

**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. 45/DB/2019

1. Vijaypal Singh S/o Matbar Singh, presently posted as Assistant Engineer (Civil) at office of Executive Engineer, PMGSY (ID) Rudraprayag.
2. Pankaj Pathak, S/o Mansha Ram Sharma, at presently working on deputation as Assistant Engineer (Civil) at HRDA.
3. Vishal Prasad S/o Sh. P.L. Arya, presently posted as Assistant Engineer (Civil) at Office of Executive Engineer, Irrigation Division, Rudrapur, Udham Singh Nagar.
4. Sudhir Saini S/o Sri Amrit Lal Saini, presently posted as Assistant Engineer (Civil) at office of Executive Engineer, Unit-1, Irrigation Design Organization, Roorkee, Haridwar.
5. Sanjay Kumar Singh S/o Sh. Jyoti Prakash Tamta, presently posted as Assistant Engineer (Civil) at Office of Executive Engineer, Jamrani Dam, Construction Division, Dumwadhunga, Haldwani, Nainital.

.....**Petitioners**

vs.

1. State of Uttarakhand through Principal Secretary/Secretary Irrigation, Civil Secretariat, Dehradun.
2. Engineer in chief, Irrigation Department, Yamuna Colony, Dehradun.
3. Uttarakhand Public Service Commission, through its Secretary, Gurukul Kangri, Haridwar.
4. Vipin Chandra Joshi, Retd. Assistant Engineer (Civil)
5. Prem Singh Rawat, Retd. Assistant Engineer (Civil)
6. Vikram Singh Bisht, Retd. Assistant Engineer (Civil).
7. Prem Kumar Godyal, Retd. Assistant Engineer (Civil) Retired) S/o Late Devendra Dutt.
8. Rampal Sharma, Assistant Engineer (Civil) (Retired) S/o Late Chandrabhan Sharma.
9. Umeed Hasan, Assistant Engineer (Civil) Retired)'S/o Late Deena Mohammad.
10. Virender Durr, Assistant Engineer (Civil) S/o Sh. Jevanand.
11. Humkum Singh Rawat, Assistant Engineer (Civil)
12. Sh. Tara Singh Rawat. 12. Shailendra Kumar Mangain, Assistant Engineer (Civil) S/o Sh. Jagdish Prasad Mangain.
13. Jayendra Singh, Assistant Engineer (Civil) S/o Sh. Fateh Singh.
14. Ramswaroop Raturi, Assistant Engineer (Civil) S/o Sh. Gayanand Raturi.
15. Anant Ram Uniyal, Assistant Engineer (Civil) S/o Sh. Ramprasad Uniyal.

16. Subhash Chandra Ramola, Assistant Engineer (Civil) S/o Sh. Ram Chandra Ramola.
17. Suresh Chandra, Assistant Engineer (Civil) S/o Sh. Kripal Singh.
18. Virendra Dutt Joshi, Assistant Engineer (Civil) S/o Sh. Bal Govind Joshi.
19. Rajeev Kumar Goswami, Assistant Engineer (Civil) S/o Sh. Suraj Prakash.
20. Rajendra Prasad Pant, Assistant Engineer (Civil) S/o Sh. Devi Prasad Pant.
21. Chandra Kishore, Assistant Engineer (Civil) S/o Sh. Naya Ram Uniyal.
22. Himanshu Kishore, Assistant Engineer (Civil) S/o Sh. G.N. Ghildiyal.
23. Vinod Prasad Dangwal, Assistant Engineer (Civil) S/o Sh. Radha Krishan Dangawal.
24. Krishna Singh Chauhan, Assistant Engineer (Civil)S/o Sh. Bhagwan Singh Chauhan.
25. Rameshwar Prasad Chamoli, Assistant Engineer (Civil) S/o Sh. Narayan Dutt.
26. Sudhir Chand Pant, Assistant Engineer (Civil) S/o Sh. J.V. Pant.
27. Chandi Prasad Bhatt, Assistant Engineer (Civil) S/o Sh. Mohan Lal Bhatt.
28. Ratnakar Belwal, Assistant Engineer (Civil) S/o Sh. Vishal Mani Belwal.
29. Kamal Singh Sajwan, Assistant Engineer (Civil) S/o Sh. Prem Singh.
30. Jaipal Singh Rawat, Assistant Engineer (Civil) S/o Sh. Avaval Singh.
31. Prem Lal Nautiyal, Assistant Engineer (Civil) S/o Sh. Purshottam Dutt.
32. Vinod Kumar Dangwal, Assistant Engineer (Civil) S/o Sh. R.S. Dangwal
33. Vinod Kumar Nautiyal, Assistant Engineer (Civil) S/o Sh. Fojram.
34. Dinesh Chandra Uniyal, Assistant Engineer (Civil) S/o Sh. Devanand Uniyal.
35. Dhanendra Prasad Joshi, Assistant Engineer (Civil) S/o Sh. Pareswar Prasad.
36. Arvind Prasad Joshi, Assistant Engineer (Civil) S/o Sh. Govind Prasad.
37. Jagdish Chandra Thapliyal, Assistant Engineer (Civil) S/o Sh. Nanda Dutt.
38. Anoop Kumar Dyundi, Assistant Engineer (Civil) S/o Sh. Kamleshwar Prasad.
39. Surendra Singh, Assistant Engineer (Civil) S/o Sh. Teg Singh.
40. Sudhir Kumar Mamgain, Assistant Engineer (Civil) S/o Sh. R.P. Mamgain.
41. Arvind Singh Negi, Assistant Engineer (Civil) S/o Sh. Khushal Singh.
42. Rakesh Lamba, Assistant Engineer (Civil) S/o Sh. Hari Ram Lamba.
43. Rajendra Prasad Kudiya, Assistant Engineer (Civil) S/o Sh. Ram Chandra.
44. Arun Kumar Bahuguna, Assistant Engineer (Civil) S/o Sh. Mani Ram Bahuguna.
45. Rajesh nautiyal, Assistant Engineer (Civil) S/o Sh. Ganesh Prasad Nautiyal.
46. Shiv Ram Jagudi, Assistant Engineer (Civil) S/o Sh. Jagdish Prasad.
47. Ramesh Chandra Kothari, Assistant Engineer (Civil) S/o Sh. Bacchi Ram Kothari.
48. Raghuveer Singh Gosain, Assistant Engineer (Civil) S/o Sh. Sobat Singh Gosain.
49. Parshuram, Assistant Engineer (Civil) S/o Sh. Janardhan Prasad.
50. Naveen Singh Laspal, Assistant Engineer (Civil) S/o Sh. Hayat Singh Laspal.
51. Madan Singh Bisht, Assistant Engineer (Civil) S/o Sh. Pan Singh.
52. Panni Lal, Assistant Engineer (Civil) S/o Sh. Krat Lal

