

**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. 49/NB/DB/2023

Dinesh Chandra Arya (Male) Aged about 43 years S/o Late Sri Govardhan Arya R/o Village Goveria Khan P.O. Bhowali District Nainital Presently posted as Assistant Engineer (Deputation), Project Implementation Unit Uttarakhand Urban Sector Development Agency, Nainital.

.....**Petitioner**
Vs.

1. State of Uttarakhand through its Secretary Pey Jal Uttarakhand Secretariat Dehradun.
2. Managing Director Uttarakhand Peyjal Sansadhan Vikas Evam Nirman Nigam Dehradun District Dehradun.
3. Chief Engineer (Head Quarters), Uttarakhand Peyjal Sansadhan Vikas Evam Nirman Nigam Dehradun District Dehradun.
4. Mr. Radhey Shyam Singh S/o Sri Jaswant Singh Presently Posted as Additional Assistant Engineer Service through HOD, Chief Engineer (Head Quarters), Uttarakhand Peyjal Sansadhan Vikas Evam Nirman Nigam Dehradun District Dehradun.
5. Mr. Sanjay Singh S/o Not Known Presently Posted as Chief Engineer Head Quarter Uttarakhand Peyjal Sansadhan Vikas Evam Nirman Nigam Dehradun District Dehradun.

.....**Respondents**

Present: Sri Harish Adhikari, Advocate, for the petitioner

Sri Kishore Kumar, A.P.O. for the respondent no. 1

Sri Siddhant Manral, Advocate, for respondents no. 2 & 3

Ms. Priyanka Agarwal, Advocate, for respondent no. 4

JUDGMENT**DATED: JANUARY 22, 2026****Per: Hon'ble Sri A.S.Rawat, Vice Chairman(A)**

This claim petition has been filed by the petitioner for following reliefs:

“(i). To issue order or direction appropriate in nature and set aside the final seniority list dated 16-02-2022 (Contained as Annexure No. 1 to the claim petition) and further direct the respondents to correct the seniority list as per rules and treating the private respondent as General Category Candidate not Schedule Caste Category Candidate, after calling the entire records from the respondents or in alternate pass any appropriate orders keeping in view of the facts highlighted in the body of the petition or mould the relief appropriately.

(i)a. To issue appropriate order or direction for quashing the tentative seniority list dated 02-06-2023 (Annexure No.7 to the claim petition), in view of the facts highlighted in the body of the claim petition, after calling the entire records from the respondents or in alternate pass any appropriate orders keeping in view of the facts highlighted in the body of the petition or mould the relief appropriately.

(i)b. To issue appropriate order or direction for quashing the final seniority list dated 10-10-2023 (Annexure No.13 to the claim petition), in view of the facts highlighted in the body of the claim petition, after calling the entire records from the respondents or in alternate pass any appropriate orders keeping in view of the facts highlighted in the body of the petition or mould the relief appropriately.

(ii). To issue any other order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case.”

2. Brief facts, giving rise to present claim petition, are as follows:

2.1 In the year of 2004-05, an advertisement was issued for filling up the post of the Junior Engineer (Civil) and Junior Engineer Electrical/ Mechanical, in which the petitioner has participated as Schedule Caste Category Candidate being permanent resident of Uttarakhand. The private respondent who is permanent resident of

State of Uttar Pradesh and belongs to Schedule Caste Category of Uttar Pradesh has also applied as General Category Candidate.

2.2 In the result of the successful candidates the private respondent has been shown under general category as per law. The respondent department issued the appointment order in favour of the petitioner on 13-05-2005 and he joined on 24-05-2005. Thereafter he has been promoted to post of Additional Assistant Engineer in the year of 2013.

2.3 On 09-08-2005, the respondents issued appointment order to the private respondent showing him as Schedule Caste Category candidate by cutting the category General in fourth appointment order and joined on 16-08-2005. The respondent department has issued the appointment orders in five phases, first appointment orders were issued on 13-05-2005 (In which the petitioner was offered appointment), thereafter second appointment order was issued on 18-05-2005, third appointment orders on 27-06-2005 and the fourth in which the private respondents has given appointment under Schedule caste category has been issued on 09-08-2005 (In which the private respondent has been offered appointment as S.C. Candidate ignoring his category General) and fifth appointment order on 13-03-2006.

