

**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. 98/DB/2022**

Manoj Kumar Singh, aged about 50 years, s/o Late Shri Ram Singh, r/o Khasra No. 34-A, opposite M.B.Homes, Aamwala Uparla, Dehradun.

.....Petitioner

**vs.**

1. State of Uttarakhand through its Additional Chief Secretary (Finance), Secretariat, Dehradun.
2. Secretary (Finance), Sector-6, Secretariat, Dehradun.
3. Director, Directorate of Audit, Government of Uttarakhand, State Election Commission Campus, Ladpur, Mussoorie By-pass Ring Road, Dehradun.
4. Viresh Kumar Singh, Directorate of Audit, Government of Uttarakhand, State Election Commission Campus, Ladpur, Mussoorie By-Pass Ring Road, Dehradun.

.....Respondents

Present: Sri H.M. Bhatia, Advocate, for the Petitioner (online)

Sri V.P.Devrani, A.P.O., for the Respondents no. 1, 2 & 3

Dr. N.K.Pant & Sri L.K.Maithani, Advocates, for the Respondent no. 4

**JUDGMENT**

**DATED: APRIL 06, 2023**

**Per: Sri Rajeev Gupta, Vice Chairman (A)**

This claim petition has been filed for the following reliefs:

*“(I) Issue an order or direction to quash the Final Seniority List dated 05.09.2022 so far as in relates to the petitioner and respondent no.4.*

*“(II) Issue an order or direction to the official respondents to put the Petitioner at serial no. 4 above the respondent no.4 in the final seniority list dated 05.09.2022.*

*“(III) Issue any other relief, which this Hon'ble Court may deem fit and proper in the circumstances of the case.*

*(IV) Cost of petition may be awarded in favour of petitioner."*

2. The claim petition mainly states the following:

The petitioner was initially appointed through Public Service Commission as a direct recruit on the post of Audit Officer, Grade-1 (Lekha Pariksha Adhikari, Grade-1) in the pay scale of Rs. 8000-275-13500 in the Department of Cooperative Society and Panchayat Audit and the petitioner joined on this post on 18.07.2005. The respondent no. 4 has been appointed in the Local Fund Audit department on the post of District Audit Officer/Lekha Pariksha Adhikari Grade-II in the year 1998 initially in the pay scale of Rs. 6500-200-10500 and the same has been revised by the Government of Uttarakhand vide its notification dated 13.09.2005 as Rs. 7500-250-12000 from 01.04.2001. After the recommendation of the 6<sup>th</sup> Pay Commission Report as adopted by the Government of Uttarakhand the pay scale of the petitioner was revised from Rs. 8000-275-13500 in Grade Pay of Rs. 5400/- as per the Government Order issued by the Government of Uttarakhand while the pay scale of the respondent no. 4 was initially revised from Rs. 7500-250- 12000 in Grade Pay of Rs. 4800/-.

The petitioner since first day of his services in the department i.e. since 18.07.2005 is getting the salary on the basis of Grade Pay of Rs. 5400/- and for that there is no dispute between the parties. For the respondent no. 4 pay scale was revised in the Grade Pay of Rs. 4800/- initially from 01.04.2001, thereafter Government of Uttarakhand vide Government Order dated 24.12.2009 again revised the pay scale for the post of District Audit Officer/Audit Officer Grade- 2 in Grade Pay of Rs. 5400/- from 01.01.2006. It means the respondent no. 4 got the benefit of pay scale of Grade Pay Rs. 5400/- from 01.01.2006 notionally. The respondent no. 4 occupied the Sub-ordinate Cadre post while the petitioner occupied the State Cadre post as per the service rules.

On 08.07.2019 the Government of Uttarakhand issued the Rules under Article 309 of Constitution of India namely Uttarakhand Cooperative Societies and Panchayat Audit Department and Local Fund Audit

Department Personnel's Unification Rules, 2019. By the said rules of 2019 the Government of Uttarakhand unified 02 departments in one unified department for the purpose of audit in the State of Uttarakhand. The process of unification and guiding principle of unification of officers of 02 departments was provided in Rule 6 of Uttarakhand Cooperative Societies and Panchayat Audit Department and Local Fund Audit Department Personnel's Unification Rules, 2019 (Hereinafter referred to as Unification Rules, 2019). In the case of the petitioner, Rule 6(4) is relevant for the reason the respondent also unified the services of the petitioner with the person of other department in view of the said rules. As per the Rule 6(4) the unification can be done on the basis of same pay scale and name. The petitioner before unification was working in the Cooperative Societies and Panchayat Audit Department since 18.07.2005 in the pay scale of Grade Pay Rs.5400/- while the respondent no. 4 was working in the Local Fund Audit Department in pay scale of Grade Pay of Rs 4800/- on the same date when the petitioner joined the services i.e. 18.07.2005, and got the equivalent pay scale to the Petitioner of Grade Pay of Rs.5400/- since 01.01.2006 meaning thereby the petitioner is getting the same Grade Pay much before the respondent no. 4. After the notification of Unification Rules, 2019, the official respondents issued the tentative seniority list of Gazetted Officers of unified audit department in view of 2019 Rules in which the petitioner was placed at serial no. 5 while the respondent No.4 was placed at Serial No 4. The petitioner as per the law objected to the position of the Respondent No.4 in the tentative seniority list at serial no. 4 and filed his first objection on 25.10.2021. It is relevant to submit here that the petitioner's basic objection to the tentative seniority list is that the petitioner is getting the same pay scale much prior to the respondent no. 4, therefore as per the Rule 6(4) of Unification Rules, 2019 r/w Uttarakhand Govt. Servant Seniority Rules, 2002, being a direct recruit, the petitioner may be treated senior to the respondent no. 4.

