

“(i) To quash the Final Seniority List dated 19.11.2024 issued by the Secretary, Agriculture and Farmers Welfare, Govt. of Uttarakhand, Dehradun, so far as it determines the inter-se seniority of the Petitioner and private respondents on Grade-1 post in the Department of Horticulture and Food Processing inasmuch as the same is in violation of the provisions of Uttarakhand Govt. Servant Seniority Rules, 2002.

(ii) To direct the respondents to prepare and issue the revised Seniority List of the Officers of Grade-1 post in the Department of Horticulture and Food Processing as per the provisions of Uttarakhand Govt. Servant Seniority Rules, 2002 by placing the Petitioner above the private respondents.

(iii) To award the cost of the petition or to pass such order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case.”

2. Brief facts of the case are as follows:

2.1 The petitioner was appointed on the post of District Horticulture Officer in the Horticulture Development Branch, Class-2 under Department of Horticulture and Food Processing (Hill Region), Uttar Pradesh on which he joined on 30.11.1998 after due permission granted to him. Private Respondent no.3, Dr. Brijesh Kumar Gupta was initially appointed in the Department of Horticulture and Food Processing on Group 'C' post and was subsequently promoted on Class-2 post vide order dated 03.02.2010. The private respondent no.4, Dr. Suresh Ram was directly appointed on Class-2 post vide Order dated 06.06.1999. Dr. Shiv Kumar Singh was also directly appointed on Class-2 post of Nursery Development Officer vide Order dated 26.02.1999. As such, in the Cadre of Class-2 posts, the petitioner was inducted prior to the private respondents.

2.2 After creation of the State of Uttarakhand, the petitioner became the member of services of the State of Uttarakhand. By promotion order dated 19.09.2014, Shri Brijesh Kumar Gupta was promoted on the post of Deputy Director in Experiment and Training branch. Dr. Shiv Kumar Singh was promoted on the post of Deputy

Director (Establishment/Chief Horticulture Officer) in the department of Horticulture and Food Processing. The petitioner was promoted on the post of Chief Horticulture Officer. Addl. Secretary Horticulture circulated the Tentative Seniority list dated 19.07.2019 of the persons working on Class-I posts in the Department of Horticulture and Food Processing and invited objections on the same. In the Tentative Seniority List, the name of Dr. Brijesh Kumar Gupta figured at Serial No. 07, Name of the Petitioner figured at Serial No. 12 and the name of Shiv Kumar Singh figured at Serial No. 13. In the tentative seniority list the name of the Petitioner figured above Dr. Shiv Kumar Singh.

2.3 The Secretary, Horticulture constituted a Committee to decide the objections received on the Tentative Seniority List. In respect of the representations submitted by the Petitioner, Dr. S.K Singh, Shri Suresh Ram and Shri B. K Gupta, the committee opined that the decision on the same will be taken after obtaining the opinion of Department of Personnel. Department of Agriculture and Farmer Welfare issued the Final Seniority List of Class -I officers in which the name of the Petitioner figured at Serial No. 7, name of Shri Shiv Kumar Singh figured in Sl. No. 8, name of Dr. Suresh Ram figured at Sl. No. 9 and name of Shri Brijesh Kumar Gupta figured at Sl. No. 10. The Office Memorandum/ Final Seniority List specifically mentioned in Clause 4 that after publication of the final seniority list of the Class-I officers working in different branches of the Department of Horticulture and Food Processing, no representation of any nature will be taken into consideration.

2.4 After issuance of the final seniority list dated 29.09.2020, representation was submitted by Dr. Jagdish Chandra and Dr. R.K Singh, objecting to issuance of final seniority list that the tentative seniority list was issued on 19.07.2019 on the basis of Rule-7 of the Govt. Servant Seniority Rules, 2002 whereas the final seniority list was issued on the basis of Rule-6 of the said Rules of 2002. On their representation, the Department sought an opinion from Department of Personnel, Govt. of Uttarakhand. On the basis of the opinion given by

the Department of Personnel, the Respondents issued an Office Memorandum, whereby the Final Seniority List dated 29.09.2020 was revised. In the revised Final Seniority List of the Class-I officers dated 06.07.2021, the name of the Petitioner was placed at Serial No. 13, the name of Dr. Brijesh Kumar Gupta figured at Serial No. 7, Dr. Suresh Ram at Serial No. 8 and name of Dr. Shiv Kumar Singh figured at Serial No. 11.

