

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT DEHRADUN**

Present: Hon'ble Mr. Justice U.C.Dhyani

----- Chairman

Hon'ble Mr. Arun Singh Rawat

-----Vice Chairman (A)

CLAIM PETITION NO.77/DB/2020

1. Sri Achyut Prasad Bajpai, Senior Private Secretary, Secretariat Administration Department, Uttarakhand Dehradun.
2. Sri Kailash Chandra Tiwari, Senior Private Secretary, Secretariat Administration Department, Uttarakhand Dehradun

.....**Petitioner**

vs.

State of Uttarakhand through Additional Chief Secretary, Secretariat Administrative Department, Uttarakhand Secretariat, Subhash Road, Dehradun.

.....**Respondent**

Present: Dr. N.K.Pant, Advocate, for the Petitioners.
Sri V.P. Devrani, A.P.O. for the Respondent.

JUDGMENT

DATED: JULY 28, 2025.

Justice U.C. Dhyani (Oral)

By means of present claim petition, petitioners, *inter alia*, seek promotion from the date(s) of their eligibility/ from the date(s) of their entitlement.

2. Claim petition is supported by the affidavit of Sri Achyut Prasad Bajpai, petitioner no.1. Relevant documents have been filed along with the petition.

3. Claim petition has been contested on behalf of respondents. Sri Nandan Singh Dungariyal, Joint Secretary, Department of Administration, Govt. of Uttarakhand, Dehradun, has filed Counter Affidavit on behalf of Respondents. Relevant documents have been filed in support of Counter Affidavit.

BACKDROP

4. Claim Petition No. 13/DB/2013, Hari Dutt Devtalla and three others vs. State of Uttarakhand, through Principal Secretary and 35 others, was disposed of by the Tribunal *vide* order dated 29.03.2019. The operative portion of the decision reads as under:

“The claim petition is allowed, The impugned seniority list dated 29.04.2009 is hereby set aside along with its effect and operation also. The respondents are directed to re-draw the seniority list afresh, in view of the observation made in the body of the judgment and to place the petitioners at the right place and also to allow all the consequential benefits of service according to their seniority.”

[Emphasis supplied]

5. The said order was challenged before the Hon'ble High Court of Uttarakhand at Nainital. WPSB No. 191 of 2019, Trilok Chandra Tiwari and others vs. State of Uttarakhand and others along with WPSB No. 316 of 2020, State of Uttarakhand and others vs. Hari Dutt Devtalla & others was decided by the Hon'ble Court by a common judgment and order dated 02.08.2022. [Present petitioners were not party to the aforesaid litigation].

6. Tribunal's decision, whereby the impugned seniority list dated 29.04.2009 was directed to be set aside by the Tribunal, has been set aside by the Hon'ble Court *vide* judgment and order dated 02.08.2022.

NATURE OF CONTROVERSY

7. It will be quite pertinent to reproduce relevant paragraphs of the judgment of the Hon'ble Court, for understanding the nature of controversy involved in present claim petition, as below:

“These two writ petitions assail the same judgment dated 29.03.2019, passed by the Uttarakhand Public Services Tribunal at Dehradun, in Claim Petition No. 13/DB/2013, preferred by the private respondent nos.5 to 8 in Writ Petition (S/B) No.191 of 2019 (hereinafter referred to as the private respondents). The petitioners in Writ Petition (S/B) No.191 of 2019 were the respondents in the Claim Petition, whose seniority above the private respondents has been disturbed, and the effect the impugned judgment is that the private respondents would be ranked senior to the petitioners. The State of Uttarakhand has also assailed the impugned judgment in Writ Petition (S/B) No.316 of 2020. The Tribunal allowed the said claim petition preferred by the private respondents; set-aside the seniority list dated 29.04.2009; and, the Tribunal also directed the State of Uttarakhand, and its authorities to re-draw the seniority list afresh on the basis of the date of substantive appointment of the persons in the parent department for determining the inter se seniority of the persons who joined the Secretariat services under the *Uttaranchal Sachivalaya Vaiyaktik Sahayak, Avar Varg Sahayak, Sahayak Lekhakar, Tankak, Anusevak ke Padon per Samvilian Niymawali, 2002* (hereinafter referred to as the “Absorption Rules, 2002”), (the Tribunal has referred the expression “Amalgamation Rules” for the same). Rule 6 of the Absorption Rules, 2002 is material to determine the present controversy, and the relevant extract from Rule 6 of the said rules, as published in Hindi language, as well as its English translation, (provided by the learned Senior Counsel appearing for the petitioners- which has not been disputed by the learned counsel for the private respondents, and the learned Special Senior Counsel appearing for the State), reads as follows:

