

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

Present: Hon'ble Mr. Rajendra Singh

.....Vice Chairman (J)

Hon'ble Mr. A.S.Rawat

.....Vice Chairman (A)

CLAIM PETITION NO. 58/NB/DB/2023

Rakesh Kumar, aged about 53 years, s/o Late Sri Gyan Das Singh, presently posted as Assistant Engineer, Minor Irrigation, Sub Division, Haldwani, District Nainital.

..... **Petitioner**

Vs

1. State of Uttarakhand through Secretary, Minor Irrigation, Govt. of Uttarakhand, Dehradun.
2. Chief Engineer and Head of Department, Minor Irrigation Department, Uttarakhand, Dehradun.
3. Mr. Dinesh Chandra Mishra, presently posted as Assistant Engineer, Minor Irrigation, Sub Division, Tehri, District-Tehri Garhwal.

..... **Respondents**

Present: Sri Sanjay Bhatt, Advocate for the petitioner
Sri Kishore Kumar, A.P.O. for the respondents no. 1 & 2
Sri Harimohan Bhatia, Advocate, for the respondent no. 3

JUDGMENT

DATED: JUNE 19, 2025

HON'BLE MR. A.S.RAWAT, VICE CHAIRMAN(A)

By means of present claim petition, the petitioner seeks the following reliefs:

- 1. Issue appropriate, order or direction declaring the order dated 24.09.2021 as illegal and consequently to set aside the same.*

2. Issue appropriate order or direction declaring the impugned seniority list dated 20.11.2004 as illegal and consequently to set aside the same.

3. Issue appropriate order or direction directing the official respondents to redraw the seniority list by making necessary correction and place the name of petitioner and private respondents in the order of seniority based on their initial date of appointment which is 23.02.2000 and 15.05.2000.

4. Issue any suitable order or direction, which this Hon'ble Tribunal may deem fit and proper on the basis of the facts and circumstances of the case.

5. Award the cost of the petition to the petitioner.

2. The brief facts of the case are as below:

2.1 The petitioner was initially appointed as Junior Engineer vide select list dated 28/9/1999 in the Hill cadre. At that time 104 posts of the Junior Engineers were filled and the name of the petitioner was at sl no 84. One Sh. Dinesh Chandra Mishra at Sl. no 57 was also selected vide the same select list. The petitioner joined service on 23.02.2000. He was promoted on the post of Additional Asstt. engineer in the year 2011 and subsequently promoted on the post of the Asstt. Engineer on 27.08.2021.

2.2 The service conditions of the Engineers, serving in the Minor Irrigation Department are governed by the Uttarakhand Engineering Service Rules, 2006. Rule 5(1) of the said Rules deals with the source of recruitment to the post of Asstt. Engineer, according to which, 50% posts would be filled up by way of promotion from the substantively appointed Junior Engineers, who have completed 10 years of service on the first day of recruitment year. Rule 16 states that the promotion to the post of Asstt. Engineers shall be made on the basis of seniority-cum-fitness subject to rejection of unfit.

2.3 35 more Junior Engineers were appointed vide select list dated 23.02.2000 in which one Mr Bharat Ram at Sl no. 2 in Minor Irrigation (Hill) was also appointed.

2.4 Two select lists of 1999 and 2000 make it clear that the initial appointment of the petitioner was on 23.02.2000, whereas, the date of

appointment of private respondent was 15.05.2000. Therefore, the petitioner is senior to the private respondent.

2.5 The department issued the final seniority list on 20.11.2004 in which the name of the petitioner is mentioned at sl. no 95 whereas that of the private respondent, Sh. Dinesh Chandra Mishra is at sl. No. 92 over and above the petitioner.

2.6. It is to be mentioned that the date appointment of the petitioner would be 23.02.2000 whereas that of the respondent will be 15.05.2000 in no case 24.08.1999 as has been shown in the seniority list.

2.7. The petitioner was earlier under the impression that Sh. Dinesh Chandra Mishra mentioned in the list, was appointed on 28.09.1999, so he did not make representation against his seniority in the list dated 20.11.2004.

2.8. In the year 2013, the private respondent, who was appointed with Mr. Bharat Ram was promoted on the post of Asstt. Engineer, whereas both of them were junior to the petitioner and were appointed vide select list dated 27.01.2000. Mr. Bharat Ram junior to the petitioner is rightly placed in the seniority list but Mr Dinesh Chandra Mishra has been shown wrongly above the petitioner by taking advantage of the name of Sh. Dinesh Chandra Mishra who was appointed with petitioner vide select list dated 28/9/1999 and who never joined the service.