53. Kamlesh Pandey, Assistant Engineer (Civil) S/o Sh. Nityanand Pandey.
54. Mohan Singh Rawat, Assistant Engineer (Civil) S/o Bachan Singh Rawat
55. Bhuwan Chandra Nainwal, Assistant Engineer (Civil) S/o Sh. Banshidhar Nainwal.
56. Pan Singh, Assistant Engineer (Civil) S/o Sh. Govind Singh.
57. Manoj Kumar, Assistant Engineer (Civil) S/o Sh. Ramdas Gupta.
58. Kamal Kant Joshi, Assistant Engineer (Civil) S/o Sh. Vidya Sagar Joshi.
59. Manoj Semwal, Assistant Engineer (Civil) S/o Sh. Radha Krishn Semwal.
60. Om Ji, Assistant Engineer (Civil) S/o Sh. Shivpoojan Prasad.
61. Lalit Mohan Kudiyal, Assistant Engineer (Civil) S/o Sh. Mayaram Kudiyal
62. Sachin Sharma, Assistant Engineer (Civil) S/o Sh. Rajesh Kumar.
63. Amit Kumar Gupta, Assistant Engineer (Civil) S/o Sh. Radhe Shyam Gupta.
64. Abhay Kumar Verma, Assistant Engineer (Civil) S/o Sh. Shiv Chandan Singh Verma.
65. Sachin Kumar Singhal, Assistant Engineer (Civil) S/o Sh. Rajesh Kumar.
66. Harish Chandra, Assistant Engineer (Civil) S/o Sh. Ramesh Chandra.
67. Ganesh Prasad Nautiyal, Assistant Engineer (Civil) S/o Sh. Siyaram Nautiyal.
68. Vinod Singh Rawat, Assistant Engineer (Civil) s/o Sh. Virendra Singh Rawat.

.....**Respondents**

Present: Sri L.K.Maithani, Advocate, for the Petitioners
 Sri V.P.Devrani, A.P.O., for the Respondent no.1
 Sri Ashok Singh, Advocate, for Respondents no. 61 & 62

JUDGMENT

DATED: JANUARY 20, 2023

Per: Sri Rajeev Gupta, Vice Chairman (A)

The reliefs prayed for in this claim petition and brief facts of this claim petition have been mentioned in this Tribunal's order dated 28.10.2020 vide which the interim relief application was disposed of. The same is reproduced as herein below:

“Petitioners filed a writ petition no. 442/SB/2016 before Hon'ble High Court of Uttarakhand at Nainital, which was dismissed by the Said Court *vide* judgment dated 12.03.2019 on the ground of alternative remedy with the direction to the petitioners to approach the Tribunal.

2. Petitioners have, therefore, filed present claim petition with following prayers:

“(i)To declare that the promotion order dated 07.06.2012 of the private respondents no. 4 to 6 and promotion order dated 30.01.2013 of private respondents no. 7 to 68 on the post of Assistant Engineer (Civil) was/ is made in violation of Rule 17 r/w Rule 18(2) of Uttaranchal Engineers (Department of Irrigation) (Group B)Service Rules, 2003, hence the promotion order dated 07.06.2012 and 30.01.2013 of private respondents no. 4 to 68 is not proper,

regular and substantive, hence cannot place above to the petitioners in the seniority list.

(ii) To quash the seniority list dated 17.12.2015 from Sl. No. 414-478 up to the extent where it relates to the placing of private respondents no. 4 to 68 in the seniority list.

(iii) To issue an order or direction to the respondent no.1 to issue a fresh seniority list by making the combined list of petitioners and the private respondents no. 4 to 6 as per Rule 17 of Uttaranchal Engineers (Department of Irrigation) (Group B) Service Rules, 2003 (as amended till date) r/w Uttaranchal Government Servant Seniority rules, 2002, with all consequential benefits.

(iv) To issue any other order or direction which this Court may deem fit and proper in the circumstances of case in favour of the petitioners.

(v) To award the cost of petition.”

3. Interim relief has been sought for directing official respondents, not to make further promotion of private respondents till the disposal of present claim petition.

4. The main grounds taken by the petitioners in the claim petition are as follows:

Recruitment year of the petitioners, as per rules is 2010-11 and recruitment year of private respondents no. 4 to 6 and 7 to 68 is 2011-12 and 2012-13, which is clearly of the subsequent recruitment year. According to the petitioners, if any regular appointment through promotion [of the private respondents no. 4 to 68], was to be made, then that should not have been made until direct recruitment process of the petitioners was completed. But the respondent no. 1, *i.e.*, the appointing authority, in total violation of the Service Rules, 2003, made substantive appointment through promotion of respondents no. 4 to 6 and 7 to 68. Thereafter, without preparing year of recruitment-wise combined list of the petitioners and private respondents no. 4 to 6, as per Rule 17 of the Service Rules, issued the final seniority list dated 17.12.2015, thereby placing the persons of both the subsequent year selection, *i.e.*, respondents no. 4 to 6 and 7 to 68 in the list without assigning seniority to the petitioners as yet.

A reference of G.O. dated 26.03.2003 and guidelines for making recruitments on the posts has also been given. Referring to the G.O., it has been pleaded that, where appointments are to be made on the cadre post through direct recruitment for a particular recruitment year, then the same should be calculated and be sent to the Commission two years in advance (of the concerned recruitment year).

According to the petitioners, G.O. dated 23.06.2003 and Service Rules governing the field, clearly stipulate that if in any year of recruitment, appointments are to be made both by direct recruitment and promotion, then regular appointments shall not be made unless selections are made from both the sources, *i.e.*, direct recruitment and promotion, but the respondents, in total contravention of G.O. dated 23.06.2003, sent requisition of vacancies for selection year 2010-11 on 02.08.2011 to the Uttarakhand Public Service Commission. [*Uttarakhand Public Service Commission has not been issued notice as yet. The Tribunal is of the view that issuance of notice to the Commission for the purpose of deciding the interim relief prayer is not required.*]

5. It is the submission of Ld. Counsel for the petitioners that the direct recruitment process, substantially, commenced in the same recruitment year, according to the vacancies calculated. Although the examination and selection process could not be completed within that

recruitment year itself, but the seniority of such direct recruits should be assigned interspersing the promotees of the same recruitment year.

6. Objections to the interim relief prayer have been filed on behalf of the private respondents, as well as Respondent State. Whereas Sri V.P. Devrani, Ld. A.P.O., is representing the State; Sri Ashok Singh, Advocate is representing respondents no. 61 and 62 and respondent no. 24 is being represented by Sri Sandeep Kothari, Advocate.

