniority list of Naib Tehsildar was issued on 07.08.2018 in which her name was placed at sl. No. 27, against which, other Naib Tehsildars did not submit any objections. The objections were

received from other Naib Tehsildars only when her name was put at sl. No.4 in the final seniority list. The tentative seniority list, in which, the petitioner was at sl. No. 27 has been prepared as per Rule 5 of the Uttarakhand Govt. Servant Seniority Rules, 2002. The respondents again invited objections against this final seniority dated 04.12.2018, which was amended and issued on 23.03.2021. Thereafter, the respondents circulated a tentative seniority list of Tehsildars on 01.06.2021 and invited objections from all the concerned and issued final seniority list on 18.11.2021, subject to the final decision of this Tribunal in the claim petition. The petitioner is not entitled to claim any relief and the claim petition is liable to be dismissed.

4.2 It has been contended that the final seniority list issued by the Revenue Board, Uttarakhand, Dehradun on 04.12.2018 has glaring mistakes and would have adversely affected the other candidates, so it was decided to seek objections from the affected candidates and after disposal of their objections, the final seniority list issued on 04.12.2018 was reopened. The list was finalized on 23.03.2021 and thereafter, tentative seniority list of Tehsildar was circulated on 01.06.2021, which has also been finalized on 18.11.2021 subject to the final decision of the Tribunal. The petitioner is not entitled to get any relief and the claim petition is liable to be dismissed.

5. The petitioner has filed R.A. with reference to the Counter Affidavit filed by the private respondents, in which, she has submitted that the seniority list dated 23.03.2021 has been issued after the final seniority list which was already issued on 04.12.2018 which is infringement of the power of the respondents. The seniority list has been changed by misuse of discretionary power by the respondents. The Office Memo dated 07.07.2015 related to her appointment again on the post of Naib Tehsildar has been issued by the appointing authority after considering all the facts related to her not able to complete the training. She was exempted vide office memo dated

20.8.2013 from compulsory training and then she was again asked to attend the training vide letter dated 20.07.2014.

5.1 On termination of her candidature, vide office memo dated 20.03.2015, the petitioner again represented to respondent no. 2 to consider her candidature and she was given appointment on 07.07.2015, in which, clearly mentioned that her seniority along with other Tehsildars appointed from other sources, will be decided later on. There is no adverse comment on her appointment letter dated 07.07.2015 from the appointing authority. Her seniority decided vide order dated 04.12.2018 is as per existing rules. Although, she was given exemption for attending compulsory training vide office memo dated 20.08.2013 with some conditions but her appointing authority considered the special situations she faced which caused delay in attending training. There is no adverse comment from appointing authority, on this aspect, in the appointment letter. This fact nullifies the comment in the letter dated 20.08.2013. The change in the seniority list by the same authority, which has finalized it, is infringement in the right of the authority and this will lead to endless process. The other private respondents would have challenged this order before the competent authority or the Court of law. They have obtained the order by wrongful means. The petitioner has requested to quash the seniority list dated 23.03.2021 of Naib Tehsildars and the tentative seniority list of Tehsildars dated 01.06.2021 and restore the seniority of the petitioner as per the seniority list dated 04.12.2018 at sl. No. 4 in the merit of Naib Tehsildars as decided by the Public Service Commission. Her seniority on the post of Tehsildar should be at sl. No. 13.

5.2 The petitioner has relied upon the judgment dated 05.07.2011 passed by the Hon'ble Supreme Court in Civil Appeal No. 4949 of 2011 in the matter of Rajendra Pratap Singh Yadav and others vs. State of U.P. & others, in which, the Hon'ble Apex Court has decided- *there is immense sanctity of a final seniority list, the seniority list once published, cannot be disturbed at the behest of the person*

who choose not to challenge it for four years. The sanctity of the seniority list must be maintained unless there are very compelling reasons to do so, in order to substantial justice.”

6. The petitioner has also filed R.A. in response to the C.A. filed on behalf of respondents no. 2 & 3. She made the same averments as in the R.A. filed in response to the C.A. filed by the private respondents. She reiterated that the respondent authorities have given her extension as per the provisions of Uttarakhand Govt. Servant Seniority Rules, 2002 and raising any question on the decision of the respondent authority is not justified.