Before finalization of the impugned final seniority list the petitioner again agitated the issue of seniority over the respondent no. 4 on

25.11.2021 as well as on 13.06.2022 in which also the petitioner again stated that the petitioner must be treated senior to the respondent no. 4 in view of the law laid down by the Hon'ble Apex Court in the case of P. Mohan Reddy Vs. E.A.A. Charles AIR 2001 SC 1210 as the petitioner before the unified cadre was senior to the respondent no. 4 and if the tentative seniority list will not be corrected by the department then the petitioner would suffer great loss and he has to work under his junior.

The official respondents, while deciding the objections of the incumbents of the Audit Department, have treated the Gazetted officers by 02 yardsticks. In the case of the petitioner while rejecting the objection of the petitioner against the tentative seniority list, the official respondents stated that the petitioner was substantively appointed on 18.07.2005 as an Audit Officer, Grade-1 and the respondent no. 4 was appointed on 18.05.1998 substantively on the post of District Audit Officer in the Local Fund Audit Department on the same post in comparison to the petitioner and therefore being prior substantive appointment of respondent no. 4 in the year 1998, the respondent no. 4 would be senior to the petitioner. It was wrong because the petitioner was substantively appointed on the post, which was promotional post of District Audit Officer/Audit Officer Grade-II and the official respondents failed to consider the intention of the Rule 6(4) of 2019 rules, which provides the equal pay scale on the same post. As per the admitted facts after the unification of the 02 departments the post of petitioner as well as the post of respondent no. 4 is same and the pay scale of both the officers is made same but the pay scale of Rs. 5400/- is got by the petitioner from the date of his appointment since 18.07.2005 and the respondent no. 4 is getting the said pay scale since 01.01.2006, therefore in the Cadre of Gazetted officers of Audit Department the petitioner is senior to respondent no. 4.

On the other hand, while deciding the case of Smt. Indira Bhatt and Sri Kishan Singh Bisht as mentioned in Column No. 9 and 12 of the impugned final seniority list, the official respondents stated that since Smt. Indira Bhatt is getting the Grade Pay of Rs. 5400/- from 29.12.2008 and Sri

Kishan Singh Bisht was appointed as Gazetted officer on 13.03.2019 and got the same pay scale after Smt. Indira Bhatt, therefore Smt. Indira Bhatt would be senior to Kishan Singh Bisht. It is relevant to submit here that the 2019 rules were notified by the Government of Uttarakhand on 08.07.2019 which means that Kishan Singh Bisht was appointed as Gazetted officer prior to the application of the 2019 rules and as per the Rule 6(4) of 2019 rules, Kishan Singh Bisht and Indira Bhatt both are working as Gazetted officers in the same pay scale and on the same post but the official respondents treated Kishan Singh Bisht as junior to Smt. Indira Bhatt only for the reason that Smt. Indira Bhatt is getting Grade Pay of Rs. 5400/- prior to Kishan Singh Bisht. However, in the present case of the petitioner, the respondents failed to apply the same yardstick; the official respondents treated the case of the petitioner with different yardstick which is not permissible under the law and is violative of Article 14 of Constitution of India for the same set of employees.

Hence the claim petition.

3. Counter Affidavit filed on behalf of respondents no.1, 2 and 3 mainly states the following:

“11. That, it is a case of seniority in a department, called Uttarakhand Audit Department which was evolved after unifying two erstwhile separate departments namely Local Fund Audit Department (स्थानीय निधि लेखा परीक्षा विभाग) and the Cooperative Societies and Panchayten Audit Department (कोआपरेटिव समितियां एवं पंचायतें लेखा परीक्षा विभाग). The private respondent no 4 (Mr. Viresh Kumar Singh) and the petitioner Mr. Manoj Kumar Singh. Belonged to two different parent departments. Mr. Viresh Kumar Singh belonged to the Local Fund Audit department and Mr Manoj belonged to the Cooperative and Panchayten Audit, before the said unification of their parent departments.

12. That, in June 2012. Uttarakhand Govt notified AUDIT ACT 2012 which proposed to unify the two audit departments named as above. Nearly 5 months later, in the November 2012, the govt through finance department, issued a G.O. which mentioned the following two things,

(a) opportunity of promotion for existing officers will be as it is,

(b) existing officers will be inducted in unified department once service rule is notified.

13. That, a new structure and corresponding service rules were issued in April 2016 and in April 2017 respectively. The service rules also contained the provision to draw a parallel in the existing posts and way to determine seniority among the Gazetted officers and also in other cadres. But because of some issues arising due to omission of some entry level posts in that rule, no action was initiated on the basis of the aforementioned new service rule of 2017 and again it was scrapped in the year 2019 when new unification rule and corresponding service rules were notified in the July 2019 and in the November 2019 respectively. These new notified rules were in compliance and continuation of the AUDIT ACT 2012....