2.4 The respondents published a seniority list on 28-11-2014, which was challenged before this Tribunal, which was dismissed by this Tribunal vide judgment dated 10-10-2017. The review application was also rejected vide order dated 23-11-2017. Against the judgment of this Tribunal, the petitioner filed a Writ Petition No. 17 of 2018 (S/B) before the Hon'ble High Court of Uttarakhand and the Hon'ble High Court quashed the order of the Tribunal vide judgement dated 11-07-2018 and quashed the seniority list dated 28-11-2014 also and issued certain directions to the respondent department for issuance of fresh seniority list.

2.5 The respondents challenged aforesaid judgment dated 11-07-2018 of the Hon'ble High Court of Uttarakhand before Hon'ble Supreme Court in Civil Appeal No. 9247 of 2019, which was decided by the Hon'ble Supreme Court vide order dated 06-12-2019 and set aside the judgment of the Hon'ble High Court of Uttarakhand along with the seniority list issued on 20-11-2014, which was already set aside by the Hon'ble High Court by judgment dated 11-07-2018. The Hon'ble Apex Court directed the respondents to take into consideration the merit and be placed in seniority as per roster point given in circular dated 31-08-2001 which provides 100-point roster and it has to be applied for determination of seniority as per the judgment of the Hon'ble Supreme Court.

2.6 After the decision of the Hon'ble Apex Court the respondent department has issued the tentative seniority list on 02-02-2022 in which the private respondent Mr. Radhyshyam has been shown at serial no. 34 and has been placed under the category of Schedule Caste despite of the fact that he has joined his services on 16-08-2005 pursuant to the appointment order dated 09-08-2005 and the petitioner is placed at serial no. 159 despite of his joining on 24-05-2005 pursuant to his appointment order dated 13-05-2005.

2.7 The petitioner got the selection list as forwarded by the Punjab Technical University (PTU) and it came in the knowledge of the petitioner that in the aforesaid selection list after the name of the private respondent the selection agency shown the category General but after Overwriting/ Cutting the same was amended as Schedule Caste. The petitioner submitted representation to the respondents and requested to correct the category of the private respondent. But the respondents did not change his category. The respondents without deciding the objections made by the petitioner against the tentative seniority list dated 02-02-2022 issued the final seniority list on 16-02-2022 and again showed the private respondent as Schedule Caste Candidate and placed him at serial no.16 as per roster and as per seniority. The impugned final seniority list is already a subject

matter of claim petition no. 57/NB/DB/2022 "Sunil Kumar Vs. State of Uttarakhand and others". The final seniority list dated 16-02-2022 is liable to be quashed and the private respondent is to be shown as General Category candidate as shown in the selection list.

2.8 The Hon'ble Apex Court in a recent judgment has held that a member of an SC/ST community from one state cannot claim the benefit of reservation in government jobs or admission in another state, if his or her caste is not notified there.

2.9 The impugned final seniority list has been issued in flagrant violation of the judgment passed by the Hon'ble Apex Court in SLP and not only this, this is also flagrant violation of law laid down by the Hon'ble Apex Court for applying the roster of reservation and also in violation of the circular issued on 31-08-2001, 21-01-2006 as well as the instructions issued by the government by letter dated 24-12-2020 and 20-09-2021 and also violation of the judgment of the Hon'ble Apex Court in the Case of R.K. Sabarwal and others Vs. State of Punjab Reported in 1995 SCC(2).

2.10 This Tribunal in a similar matter in Claim petition no. 57/NB/DB/2022 "Sunil Kumar Vs. State of Uttarakhand, on 26-09-2022 passed an interim order, the operative portion of the aforesaid order is being quoted here below:

"After hearing the learned counsel for the parties, the tribunal notes the statement of the learned counsel for the respondents No.2 to 4 and agrees that when the respondent corporation is seeking review of the orders of the Hon'ble Apex Court, it is justified in not taking further action including promotion on the basis of the impugned seniority list."