“6. Determination of conditions for absorption:- (1) The date indicated in the order of absorption on the post of Personal Assistant, Lower Division Assistant/Assistant Accountant/ Typist/ Peon in the Secretariat shall be treated as the date of substantive appointment of the concerned employee on the concerned post in the Secretariat and after that date, the matters relating to his seniority, promotion and other service matters shall be governed as per the concerned service rules.

(2) After absorption, after fixation of the inter se seniority of the employee on the concerned post in Secretariat cadre on the basis of date of substantive appointment in the concerned cadre, he shall be placed in the seniority below the junior most employee of the Secretariat cadre. Against the concerned post in the Secretariat cadre at the time of fixation of seniority below the junior most employee, those employee whose pay scale is same in different departments, their seniority shall be determined from their date of substantive appointment in their parent department on the basis of counting their period of service.

(3) Even after absorption of personnel posted in the Government departments on deputation, the direct recruitment posts remain vacant, then in such an eventuality the absorption shall be made in the Secretariat from amongst the employee substantively appointed in the Corporations and Autonomous Institutions.

(4) In the eventuality of absorption of the employees of Corporation/Autonomous Institution, they shall be placed in the seniority list at the bottom of absorbed employees of Government Department. The inter se seniority of the absorbed employees of Corporation/ Autonomous Institution having same pay-scale shall be determined on the basis of their period of service from the date of their substantive appointment in the Corporation/ Autonomous Institution till the date of their absorption”.

2. The Absorption Rules, 2002 were framed on 22.06.2002. The petitioners and the private respondents- at their option, were attached to the Secretariat on 25.06.2002 with the issuance of an office memorandum. On 20.07.2002, the Government of Uttarakhand issued an office memorandum, whereby it stated that with immediate effect, the sixty-four stenographers posted in Uttaranchal Secretariat, on the basis of transfer, are substantively appointed on the posts of Personal Assistant under the terms and conditions specified in the Uttaranchal Personal Assistant, Lower Division Assistant/Assistant Accountant/ Typist/ Peon Absorption Rules, 2002, on probation for a period of one year. Paragraph No.3 of the said office memorandum stated that the serial numbers mentioned in the above appointment order do not have any relation with the seniority of the persons. The order relating to seniority under the provisions of the Absorption Rules, 2002 will be issued separately.

3. On 13.08.2002, the Uttarakhand Government Servants Seniority Rules, 2002 (hereinafter referred to as the "Seniority Rules, 2002") were framed and enforced. It appears that on 26.03.2004, the Government of Uttarakhand issued a tentative seniority list of the absorbed employees into the Secretariat, in the cadre of Additional Private Secretary. After considering the objections, on 08.12.2004, the final seniority list was issued by the Government of Uttarakhand in the cadre of Additional Private Secretary. In the said seniority list, the petitioners were placed at Sl. Nos.1, 2, 3, 4, 5, 8 and 11, whereas the private respondents were placed at Sl. Nos.26 and below. As noticed above, the date of absorption of the petitioners as well as the private respondents was the same, i.e. 25.06.2002. This seniority list indicated- in column No.9, the pay-scale drawn by, inter alia, the petitioners, and the private respondents in their parent departments. It would be seen that the petitioners were all drawing their pay in the pay-scale of Rs.5500 - 9000, or Rs.5000 - 8000, whereas, the private respondents were drawing their pay in the pay-scale of Rs.4000 – 6000.

4. On 10.12.2004, the Government of Uttarakhand issued a promotion order granting promotion to the Additional Private Secretaries as Private Secretaries (Grade-1) in the pay-scale of Rs. 6500-10500. In this promotion order, the names of the petitioners ranked higher in seniority, than that of the private respondents.