14. That, on 08.07.2019, Government of Uttarakhand framed rules under Article 309 of the Constitution of India known as Uttarakhand Cooperative Society and Panchayaten Audit Department and Local Fund Audit Department Personnel Unification Rules, 2019 by which the Uttarakhand has merged two departments In one combined department as such the petitioner and respondent no. 4 are serving in a direct recruitment post rather than a promotional post. In such situation, Rule 6 is not applicable is not applicable for determination of seniority between petitioner vis-à-vis the respondent no. 4 because the rule 6 is applicable only in the case when according to the relevant service rule, appointments are to be made only by promotion from a single feeding cadre whereas the present post of the petitioner vis-à-vis respondent no. 4 is a direct recruitment post. Hence, such a situation, seniority of the merged employee will be determined on the basis of date of substantive appointment to the lien post on the date of unification.

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15. That, in light of above the facts, it is clear that the two officers were selected in the different departments and both worked till the year 2019 under different service rules. Therefore before unifying them in one department, no comparison of the seniority is justified! Firstly, they will be inducted/unified in the new structure on posts which is allocated for them as per the unification rule. Thereafter, the applicable seniority rule (Uttarakhand Seniority Rule, 2002 ) will be used to fix the relative position of the officers in the gradation list.

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16. That, it is also well known fact that no commonly accepted or universal rule exists to unify two different departments. In all of the such situations, first a criteria is evolved and notified to draw a parallel among existing posts of the two departments and to fit/merge existing posts in the new structure. These exercises obviously try to ensure that employees of each separate department should get at least same opportunities of elevation in respect of their service benefits as they would have got in their parent departments. Such exercise at the

government level also ensures that seniority should not be upset for any one as compared to some one in his own parent department. The seniority of the two persons working in different departments, will be compared only after both are unified in one department.

17. That the petitioner is comparing his seniority with the respondent no. 4. Mr Viresh Kumar Singh, in the period between July 2005 and 01 January 2006, when both were in different departments and governed/selected under different service rules. The Audit Act which proposed unification of the two audit departments and the corresponding unification rule and service rules were notified in the year 2012 and 2019 respectively. The petitioner is missing a basic fact that he can compare his seniority with respondent no. 4 Mr. Viresh Kumar Singh only under the umbrella of the Unification Rule, 2019 notified for the new audit departments, Gazetted Officers Service Rule, 2019 for the new Audit Department and Uttarakhand Seniority Rule, 2002 mentioned in the aforementioned Rule of 2019, to decide the seniority in the unified audit department.

18. That, the Unification Rule, 2019 has placed the initial posts of respondent no. 4 Mr Viresh Kumar Singh and that of the petitioner at the same level and pay scale/merged them in to a new post termed "Audit Officer/Assistant Director". This post of "Audit Officer/Assistant Director forms the entry level post of the cadre of the Gazetted officers as per the New Unification and Service Rules, 2019 applicable for the new Audit Department. Here, it is worth noting that the petitioner never challenged Unification Rule, 2019 which is the basis to merge the two audit departments. Hence, without challenging the Unification Rules, 2019, the petitioner has no locus-standi to challenge the seniority prepared under the Unification Rules as well as the Seniority Rules, 2002.

19. That, anyone who held the entry level post of the cadre, from prior date, will obviously be placed senior to the one who enters at the entry level post later. Mr Viresh Kumar Singh held the entry level post since 1998 and the petitioner Mr Manoj Kumar Singh held the entry level of the cadre in 2005, 7 years later to Mr Viresh Kumar Singh, hence the respondent 1. 2 and 3 has rightly placed Mr. Viresh Kumar Singh as senior to the petitioner Mr Manoj Kumar Singh. In the clause 21 of Officer's Service Rules of 2019, Uttarakhand Seniority Rule, 2002 has been declared as basis to decide about the seniority in the newly formed audit department.

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22. That, the petitioner has raised major objection on the basis of the pay scale of the respondent no. 4 Mr Viresh Kumar Singh, whose pay scale was 7500-12000 when the petitioner joined the service in July 2005 in the pay scale of 8000- 13500. Later on the government upgraded the post held by the respondent no. 4 Mr Viresh Kumar Singh and his upgraded pay scale was 8000-13500 i.e. same as that of the petitioner and it was made notionally effective since 01 January

2006 which is a date nearly 6 month later than the joining date of the petitioner in the same pay scale. On the basis of this fact the petitioner claims that since he is getting a scale of 8000-13500 from early date July 2005 than the date of January 2006 when the respondent No 4 Mr Viresh Kumar Singh was elevated to the same scale, so the petitioner should be treated senior to the respondent No 4 Mr. Viresh Kumar Singh. But the claim of the petitioner for the seniority is to be decided by the Rule-5, proviso 2<sup>nd</sup> of Uttarakhand Seniority Rule, 2002, and not by the Rule-7. Notable point here is that upgradation of any post is different than the promotion from the existing post. If a post is upgraded from a particular date then to maintain the relative seniority among the existing officers and any officer joining at the same post, then for the purpose of the next level promotion or ACP, the officer holding the upgraded post, since prior to the date of its upgradation, is treated in the upgraded scale from the date of holding that post. Though ACP does not form basis of the seniority in any department. But when it comes to the compare the service status /seniority of the two persons working in two different departments, such financial elevations/ACP may easily reflect the relative seniority between the two persons and the government realizes it very well. Therefore, for the purpose of promotion and financial elevations like ACP, the officer holding the upgraded post, is treated in the upgraded scale from the date since when he or she holds that post.