2.9. Having come to know about anomaly the petitioner moved a representation before the Chief Engineer & Head of the Department on 24.08.2020 elaborating the entire case. Since no decision was taken on his representation dated 24.08.2020, the petitioner filed a Claim Petition 96/ND/DB/2021 before this Tribunal.

2.10. The petitioner was promoted to the next higher post and the department took a decision to revert back the pvt. respondent No.3, Sh. Dinesh Chandra Mishra because he procured promotion on the

basis of invalid degree, therefore, the seniority position of the petitioner with the respondent will not have any difference.

2.11. After declaring the degree of the private respondent invalid, he was reverted back to the position of Junior Engineer. But vide order dated 17.08.2022 the private respondent was again given promotion on the post of Assistant Engineer and the date of notional promotion shown as 27.08.2021.

2.12. The petitioner has filed the claim petition by annexing the letter of rejection of the representation by the respondents. During the course of hearing, the petitioner requested to withdraw his claim petition with liberty to file a fresh petition before this Tribunal.

2.13. The petitioner was appointed vide select list dated 28.09.1999 and he joined the post of Junior Engineer on 23.02.2000, whereas the private respondent joined on 15.05.2000 vide select list dated 27.01.2000. By giving notional promotion to the private respondent on the same day as of that of the petitioner shows that the respondent has been given undue favour of seniority.

2.14. The private respondent was selected vide select list dated 27/01/2000 and joined the service on 15.05.2000 but in the seniority list, his appointment is shown as 24.09.1999 which casts doubt on the veracity of the seniority list. The petitioner is senior to the private respondent but by taking advantage of the similar name, the private respondent has been given advantage.

2.15. The impugned order dated 24.09.2021 passed by the respondent is non-speaking and unreasoned and completely ignores the facts regarding the date of appointment of the petitioner and the private respondent. The impugned order is liable to be set aside and the claim petition is liable to be allowed.

3. The respondents No. 1 and 2 have filed the C.A./W.S. separately. The C.A. of respondent no. 2 is being mentioned here. The contents of C.A. of respondent no. 1 is same as that of respondent no.

2. The contents of all the paragraphs of the claim petition are not admitted as stated except those which have been averred on the basis of record or unless specifically admitted.

3.1 The services of the petitioner are governed by Uttaranchal Service of Junior Engineers, Minor Irrigation (Irrigation Department) (Group-C) Rules, 2003. The part- 6, Rule 21 of the above service Rules states that the seniority of persons substantively appointed in any category of posts shall be determined in accordance with the Uttaranchal Government Servant Seniority Rule, 2002 as amended from time to time. For the post of Assistant Engineer, Executive Engineer, Superintendent Engineer and Chief Engineer, a different service Rules i.e. Uttaranchal Service of Engineers Minor Irrigation Department, Rules 2006" are applicable.

3.2 As per the Uttaranchal Service of Junior Engineers, Minor Irrigation (Irrigation Department) (Group-C) Rules, 2003, 75% posts shall be filled through direct recruitment from the candidates who possess technical qualification, as in column 5 of appendix, in Agriculture, Civil and Mechanical cadre, from recognized institution, having a proportion of direct recruitment of 50%, 30% and 20% respectively.

3.3 As per clause 5(1) of the above service rules, the provisions for source of recruitment for the post of Assistant Engineer are as follows:-

(a) 40.67% of posts through Commission, in the Agriculture, Civil and Mechanical cadre who possess a bachelor degree or an equivalent degree, from a recognized institution, having a proportion of direct recruitment of 50%, 30% and 20% respectively.

(b) (i) 50% post shall be filled in by promotion amongst substantively appointed Junior Engineer who have completed 10 years' service as such on the first day of the year of recruitment.

(ii) 9.33% posts shall be filled in by promotion from amongst such substantively appointed Junior Engineers who possess Bachelor

Degree in Civil, Mechanical or Agriculture and who have completed 3 years of service, as such on the first day of the year of recruitment.

3.4. The D.P.C. for promotion to the post of Assistant Engineer (from the post of Junior Engineer) was conducted by Uttarakhand Public Service Commission. The petitioner has also been promoted to the post of Assistant Engineer on 27-08-2021.

3.5 In undivided State of Uttar Pradesh, the U.P. Public Service Commission selected 103 Junior Engineer (Agriculture) (12 hill cadre + 91 plain cadre) vide letter Dt. 28-09-1999 and 38 Junior Engineer (Mechanical) (hill cadre+35 plain cadre) vide letter Dt. 27-01-2000. The petitioner's name was mentioned at serial no. 84 in Junior Engineer (Agriculture) list whereas the name of respondent no. 3 Sh. Dinesh Chandra Mishra is mentioned at hill cadre serial no. 2 in Junior Engineer (Mechanical) list dated 27.01.2000.