5. At this stage, we may leave the narration of further facts on the side, and take note of certain legal proceedings qua the challenge to Rule 6 of the Absorption Rules, 2002. The constitutionality of the aforesaid rule was challenged before this Court in a batch writ petitions, including Writ Petition (S/B) No.34 of 2005. A Division Bench of this Court, vide its judgment dated 20.12.2006, repelled the said challenge to Rule 6(2). The Division Bench, in its judgment held, inter alia, as under:-.....

6. The matter was carried to the Supreme Court in Special Leave Petition being Special Leave to Appeal (Civil) No(s).5574 of 2007. The same was dismissed on 02.04.2007. The Supreme Court further observed that "in case any individual person is affected by the improper implementation of the Rule, then he can approach the proper forum for relief of his grievance. So far as Rule is concerned, we do not find any illegality in it".

7. It appears that the Government of Uttarakhand again invited objections to the seniority list finalized on 08.12.2004. On 29.04.2009, the Government, after considering the objections received, again issued a final seniority list. Yet again, the petitioners were ranked higher to the private respondents. In Paragraph No. 3.1 of the said office order dated 29.04.2009, the Government stated as under:-.....

8. On 17.04.2012, the Government of Uttarakhand issued another office order containing its decision on the representation of officers- like the private respondents, in the light of the right of representation given by the Supreme

Court while dismissing Special Leave to Appeal (Civil) No.5574 of 2007. The Government rejected the said representation, wherein the Government observed as follows:-.....

11. On behalf of the petitioners, the submissions were led by Mr. Rakesh Thapliyal, the learned Senior Counsel. He firstly submits that the Tribunal fell in grave error in unsettling the settled seniority lists since 08.12.2004, which had repeatedly been finalized after repeated rejection of the objections raised by the private respondents. The provisional seniority list, upon absorption of the petitioners and the private respondents into the Secretariat services, was issued by the Government of Uttarakhand on 26.03.2004, and objections were called against the same. The said seniority list was finalized on 08.12.2004 after considering of all objections of the private respondents.....

12. Mr. A.S. Rawat, learned Special Senior Counsel, appearing for the State in the aforesaid writ petitions, supported the submissions of Mr. Rakesh Thapliyal, the learned Senior Counsel appearing for the petitioners.

13. On the other hand, Ms. Durgesh Thapa, the learned counsel for the private respondents, has firstly drawn our attention to an office order dated 20.07.2002, whereby, the absorbees, i.e the petitioners and the private respondents, were kept in probation for a period of one year upon their transfer into the Secretariat services on the post of Personal Assistant in terms of the Absorption Rules, 2002. Learned counsel submits that in this list, some of the private respondents were placed above the petitioners. For example, Mr. Madan Mohan Bhardwaj- respondent no.8, was placed at Sl. No.6, Mr. Hari Dutt Deotala- respondent no.5, was placed at Sl. No.13, and Mr. Dinesh Chandra Gairola-respondent no.7, was placed at Sl. No.30, whereas the petitioner Mr. Trilok Chandra Tiwari was placed at Sl. No.56.

14. Pertinently, this office order, in Paragraph No.3, clearly stated that the said office order had no relation with the inter se seniority of the absorbees, and that the inter se seniority would be fixed under the Absorption Rules, 2002 on a later date. Therefore, reliance placed by the learned counsel for the private respondents on the office order dated 20.07.2002 appears to be of no avail. As we have noticed hereinabove, the inter se seniority list of the absorbees was issued on 08.12.2004.

18. We have perused this judgment, and in our view, the same is wholly irrelevant for our purpose. This is for the reason that the Supreme Court was concerned in that case with a particular clause of the policy, namely Clause 11.1(ii) which was applicable to inter-company transfer on request of the employee. However, Rule 6 of the Absorption Rules, 2002 is completely different. Navin Kumar Singh (supra) was a case of inter-company transfer, whereas the present is a case of absorption in the Secretariat services of persons serving in different departments of the Government. Reliance placed on Navin Kumar Singh (supra) is, therefore, rejected.

19. Having heard the learned counsels, and considered their submissions, and having perused the impugned judgment rendered by the Tribunal, we are of the view that the impugned judgment is, completely, laconic and cannot be sustained.