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4. C.A. filed by respondent no. 4 mainly states the following, in addition to the averments made in the C.A. filed by respondents no. 1 to 3:

“6. That the deponent was duly selected on the group B, Gazetted post of District Audit Officer way back in the year 1998 through direct recruitment by Uttar Pradesh Public Service Commission while the petitioner was selected on the group B, Gazetted post of Audit Officer Grade-1 in the year 2005, through direct recruitment by Uttarakhand Public Service (Commission). Hence the deponent was directly recruited on a Gazetted post of Local Fund Audit department, to control and supervise auditing staff and their work at the district level in the year 1998, while 7 years later in the year 2005, the petitioner was directly recruited on a Gazetted post in a different department for auditing work in a Sugar Mill. Both officers were working in different departments and governed with different service rules before the unification of the respondent department.

12. After considering the various relevant aspects, the government, through, the rule 6(4) of the Unification rule 2019 has equated the

initial posts of the deponent and that of the petitioner and placed them at the same level and their initial posts was renamed with new common name termed "Audit Officer//Assistant Director". This post of "Audit Officer//Assistant Director" forms the entry level post of the cadre of the Gazetted officers as per the new unification and service rules 2019. Anyone who held the entry level post of the cadre, early, will obviously be placed senior to the one who enters at the entry level post later. That means the length of the service on the equated posts i.e. on the posts of Audit Officer//Assistant Director" will be used to fix the seniority in the new audit department. It is also a fact that there has been no dispute on the equation of the posts held by the deponent and the petitioner at the time of their appointment because the petitioner never challenged the equation of his post with the post of the deponent in any court of law.

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14. That as per the seniority list in his parent department, if someone junior to him, is now placed senior to him as per new unification/seniority rule applicable and the petitioner's inter-se seniority has been upset due to the unification, then it would have been reasonable on the part of the petitioner to oppose it. But there is no such issue as all the persons who were junior to him in his parent department, are still junior to him in the new audit department. As mentioned earlier, the deponent doesn't belong to petitioner's department so there is no scope of any such anomaly.

16. That in general the Principles governing fixation of seniority: In determining relative seniority as between two persons holding posts declared equivalent to each other and drawn from different departments, the following points should be taken into account: (i) Length of continuous service in a particular grade. This should exclude periods for which an appointment is held in a purely stop-gap or fortuitous arrangement. (ii) Age of the person, other factors being equal, seniority may be determined on the basis of the age (iii) The inter-se seniority of persons allotted from the same parent department shall not be disturbed as far as possible.

19. That the power conferred on the State under Article 309 of the Constitution to regulate methods of recruitment and conditions of

service include the power to frame rules for regulating the principles to be followed in determining the seniority of the officers when the State decides to bring about amalgamation of two cadres. In the absence of statutory rules, it is also competent for the State Government to issue executive orders laying down the principles on the basis of which the integration or amalgamation of two cadres should be brought about. In the present case, rule 6(4) of the unification rule 2019 provides the provision of the equation of the posts of the deponent and that of the petitioner belonging to the different departments. As discussed earlier the deponent and the petitioner belong to different department and now holding the equal posts, the principal of the length of the service on the equated post of audit officer/ assistant director, will be the basis of their seniority. The deponent has been serving from 1998 and the petitioner from 2005 on the equated post, therefore on the basis of the length of the service on equated post, the deponent is obviously senior.

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22. The petitioner has frequently misquoted the rule 6(4), of the unification rule 2019, as a rule for deciding seniority whereas in the rule 7 of the unification rule 2019 itself, there is a clear provision of the Uttarakhand servant seniority rule 2002 for deciding the seniority of the employees inducted to the newly formed Uttarakhand Audit department by unifying the deponent's and the petitioner's parent departments. The rule 6(4) simply mentions the basis of the equating few posts of the two departments. Also the petitioner has tried to mislead the honorable court by saying that the deponent has been getting 5400 grade pay from 1/1/2006 and the petitioner is getting 5400 from July 2005. The fact is that the deponent has been given actual financial benefit of 5400 grade pay from 1/1/2006 but for other purpose like promotion and related service benefits, the entire previous service of the deponent, before 1/1/2006 is to be treated in the scale of 5400 grade pay. This is due to the up gradation of the post held by the deponent. That is why the deponent was sanctioned time scale/promotional scale of 6600 grade pay from 18<sup>th</sup> May 2006, Just 5 months later after 1/1/2006. The petitioner has invariably been unable to appreciate the difference between the promotion and post/scale up gradation. The claim of the petitioner could have some weightage, had

the deponent been promoted to 5400 grade pay on 1/1/2006, Had this been the case, then how can the deponent be elevated to 6600 grade pay in May 2006, just 5 month after being promoted to 5400 grade pay on 1/1/2006.”

5. The petitioner has filed separate R.As. to the Counter Affidavits of respondents no. 1 to 3 and of respondent no. 4. In the R.A. to the C.A. of respondents no. 1 to 3, the petitioner has mainly stated the following besides reiteration of many averments of the claim petition:

“6. That as per the admission of the official respondent itself in paragraph no. 6 and 7 of the counter affidavit it is very much crystal clear that the petitioner and the respondent no. 4 both are appointed as direct recruit in the department. While the petitioner was appointed as Audit Officer, Grade-I (Lekha Pariksha Adhikari Grade-1), which a State Cadre post while the respondent no. 4 was appointed as Audit Officer, Grade-II (Lekha Pariksha Adhikari Grade-II) which is a District Level Cadre post, by the nomenclature of the post itself clearly shows that the petitioner was appointed on the higher grade and on higher post while the respondent no. 4 was appointed in a lower grade pay and on lower cadre post. In view of this admission of the official respondent itself if we test the application of Rule-5 of Uttarakhand Government Servant Seniority rules, 2002 then we clearly find that both the petitioner and respondent no. 4 although are direct recruited officers but they are not appointed on the result of anyone selection and also as per the admission itself both petitioner and the respondent no. 4 are also not appointed in the same cadre post, for the sake repetition Rule-5 of Uttarakhand Government Servant Seniority Rules, 2002 is read as under: -