7. Supplementary Affidavit has been filed on behalf of respondent no. 8 in which, it is submitted that the petitioner has concealed the material facts before the Tribunal. The petitioner has filed claim petition on 15.07.2021 after promotion to the post of Tehsildar on 16.04.2021, which she did not mention in the claim petition. She has challenged the tentative seniority list of Tehsildars dated 01.06.2021. Whereas, the final seniority list dated 18.11.2021 has also been circulated by the respondents. She has not come to the court with clean hands and clean mind so she should not deserve any relief from the Court. The petitioner is also estopped to put challenge to the seniority list dated 20.3.2021 for the reason that she accepted the same when she got promotion on the post of Tehsildar on 16.04.2021. Although, the petitioner was confirmed on the post of Tehsildar in the month of April, 2023. She failed to disclose these facts to the Hon'ble Court. So, it is expedient in the interest of justice that this Hon'ble Court may dismiss the present claim petition with cost.

8. Supplementary Affidavit has also been filed on behalf of respondent no. 15 on the same lines, as by the respondent no.8. Further, it has been submitted that the petitioner has got promotion on the post of Tehsildar on 16.04.2021 on the vacant post of Selection year 2020-21 and answering respondents and other private respondents got the promotion on 06.03.2019. Therefore, petitioner has been rightly placed at sl. No. 31 in the tentative seniority list of

Tehsildar dated 01.06.2021 and the final seniority list dated 18.11.2021. It is further submitted that the petitioner has been reappointed vide order dated 07.07.2015 without recalling order dated 20.03.2015 even without prior approval of the State Govt. as well as consultation with the Public Service Commission. The petitioner cannot claim the seniority from the date when she was not borne in the cadre. By challenging the seniority list dated 01.06.2021, the petitioner is claiming seniority at sl.no. 13, who were promoted on 06.03.2019. The petitioner has accepted the office order dated 20.08.2013 and has mentioned in the petition that she reserved her right to challenge it at appropriate time, but she has never challenged the order dated 20.8.2018, meaning thereby, she accepted the same in totality. So, her seniority on the post of Naib Tehsildar has been rightly determined by the respondent authorities.

9. The petitioner filed reply to the Supplementary Counter Affidavit filed on behalf of respondent no. 15. The petitioner refuted the allegations as mentioned in the Supplementary Counter Affidavit and submitted that there is no act of concealment of fact by the petitioner as alleged. The petitioner has further submitted that in view of Rule 3 of the Uttarakhand Govt. Seniority Rules, 2002 in case the senior person is promoted after a junior he or she regains her seniority so, her seniority at sl. No. 4 as per the seniority list is the basis for claiming her seniority at sl. No. 13 in the seniority list of Tehsildars published in 2021. The petitioner has further submitted that the order dated 20.3.2015 of the respondent authorities still stands and the order dated 07.07.2015 for reappointment has been issued without recalling the order dated 20.3.2015, is not accepted as the respondent authority has accepted the reconsideration application of the petitioner and issued the appointment order dated 07.07.2015 in view of the latest order i.e. 07.07.2015, the earlier order issued on 20.03.2015 will be considered as impliedly superseded. So, there was no logic to challenge the order dated 20.03.2015. The petitioner has requested to allow her claim petition by quashing the seniority list of Naib Tehsildars dated 20.3.2021 and the final seniority list of 2021 of

Tehsildars and restore her seniority at sl. No.13 in the seniority of Tehsildars.

10. We have heard Learned Counsel of the parties and perused the records carefully.

11. The learned Counsel on behalf of the petitioner has pleaded that as per the Uttarakhand Government Servant Seniority Rules, 2002 the candidates drawn from the same selection will have seniority as per the merit given by the Public Service Commission or the Committee.

12. Petitioner being at sl. no. 4 in the list of the selected candidates in 2012, has been rightly placed at sl. no 4 in the seniority list, finalized on 04.12.2018. The aforesaid seniority list was the final list notified by the respondent authorities. The seniority list cannot be changed again and again and it must reach finality, once the finality has reached the list cannot be changed. It can be changed only after intervention of the Court. In support of her contention, Learned Counsel for the petitioner has relied upon the following judgments of the Hon'ble Courts:

- i. *Rajendra Pratap Singh Yadav vs State of UP & ors on 5 July 2011.(Civil Appeal No 4949 of 2011 of Hon'ble Supreme Court.*
- ii. Deepak Kumar & others vs. State of Uttarakhand & others (of this Tribunal in claim petition No. 54/NB/DB/2020).
- iii. Dr. Sunita Paney vs. State Uttarakhand and others passed in Writ Petition No. 326 (SB) of 2017.