20. We have extracted hereinabove the relevant part of Rule 6 of the Absorption Rules, 2002 in Hindi language, as it was published, as well as its English translation, as provided by the learned Senior Counsel appearing for the petitioners, which translation has not been disputed by any of the other parties. A perusal of the said rule leaves no manner of doubt that the manner of fixation of inter se seniority of the absorbees, who were absorbed on the same day; in the same post, was that the absorbees who were in a higher pay-scale in their parent departments on the date of absorption, would rank higher in seniority

than those who were in a lower payscale in their parent departments on the date of absorption. This Rule has been upheld, and there is good justification for it. It stands to reason that persons in higher pay scale- when clubbed with persons in lower pay scale, should be ranked higher in the seniority list when their date of absorption is the same; in the same post.

22. It appears that the Tribunal, thereafter, proceeded to hold that the inter se seniority of the absorbees should be fixed according to the length of service of the absorbees in their parent departments, only on the basis that the private respondents claimed that in the case of Anusewak (peon), the Absorption Rules, 2002 (Amalgamation Rules) were interpreted, and were made applicable for fixation of seniority according to length of service, i.e. on the basis of date of their substantive appointment, and not on the basis of their pay-scales in their parent departments at the time of absorption. The Tribunal misdirected itself by not appreciating that it was called upon to interpret Rule 6(2) of the Absorption Rules. It should have realized that it was not relevant how the Rule had been applied in the case of peons, and two wrongs do not make a right. It is, thus, clear that the Tribunal failed to read, and interpret Rule 6(2) of the Absorption Rules, 2002, and proceeded to allow the claim petition by holding that for fixation of inter se seniority, payscales cannot be the criteria, and the date of substantive appointment in the parent department, should be the criteria for considering their inter se seniority. This interpretation is, on the face of it, contrary to the plain language of Rule 6 of the Absorption Rules, and therefore, cannot be sustained.

23. For the aforesaid reasons, we allow the present writ petitions, and set-aside the impugned judgment and the directions issued by the Tribunal."

[Emphasis supplied]

8. During pendency of WPSB No. 191/2019, stay application No. 6517/2019 was disposed of by the Hon'ble Court, while admitting the writ petition, as below:

"The question which arises for consideration in this Writ Petition is whether the seniority of the petitioners and the respondents should be fixed in terms of the Amalgamation Rules, 2002, which existed when they were absorbed into the services of the Secretariat or whether their seniority should be determined in terms of the Seniority Rules, 2002, which came into force 58 days' thereafter.

2. The Tribunal has taken the view that, since the merger of two different cadres, for absorption of employees in the Secretariat, took place before the Seniority Rules, 2002 came into force, it is only the Amalgamation Rules, 2002, which were then in force, which were applicable; and the Seniority list of 2009 ought to have been drawn in terms of the Amalgamation Rules, 2002, and not in terms of the Seniority Rules, 2002, which came into force nearly two months thereafter.

3. The petitioners and the respondents have all been promoted to higher posts in terms of the 2004 and 2009 seniority lists. While we see no reason to interdict the exercise, required to be undertaken by the Government of Uttarakhand in compliance with the order of the Tribunal, to redraw the 2009 seniority list, suffice it to direct that, pending further orders, the petitioners shall not be reverted to the posts below those in which they are presently working.

4. Admit."

[Emphasis supplied]

9. The claim petition was filed by the petitioners in September 2020. Counter Affidavit of Sri Nandan Singh Dungariyal, Joint Secretary, Department of Administration, Govt. of Uttarakhand, Dehradun, was filed by Sri V.P.Devrani, Ld. A.P.O., in November, 2020. When the C.A. was filed, WPSB No. 191/2019 along with WPSB No. 316/2020 was pending before the Hon'ble Court. Interim order was however, passed by the Hon'ble Court on 21.05.2019 that, "pending further orders, the petitioners shall not be reverted to the posts below those in which they are presently working".