7. It is the submission of Ld. A.P.O. that the petitioners were appointed against the vacancies of selection year 2012-13 in selection year 2013-14 on 26.02.2014 on the post of Assistant Engineer (Civil), through Public Service Commission. The respondents were promoted to the post of Assistant Engineer on 07.06.2012 and 30.01.2013 under the departmental promotion quota, as provided in the Uttaranchal Engineers (Department of Irrigation) (Group B) Service Rules, 2003. Hence, the private respondents are senior to the petitioners in view of the substantive dates of their appointment/ promotion orders. Promotion exercise for the post of Executive Engineer is being conducted and, therefore, the interim relief application, filed by the petitioners, is liable to be dismissed.

8. It is the submission of Sri Sandeep Kothari, Ld. Counsel for respondent no. 24 that the petitioners and the answering respondent (respondent no. 24) were not appointed in one recruitment year and, therefore, there is no question of any combined select list, as provided in Rule 17. Sri Kothari also submitted that the only purpose of filing such claim petition is to delay the promotion of the answering respondent, more particularly, when the petitioners, even as on the date, are not qualified in the length of service, to be considered for promotion. Petitioners are litigating on frivolous grounds according to Sri Kothari. Recruitment year starts from the first day of July and recruitment year 2010-11 reflects the year from 1st July, 2010 to 30th June, 2011. In the present case, even the requisition was sent on 02.08.2011. It is a case where even the requisition was not sent in the year 2010-11. An entry made in a particular proforma is the sole basis of petitioners' case.

9. Sri Ashok Singh, Ld. Counsel for respondents no. 61 and 62 submitted that the petitioners are nowhere relying upon the Seniority Rules, but are relying on the Recruitment Rules, which have no relevance in the matter of seniority. Petitioners have no *prima facie* case, balance of convenience is in favour of the respondents and no irreparable loss will be caused to the petitioners if promotional exercise continues and promotion is given to the private respondents as per Rules.

10. Ld. Counsel for respondents no. 61 & 62 also submitted that the promotion order of respondents. No. 4 to 6 is dated 07.06.2012 and of respondents no. 7 to 68 is dated 30.01.2013. Appointment order of petitioners is dated 26.02.2014. Petitioners were not even born in the organization when the promotion orders of the respondents were issued in the years 2012 and 2013. Petitioners have no right to challenge the same.

11. ***Prima facie*, it would appear that the petitioners were appointed on 26.02.2014 as Assistant Engineer (Civil). The appointment was made through Public Service Commission. The respondents were promoted as Assistant Engineers on 07.06.2012 and 30.01.2013 under the departmental promotion quota, as per the Uttarakhand Engineers (Department of Irrigation) (Group B) Service Rules, 2003. *Prima facie*, it would also appear that the private respondents are senior to the petitioners in view of the dates of their substantive appointment/**

promotion orders. Issues, as raised, in present claim petition are with regard to the seniority of the petitioners *qua* the respondents. *Prima facie*, petitioners and respondents belong to different years of recruitment. We are unable to hold, at this stage, that the petitioners are senior to the private respondents.

12. Stay of promotion will take away the rights of those who are eligible for the same, as per Rules. If, subsequently, the claim petition is dismissed, this Tribunal may not be in a position to give direction to promote the respondents with retrospective effect. The injury caused to the respondents by grant of stay, cannot be undone by the Tribunal subsequently. On the other hand, if the claim petition is finally allowed, the petitioners can always be given seniority and notional promotion, with pecuniary benefits, from the date their juniors were promoted. Balance of convenience is in favour of the private respondents.

13. **Whereas the writ petition was filed before Hon'ble High Court of Uttarakhand at Nainital in the year 2016, the same was dismissed on the ground of alternative remedy on 12.03.2019, the claim petition was filed on 12.04.2019, an attempt is being made to unsettle three events which occurred on 07.06.2012, 30.01.2013 (promotion order of respondents) and seniority list dated 17.12.2015 through interim relief prayer, which, in the given facts of the case, cannot be accepted.**

14. This Tribunal is, therefore, not impressed to accept the interim relief prayer of the petitioners to stay promotional exercise till the disposal of present claim petition. Objections raised on behalf of respondents on interim relief prayer are accepted at this stage.

15. Promotional exercise, if any, undertaken by the official respondents, shall be subject to final decision of present claim petition."

2. Counter Affidavits have been filed on behalf of some respondents to which Rejoinder Affidavits have also been filed. Supplementary Counter Affidavit has also been filed on behalf of respondent no. 24, *inter-alia*, stating that the entire case has been set up by the petitioners claiming that they have been appointed with respect to the vacancies of the year 2010-11 while according to the requisition prepared by the department and sent to the State Govt. it has been specifically mentioned that these vacancies of direct recruitment are with respect to the selection year 2006-07, 2007-08, 2008-09 and 2009-10 and hence it can never be said that all these vacancies were with respect to the recruitment year 2010-11. For the promotion of the answering respondent (respondent no.24) he had completed the requisite length of service several years back to be promoted as Assistant Engineer and further the vacancies were there but the Govt. accumulated such vacancies and carried out such promotional exercise in the year 2012-13. Since it can never be said that the vacancies were relating to one

particular recruitment year, there is no question of comparing a selection by direct recruitment *vis-à-vis* selection through promotion.

3. Written arguments have been filed on behalf of respondents no. 1 & 2 and respondents no. 61 and 62.

4. We have perused the record and heard Sri L.K.Maithani, learned Counsel for the petitioners, Sri V.P. Devrani, learned A.P.O. for the respondents no. 1 & 2 and Sri Ashok Singh, learned Counsel for the private respondents no. 61 and 62, who have finally argued the case.

5. The contention of learned Counsel for the petitioners is that against the vacancies of selection year 2010-11, a requisition dated 02.08.2011 was sent to the Uttarakhand Public Service Commission for the recruitment to the posts of Assistant Engineer (Civil) under the direct recruitment quota. The petitioners who fulfilled all the eligibility criteria for the post, had applied for the same and after completing the selection process, vide order dated 26.02.2014 and the order dated 02.12.2014, respondent No. 1 appointed them on the post of Assistant Engineer (Civil). During the pendency of the recruitment for the selection year 2010-11, a subsequent requisition was sent to the Uttarakhand Public Service Commission for the recruitment to the post of Assistant Engineer (Civil) under promotion quota and in very arbitrary, discriminatory and illegally manner in utter disregard of rules, the respondent No. 1 made promotions of the private respondent No. 4 to 6 on 07.06.2012 and thereafter in the next subsequent selection, promotion was granted to the private respondent No. 7 to 68 on 30.01.2013 without completing the direct recruitment process of the vacancies of selection year 2010-11.