5. Seniority where appointment by direct recruitment only-

Where according to the service rules appointments are to be made only by the direct recruitment the seniority inter se of the persons appointed on the result of any one selection, shall be the same as it is shown in the merit list prepared by the commission or the committee, as the case may be:

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

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

Explanation-Where in the same year separate selection for regular and emergency recruitment, are made, the selection for regular recruitment shall be deemed to be previous selection.

7. That it is also relevant to submit here that the second proviso of the Rule- 5 provides that the persons appointed on the result of subsequent selection shall be junior to the persons appointed on the

result of a previous selection, the second proviso of Rule-5 will only apply in the case where the officer/person is appointed by subsequent selection in the same cadre post as per the settled principle of law. We have to read the entire rule as a whole, and as per the law laid down by the Hon'ble Apex Court the proviso to the main rule cannot be read in isolation therefore the application of the Rule-5 cannot be applied here in this case because the petitioner and the respondent no. 4 both are appointed in different cadre posts, one (petitioner) appointed in a higher cadre post while the respondent no. 4 appointed in a lower cadre post therefore in the entire service of the petitioner as per the admitted fact the respondent no. 4 was the junior to the petitioner and now by determining the impugned seniority list the official respondent treated the respondent no. 4 senior to the petitioner.

12.....if the unification was not done of the both the departments in the year 2019 then the next promotional post of the respondent no. 4 was the Assistant Director in the Grade Pay of Rs. 5400/- in view of the service rules applicable over the respondent no. 4 while as per the service rules of the petitioner the next promotional post of the petitioner is the Deputy Director therefore as per the averment made in the para no. 12(a) is now being frustrated by the official respondent itself. They are frustrating the opportunity of promotion of the petitioner.

14. That the facts mentioned in Para No. 14 of the counter affidavit are wrong and denied. It is wrong to say that after the notification of Unification Rules 2019 the two departments has merged in one combined department, the framers of the rules 2019 did not use the word "Merger". The intention of the Rules 2019 is one combined Audit Department not the merger of the two departments. It is relevant to submit here that as per the Rule 7 of Uttarakhand Co-operative Societies and Panchayat Audit Department and Local Fund Audit Department Personnels Unification Rules, 2019 for determination of seniority between the two incumbents after the unification, the provisions of Uttar Pradesh Government Servant Seniority Rules, 1991 and Uttarakhand Government Servant Seniority Rules, 2002 are applicable. Here in this case as per the admitted fact of the official respondent itself although both the officers petitioner and respondent no. 4 are direct recruit officers, one (petitioner) was appointed as Audit Officer, Grade- I (State Cadre Post) while the respondent no. 4 was appointed Audit Officer, Grade-II (District Cadre Post) cannot be appointed by anyone selection therefore as stated above in the present affidavit as well as in the claim petition there is no application of Rule-5 of Uttarakhand Government Servant Seniority Rules, 2002, neither the main provision of Rule 5 is applicable nor the second proviso of the Rule 5 is applicable here in this case because both the officers are appointed by different selections on different cadre posts. Admittedly the petitioner was appointed in a higher cadre post and the respondent no. 4 was appointed in a lower cadre post therefore there is no application of Rule 5 from any angle.

It is also relevant to submit that here in this case Rule 6 of Uttarakhand Government Servant Seniority Rules is also not applicable because it is applicable over the incumbents appointed by promotion only from a single feeding cadre.

It is also relevant to submit here that here in this case the main section of Rule 7 of Uttarakhand Government Servant Seniority Rules is also not applicable because Rule 7 provides the seniority where appointment by promotion only from several feeding cadres if the appointment is done from several feeding cadres by way of promotion then only the Rule 7 will be applicable.

Likewise the Rule 8 of Uttarakhand Government Servant Seniority Rules 2002 is also not applicable here in this case for the reason it provides the seniority where the appointments are being made by promotion as well as by direct recruitment.

15. That it is further relevant to submit here that the Rule 7 of 2019 Rules provides that the determination of seniority will be determined between the incumbents in view of Uttarakhand Government Servant Seniority Rules 2002 but here in this case as stated above neither the Rule 5 nor the rule 6, 7 and 8 are applicable completely in such a scenario then we have to find out the intention of the framers of the rules for determination of the seniority between the two incumbents and answer to this question is also given by the framers of the Uttarakhand Government Servant Seniority Rules, 2002 itself. The Rule 7 provides the seniority where the appointment by promotion only from several feeding cadres, although the main provision of Rule 7 does not apply in the case of Petitioner and the Respondent No.4 but if we read the proviso to the Rule 7 which provides that where the pay-scale of the feedings cadres are different, the person promoted from the feeding cadre from the higher pay-scale shall be senior to the persons promoted from the feeding cadre having the lower pay-scale.