2.5 The petitioner submitted representations against the revised final seniority to the Secretary, Agriculture and Farmer Welfare Govt. of Uttarakhand highlighting the fact. Subsequently on the basis of separate opinion given by the Department of Personnel, the revised final seniority list dated 06.07.2021 was issued without giving an opportunity of hearing to the petitioner. Petitioner again submitted a detailed representation to the Secretary, Agriculture and Farmer Welfare, Govt. of Uttarakhand on 21.02.2022, which was forwarded by the Director, Horticulture and Food Processing to the Government vide communication dated 06.03.2022.

2.6 Dr. Shiv Kumar Singh, who was placed at Sl. No. 11 in the revised final seniority list dated 06.07.2021, above the petitioner, has filed Claim Petition No. 129/DB/2021, Shiv Kumar Singh Vs. State & Ors., before the Tribunal assailing the revised final seniority list dated 06.07.2021. The petitioner again submitted representation to the respondent no. 1 regarding promotion exercise to be taken by the Department for the post of Joint Director.

2.7 During the pendency of decision on the representations of the petitioner, on 19.04.2022, the Respondent no. 1 issued the promotion order, whereby Dr. Brijesh Kumar Gupta and Dr. Suresh Ram were promoted on the post of Joint Director in the Department of Horticulture and Food Processing. The Claim Petition No. 37/NB/DB/2023, filed by the petitioner, was disposed of by the Tribunal on 02.03.2023 by directing the respondent no. 1 to decide the representation dated 21.02.2022. When no action was taken, the

petitioner again submitted a detailed representation to the Secretary, Agriculture and Farmer Welfare on 19.06.2024. The Appointing Authority/Secretary Department of Agriculture and Farmer Welfare, Government of Uttarakhand issued impugned Office Memorandum whereby the inter-se Seniority of the Grade-1 officers of the Department of Horticulture and Food Processing, was issued after deciding the objection raised by the petitioner and other persons. In the impugned final seniority list dated 19.11.2024, the petitioner has been placed below the private respondents, which is not sustainable so far as the preparation of joint seniority list of the Deputy Director is concerned inasmuch as Rule-7 of the Uttarakhand Govt. Servant Seniority Rules, 2002 nowhere provides for preparation of the Joint Seniority List of the members of multi-feeding cadre. Hence the Claim Petition.

3. Opposing the claim petition, the respondent no. 2 has filed C.A/W.S. and the facts mentioned in the claim petition, which are based on the documentary evidence, have been accepted. Further, it has been contended in the W.S. that-

3.1 प्रतिवादी संख्या-1 द्वारा निर्गत श्रेणी-1 के अधिकारियों की अन्तिम कोटिकम सूची कार्मिक विभाग के परामर्शानुसार प्राप्त आपत्तियों के समाधान के उपरान्त कार्यालय ज्ञाप संख्या-799/दिनांक 29.09.2020 के माध्यम से निर्गत की गयी। उक्त अन्तिम कोटिकम सूची के विरुद्ध डा० जगदीश चन्द्र एवं डा० आर०के० सिंह जो कि उक्त ज्येष्ठता सूची के ज्येष्ठता कमांक 03 एवं 04 पर अंकित हैं द्वारा उचित माध्यम से प्रतिवादी संख्या-1 को दिनांक 07.10.2020 के माध्यम से प्रत्यावेदन प्रस्तुत किया गया, जिसमें उनके द्वारा कतिपय तथ्य उल्लेखित करते हुए कार्यालय ज्ञाप दिनांक 29.09.2020 द्वारा प्रख्यापित अन्तिम ज्येष्ठता सूची को निरस्त कराते हुए उत्तराखण्ड सरकारी सेवक ज्येष्ठता नियमावली, 2002 के नियम 7 के अनुसार ज्येष्ठता सूची निर्गत किये जाने का अनुरोध किया गया। प्रत्यावेदन में इनके द्वारा यह भी उल्लेख किया गया कि यदि इस सम्बन्ध में कोई शंका हो तो कार्मिक विभाग से पुनः पुष्टि करायी जा सकती है।