Thereafter vide office order dated 17.12.2015, a final seniority list of Assistant Engineers (Civil) from serial No. 278 to serial No. 478 was issued, in total contravention of rule 17 r/w rule 18(2) of the Uttaranchal Service of Engineer (Irrigation Department) (Group-B) Service Rules, 2003 (as amended up till date) without making any combined list with the direct recruits i.e.

petitioners. From the bare perusal of the impugned seniority list, it is clearly revealed that promotion to the private respondent No. 4 to 6 were granted vide office order No. 259/11-2012-01(90)/2003 of dated 07.06.2012 under vacancies of promotion quota of 2011-12 when the selection process against the vacancies of direct requirement quota of the selection year 2010-11 was already under process. It has been specifically provided under Rule 18(2) of the Service Rules, 2003 that if in any year of recruitment appointments are to be made both by direct recruitment and by promotion, then regular appointments shall not be made unless selection are made/completed from both the sources and a combined list is prepared in accordance with Rule 17. Thus, the regular appointments through promotion of the private respondents No. 4 to 6 were made in total contravention of the Rules 18(2) of the Service Rules, 2003, who were of subsequent recruitment year than petitioners.

The official respondents delayed the selection/recruitment of the direct recruit quota and started again selection process for the vacancies of the promotion quota of the year 2012-13 and requisition was sent to the UKPSC for selection to the post of Assistant Engineer (Civil) by the respondent No. 1 on 18.10.2012. The respondent No. 3, the UKPSC without completing the earlier selection process against the vacancies of the selection year 2010-11 (direct recruitment), held its meeting (D.P.C.) on 28.10.2012 and made the selection for the vacancies of the selection year 2012-13 in promotion quota. Thereafter, the respondent No. 1 issued the promotion order dated 30.01.2013, by which the promotion was granted to the private respondents no. 7 to 68 on the post of Assistant Engineer (Civil) against the vacancies of the selection year 2012-13.

The selection of the petitioners was made against the vacancies of selection year 2010-11, but due to the wrong of the respondents, the appointments of the petitioners were made on the post in year 2014 awarding the selection year 2013-14. Without completing the formalities and process of previous selection year 2010- 11, the respondent No. 1

started the process of selection/promotion for the vacancies of subsequent year 2011-12 & 2012-13 and issued the promotion orders dated 07.06.2012 and 30.01.2013 of the private respondent No. 4 to 68 in utter disregard of provisions of Service Rules, 2003. Hence appointment/promotion of the private respondents No. 4 to 68 vide promotion orders dated 07.06.2012 & 30.01.2013 is not proper, regular and substantive and until the appointment of the petitioners, the promotion of private respondents cannot be deemed and treated as regular and substantive promotion. Therefore, for the purpose of seniority, the promotion and appointments of both the petitioners and private respondents No. 4 to 6 should be treated to be of the same selection year and accordingly under rule 8 of the seniority Rules 2002 the seniority of both the petitioners and private respondents No. 4 to 6 should be decided and after the determination of seniority between the petitioner and private respondents No. 4 to 6, the respondents No. 7 to 68 be placed in seniority list.

6. Learned A.P.O. has mainly argued that the petitioners are directly appointed Assistant Engineers (under 50% direct recruit quota) from Public Service Commission and the date of substantive appointment of the petitioner is 26-02-2014 in the selection year 2013-2014 (beginning from 01-07-2013 to 30-06-2014). The private respondents no 4 to 68 are promoted A.E. Civil (under 50% Departmental promotion quota available in the rules). The date of promotion/substantive appointment of the respondents no 4 to 6 is 07-06-2012 (selection year starts from 01-07-2011 to 30-06-2012) while the date of promotion/substantive appointment of respondents no 7 to 68 is 30-01-2013 (selection year starts from 01-07-2012 to 30-06-2013). Hence the petitioners were not even born in the AE service cadre when the promotion order of the private respondents no 4 to 68 were issued in the years 2012 and 2013. Therefore, petitioner have no legal right to challenge the settled seniority of the petitioners. The rule 8(1) of the Uttarakhand Government Servant Seniority Rules 2002 is applicable in the present matter of the petitioners and private respondents no 4 to 68 for determination of

inter- se-seniority. The direct appointed AEs, (Civil) and promotee AEs (civil) are not of any one selection, hence there is no application of rule 8(3) of seniority rules 2002 in the present matter at hand for the purpose of determination of seniority. The seniority rule 8(1) provides as under:

8(1) Where according to the service rules appointments are made both by promotion and by direct recruitment, the seniority of persons appointed shall subject to the provisions of the following sub-rules, be determined from the date of the order of their substantive appointments and if two or more persons are appointment order.

Provided further if the appointment order specifies a particular back date, with effect from which a person is substantively appointed, that date will be deemed to be the date of order substantive appointment and in other cases, it will mean the date of order:

In view of the above seniority rule 8(1), the private respondents are senior to the petitioners on the basis of the substantive dates of their appointment/promotion orders.

7. The main contentions of learned Counsel for the respondents no. 61 and 62 are as below:

(i) The petitioners, if they want to challenge the recruitment or promotion ought to reply on Service Rules, 2003 and if they want to challenge the Seniority ought to reply on the Seniority Rules. Admittedly, the petitioners have not challenged the promotion of the respondents. The petitioners in no way can rely on the recruitment/promotion rules for the purpose of seniority. Rule 17 of the Rules of 2003 is about combined select list. Rule 18(2) of these Rules is about appointment. They are applicable when direct recruitment and promotion both are made in any particular year only. These Rules cannot be used by direct recruits of one year against the promotees of other years. Rule 21 of these Rules reads as below:

***"21. Seniority:** The Seniority of persons substantially appointed in any category of post shall be determined in accordance with the Uttaranchal Government Servants Seniority Rules 2002 as amended from time to time."*

The plain reading of the above Rule 21 further corroborates the arguments that for the purpose of Seniority the reliance ought to be placed on Uttaranchal Government Servants Seniority Rules 2002. The petitioners

while challenging the Seniority have not placed reliance on any of the Seniority Rules.

The Uttaranchal Govt. Servants Seniority Rules, 2002 are relevant for the purpose of adjudication of the present claim petition, which according to Rule-3 thereof have overriding effect over all the rules. Sub-clause (ii) of the last proviso to Rule 8 of these rules, reads as below:

“Provided that:-

(i)

(ii) Where appointments from any source fall short of the prescribed quota and appointment against such unfilled vacancies are made in subsequent year or years, the persons so appointed shall not get seniority of any earlier year but shall get the seniority of the year in which their appointments are made, so however, that their names shall be placed at the top followed by the names, in the cyclic order of the other appointees:

(iii)”

It is clear from the above that the petitioners will get the seniority from the date of substantive appointment and not from the date of vacancies.