2.11 Respondents No. 2 and 3 without filing counter affidavit on the facts on which the petitioner challenged the final seniority list dated 16-02-2022 cancelled the same and issued the tentative seniority list without taking permission from this Hon'ble Tribunal because the Hon'ble tribunal in a similar matter passed interim order

and restrained the respondents from making any promotion or further exercise and on the other hand they again placed the private respondent no.4 above the petitioner at serial no. 103 whereas the petitioner has been placed serial no.142 much below the private respondent.

2.12 The D.P.C. meeting held on 03-05-2005 approved the list of candidates on the basis of the roster therefore the seniority should be done as per the roster. Therefore, the tentative seniority list is to be corrected in view of the recommendation of the D.P.C.

2.13 In the year of 2004-05 and 2005-06, a total of 9 appointment letters were issued and the petitioner was appointed through first appointments and in the tentative seniority list the petitioner is placed below to the private respondent who is a General category candidate and has been appointed under reserved category much after the petitioner. In this connection Hon'ble Apex Court in D.N. Agarwal Vs. State of Madhya Pradesh (AIR 1990 SC 1331) has held appointment at a later date cannot relate back to an earlier date of adhoc appointment" the Hon'ble Apex Court has passed clear orders therefore the tentative seniority list is liable to be quashed.

2.14 During pendency of the claim petition the Hon'ble Apex Court vide order dated 02-05-2023 allowed the review petition (Civil) No. 1130 of 2022 in Civil Appeal No. 9247 of 2019.

2.15 The petitioner filed amendment application and challenged the impugned tentative seniority list dated 02-06-2023 on the ground that the respondents have only called objections for clerical mistake. The Tribunal after hearing, directed the respondents to issue fresh corrigendum and call objections on each and every aspect of the tentative seniority list. Pursuant to the orders of the Tribunal, the respondents have issued corrigendum vide its letter no. 348/Adhisthan Anu Adhi Kani Abhi/37 dated 21-06-2023 and called objections on all issues regarding roster and merit. Pursuant to the

letter dated 21-06-2023 the petitioner has submitted his objections on 04-09-2023 to the tentative seniority list.

2.16 The respondent department decided the objections of the petitioner and other similarly situated persons on 10-10-2023. No explanation has been given by the respondents, only by saying that the Hon'ble Apex Court vide order dated 02-05-2023 has decided the issue thus there is no need to decide the objections of the petitioner is misconceived because as per the seniority rules the authority is bound to give his finding on the each and every objection of the delinquent. Thus, on this ground the objections decided by the respondent are liable to be quashed and the similarly the final seniority list is also liable to be quashed. The reserved category candidates have joined the service before the second batch of general/unreserved category candidates and similarly the other batch of candidates joined much after the joining of the first batch but now the respondents by relying on the rules of 2002 which have been adopted much after the appointments made the impugned seniority list.

2.17 The selection committee in its meeting held on 12-05-2005 granted the appointment orders pursuant to the roster as per the roster based merit. For e.g. if there are vacancies of the Schedule category employees available then the selection committee selected the schedule caste category candidate on the basis of marks obtained by them in the selection process by the selection agency who provided tentative merit list not the list purely on the basis of merit. The petitioner and other employees in their objections also made the roster chart but the respondent without going through the objections merely by saying that the Hon'ble Apex Court in review has held that the basis of seniority is merit, decided the objections in cursory manner and had not applied its mind as the Hon'ble Apex Court had held in its final judgment. The government had filed an affidavit before the Hon'ble High Court in which it is admitted by the government that pursuant to the government order no. 442/29/05-2 (13Adhi) 04 dated