3.6 The petitioner joined the department on 23.02.2000 whereas the respondent no. 3 joined the department on 15.05.2000 i.e. in the same selection year whereas one other candidate, Mr. Bharat Ram has joined the department on 14.07.2000 i.e. in next selection year. In fact there was one more Sh. Dinesh Chandra Mishra (serial no. 57) selected for the post of Junior Engineer (Agriculture) as per the order dated 28.09.1999, but he never joined the department.

3.7 A common seniority list of all Junior Engineers working in the department was issued vide letter no. 46 Dt. 20-11-2004 by the department. Due to some clerical mistakes, the date of appointment (24-08-1999) was wrongly mentioned in the seniority list against names of both petitioner and respondent no. 3.

3.8. In the present case, the procedure for finalization of the seniority list as laid down has been followed- first, a tentative seniority list was circulated to all candidates and objections were invited. Thereafter, the seniority list was finalized on 20.11.2004, but the petitioner never informed or raised any objection about this.

3.9 The petitioner though was aware of the fact that he did not represent against the tentative seniority list, which was duly circulated and even immediately thereafter was finalized. He is representing against the final seniority list after 17 years.

3.10 The respondent no. 3, Mr. Dinesh Chandra Mishra was promoted on the post of Assistant Engineer on 28-01-2013 under 9.33% degree quota. As the petitioner was having only diploma in Agriculture so he got promotion later in August, 2021 under 50% diploma quota. So, the petitioner's statement that respondent no. 3 got promotion on 28-01-2013 but he has not been given promotion, is totally wrong and baseless. In fact some other eligible candidates like Mr. Vinay Kumar Singh (serial no. 96 in the seniority list) was also promoted in 2005, since he was having Bachelor degree and the post was vacant although he was junior to the petitioner as per seniority list. There are other candidates like Mr. Naresh Kumar (serial no.97 in the seniority list), Mr. Goverdhan Singh (serial no. 98 in the seniority list) and Mr. Bharat Ram (serial no. 99 in the seniority list) who got promotion earlier due to their eligibility and belonging from reserve category although all these candidates were junior to the petitioner.

3.10 The petitioner had given his representation on 24.08.2020, which was decided by the Chief Engineer HOD, Minor Irrigation vide order dated no. 931 dated 24.09.2021 after considering all the facts. The petitioner has already been promoted on the post of Assistant Engineer on 27.08.2021 so his statement that his representation dated 24.08.2020 for seeking promotion on the post of Assistant Engineer was rejected, is wrong. The petitioner joined the department on 23.02.2000 whereas the respondent no. 3 joined the department on 15.05.2000 in the same selection year. It is also relevant to point out that although as per service rules for Junior Engineer (Agriculture), Junior Engineer (Civil) and Junior Engineer (Mechanical) are selected in the ratio of 50%, 30% & 20% but after joining in the department a common seniority list of all Junior Engineer Civil, Mechanical & Agriculture is prepared on the basis of eligibility.

3.11 Sh. Dinesh Chandra Mishra's name mentioned in the list of Junior Engineer (Agriculture) provided by Public Service Commission never joined the department. The respondent no. 03, Mr. Dinesh Chandra Mishra belongs to Junior Engineer (Mechanical) and has no relation with another Sh. Dinesh Chandra Mishra. Respondent no. 3 Sh. Dinesh Chandra Mishra was promoted on the post of Assistant Engineer on 28-01-2013 under 9.33% degree quota (as per service rule 2006). Hon'ble Supreme Court issued an order in writ petition no. 1869-17870/2017(SLP(Civil) no. 19807-19808/2012) Orissa Lift Irrigation Corp. Ltd. Vs Rabi Shankar Patro and others on 03.11.2017. Since as per above Supreme Court order, the distance education degree of Shri Dinesh Chandra Mishra was not valid, so in compliance, the promotion order dated 28.01.2013 was cancelled and he was reverted to the post of Junior Engineer/Additional Assistant Engineer vide Government order 240 Dt. 05.04.2022. But since Mr. Sandeep (no. 93 in seniority list) who was already promoted to the post of Assistant Engineer was junior to Sh. Dinesh Chandra Mishra (no. 92), he has been again notionally promoted from 27.08.2021 vide Government order no. 542 Dt. 17.08.2022. The petitioner is junior to respondent no. 3 as per the seniority list issued on 20.11.2004, so he cannot claim that he is senior to respondent no. 3.