(ii) The promotion orders of the respondents no. 4 to 6 are dated 07.06.2012 and the respondents no. 7 to 68 are dated 30.01.2013, while the appointment orders of the petitioners are dated 26.02.2014. The claimants/petitioners did not challenge the promotion orders of the respondents no. 4 to 6 dated 07.06.2012 and of the respondents no. 7 to 68 dated 30.01.2013. Even otherwise it may not be appropriate and legal for this Hon'ble Tribunal to go into the question of legality of selection/appointment of the respondents when the selection/appointment of the respondent has not been specifically challenged. The petitioners are further bound by the terms and condition of their appointment letter (Annexure A-7 Page 96-101). The petitioners have not challenged their appointment letter and now the petitioners in the collateral proceeding intend to get the terms of their appointment letters and the date of their joining post (date of substantive appointment) altered without even challenging their Appointment letters. The petitioners indirectly intend to get proponed the date of their joining. The preponement is sought from the date when the

petitioners were not even born in the organization and from the date when the petitioners were not even eligible and not having the eligible qualifications. The petitioners had not even cleared the written examination by that time. The case of the answering respondents is that the date of the substantive appointment is the sole accepted criteria for determination of the seniority. The substantive appointment is defined in the Rule 4(h) of the Seniority Rules, 2002 as “the appointment on the post in the cadre of the service, made after the selection as per the rules.”

(iii) Reference to certain case law is also made in the written arguments filed by learned Counsel for the respondents no. 61 and 62. The relevant extract of his written arguments is reproduced below:

“38. That the case of the answering respondents is fairly covered in the following judgments:

A. Pawan Pratap Singh & Ors versus Reevan Singh & Ors (2011) 3 SCC 267.

B. Shanti Shekhar Singh versus State of U.P. Service Bench no. 19231 of 2016. The law as laid in Pawan Pratap Singh has been followed, elaborated in Shanti Shekhar Singh by the Hon'ble High Court.

39. That the cardinal principle for the determination of seniority is that unless provided in the Rules, seniority cannot relate back to prior to the date of the birth of the incumbent's birth in the service /cadre. The judgment in support are:

A. Ram Janam Singh Versus state of U.P. (1994) 2SCC 622

B. Uttaranchal Forest Rangers Association versus State of Bihar (2006) 10 SCC 346

C. State of Bihar versus Akhourri Sachindra Nath (1991) Suppl (1) SCC 334

D. Suraj Prakash Gupta versus State of J & K (2000) 7 SCC 561 it state that direct recruit cannot claim retrospective date of recruitment from the date of vacancy.

E. Jagdish Ch Patnaik Versus State of Orissa (1998) 4 SCC 456.

40. That the direct recruit can claim seniority from the date of regular appointment and cannot claim the seniority from the date when the direct recruit was not even born in the service. N.K. Chauhan versus State of Gujarat (1977) 1 SCC 308, Janardhana Versus Union of India (1983) 3 SCC 601.

41. That slots cannot be kept reserved for direct recruits for retrospective appointment as stated by the Hon'ble Supreme Court in A.N. Pathak versus Secy. 1987 Supp. SCC 763.

42. That in Suraj Praksh Gupta and Others versus State of J and K and Others 2000(7) SCC 561 Civil Appeals no. 3034, 3035 to 3047 of 2000, the Hon'ble Supreme Court while deciding the Point 4 observed:

"Point 4:

Direct recruits cannot claim appointment from date of vacancy in quota before their selection:

78. We have next to refer to one other contention raised by the respondents-direct recruits. They claimed that the direct recruitment appointment can be antedated from the date of occurrence of a vacancy in the direct recruitment quota, even if on that date the said person was not directly recruited. It was submitted that if the promotees occupied the quota belonging to direct recruits they had to be pushed down, whenever direct recruitment was made. Once they were so pushed down, even if the direct recruit came later, he should be put in the direct recruit slot from the date on which such a slot was available under direct recruitment quota.

79. This contention, in our view, cannot be accepted. The reason as to why this argument is wrong is that in Service Jurisprudence, a direct recruit can claim seniority only from the date of his regular appointment. He cannot claim seniority from a date when he was not born in the service. This principle is well settled. In N.K. Chauhan v. State of Gujarat, [1977] 1 SCC 308 (at p.321) Krishna Iyer, J. stated:

"Later direct recruit cannot claim deemed dates of appointment for seniority with effect from the time when direct recruitment vacancy arose. Seniority will depend upon length of service."

Again in A. Janardhana Vs Union of India, (1983) 2 SCR 936: (AIR 1983SC 769: 1983 Lab IC 849) it was held that a later direct recruit cannot claim seniority from a date before his birth in service or when he was in school or college. Similarly it was pointed out in A.N. Pathak vs Secretary to the Government, 1987 Suppl SCC 763 (at page 767): AIR 1987 SC 716 at page 718: 1987 Lab IC 638 at page 651) that slots cannot be kept reserved for the direct recruits for retrospective appointments."

43. That the observation of the Hon'ble Supreme Court in 1983 (3) SCC 601: 1983 AIR (SC) 769 titled as A. Janardhana versus Union of India and other in the Para 38 are very relevant for the purpose of the present claim petition which are:

38. Before we conclude this judgment, we will have qualm of conscience if we do not draw attention to a very unjust, unfair and inequitable situation having a demoralising effect on public services probably ensuing from certain rules framed by the Government and the decisions of this Court. Even where the recruitment to a service is from more than one source and a quota is fixed for each service, yet more often the appointing authority to meet its exigencies of service exceeds the quota from the easily available source of promotees because the procedure for making recruitment from the market by direct recruitment is long prolix and time consuming. The Government for exigencies of service, for needs of public services and for efficient administration, promotees person easily available because in a hierarchical service one hopes to move upward. After the promotee is promoted, continuously renders service and is neither found wanting nor inefficient and is discharging his duty to the satisfaction of all, a fresh recruit from the market years after promotee was inducted in the service comes and challenges all the past recruitments made before he was born in service and some decisions especially the ratio in Jaisinghani's case as interpreted in two B. S. Gupta's cases gives him an advantage to the extent of the promotee being preceded in seniority by direct recruit who enters service long after the promotee was promoted. When the promotee was promoted and was rendering service, the direct recruit may be a schoolian or college going boy. He emerges from the educational institution, appears at a competitive examination and starts challenging everything that had happened during the period when he has had nothing to do with service. A mandamus issued in Jaisinghani's case led to a situation where promotees of the year 1962 had to yield place to direct recruits of 1966 and the position worsened thereafter. In the case in hand, appellant a promotee of September 27, 1962 is put below N. K. Prinza who appeared at competitive examination in April 1976 i.e. One who came 14 years after the appellant, and it does not require an intelligent exercise to reach a conclusion that 14 years prior to 1976 Mr. Prinza who is shown to be born on July 20, 1950 must be aged about 12 years and must have been studying in a primary school. Shorn of all service jurisprudence jargon one can bluntly notice the situation that a primary school student when the promotee was a member of the service, barged in and claimed and got seniority over the promotee. If this has not a demoralising effect on service one fails to see what other inequitous approach would be more damaging. It is therefore, time to clearly initiate a proposition that a direct recruit who comes into service after the promotee was already unconditionally and without reservation promoted and whose promotion is not shown to be invalid or illegal according to relevant statutory or non-statutory rules should not be permitted by any principle of seniority to score a march over a promotee because that itself being arbitrary would be violative of Arts. 14 and 16."