3.2 प्रस्तुत प्रत्यावेदनों के आलोक में प्रतिवादी संख्या-1 द्वारा कार्मिक विभाग से परामर्श प्राप्त किया गया। कार्मिक विभाग द्वारा परामर्शित किया गया कि उत्तर प्रदेश

उद्यान एवं खाद्य प्रसंस्करण समूह 'ख' सेवा नियमावली 1993 के नियम 5 में उद्यान विभाग के अन्तर्गत विभिन्न शाखाएं गठित हैं। उत्तर प्रदेश उद्यान एवं खाद्य प्रसंस्करण समूह 'ख' सेवा नियमावली, 1993 के नियम-8 के अन्तर्गत परिशिष्ट में विभिन्न शाखाएं एवं उप शाखाओं में चयन हेतु पदनाम तथा शैक्षिक योग्यता भिन्न-भिन्न निर्धारित हैं। उत्तर प्रदेश उद्यान एवं खाद्य प्रसंस्करण समूह 'ख' सेवा नियमावली 1993 के भाग-2 सेवा का संवर्ग (4) में यह उल्लेख है कि एक अनुभाग से दूसरे अनुभाग में एवं एक उप-अनुभाग से दूसरे उप-अनुभाग में स्थानान्तरण अनुमन्य नहीं होगा। उत्तर प्रदेश उद्यान एवं खाद्य प्रसंस्करण समूह 'ख' सेवा नियमावली, 1993 के अन्तर्गत भिन्न भिन्न सेवा संवर्ग गठित होने एवं श्रेणी-1 के पद पर भी पदोन्नति के सोपान पृथक-पृथक के दृष्टिगत श्रेणी-1 में ही संयुक्त ज्येष्ठता अवधारित की जा सकती है। कार्मिक विभाग के उक्त परामर्श के अनुसार समूह 'ख' सेवा नियमावली, 1993 के अन्तर्गत विभिन्न सेवा संवर्ग गठित होने एवं श्रेणी-1 के पदों पर पदोन्नति के सोपान पृथक-पृथक होने के दृष्टिगत प्रतिवादी संख्या-1 द्वारा ज्येष्ठता नियम-6 एवं 7 में विहित व्यवस्थाओं के आलोक में विस्तृत रूप से परीक्षणोपरान्त कोटिकम सूची दिनांक 29.09.2020 को सम्यक विचारोपरान्त निरस्त करते हुए नियम-7 के अनुसार श्रेणी-1 के अधिकारियों की अंतिम कोटिकम सूची कार्यालय ज्ञाप संख्या-829/दिनांक 06.08.2021 से प्रख्यापित की गयी।

3.3 डा० शिव कुमार सिंह द्वारा मा० अधिकरण, के समक्ष कोटिकम सूची दिनांक 06.08.2021 को निरस्त किये जाने तथा कोटिकम सूची दिनांक 29.09.2020 के आधार पर पदोन्नति हेतु याचिका दायर की गयी। उक्त याचिका को डा० शिव कुमार सिंह द्वारा विहित रूप से पैरवी न किये जाने के आलोक में मा० अधिकरण द्वारा डा० शिव कुमार सिंह श्रेणी-1 द्वारा योजित याचिका को प्रोसिक्यूसन के अभाव में दिनांक 07.03.2023 को निरस्त कर दी गयी। उक्त निर्णय के आलोक में डा० शिव कुमार सिंह द्वारा याचिका को पुनर्जीवित किये जाने सम्बन्धी कोई नोटिस/जानकारी विभाग को आतिथि तक प्राप्त नहीं है। अतः अंतिम ज्येष्ठता सूची दिनांक 06.08.2021 में अवधारित ज्येष्ठता के अनुसार ही डा० बृजेश कुमार गुप्ता एवं डा० सुरेश राम श्रेणी-1 के अधिकारियों की प्रतिवादी संख्या-1 द्वारा मा० अधिकरण के अंतिम निर्णयाधीन संयुक्त निदेशक के पदों पर दिनांक 19.04. 2022 को प्रोन्नति प्रदान की गयी।