RIVAL SUBMISSIONS

10. Dr. N.K.Pant, Ld. Counsel for the petitioners drew attention of the Tribunal towards seniority lists dated 08.12.2004 (Sl. No. 1 - 74), 20.08.2008 (Sl. No. 75 - 106), 09.07.2013 (Sl. No. 107-115) and 23.01.2017 (Sl. No. 116-176), to submit that these are the seniority lists of Private Secretaries, in continuation to each other. He also drew attention of the Tribunal towards Para 2 of the office order dated 28.08.2020, issued by Additional Chief Secretary, SAD (Copy: Annexure: A 3), to submit that the persons, who were junior to the petitioners, were promoted. He submitted that Sri Raj Kumar Pathak and Sri Puneet Kumar were although junior to the petitioners, but were promoted on 13.05.2020. In response to the query of the Tribunal, Ld. counsel for the petitioners submitted that Sri Raj Kumar Pathak and Sri Puneet Kumar have not been arrayed as party respondent because their prayer is for 'promotion from the date(s) their eligibility/ from the date(s) of their entitlement".

11. In reply, Ld. A.P.O. submitted that petitioners are substantively appointed Stenographers from different departments of the State. Petitioner No.1 Achyut Prasad Bajpai was merged on the post of A.P.S. on 28.09.2004 and Petitioner No.2 Kailash Chandra Tiwari was merged on the post of A.P.S. on 25.06.2002 in Private Secretary Service Cadre of Secretariat as per Rule 06(2) of Amalgamation Rules, 2002. Under the said provision, the name of Petitioner No. 1 was mentioned at Sl. No. 46 and Petitioner No. 2 at Sl. No. 45 in the final seniority list dated

29.04.2009, issued by the respondent No.1. No junior to the petitioners was ever promoted to the next higher promotional post of P.S. (Private Secretary)/ S.P.S.(Senior Private Secretary) from the final seniority list dated 29.04.2009.

DISCUSSION

12. In a nutshell, the impugned seniority list dated 29.04.2009 was set aside by the Tribunal *vide* order dated 29.03.2019. Aggrieved thereby, Sri Trilok Chandra Tiwari and others, as also State of Uttarakhand and others, filed writ petitions before the Hon'ble High Court. The Hon'ble Court, *vide* order dated 02.08.2022, was pleased to set aside the impugned judgment and direction issued by the Tribunal. The petitioners were not party to this litigation. Petitioners' names find place in seniority list dated 29.04.2009 at Sl. Nos. 45 and 46. Names of those against whom the petitioners claim seniority, do not find place in the seniority list dated 29.04.2009. Their names were however shown in seniority list dated 23.01.2017 from Sl. Nos. 116 to 176. Whereas Ld. Counsel for the petitioners submitted that the seniority lists are in continuation to each other, Ld. A.P.O. vehemently denied the same. Sri Raj Kumar Pathak and Sri Puneet Kumar have not been arrayed as party respondents in the claim petition, over whom the petitioners claim seniority.

THE WAY FORWARD

13. We have to look forward and not backward. We have to consider the development which took place after the decision of Hon'ble High Court. The Tribunal cannot visualize any situation which was prevailing before the decision of the Hon'ble Court.

14. It is trite law that a senior person should be considered for promotion, if any person, junior to him, has been promoted. This should be done from the day the junior was promoted.

15. Ld. Counsel for the parties agree that the State Government in SAD must have finalized the seniority list after the judgment of Hon'ble High Court on 02.08.2022 and if it is found that any person

junior to the petitioners, has been promoted, then the petitioners are entitled to be considered for promotion from the date junior to any of them was so promoted. If no person junior to the petitioners has been promoted, then, of course, the petitioners have no legal right to be considered for promotion through present petition. Ld. Counsel for the parties, therefore, submitted that the present claim petition should be disposed of in the aforesaid terms. A direction should be given to the respondent department to consider the names of the petitioners for promotion, if any person junior to them has been promoted, after the decision of the Hon'ble High Court on 02.08.2022 in WPSB No. 191/2019 and WPSB No. 316/2020.

DIRECTION

16. A direction is, therefore, given to the respondent department to consider the names of the petitioners for promotion, if any person junior to them has been promoted in furtherance of the decision of the Hon'ble High Court on 02.08.2022 in WPSB No. 191/2019 and WPSB No. 316/2020, as per law. Needless to say that such promotion shall be considered from the date any junior has been promoted. The respondent department may afford reasonable opportunity of hearing to those who are affected by such promotion of the petitioners.

17. The claim petition thus stands disposed of with the consent of Ld. Counsel for the parties. No order as to costs.

(ARUN SINGH RAWAT)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: JULY 28, 2025
DEHRADUN