44. That the case of the respondents is also fully covered by the Decision of Hon'ble Allahabad High court in case titled as " Ram Chaturvedi vs State of U.P. judgment dated 10 Aug 2007. The facts of the case and relevant rules are the same as in the present petition and the present claim petition is likely to be dismissed by the Hon'ble Tribunal in view of law as laid in the said case. The complete pleadings of the Claimant are answered in the said judgment.

"Seniority.- Seniority in any category of posts in the service shall be determined from the date of order of substantive appointment and if two or more persons are appointed together, from the order in which their names are arranged in the appointment order.

(i) the inter se seniority of persons directly appointed to the service shall be the same as determined at the time to selection.

(ii) the inter se seniority of persons appointed to the service by the promotion shall be the same as it was in the substantive posts held by them at the time of promotion.

NOTES- (1) 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 the reasons will be final.

(2) Where the appointment order specified a back date with effect from which a person is to be appointed substantively that date will be deemed to be the date of the order of substantive appointment in other cases it will mean the date of issue of the order.

22. A perusal of the above rule indicate that seniority was to be determined from the date of substantive appointment and if the two persons are appointed by same order then according to their order in the select list. Determination of seniority by quota rota was not contemplated. The above Rules were amended in 1993 and amended Rule 21 now provides:

21. Seniority. The seniority of persons substantively appointed in any category of posts shall be determined in accordance with the Uttar Pradesh Government Servants Seniority Rules, 1991, as amended from time to time.

23. The seniority of a person substantively appointed in any category to post shall be determined in accordance with U.P. Government Servant Seniority Rules, 1991 as amended from time to time. Thus 1991 Rules have to be looked into to find out the rules for determination of seniority. It is the case of both the parties that seniority has to be determined according to 1991 Rules. The relevant Rule 8 is quoted below:

8. Seniority where appointments made by promotion and direct recruit-

(1) Where according to the service rules appointments are made both by promotion and by direct recruitment, the seniority of persons appointed shall, subject to the provisions of the following sub-rules, be determined from the date of the order of their substantive appointments, and if two or more persons are appointed together, in the order in which their names are arranged in the appointment order:

Provided that if the appointment order specifies a particular back date, with effect from which a person is substantively appointed, that date will be deemed to be the date of order of substantive

appointment and, in other cases, it will mean the date of issuance of the order;

Provided further 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.

(2) The seniority interse of persons appointed on the result of any one selection-

(a) through direct recruitment, shall be the same as it is shown in the merit list prepared by the Commission or by the Committee, as the case may be:

(b) by promotion, shall be as determined in accordance with the principles laid down in rules 6 or rule 7, as the case may be, accordingly as the promotion are to be made from a single feeding cadre or several feeding cadres.

(3) Where appointments are made both by promotion and direct recruitment on the result of any one selection the seniority of promotees vis a vis direct recruits shall be determined in a cyclic order (the first being a promotes) so far as may be, in accordance with the quota prescribed for the two sources.

Illustrations-(1) Where the quota of promotees and direct recruits is in the proportion of 1:1 seniority shall be in the following order-

First Promotee SecondDirect recruits and so on:

(2) where the said quota is in the proportion of 1:3 the seniority shall be in the following order-

First Promotee

Second to fourth..... Direct recruits

Fifth..... Promotee

Sixth to eightDirect recruits.

and:

Provided that-

(i) where appointments from any source are made in excess of the prescribed quota, the persons appointed in excess of quota shall be pushed down, for seniority, to subsequent year or years in which there are vacancies in accordance with the quota:

(ii) where appointments from any source fall short of the prescribed quota and appointment against such unfilled vacancies are made in subsequent year or years, the persons so appointed shall not get seniority of any earlier year but shall get the seniority of the year in which their appointments are made, so however, that their names shall be placed at the top followed by the names, in the cyclic order of the other appointees;

(iii) Where, in accordance with the service rules the unfilled vacancies from any source could, in the circumstances mentioned in the relevant service rules be filled from the other source and appointment in excess of quota are so made, the persons so appointed shall get the seniority of that very year as if they are appointed against the vacancies of their quota.

24. The post of Marketing Inspector is being filled both by direct recruitment and promotion hence, the relevant rule which is to be looked into is rule 8(1) and 8(3) as quoted above. The said rule 8 (3) provides "Where appointments are made both by promotion and direct recruitment on the result of any one selection the seniority of promotees vis-a-vis direct recruits shall be determined in a cyclic order...."

25. Rule 8(1) provides that where appointments are made both by promotion and by direct recruitment, the seniority of persons appointed shall, subject to the provisions of the subsequent sub rules, be

determined from the date of the order of their substantive appointments. Thus, the basic criteria of determination of seniority is date of the order of their substantive appointment. Rule 8(1) and Rule 8(2) both have to be harmoniously construed to give effect to the object and purpose of the entire rule as noted above. Under Rule 21 of 1980 Rules also before the amendment and after the amendment, the criteria of determination of seniority is substantive appointment. The sub Rule (3) of Rule 8 contemplates determination of seniority in a cyclic order only when appointments are made both by promotion and direct recruitments on the result of any one selection. Thus, sub rule (3) of rule 8 comes into play when both promotion and direct recruitments take place as result of one selection. In case both direct recruitment and promotion are not on the basis of result of one selection, the determination of the seniority has to be in accordance with rule 8 (1) i.e. from the date of the Cider of substantive appointment. The 1991 Rules were framed for determining the seniority giving it overriding effect and the quota rota rule has been applied only to a limited extent i.e. while determining seniority when both promotion and direct recruitment is on the basis of one selection. When selections are different, i.e. held in different years, there is no question of applicability of quota and rota Rules. The substantive appointment of direct recruits were made in the year 1974 by the U.P. Public Service Commission thereafter ad-hoc direct recruits were regularised in the year 1981 under 1979 Rules and ad-hoc promotions were regularised in the year 1989 under 1988 Rules. All the substantive appointments being in different years i.e. 1974, 1981 and 1989, there is no question of applying quota rota rules for determining the seniority. As noted above, a perusal of the seniority list indicates that from serial No. 1 to 55, the direct recruits of 1974, have been placed and thereafter from serial No. 56 to 650, direct recruits which were initially appointed on ad-hoc basis from the year 1972 to 1977 were regularised w.e.f. 1981 and the ad-hoc promotees who were given promotion from 1971 to 1984, were regularised in the year 1991. The substantive appointments of all being of different years, they have been placed in the seniority list accordingly, which is in conformity with Rule 8 of 1991 Rules. Thus, the submission of the learned Counsel for the petitioner that the petitioner is entitled to be placed at serial No. 125, cannot be accepted. As far as inter se seniority amongst promotees are concerned, the same is also in accordance with 1991 Rules.