4. C.A./W.S. has been filed on behalf of respondent no. 3, stating therein that-

4.1 By way of present claim petition, the petitioner has put to challenge the order dated 24.09.2021 passed by the official respondents and also put to challenge to the Final Seniority List issued in the year 2004 by making the prayers No.2 & 3. The petitioner basically by making the prayer no. 2, challenging the Final Seniority List dated 20.11.2004 (Annexure No.2 to the claim petition) which was issued by the official respondents on 20.11.2004, in which the petitioner namely Rakesh Kumar has been placed at Serial No. 95 and the answering respondent namely Sh. Dinesh Chandra Mishra at Serial No.92, meaning thereby the petitioner by filing the present claim

petition and by making the prayers No.2 and 3 challenging the Final Seniority List dated 20.11.2004 after about 19 years of its issuance. Under the law, it is admitted and settled principle that the life of the Final Seniority List is only 01 year from the date of its issuance and thereafter it attained finality. Therefore, the prayer No.2 and 3 as made by the petitioner in the present claim petition cannot be sustained in the eyes of law after about 19 years of its issuance.

4.2 In last 19 years, neither the petitioner nor any other incumbent has put to challenge the Final Seniority List dated 20.11.2004 in any manner. As per the Uttarakhand Government Servant Seniority Rules, 2002 once the Seniority List has attained finality, it cannot be disturbed either by making any representation or by invoking the jurisdiction of Court of Law that too after about 19 years of its issuance.

4. The Rule 09 of the Uttarakhand Government Servant Seniority Rules, 2002 does not empower the appointing authority or any other official to entertain any kind of representation against the final seniority list once it has been issued, therefore the Prayer No. 1 as made by the petitioner for deciding the representation in the garb of Prayer No. 2 also not sustain in the eyes of law.

4.4 Vide order dated 24.09.2021, the official respondents rightly rejected the representation dated 24.08.2020 of the petitioner as he wants to disturb the final seniority list dated 20.11.2004.

4.5 As per settled principle of law laid down by Hon'ble High Court of Uttarakhand in the case of WPSB 297 of 2017, Dr. Sunita Pandey vs. State of Uttarakhand and others that by merely filing representation, the Government cannot reopen or revisit the final seniority list. As per the law laid down by the Hon'ble Supreme Court, seniority should not be re-opened after a lapse of a reasonable period as it results disturbing the settled position, which is not justifiable. Inordinate delay in making a grievance is sufficient to decline interference under Article 226. (B.S. Bajwa v. State of Punjab and Ors. AIR 1999 SC 1510; Shiba Shankar Mohapatra vs. State of Orissa

(2010) 12 SCC 471). A seniority list, which remains in existence for 3 to 4 years unchallenged, should not be disturbed. Thus, 3-4 years is a reasonable period for challenging the seniority, and in case someone agitates the issue of seniority beyond this period, he has to explain the delay and laches in approaching the adjudicatory forum, by furnishing a satisfactory explanation. After about 19 Years of issuance of final seniority list and after taking all the benefits on the basis of the final seniority list issued in the year 2004, the petitioner in the garb of representation cannot be permitted under the law.

4.6. Final seniority list of the Junior Engineers has been published by the official respondents on 20.11.2004 and before issuing the final seniority list, the petitioner has all rights to raise such objections against the tentative seniority list, then the official respondents are bound to decide the same as per Rule 9(4) of 2002 Rules, but the petitioner has not raised such objection at that point of time. It is also relevant to submit here that the petitioner joined as a Junior Engineer (Agriculture) in the department on 23.02.2000 and the answering respondent joined the services as Junior Engineer on 15.05.2000, both the petitioner as well as the answering respondent joined as a direct recruit in the Minor Irrigation Department in the selection year 2019-20. The respondents prepared the joint seniority list in the year 2004 and the petitioner did not object the tentative seniority list, even final seniority list has been challenged after 19 years after its publication in 2004. While filing the claim petition, the petitioner tried to disturb the final seniority list dated 20.11.2004 but he failed to explain the delay in filing the present claim petition after about 19 years of its issuance and, therefore, the present claim petition deserves to be dismissed on this ground alone.

4.7. Sh. Bharat Ram in the seniority list has been shown at serial no.99 has got benefit of reservation in promotion for the reserved category. Sh. Bharat Ram got promoted in the year 2011 as Assistant Engineer whereas the answering respondent being a member of

General Category got promotion on the basis of his merit cum seniority at that point of time.