3.4 प्रतिवादी संख्या 1 द्वारा डा० नरेन्द्र कुमार द्वारा योजित याचिका में पारित निर्णय दिनांक 02.03.2023 पर सम्यक/समयान्तर्गत कार्यवाही किये जाने के दृष्टिगत शासन में वादी द्वारा उल्लेखित विभिन्न तिथियों में प्रभावित होने वाले पक्षों एवं शासन

के मध्य बैठक आयोजित करायी गयी तथा प्रतिवादी संख्या 2 से विस्तृत रूप से आख्या/अभिलेख शासन को उपलब्ध कराने हेतु पत्र दिनांक 12.07.2023 एवं 07.08.2023 से निर्देशित किया गया एवं प्रतिवादी संख्या-2 द्वारा पत्र दिनांक 22.08.2023, के आलोक में ज्येष्ठता निस्तारण/मा० अधिकरण के निर्णय का अनुपालन हेतु भरसक प्रयास किया गया तथा श्रेणी-1 के अधिकारियों की सभी पक्षों को सुनने के उपरान्त दिनांक 19.11.2024 से श्रेणी-1 के अधिकारियों की अंतिम कोटिकम सूची प्रख्यापित की गयी, जिसमें एक ही शाखा के अन्तर्गत डा० नरेन्द्र कुमार एवं डा० शिव कुमार सिंह होने के कारण एवं श्रेणी-2 में मौलिक नियुक्त के आधार पर वादी की ज्येष्ठता कमांक-11 पर अवधारित करते हुए प्रकरण का निस्तारण किया गया साथ ही पूर्व अंतिम ज्येष्ठता सूची दिनांक 06.08.2021 को अधिकमित भी किया गया।

3.5 उद्यान एवं खाद्य प्रसंस्करण विभाग के संरचनात्मक ढांचे का पुनर्गठन शासनादेश संख्या-2343/दिनांक 03.11.2016 से पारित हुआ है. जिसके अनुसार श्रेणी-2 एवं श्रेणी-1 के अन्तर्गत विभिन्न शाखाएं यथा उद्यान विकास शाखा, खाद्य प्रसंस्करण शाखा, प्रयोग एवं प्रशिक्षण शाखा, कीट एवं पौध परीक्षण शाखा, मशरूम विकास शाखा, सांख्यिकीय एवं नियोजन शाखा गठित हैं तथा प्रयोग एवं प्रशिक्षण शाखा के अन्तर्गत उद्यान विज्ञान, वनस्पति विज्ञान/पुष्प विज्ञान, रसायन विज्ञान, मृदा परीक्षण भी गठित हैं। साथ ही मशरूम विकास शाखा प्रयोग एवं प्रशिक्षण शाखा के अन्तर्गत वनस्पति विज्ञान की उप शाखा है। समूह 'ख' सेवा नियमावली 1993 के अनुसार विभिन्न शाखाओं/संवर्गों में चयन हेतु पदनाम तथा शैक्षिक योग्यता भिन्न-भिन्न निर्धारित है। पूर्व ज्येष्ठता सूची दिनांक 06.08.2021 के अनुसार भिन्न भिन्न संवर्ग गठित होने एवं श्रेणी-1 के पद पर भी पदोन्नति के सोपान पृथक-पृथक के दृष्टिगत श्रेणी-1 में संयुक्त ज्येष्ठता अवधारित किया जाना उल्लेखित है तथा वर्तमान कोटिकम सूची दिनांक 19.11.2024 के अनुसार विभाग के संरचनात्मक ढांचे के अन्तर्गत सृजित विभिन्न शाखाएं/अनुभाग, पृथक-पृथक संवर्ग हैं। फलस्वरूप शासन द्वारा ज्येष्ठता नियमावली के नियम-7 के अनुसार पृथक-पृथक संवर्ग एवं विभिन्न शाखाओं/अनुभाग के आलोक में उत्तराखण्ड सरकारी सेवक ज्येष्ठता नियमावली के नियम-7 के अनुसार ज्येष्ठता अवधारित की गयी है, किन्तु डा०एस०के० सिंह एवं वादी के परिप्रेक्ष्य में एक ही संवर्ग में मौलिक रूप से श्रेणी-2 के पद पर नियुक्ति के आलोक में नियम-6 के अन्तर्गत वादी से डा० शिव कुमार सिंह को नीचे ज्येष्ठता अवधारित की गयी है।