13. The learned A.P.O. argued that the petitioner has accepted that she would lose seniority in case she joins later on. This fact could not be considered while finalizing the seniority list. But when the persons affected by the seniority list, pointed out the discrepancy and the respondents realized the mistake and realized that the contention of the petitioner should have been shown to the respondents. The respondent authorities considered the final seniority list as tentative final allocation list, issued a show cause notice to the petitioner on 07.02.2020 and invited the objections of the private respondents also.

After considering the contention of the private respondents and incorporating the suggestions, finalized the list on 23.03.2021. The respondent authorities have rightly corrected and finalized the seniority list as there were glaring infirmities in deciding the seniority. The claim petition is liable to be dismissed.

14. Learned counsel on behalf of the private respondents No. 7 & 8 filed written submissions also. Learned counsels of private respondents argued that the petitioner has concealed the facts related to her appointment in the representation against the tentative seniority list notified in 2018. The Uttarakhand Subordinate Revenue Executive (Naib Tehsildar) Service Rules, 2009 for the post of Naib Tehsildar clearly mention that the seniority will count from date of joining after completing 4½ months training. The petitioner was appointed on sympathetic ground after her candidature was cancelled on 20.03.2015 and the appointment order dated 07.07.2015 clearly mentions that her appointment on the post of Naib Tehsildar will be considered after qualifying the required eligibility examination of Naib Tehsildar Training. She completed her training on 07.05.2018. That is her date of substantive appointment.

15. Learned Counsel for the private respondents also relied on the Judgement of the Hon'ble Supreme Court in the matter of Rajendra Pratap Singh Yadav vs State of U.P. (2011(7) SCC 74), in which, the Hon'ble Supreme Court, in para 52, has held that:

52. We deem it appropriate to reiterate that in service jurisprudence there is immense sanctity of the final seniority list. The final seniority list once published cannot be disturbed at the behest of a person who choose not to challenge it for 4 years. The sanctity of the seniority must be maintained unless there are very compelling reasons to do so in order to do substantial justice.

16. Learned Counsel for the petitioner also relied on above judgement while moving the interim relief application on 03/05/2023. Learned Counsels for private respondents submitted that they pointed out the following compelling reasons before the Board of Revenue to revise the final seniority list for the purpose of the substantial justice:

i) The petitioner did not join the training of Naib Tehsildar instead moved an application for conducting her training after 20.03.2014. The Chairman, Board of Revenue accepted her request. The petitioner was again appointed on 07.07.2015 on her application for appointment. She was appointed with the condition that she will be appointed to the post of the Naib Tehsildar after qualifying the requisite training examination of Naib Tehsildar.

(ii) The petitioner passed the examination of 07.05.2018. So her substantive date of the appointment is 07.05.2018. The private respondents completed the training on 05.01.2014 and appointed as Naib Tehsildars.

(iii) The year of recruitment of the private respondents is 2013-14 and that of the petitioner is 2017-18.

(iv) The final seniority list published in 2018 was finalized without giving opportunity to the respondents for hearing, which was accepted by the Board of Revenue in the letter dated 07.02.2020 for the purpose of substantial Justice between the parties.

(v) While filing the objections, the petitioner concealed the material facts before the Board, whereby her seniority by the Public Service Commission was changed and letter dated 20.03.2015 whereby her appointment to the post of the Naib Tehsildar was cancelled. Her appointment order dated 07.07.2015 clearly mentions that she will be treated substantively appointed after qualifying the requisite training examination of Naib Tehsildar, which she completed on 07.05.2018.

17. Learned Counsel for the respondents emphasized that since the petitioner concealed the facts due to which, she does not deserve any kind of relief from the Hon'ble Court. The private respondents relied on the judgement of the Hon'ble Supreme Court in the case of V. Chandra Sekharan vs. Administrative officer 2012 (12) SCC 133, the relevant portion of the judgment reads as under:

‘One who does not come with the clean hands and conceals the material facts he or she does not deserve any kind of relief from the Hon’ble Court.’

18. The said principle of laws has been followed by the Hon’ble High Court of Jammu Kashmir and Ladakh in the case of Fayaz Ahmed Khan vs Union Territory of J&K and others LPA no 20/2023 dated 03/04/2023.

“35. No litigant can play ‘hide and seek’ with the courts or adopt ‘pick and choose’.” True facts ought to be disclosed as the Court knows law, but not facts. One, who does not come with candid facts and clean breast cannot hold a writ of the court with soiled hands. Suppression or concealment of material facts is impermissible to a litigant or even as a technique of advocacy. In such cases, the Court is duty bound to discharge rule nisi and such applicant is required to be dealt with for contempt of court for abusing the process of Court.”