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21. That it is also relevant to mention here that if we read the Rule 6(4) of 2019 Rules then we find that the Rule 6(4) provides that the unification of two departments can be done on the basis of same pay scale and name on the post of Assistant Director, it provides that the Assistant Director and Audit Officer of Local Fund Audit Department and Regional Audit Officer/District Audit Officer (Grade 1) and District Audit Officer/Audit Officer (Grade 2) Co-operative Societies and Panchayat Audit Department shall be unified as Assistant Director/Audit Officer. If we read the first part of the said rule which provides the details of Local Fund Audit Department which includes the Regional Audit Officer/ District Audit Officer (Grade-1) unified District Audit Officer/Audit Officer (Grade-2) of Co-operative Societies and Panchayat Audit Department, the petitioner belongs to the cadre of Regional Audit Officer/District Audit Officer (Grade-1) of Co-operative Societies and Panchayat Audit Department therefore it

seems that the unification process by the official respondent has wrongly been done because the cadre of the petitioner on which he was posted does not belong to Local Fund Audit Department. Even otherwise if the Hon'ble Court finds out that unification of the two departments has been done correctly then also the petitioner must be treated senior to the respondent no. 4 because he got the pay scale of Grade Pay of Rs. 5400/- w.e.f. 18.07.2005 whereas the respondent no. 4 as per the admission of the official respondent got the pay scale of Grade Pay of Rs. 5400/- actually from 01.09.2009. Even otherwise if we again read the Rule 6(4) then we find that the petitioner is much senior to the respondent no. 4 and in his entire service career the respondent no. 4 was treated to be junior from the petitioner as he belongs to the District Level Cadre of Local Fund Audit department and if the 2019 Rules had not come into the force in the year 2019 then only after getting promotion on the post of Assistant Director the respondent no. 4 will be equal to the petitioner therefore the impugned seniority list as drawn by the official respondent is completely against the law.

25. That the facts mentioned in Para No. 19 and 20 of the counter affidavit are wrong and denied as stated. It is wrong to say that anyone who held the entry level post of the cadre, from prior date, will obviously be placed senior to the one who enters at the entry level post later. As stated above here in this case there is no application of Rule 5 of Uttarakhand Government Servant Seniority Rules 2002, as per the admission of the official respondent in the counter affidavit itself that both the petitioner and the respondent are directly recruited in different selection year in different cadre posts, as per the further admission of the official respondent the petitioner was initially appointed in the department as regional Audit Officer/Audit Officer (Grade 1) in a State Cadre post whereas the respondent no. 4 was appointed as District Audit Officer (Grade II) in a Local Fund Audit Department which is a District Level Cadre post. Therefore, even if the respondent no. 4 was initially appointed prior to the petitioner, it could not be said that both are appointed by one selection or subsequent selections in a same cadre post. If the petitioner and the respondent no. 4 both are appointed in the department on the same cadre post in different selections, then only the second proviso to the Rule 5 will be applicable. In the case here as per the admission of the official respondent itself the initial appointment of both the persons was made in different cadre posts in the different pay scales. As stated above at the time of appointment the petitioner got the much higher pay scale in comparison to the respondent no. 4 and as per the admission of the official respondent the pay scale which is getting by the petitioner on 18.07.2005 was actually got by the respondent no. 4 from 01.09.2009 and while finalizing the seniority list in the case of Smt. Indira Bhatt and Kishan Singh Bisht they treated Smt. Indira Bhatt senior to Kishan Singh Bisht only for the reason that Smt. Indira Bhatt was getting the pay scale Grade Pay of Rs. 5400/- since 29.12.2008 while Kishan Singh Bisht was getting the said pay scale since

13.03.2019. Therefore in view of proviso to the rule 7 of Uttarakhand Government Servant Seniority Rules 2002 the official respondent himself treated Smt. Indira Bhatt senior to Sri Kishan Singh Bisht but in the present case the official respondent took the different stand which is not permissible under the law.

6. R.A. of the petitioner filed against the C.A of respondent no. 4 further states as follows:

“10. That the facts mentioned in Para No. 12 of the counter affidavit are wrong and denied. It is wrong to say that as per the Uttarakhand Co- operative Society and Panchayat Audit Department and Local Fund Audit Department Personnels Unification Rules, 2019 anyone who held the entry level post of the cadre, early, will obviously be placed senior to the one who enters at the entry level post later. It is relevant to mention here that by bare reading of Uttarakhand Co-operative Society and Panchayat Audit Department and Local Fund Audit Department Personnels Unification Rules, 2019 it is crystal clear that the Rule 6(4) does not provide such a situation as mentioned by the respondent in the said paragraph therefor it is a misinterpretation of Rule 6(4) of 2019 Rules on the part of the Respondent No.4.

11. That the facts mentioned in Para No.13 of the counter affidavit are wrong and denied as stated. It is relevant to submit here that the Respondent No.4 in this paragraph completely misinterpreted the Rule 6(4) of Uttarakhand Co-operative Society and Panchayat Audit Department and Local Fund Audit Department Personnels Unification Rules, 2019. As per the Rule 6(4) it provides that Assistant Director and Audit Officer of Local Fund Audit Department and Regional Audit Officer/District Audit Officer (Grade-1) and District Audit Officer/Audit Officer (Grade-2) Cooperative Societies and Panchayat Audit Department shall be unified as Assistant Director/Audit Officer, Audit Department on the basis of the same pay scale and name. The Rule 6(4) of 2019 Rules does not provide about the induction in the service at the entry level. Only Rule 7 provides that the determination of seniority will be done on the basis of Uttarakhand Government Servant Seniority Rules, 2002. The seniority between the parties cannot be decided on the basis of Rule 6(4) of Uttarakhand Co-operative Society and Panchayat Audit Department and Local Fund Audit Department Personnels Unification Rules, 2019, wherein just before the unification also petitioner was the State Cadre Officer while the Respondent No.4 was working in lower grade of District Cadre post. As stated in the claim petition if the unification of the two departments was not done in view of the 2019 Rules, the next promotion of the Respondent No.4 would be the Assistant Director in the Grade Pay of Rs.5400/- while on the basis of erstwhile service rules the Petitioner's next promotion would be on the post of Deputy Director and only after getting the promotion on the post of Assistant Director, the petitioner will serve in State Cadre post. Admittedly as per the admission of the respondent