03-05-2005 the appointment orders were issued as per roster. Thus, the corporation is taking U turn and saying that they have prepared the seniority as per the Seniority Rules of 2002. It is further relevant to mention here that the respondents themselves admitted that the selecting body has provided the tentative selection list and thereafter the selecting committee vide their recommendation dated 12-05-2005 issued the select list in part as per roster and thereafter time and again issued other selection list after almost 6 months and one year of the first selection. The Selection Committee in first round of issuance of appointment order issued total 88 appointment orders against the sanctioned post and as per roster there are 38 candidates of reserve category as per their vacancy, thus it is clear that the appointment are purely given on the basis of roster based merit not on the basis of merit because if the basis of appointment was merit then as per reservation policy only 16 posts were reserved for Schedule caste category but in view of the roster policy and availability of the vacancy 38 candidates were given appointment. Thus, the impugned final seniority list is liable to be quashed on the ground alone that there was no final selection list provided by the selection agency and in absence of the final selection list by the selection agency the preparation of the final seniority list purely on the basis of merit is misconceived.

2.18 The Govt. for the year 2004-05 issued 88 appointments and for the year of 2005-06 issued 176 appointments. For total sanctioned 176 posts the corporation has issued 202 appointments thus the corporation has issued 26 excess appointments which are illegal and now the respondents have given seniority to these employees who are excess at the time of appointment and placed them above the reserve category candidates which violates the mandate of the constitutions and special rights of the reserved category candidates.

3. The claim petition has been contested on behalf of the respondents. Sri Siddhant Manral, learned Counsel for the

respondents no. 2 and 3 has filed W.S. and the Counter affidavit has been signed filed by Sri Vinay Kumar Jain, Superintending Engineer, Construction Circle, Uttarakhand Peyjal Sansadhan Vikas Evam Norman Nigam, Haldwani. The C.A. has been filed mainly stating the following:

3.1 Tentative seniority list was issued vide office memorandum dated 02.06.2023 and objections were invited on the said tentative seniority list. It was contended that against the interim seniority list issued on 02.06.2023, only objections against clerical mistakes had been invited, which is against the principles of natural justice. This Tribunal vide its order dated 08.08.2023 passed in the instant claim petition, directed the Respondent Department to issue a revised circular inviting objection not only on clerical mistakes but on all aspects and give suitable time for filing objections.

3.2 Respondent Department in compliance of order dated 08.08.2023 issued an office memorandum dated 21.08.2023 wherein objections were invited on the tentative seniority list dated 02.06.2023 on all aspects.

3.3 Thereafter, an interim order was passed by this Tribunal on 25.09.2023 whereby the Respondent Corporation was restrained to make promotional exercise pursuant to the final seniority list. At the time of filing the above noted claim petition, the Petitioner had challenged the Office Memorandum dated 16.02.2022 and had sought quashing of the seniority list framed by the Respondent Department. Thereafter, the petitioner by way of the earlier amendment application had challenged the tentative seniority list dated 02.06.2023 issued by the Respondent Department on the pretext that the Respondent Department had cancelled the earlier seniority list dated 16.02.2022.

3.4 Respondent Department had sought review of order dated 06.12.2019 passed in Civil Appeal No. 9247 of 2019. The Hon'ble Supreme Court vide its order dated 02.05.2023 disposed of the

Review Petition of the Respondent Department whereby the said direction was issued: -

"The petitioners will accordingly re-frame the seniority list. In case any person has any objection to the revised seniority list, including his/her claim that he/she should be given seniority on the basis of roster points relying on any circular or the Uttar Pradesh Jal Nigam Subordinate Engineering Service Regulations. 1978, it will be open to him/her to challenge the revised seniority list in accordance with law. Of course, the ratio decidendi of the judgment dated 06.12.2019 cannot be agitated and questioned. Recording the aforesaid, the review petition is allowed and disposed of in the above terms."

3.5 After deciding the objections on the tentative seniority list dated 02.06.2023, the Respondent Department vide Office Memorandum dated 10.10.2023 issued the final seniority list which has been sought to be challenged by the Petitioner by way of the second amendment application. In fact, seniority list dated 10.10.2023 has been made in consonance with the directions passed by the Hon'ble Supreme Court.