19. Learned Counsel for the private respondents further argued that the petitioner cannot be granted retrospective seniority when she was not borne in the cadre. The petitioner is claiming seniority w.e.f. 2013-14 whereas she was given substantive appointment after completion of 4½ months training of Naib Tehsildar on 2017-18 which is against the settled law. Learned Counsel respondents relied on the judgment of the Hon’ble Supreme Court in the case of Union of India Vs. Manpreet Singh Poonam 2022 (6) SCC 105. In para 20 (iv) of the judgment, it has been held that:

“The seniority cannot be reckoned from the date of occurrence of the vacancy and cannot be given retrospectively unless it is so expressly provided by the relevant Service Rules, It is so because seniority cannot be given on retrospective basis when an employee has not even been borne in the cadre and by doing so it may adversely affect the employees who have been appointed validly in the meantime.”

20. It is further argued that the petitioner has accepted the offer of appointment on the post of the Tehsildar from the same seniority which she has challenged. She is estopped by her conduct as she has conceded the terms and conditions as laid down in the order dated 20/08/2013 which is not challenged by the petitioner. The petitioner

has challenged the tentative seniority list dated 01/06/2021 of Tehsildar, which cannot be challenged in view of the judgement of the Hon'ble High Court of Jharkhand in the matter of Shashi Bhusan Kumar vs State of Jharkhand 2018 (30 JCR 169). Hon'ble Court in para-6 has held that:

“No error has been committed by the learned Single Judge while deciding the writ petition preferred by the appellant (original petitioner), where only provisional seniority list of the post in question is under challenged. Once the seniority list is finalized, provisional list is always tentative in nature and hence, it cannot be challenged by this appellant.”

21. The substantive appointment of the petitioner is 07.05.2018 and she did not join the post in time as per initial offer of appointment. So, as per Uttarakhand Government Servant Seniority Rules, 2002 she will lose seniority. In view of above decisions of the Hon'ble Courts and the Rules, the claim petition of the petitioner is liable to be dismissed.

22. On the basis of the above discussion and perusal of the documents on record, we find that the petitioner was selected in the examination of Naib Tehsildars in 2012 and her rank in the merit list was at sl. No. 4. She was ordered to join the training at Revenue Police and Land Record Survey Training Institute, Almora till 22.08.2013. But she requested vide letter dated 20.08.2013 for exemption from the training on the ground of her appearing in the Civil Services (Main) Examination. She was given exemption vide letter dated 20.08.2013 with the condition that she will lose seniority from sl. 4 to Sl. 29 and in case she is given appointment after rescheduled organized training, all the candidates who have joined before her joining, will be senior to her whether they are appointed directly or through promotion. In case it is not possible to organize training for her before 7th August, 2014 her candidature will get automatically cancelled.

23. It is further clearly mentioned here that the petitioner was asked to join the training from 01.04.2014 but she attended the

training for 9 days only and then left on medical grounds on 10.04.2014. Thereafter, she was given notice vide letter dated 05.07.2014 to explain that despite having been given sufficient time for training she did not undergo training, so why her candidature should not be cancelled. She represented again to reconsider her candidature for the post of Naib Tehsildar. Her candidature on the post of Naib Tehsildar was cancelled vide Office Memo dated 20.03.2015. She was further appointed vide Office Memo dated 07.07.2015 and was directed to undergo training with Distt Magistrate, Nainital. The petitioner passed the Naib Tehsildar Training examination on 07.05.2018 and her substantive date of appointment will be 07.05.2018 as per the conditions as mentioned in the appointment letter.

24. The Board of Revenue notified a tentative seniority list - 2018 and invited objections. The petitioner filed objections against tentative seniority list citing the provisions contained in the Naib Tehsildar Service Rules, 2009 and Uttarakhand Govt. Servant Seniority Rules, 2002 (Amended Rules, 2003). The list was finalized on 04.12.2018. Some candidates aggrieved by the final seniority list of the Naib Tehsildars, submitted representations against it to the Chairman, Revenue Board. The Board communicated the points to the petitioner for her comments. The Board considered the final list of the seniority issued on 04.12.2018 as tentative seniority and issued final seniority list on 23.03.2021.