itself he got the pay scale grade pay of Rs.5400/- notionally from 01.01.2006 actually from 01.09.2009 and Petitioner got the said pay scale much prior to the Respondent No.4 since 2005. It is also relevant to submit here that the determination of the seniority can only be done between the parties on the basis of Uttarakhand Government Servant Seniority Rules, 2002 not on the basis of Rule 6(4) of Uttarakhand Co-operative Society and Panchayat Audit Department and Local Fund Audit Department Personnels Unification Rules, 2019.

22. That it is also relevant to point out that for deciding seniority, on the one hand, private respondent no. 4 is taking the stand that in the period before the regularization/issuance of Uttarakhand Co-operative Society and Panchayat Audit Department and Local Fund Audit Department Personnels Unification Rules, 2019, the seniority between the petitioner and private Respondent No.4 cannot be compared because the parent department of the petitioner and private Respondent No.4 is not the same and at the same time on the other hand, the private Respondent No.4 is taking the stand that the issue of seniority must be decided following the provisions of Rule 5 of Uttarakhand Government Servant Seniority Rules, 2002 but the stand of private Respondent No.4 is wrong and contradictory due to the following reasons:-

A. Uttarakhand Co-operative Society and Panchayat Audit Department and Local Fund Audit Department Personnels Unification Rules, 2019 does not mention that the issue of seniority will be decided on the basis of two different parent departments. It equates the status of the post hold by the petitioner and the private Respondent No.4 on the basis of same pay scale and only provides that the seniority will be decided on the basis of Uttarakhand Government Servant Seniority Rules, 2002. The Uttarakhand Government Servant Seniority Rules, 2002 also does not speak about parent department as the scenario of the present case is concerned.

B. As per the provisions of Uttarakhand Co-operative Society and Panchayat Audit Department and Local Fund Audit Department Personnels Unification Rules, 2019 itself, this rule has not got effect retrospectively. The effect of this rule is only the prospective one.

C. The application of Rule 5 of Uttarakhand Government Servant Seniority Rules, 2002 is limited only to the one selection. The intention of the word used "one selection" is very clear that the selection should be by one exam in the one/same department and in the one/same cadre. But the petitioner and the private Respondent No.4 are neither selected by one selection nor selected in one/same parent department/cadre, thus Rule 5 of Uttarakhand Government Servant Seniority Rules, 2002 does not apply here in the present scenario and by quoting the Rule 5 of Uttarakhand Government Servant Seniority Rules, 2002, the private Respondent No.4 is wrong and taking the contradictory stand himself. Because at the one hand, he is talking about two different parent departments, but on the other hand, at the

same time, he is talking about Rule 5 of Uttarakhand Government Servant Seniority Rules, 2002 which cannot be applied on two different parent departments.

D. The opinion of the Personnel Department, Uttarakhand Govt given before unification is being annexed here for the same. The opinion clearly states that the administrative department (Finance Department) must ascertain that the petitioner should be kept senior on the basis of substantive appointment. A True Copy of Notes and Order of Personnel Department Government of Uttarakhand Dated 30.11.2017 is being filed herewith and marked as Annexure No.RA-1 to this affidavit.

23. That for deciding seniority, the private Respondent No.4 is taking the stand that both the petitioner and the private Respondent No.4 were appointed in Group-B services according to their applicable service rules. But the stand of the private Respondent No.4 is wrong due to the following reasons-

A. Uttarakhand Co-operative Society and Panchayat Audit Department and Local Fund Audit Department Personnels Unification Rules, 2019 does not mention that the issue of seniority will be decided on the basis of grouping of services like Group A or Group B. It equates the status of the post hold by the petitioner and the private Respondent No.4 on the basis of same pay scale and only provides that the seniority will be decided on the basis of Uttarakhand Government Servant Seniority Rules, 2002. The Uttarakhand Government Servant Seniority Rules, 2002 also does not speak about grouping of services like Group A or Group B as a basis for deciding seniority.

B. It is very clear that if Group-B service includes more than one Grade pay like Rs.5400 and Rs.4800, then it will be in the interest of justice that the petitioner substantively appointed at the pay scale of Grade pay Rs.5400 must be treated senior in comparison to private Respondent No.4 who was working at the pay scale of Grade pay Rs.4800 on the date when the petitioner was substantively appointed at the pay scale of Grade pay Rs.5400. If the petitioner substantively appointed at the pay scale of Grade pay Rs.5400 is placed junior to the private Respondent No.4 who was working at the pay scale of Grade pay Rs.4800 on the date when the petitioner was substantively appointed at the pay scale of Grade pay Rs.5400, then it will be like the petitioner has been reverted from the post of substantively appointed post that is not allowed as per applicable service rules and established law. Here in this matter, it does not matter that the private Respondent No.4 was appointed earlier (in the year 1998) in respect to the petitioner because the petitioner was not only substantively appointed to the post equivalent to the promotional post of the substantively appointed post of private Respondent No.4 but the grade pay of the petitioner was also higher on the substantively appointed date 18.07.2005. If the substantive

appointed post of the petitioner and the private Respondent No.4 are being equated on the basis of same pay scale by the Unification Rules, 2019 then while deciding the seniority between the two, it must be taken into notice/account that from which date, the pay scale of the petitioner and the private Respondent No.4 were equated. (Obviously from 01.01.2006).