(26) In view of the foregoing discussions reliefs claimed in the writ petition, cannot be granted. The writ petition lacks merit and is dismissed."

45. That the Hon'ble Allahabad High Court in Shanti Shekhar Singh vs State of U.P Through Prin. Secy. vide judgment in SERVICE BENCH No. 19231 of 2016 has laid the law:

In light of above guidelines the settled provisions are that the seniority shall be counted from the date of actual appointment and not from the vacancy.

116. Much emphasis has been given by learned counsel arguing on behalf of the direct recruits of Rule 18 and it has been submitted that Rule 18 is mandatory and without preparing the list in a cyclic manner no appointment can be made from the list. The submission of the learned counsel is not tenable on the following grounds:-

I. The opening sentence of Rule 18 starts "if in any year of combined recruitment...." which means that law makers were fully aware of the fact that appointment on the basis of list prepared under Rules 15, 16 or 17 is hardly possible and that is why the sentence starts with the word "if" which denotes that if any case such recruitment is made then the list be prepared accordingly. It expresses that Rule 18 is neither mandatory nor rule of appointment. It is an internal procedure.

II. Rule 18 is meant for, "that the prescribed percentage is maintained" - the Rule provides the maintenance of such a list to ascertain the percentage of two categories.

III. Such list is required only when "if in any year of recruitment" which denotes that the year of recruitment must be same for the preparation of such list for maintaining the percentage of the cadre.

IV. Rule 19 provides that "appointing authority shall make appointment by taking the names of the candidates in the order in which they stand in the list prepared under Rules 15, 16, 17 or 18" - it means appointment can be made from any of the list available before the appointing authority.

V. Rule 19(2) provides for preparation of combined list in accordance with Rule 18 when in any year, recruitment are to be made both by direct recruitment and by promotion. Here is not the case where appointment was made relating to the vacancy of one recruitment year.

VI. Rule 18 is applicable when procedure of appointment is the same and recommendation is sent by the same authority to the appointing authority by means of one selection process. The facts in the present case are not within the category of recruitment in one selection process.

VII. Rule 19(3) provides to issue the order of appointment in the order "as it stood in the cadre from which they are promoted".

117. Learned counsel for the petitioners in Writ Petition No.19231 (SB) of 2016 has submitted that the appointment made through promotion shall be deemed to be ad-hoc promotion and be held as such by this Court on the ground of Rule 19(4) but the contention of the learned counsel is not tenable on the ground that temporary or officiating appointment can be made only when no candidate borne on these lists is available. Here in these petitions there is no case that no list is available from either Rule 15 or 16 or no procedure has been adopted. List from Rules 15, 16 or 17 was available before the appointing authority at the time of issue of order of appointment and there was no need to make any temporary or officiating appointment. There is not the case of the State Government or the Public Service Commission that they had made ad-hoc appointment or there is nothing in the order of appointment that the appointment of the respondents was in the officiating capacity. In these circumstances, presumption or inference cannot be drawn by means of interpretation of Rule 18 that the appointments so made may be held to be officiating or temporary in nature. The contention of the petitioners that the appointment of the respondents are dehors the rules and thus be held as such is not based on any sound ground. It is contented on the basis of inference and presumption that since the list has not been prepared in accordance with Rule 18, the appointments of the respondents shall be held to be officiating in nature.

118. This Court is not going to legalize the illegalities committed by the authorities. We have to examine as to whether while making the

appointment of the petitioners or respondents the appointing authority has followed the procedure of appointment or not. The appointment of the petitioners was based on calculation of the vacancies, sending the names to the Public Service Commission, advertisement, competitive examination and thereafter preparation of merit list and recommending the names of suitable meritorious candidates according to their choice to the State Government and after medical fitness certified by the Medical Board and police verification the appointment orders were issued. Thus, the procedure as laid down in Rule 15 while recruiting the posts was applied and complied. Similarly, while making appointments under Rule 16 by way of promotion the eligibility list was prepared by the department concerned and it was sent to the Departmental Promotion Committee and after scrutinizing, the matter was finalized on the basis of merit with the consultation of the Public Service Commission and thereafter it was sent to the appointing authority and the order of appointment was issued. In this way, the procedure for appointment was followed and it cannot be said that the appointment so made was de hors the rules. In the matter of Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra and Ors. - (1990) 2 SCC 715, Hon'ble the Apex Court has divided it in two categories, (1) appointment made in accordance with the procedure as laid down in the service rules, and (2) appointment de hors the rules (without applying the procedure of service rules). It is accepted case that appointments do not come within the category of appointment of category (2). The appointment was made in accordance with the appointment rules and the same was recommended to the appointing authority and the appointing authority has issued appointment letter without any condition that the appointment was of any officiating capacity. None has challenged the validity of the appointment. Thus, we cannot consider this point on the basis of argument that the appointment is de hors the rules unless and until the appointment of the respondents is challenged.

119. If the appointment of the respondents is challenged on the ground that the list while making appointment of the respondents was not in accordance with Rule 18 then it is equally applicable to the case of the petitioners also because while making the appointment of the petitioners the list was not in accordance with Rule 18. If the contention of the petitioners is taken into account that without preparation of list under Rule 18, no appointment can be made or it is illegal appointment then in these circumstances the appointment of both categories will go and this is not the case of either of the parties. Since there is no challenge of the appointment, it does not require any discussion.

120. Rule 22 determining the seniority provides that the seniority of the person in any category of posts shall be determined from the date of order of substantive appointment and further if two or more persons are appointed together, by the order in which their names are arranged in the appointment order, the proviso to Rule 22(2) provides that a candidate recruited directly may lose his seniority if he fails to join without valid reasons when vacancy is offered to him. This provision makes it clear that the intention of the rule maker was that the seniority shall be determined from the date of order of appointment.