5. The petitioner has filed R.A. to the C.A./W.S. filed by respondents no. 1, 2 and respondent no. 3 also and denied the contention of the C.A. and reiterated the facts contained in the claim petition mainly stating the following:

5.1 There is no delay in making representation because the position in the seniority list can be corrected as and when it is detected and communicated to the competent authority. The petitioner is senior to the Respondent No. 3, a fact which has been admitted by state Respondent. The power of Court or Tribunal to have judicial review of administrative act cannot be limited. The seniority position has to be corrected as and when the anomaly or irregularity or mistake is detected and communicated.

6. Heard the Learned counsel for the petitioner, respondents, the private respondent and perused the documents presented.

7. Learned Counsel for the petitioner argued that the petitioner has been appointed as Junior Engineer on 23.02.2000 and the private respondent was appointed on 15.05.2000. They have been appointed by the different select lists but in the same selection year. The petitioner has been appointed a month earlier so he is senior to pvt. respondent. The petitioner could not represent against the tentative seniority list of the Junior Engineers before it was finalised as there was one Sh. Dinesh Chandra Mishra at sl. no 53 in the select list issued on 28.09.1999. The petitioner was at sl. no 84 in this list. He was under impression that this Dinesh Chandra Mishra was same, who was senior to him. But he came to know much later to find out that the name of Sh. Dinesh Mishra who was appointed on 15.05.2000 has been put in place of Sh. Dinesh Mishra, who was appointed vide select list dated 28.09.1999. The respondents have given this undue advantage to the private respondent. The seniority list once decided wrongly can always be redrawn to correct it by judicial intervention.

The learned counsel further pleaded to quash the impugned order dated 24.09.2021 and also impugned seniority list dated 20.11.2004.

8. Learned A.P.O. argued that the petitioner did not represent against the tentative seniority list before it was finalised on 20.11.2004. Shri Dinesh Mishra who was at sl no. 53 in the select list dated 28.09.1999 was having diploma in Agriculture Engineering whereas Shri Dinesh Chandra Mishra whose name figures in the seniority list is Diploma in Mechanical Engineering. The petitioner despite knowing this fact, did not represent against the tentative seniority list. Now the petitioner is representing against the final seniority list after 19 years. He was sleeping over his rights and now he cannot be given any relief. The promotion order of the private respondent was cancelled in view of the judgement of the Hon'ble Supreme Court in the matter related to those having Engineering degrees through Distant Education. The private respondent was reverted to the post of Junior Engineer on 05.04.2022, but was again promoted as per his seniority and was given notional promotion from the date of his junior, Sh. Sandeep has been promoted. The petitioner has also been promoted on the post of Asstt. Engineer based on his position in the seniority list, which he has challenged. In view of the facts mentioned above, the claim petition is liable to be dismissed.

9. Learned Counsel for the private respondent has argued that the respondents have followed due process in drawing seniority list as per the provisions of the Uttarakhand Government Servants Seniority Rules, 2002. The petitioner has never represented against the tentative seniority list. Now the seniority list has reached finality, which cannot be disturbed.

10. Based on the arguments of the Learned Counsels for the parties and the records placed before the Tribunal, we find that the petitioner joined the department on 23.02.2000, whereas the private respondent on 15.05.2000. The appointment year of the petitioner and the respondent no. 3 is same. The plea of the petitioner that Shri

Dinesh Chandra Mishra (respondent no. 3), mentioned in the seniority list is the same Dinesh Chandra Mishra whose name was in the select list dated 28.09.1999 and he was not aware of the fact that Sh. Dinesh Chandra Mishra never joined the department. Sh. Dinesh Chadnra Mishra (shown in the list dated 28.09.1999) was from the Agriculture Engineering discipline and other Dinesh Chandra Mishra (respondent no.3 in the impugned seniority list) is from the Mechanical Engineering discipline. This was also not noticed by the petitioner for long time. The petitioner remained slept over his right for such a long time. The justification given by the petitioner for not challenging the seniority list after 19 years is not acceptable. The Tribunal agrees with the arguments of the learned counsel of the respondents that the long drawn seniority cannot be disturbed. This has been decided by the Hon'ble Supreme Court in the matter of Rajendra Pratap Singh Yadav vs State of U.P. (2011(7) SCC 74), in which, the Hon'ble Supreme Court, in para 52, has held that:

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

11. In view of the above, we hold that the petitioner did not challenge the seniority list for almost 19 years, after it was finalized, which cannot be disturbed. Hence, the claim petition is liable to be dismissed.

ORDER

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

RAJENDRA SINGH
VICE CHAIRMAN (J)

A.S.RAWAT
VICE CHAIRMAN (A)

DATED: JUNE 19, 2025
DEHRADUN
KNP/RS