3.6 The Respondent Department vide office memorandum dated 25.09.2024 has formed a three-member committee to look into the allegations against Respondent No. 4 herein as well as another person on the complaints received on the pretext that they being non-residents of Uttarakhand have been granted benefit of State reservation/domicile and as such the said three-member committee is deliberating and conducting an enquiry on the said aspect. The inquiry in the said aspect is underway and will be given logical conclusion.

4. Since the petition was amended several times, hence various Counter Affidavits have been filed. C.A./W.S. has also been filed on behalf of respondent no. 4 and it has been stated that so far his appointment is concerned, respondent no. 3 has issued an appointment letter dated 09.08.2005 and the petitioner joined his service on 16.08.2005 and till date, respondent no. 4 is working in the department in various capacities. Respondent No. 4 was selected in

General category and got 81.75 marks in the examination while the petitioner was selected in SC category and got only 68 marks. Between the selection serial no. 125 of the respondent no. 4 and selection serial no. 243 of the petitioner, there are so many candidates but the petitioner has not made them party in the present claim petition. It is further mentioned in the C.A. of respondent no. 4 that petitioner remained silent for 18 years in the matter of seniority, hence, the long standing seniority cannot be disturbed and claim petition of the petitioner is liable to be dismissed.

5. We have the Learned Counsel for the petitioner, private respondent and the Learned APO and also perused the documents submitted to the tribunal.

6. Learned counsel for the petitioner argued that the petitioner was appointed as SC candidate vide appointment order dated 13-05-2005 along with 87 other candidates. The Respondent department followed roster while appointing the Junior Engineers. Five appointments letters were issued by the department during the recruitment year 2004-05 and 2005-06 to appoint 202 candidates selected as Junior Engineer (civil). The private candidate was issued offer of appointment on 9/8/2005 as SC candidate in the 4th appointment letter. The private candidate has been selected as the General candidate although he was of SC category and the resident of U.P., he was not entitled to get the benefit of the SC candidate in Uttarakhand as per the laws. But the merit list submitted by the examination body PTU has been manipulated by overwriting general category by the SC category to favour him in giving appointment.

7. The respondents issued a tentative seniority list dated 02/02/2022 in view of the judgement of the Hon'ble Apex Court dated 06/12/2019. This list was finalised on 16/02/2022 and the petitioner is shown at Seniority at Sl.No.135 and private respondent at 16. This seniority list has been challenged in another connected claim petition No 57/NB/DB/2022, Sunil Kumar vs. State of Uttarakhand & others. The

respondents cancelled the seniority list dated 16/02/2022 and reissued the tentative seniority list on 02/06/2023 inviting objections in respect of the clerical mistakes only. The petitioner challenged the seniority that it has not been prepared as per Rule 23(1) of Subordinate engineering Service Rule 1978. The petitioner has been appointed prior to the private respondent, he should be placed above him in the seniority list.

8. Learned Counsel on behalf of the private respondent argued that the private respondent has not concealed any fact and he has been shown as the general candidate in the seniority list as per his merit.

9. Learned Counsel for the respondents 1, 2, 3 argued that the petitioner has followed the judgment of the Hon'ble Tribunal along with the Rules, 2002 and decided the seniority as per Rule. The position of the private respondent in the seniority list been shown as per his merit as general category candidate.

10. Present claim petition was heard with the connected Claim Petition No.57/NB/DB/2022, Sunil Kumar vs. State of Uttarakhand & others, as same seniority list dated 10.10.2023 has been challenged in both the claim petitions. Detailed judgment has been passed in above connected Claim Petition, the findings of which, are being reproduced herein below:

“11. Based on the argument of the parties and perusal of the record, it is clear that the Pey Jal Nigam issued appointment letters to 202 candidates as against the advertised vacancies of 176. Appointment letters were issued in five phases on 13/05/2005, 27/6/2005, 9/8/2005, 27/9/2005 and 16/12/2005. The Respondent authorities followed roster dated 31/08/2001 while issuing appointment letters. The petitioner was appointed vide first appointment letter issued on 13/05/2005. The private respondents have been appointed vide appointment letters issued on the later dates. The answering respondent no. 17 (Mr Radheshyam Singh) at Sl. 103 in the impugned seniority list dated 10/10/2023 was

selected as General category candidate but was given offer of appointment as SC candidate vide letter dated 09/08/2005. His place at Sl. no 103 in the tentative seniority list dated 02/06/2023 is against SC candidate but in the final seniority list dated 10/10/2023 he has been shown at sl. no 103 as General Category candidate. But this anomaly is not the subject of discussion here.