121. It is argued on behalf of the respondents that the year of vacancy against which a particular person is appointed is wholly irrelevant for the purpose of determination of seniority and seniority cannot relate back to the date of vacancy. It is unreasonable and bad in law in the interest of justice. It would not be proper to unsettle a settled position."

(iv) The petitioners were not even eligible for the post of Assistant Engineer in 2010-2011 and the petitioners no. 1 and 5 had admittedly

completed their B.E. in the year 2012 and could in no way be appointed in year 2010-11. The degrees of the said petitioners have also been filed with the reply of respondents no. 61 and 62.

8. On the basis of various pleadings and arguments, the Tribunal observes as below:

(i) There is no linkage of the year of vacancies to the selection year of the petitioners. The petitioners have claimed the vacancies to be of the selection year 2010-11 while according to the Supplementary C.A. of respondent no. 24, these vacancies of direct recruitment are of the selection years 2006-07, 2007-08, 2008-09 and 2009-10. The advertisement issued by the Uttarakhand Public Service Commission for selection against these vacancies (copy filed as Annexure no. A-6 to the claim petition) stated the last date of filing applications to be 26.06.2012 and the candidates were asked to ensure that by this date they must be having mandatory educational and other qualifications. Accordingly, the petitioners no. 1 and 5, who had completed their B.E. in the year 2012 could also apply against the said advertisement and get selected. Therefore, the petitioners in no way can be deemed to be selectees of the recruitment year 2010-11. The Tribunal also observes that after the due process of selection by the Public Service Commission and its recommendation to the Govt., the appointment orders of the petitioners no. 1 to 4 were issued vide order dated 26.02.2014 and appointment order of petitioner no. 5 was issued vide order dated 02.12.2014. These orders do not specify any back date from which the appointments would be effective, meaning thereby that the date of the issue of the order shall be deemed to be the date of substantive appointment of the petitioners.

(ii) The petitioners' contention, that regular promotions could not be made when their selection was under process according to Rule 18(2) of the Service Rules, 2003 which states that where, in any year of recruitment appointments are to be made both by direct recruitment and by

promotion, regular appointments shall not be made unless selections are made from both the sources and a combined list is prepared in accordance with Rule 17, is also not acceptable; as this Rule talks of “in any year of recruitment” meaning thereby that this Rule is applicable if both regular appointments and promotions are being made in the same year of recruitment. The promotion process of respondents no. 4 to 6 took place in the recruitment year 2011-12 while promotion process of respondents no. 7 to 68 took place in the recruitment year 2012-13. The requisition for direct recruitment was sent to the Public Service Commission on 02.08.2011 *i.e.* in the recruitment year 2011-12 against which the advertisement was issued by the Public Service Commission on 26.05.2012 stating the last date of application to be 26.06.2012. It was obvious that the direct recruitment process was not envisaged to be completed in the recruitment year 2011-12 and, therefore, there was no reason to withhold regular promotions in the recruitment year 2011-12. The promotion process of respondents no. 7 to 68 is of a subsequent year which also could not be withheld under Rule 17 read with Rule 18(2) of the Service Rules, 2003.

(iii) The Tribunal finds force in the contentions of learned Counsel for the respondents no. 61 and 62 that according to sub-clause (ii) of the last proviso to Rule 8 of the Seniority Rules of 2002, the petitioners shall get seniority of the year in which their appointments are made though these vacancies remained unfilled for the past so many years and they shall not get the seniority of any earlier year.

(iv) For determination of seniority, the relevant Rules are the Uttaranchal Government Servants Seniority Rules, 2002 whose Rule 8 is reproduced as hereinunder:

“8. Seniority where appointments by promotion only from and direct recruitment- (1) *Where according to the service rules appointments are made both by promotion and by direct recruitment, the seniority of persons appointed shall, subject to the provisions of the following sub-rules, be determined from the date of the order of their substantive appointments*

and if two or more persons are appointed together, in the order in which their names are arranged in the appointment order:

Provided that if the appointment order specifies a particular back date, with effect from which a person is substantively appointed, that date will be deemed to be the date of order of substantive appointment and, in other cases, it will mean the date of order:

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

(2) The seniority inter se of persons appointed on the result of any one selection--

(a) through direct recruitment, shall be the same as it is shown in the merit list prepared by the Commission or by the Committee, as the case may be;

(b) by promotion, shall be as determined in accordance with the principles laid down in rule 6 or rule 7, as the case may be, according as the promotion are to be made from a single feeding cadre or several feeding cadres.

(3) Where appointments are made both by promotion and direct recruitment on the result of any one selection the seniority of promotees vis-a-vis direct recruits shall be determined in a cyclic order the first being a promotee as far as may be, in accordance with the quota prescribed for the two sources.

Illustrations--(1) Where the quota of promotees and direct recruits is in the proportion of 1:1 the seniority shall be in the following order:--

First	.....	Promotee
Second	.....	Direct recruits and so on.

(2) Where the said quota is in the proportion of 1:3 the seniority shall be in the following order:--

First	.....	Promotee
Second to fourth	.....	Direct recruits
Fifth	.....	Promotee
Sixth to eight	.....	Direct recruits and so on.

Provided that--

(i) where appointments from any source are made in excess of the prescribed quota, the persons appointed in excess of quota shall be pushed down, for seniority, to subsequent year in which there are vacancies in accordance with the quota;

(ii) where appointments from any source fall short of the prescribed quota and appointment against such unfilled vacancies are made in subsequent year or years, the persons so appointed shall not get seniority of any earlier year but shall get the seniority of the year in which their appointments are made, so however, that their names shall be placed at the top followed by the names, in the cyclic order of the other appointees;

(iii) where, in accordance with the service rules the unfilled vacancies from any source could, in the circumstances mentioned in the relevant service rules be filled from the other source and appointment in excess of quota are so made, the persons so appointed shall get the seniority of that very year as if they are appointed against the vacancies of their quota."

[Emphasis supplied]

Rule 8(2) and Rule 8(3) are not applicable, as the appointments of the petitioners and the private respondents are not on the result of any one selection. Therefore, Rule 8(1) is applicable which states that seniority of persons appointed shall be determined from the date of the order of their substantive appointments. The first proviso to Rule 8(1) is also not applicable as none of the appointment orders of the petitioners or respondents specify any particular back date. Therefore, the dates of the orders of substantive appointments of the petitioners being later than the dates of orders of substantive appointments (promotions) to the posts of Assistant Engineers of the private respondents, the petitioners are junior to the private respondents.

9. In view of the above, the petitioners are not entitled to any reliefs and the claim petition is dismissed. No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: JANUARY 20, 2023
DEHRADUN
KNP