24. That the private Respondent No.4 is regularly stating that his substantive appointed post was upgraded and he has got the Grade pay of Rs.7600 by ACP, so that he should be treated senior in comparison to the petitioner. But the above statement is totally wrong for deciding seniority between the two due to the following reasons-

A. The substantive appointed post of the private Respondent No.4 has never been upgraded. Only the pay scale has been upgraded notionally from 01.01.2006. The upgradation of post and the upgradation of pay scale is different thing. As a proof, it has been already submitted that 3 District Audit Officers had been promoted to the post of Assistant Director (equivalent to the substantive appointed post of the petitioner) in the same pay scale of Grade pay Rs.5400 in the year 2012 by the Govt. If the upgradation of post and the upgradation of pay scale is the same thing, then there was no need of promotional exercise for the District Audit Officers from Grade pay of Rs.5400 to Grade pay of Rs.5400 on the part of the Uttarakhand Govt.

B. Getting financially benefitted by ACP has nothing to do with the seniority as per the provisions of the ACP rule.

C. If the private Respondent No.4 is stating/claiming that he should be treated in the pay scale of Grade pay Rs.5400 from 1998, then he must put up the Govt. order of the same. At the same time, it is humble request of the petitioner that the Hon'ble Court should see the actual pay slip of the private Respondent No.4 on the date 18.07.2005, when the petitioner was substantively appointed. This will clear the picture.

27. That the Uttarakhand Co-operative Society and Panchayat Audit Department and Local Fund Audit Department Personnels Unification Rules, 2019 equates the status of the post hold by the petitioner and the private Respondent No.4 on the basis of only same pay scale. Hence the petitioner is getting higher pay scale much before the private Respondent No.4 got the same after upgradation of pay scale, then the petitioner must be treated senior in comparison to the private Respondent No.4.

30. That the opinion of the Personnel Department Uttarakhand Govt given before unification clearly states that the administrative department (Finance Dept) must ascertain that the petitioner should be kept senior on the basis of substantive appointment. Thus

seniority must be decided on the basis of Substantive appointment to the lien post (including cadre level, date and pay scale)".

7. Our observations, on the basis of documents brought on record, thus are as below:

i. The impugned final seniority list dated 05.09.2022 has been issued vide Annexure-1 to the claim petition (Office Memorandum dated 05.09.2022). In this O.M., the objections of the petitioner against the tentative seniority list have been disposed of stating that the posts held by the petitioner and respondent no. 4 have become same according to the Unification Rules, 2019 and their dates of appointments on similar posts being 18.07.2005 and 18.05.1998 respectively, the respondent no. 4 has been kept at sl.no. 4 in the seniority list and the petitioner has been kept at sl. No. 5. The Tribunal observes that not only the objections of the petitioner against the tentative seniority list have not been considered in detail in such order but also there is no mention of the opinion of the Personnel Department which has been filed as Annexure-RA1 to the R.A. of the petitioner against the C.A. of respondent no. 4 and no reason for non-acceptance of this opinion of the Personnel Department has been given. This opinion of the Personal Department has been approved by the Principal Secretary of the Personnel Department on 11.12.2017 which asks that the Administrative Department (Finance Department) to ensure that the petitioner remains as the seniormost employee on the basis of his substantive appointment in the process of unification. This opinion further states that if the petitioner is otherwise eligible, he should be considered for promotion to the post of Deputy Director in the grade pay of Rs. 6600/-.

ii. The Tribunal notes that the above opinion is of the year 2017 while the Unification Rules have been finally promulgated in the year 2019. Further inter-departmental consultation between Administrative Department (Finance Department) and Personnel Department after the above note has not been produced before us but it is clear that while

disposing of the objections of the petitioner against the tentative seniority list, the opinions of the Personnel Department have not been kept in sight as there is no mention of the same nor the objections of the petitioner have been considered in detail.

iii. On the basis of the above, the Tribunal holds that the issue of seniority between petitioner and respondent no. 4 needs a thorough reconsideration by the Administrative Department (Finance Department) in consultation with the Personnel Department.

8. In view of the above, the Tribunal quashes the final seniority list dated 05.09.2022 so far as it relates to the petitioner and respondent no.4 and directs the respondent no. 1 to thoroughly examine the issue of seniority between the petitioner and respondent no. 4 in consultation with Personnel Department after giving an opportunity of hearing to both the petitioner and respondent no. 4. The petitioner and respondent no. 4 may provide their written submissions to the respondent no.1 in this regard along with relevant rules and rulings of Hon'ble Courts in support of their contentions, within a period of one month from the date of this order, on which the Administrative Department (Finance Department) shall take suitable decision in consultation with the Personnel Department and issue a speaking and reasoned order dealing with the various contentions of the petitioner and respondent no. 4 and place them at the appropriate places in the impugned seniority list.

9. The claim petition is disposed of as above. No order as to costs.

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

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

*DATE: APRIL 06, 2023*  
*DEHRADUN*  
*KNP*