25. The Respondent Authority called the objections against the tentative seniority list-2018, which was circulated. The private respondents did not submit their objections against the tentative seniority list and the comments of the petitioner were also be communicated to the affected persons. The objections submitted by the petitioner in support of her seniority were also not properly verified by the respondent authorities and the final seniority list was notified on 04.12.2018. The respondent authorities have committed the grave mistake and secondly, the respondent authorities on receiving the

representation from some private respondents against the final seniority list dated 04.12.2018 decided to reopen the seniority issue and invited objections against representation of the private respondents as well as the petitioner. After considering the objections/representations of the petitioner as well as private respondents, the seniority list was again finalized on 23.03.2021. Although, they have given the reasons to reopen the seniority list decided earlier to rectify the grave mistake committed while finalizing the seniority list in 2018, but Rule-9 of the Uttarakhand Govt. Servant Seniority Rule, 2002 does not provide reopening of the seniority issue once finalized. This fact has been dealt with by the Hon'ble High Court of Uttarakhand in Writ Petition (SB) No. 297 of 2017, Dr. Sunita Pandey vs. State of Uttarakhand & others. The relevant paras 91 and 92 of the judgment read as under:

"91. The words used in Rule 9(4) are "final seniority list", which would show that finality is attached to such a list. It is, however, contended on behalf of the petitioners that, since Rule 9 does not explicitly prohibit revision of even a final seniority list, nothing prevents the State Government from revising it again on its own accord. Such a contention, if accepted, would confer power on the State Government to revise a final seniority list ad infinitum, which would render the word "final" in Rule 9(4) redundant and inapposite surplusage, besides creating uncertainty and confusion in the "services of the State". While the State Government would, undoubtedly, be obliged to revise even a final seniority list, if they are directed to do so by the High Court or the Tribunal, it is difficult to agree with the submission, urged on behalf of the petitioners, that the State Government can, on its own accord and merely on receipt of representations from persons who are aggrieved by the final seniority list, revise the final seniority list. While it is true that Rule 9 does not contain an explicit prohibition, the said Rule does not permit the State Government, to revise a final seniority list on its own accord, either. Absence of a provision, providing for a contingency, is a clear indication of the absence of the power contended. (Shambhoo Narain Singh15).

92. In compliance with the order of the Supreme Court dated 27.01.2020, we undertook a comprehensive examination of the 1983 and the 2002 Rules and have, earlier in this order, held that the final seniority list dated 19.02.2015 is valid as it was prepared rightly applying Rule 8(1) of the 2002 Rules and has correctly determined the inter-se seniority between direct recruits and promotees; and the final seniority list dated

14.11.2009 had wrongly determined the inter-se seniority erroneously applying Rule 6 read with Rule 8(2)(b) of the 2002 Rules, both of which have no application. As we were specifically directed by the Supreme Court to determine this question, and as we are satisfied that it is Rule 8(1) and not Rule 6 which is applicable in determining inter se seniority between direct recruits and promotees, we must necessarily uphold the final seniority list dated 19.02.2015, notwithstanding our reservation that, in the absence of a judicial challenge to the final seniority list dated 14.11.2009, the State Government could not have, on its own accord, revised the said final seniority list, and that it lacked jurisdiction to issue the final seniority list dated 19.02.2015.”

26. In view of the above, we hold that the respondent authorities have reopened the seniority issue against the Rule-9 of the Uttarakhand Govt. Servant Seniority Rules, 2002. As per the aforesaid judgment of Hon’ble High Court as well as the judgment of the Hon’ble Supreme Court in the case of Rajendra Pratap Singh Yadav vs. State of U.P. (*Supra*), the seniority list once finalized can be opened on judicial challenge. Whereas, in this case, the respondent authorities on their own reopened the seniority list, which was beyond their jurisdiction. Based on the Rules as well as aforesaid decisions of the Hon’ble Supreme Court and also Hon’ble High Court of Uttarakhand, the claim petition is liable to be allowed and the impugned order dated 23.03.2021 is liable to be set aside. The petitioner has also challenged the tentative seniority list of Tehsildars dated 01.06.2021, which cannot be challenged in the eye of law.

ORDER

The claim petition is hereby allowed. The impugned order dated 23.03.2021 is hereby set aside. The respondent authorities are hereby directed to correct the placement/seniority of the petitioner in accordance with final seniority list dated 04.12.2018. No order as to costs.

A.S.RAWAT
VICE CHAIRMAN (A)

RAJENDRA SINGH
VICE CHAIRMAN(J)

DATED: APRIL 25, 2025
DEHRADUN
KNP