12. The respondent authorities finalised the seniority list based on the merit list issued by the examination body, the Punjab Technical University (PTU) and applied Rule-5 of the Uttarakhand Governments Servants Seniority Rules of 2002 for determining the seniority. The respondent did not consider the fact that these Rules were adopted by the Pey Jal Nigam in 2011 only and before this, the petitioner and other appointees of the year 2004-05 and 2005-06 were governed by the **Uttar Pradesh Jal Nigam Subordinate Engineering Service Rules, 1978**. This has been clearly mentioned in para 19 of the judgement dated 06/12/2019 of the Hon'ble Apex Court in the Civil Appeal No. 9247 of 2019. The relevant para mentioned in the judgement is reproduced below:

"19. We do not find any merit in the argument raised by the State that the seniority has to be fixed as per Rule-5 of the Uttarakhand Government servant Seniority Rules, 2002. Such Rules were not adopted to be applicable to the Nigam. The Rules were approved by the Board of the Nigam on 24th September, 2007 proposing that the provision shall be made in the proposed service regulations but the Rules were made applicable in the year of 2011 only. Such is the finding recorded by the High Court which is not disputed by the appellants or by the writ petitioners, such Rules have been framed under the proviso to Article 309 of the Constitution and they are not applicable to a creation under statute. These Rules are applicable to government servants in respect of whose recruitment and condition of Service Rules may be or have been made by the Government under the proviso to Article 309 of the Constitution. Since the employees of the Nigam are not government servant nor are their service conditions governed by Rules framed under the proviso to Article 309 of the Constitution, therefore, such Rules unless adopted by the Nigam cannot be extended to the employees of the Nigam."

Their seniority should have been determined as per the Rule 23(1) of the **Uttar Pradesh Jal Nigam Subordinate Engineering Service Rules, 1978**, which is as follows:

23(1) इस विनियम में यथा उपबन्धित के सिवाय सेवा की किसी शाखा में किसी श्रेणी के पद पर नियुक्त व्यक्तियों की ज्येष्ठता नियमित नियुक्ति के दिनांक के अनुसार और जहां दो या अधिक व्यक्ति एक ही दिनांक को नियुक्त किये जाये वहां उस क्रम के अनुसार जिसमें उनके नाम अनुमोदित सूची में रखे गये हो, अवधारित की जायेगी।

13. This issue has been extensively dealt by the Hon'ble Apex Court in the judgement passed in the Civil Appeal no. 9247 of 2019 and in the Review Petition (Civil) No. 1130 of 2022.

14. In view of the above, the seniority list issued vide letter dated 10/10/2023 is liable to be quashed and the claim petition is liable to be allowed.

ORDER

The claim petition is hereby allowed. The impugned seniority list dated 10/10/2023 is hereby quashed and the respondent authorities are directed to redraw the seniority list as per the Rule 23(1) of the **Uttar Pradesh Jal Nigam Subordinate Engineering Service Rules, 1978** and the judgement dated 06/12/2019 of the Hon'ble Apex Court in Civil Appeal no. 9247 of 2019 and the judgment dated 02.05.2023 in the Review Petition (Civil) No. 1130 of 2022. No order as to costs”

11. Present claim petition is also decided in the light of the judgment passed in connected Claim Petition No. 57/NB/DB/2022, Sunil Kumar vs. State of Uttarakhand & others. No order as to costs.

RAJENDRA SINGH
VICE CHARMAN (J)

A.S.RAWAT
VICE CHARMAN (A)

*DATED: JANUARY 22, 2026
DEHRADUN
KNP*