3.6 डा० बृजेश कुमार गुप्ता, प्रयोग एवं प्रशिक्षण शाखा के अन्तर्गत वनस्पति अनुभाग में प्रोन्नति द्वारा दिनांक 02.02.2010 तथा वादी विकास शाखा के अन्तर्गत 22.

07.1998 को सीधी भर्ती के माध्यम से नियुक्त हुए। तदआलोक में प्रतिवादी संख्या-1 द्वारा भिन्न-भिन्न संवर्ग एवं भिन्न-भिन्न शाखाओं/अनुभाग के दृष्टिगत ज्येष्ठता नियमावली के नियम-7 का अनुसरण किया गया है। डा० सुरेश राम, प्रयोग एवं प्रशिक्षण शाखा के अन्तर्गत रसायन अनुभाग में सीधी भर्ती के माध्यम से दिनांक 08.06.1999 तथा वादी विकास शाखा के अन्तर्गत 22.07.1998 को सीधी भर्ती के माध्यम से नियुक्त हुए। तदआलोक में प्रतिवादी संख्या-1 द्वारा भिन्न भिन्न संवर्ग एवं भिन्न-भिन्न शाखाओं/अनुभाग के दृष्टिगत ज्येष्ठता नियमावली के नियम-7 का अनुसरण किया गया है।

3.7 वादी एवं उत्तरदाता क्रम संख्या-3 एवं 4 तथा श्रेणी-1 में कार्यरत अधिकारियों के सम्बन्ध में प्रतिवादी संख्या-1 द्वारा कोटिकम सूची के बिन्दु संख्या-9 में सेवा नियमावली 1991 एवं 1993 के अनुसार उद्यान विकास शाखा अनुभाग समूह-3 वर्ग-1 में कार्यरत कार्मिकों के श्रेणी-2 में कार्यरत अधिकारियों के उप निदेशक/मुख्य उद्यान अधिकारी श्रेणी-1 में तथा उप निदेशक /मुख्य उद्यान अधिकारी श्रेणी-1 में कार्यरत अधिकारियों के संयुक्त निदेशक श्रेणी-1 के पद पर पदोन्नति हेतु प्राविधानों को स्पष्ट करते हुए तथा प्रस्तर-10 में सेवा नियमावली 1991 के अनुसार पोषक संवर्ग में अनुभाग, उप अनुभाग एवं पोषक संवर्ग में पदों को उल्लेखित करते हुए भरे जाने वाले पद का नाम को भी स्पष्ट कर ज्येष्ठता नियमावली नियम-7 का उल्लेख करते हुए बिन्दु संख्या-13 में श्रेणी-1 के पद पर ज्येष्ठता सूची प्रख्यापन का भी उल्लेख किया गया है। उल्लेखनीय है कि बिन्दु संख्या-13 में प्रतिवादी संख्या-1 द्वारा उल्लेख किया गया है कि संयुक्त निदेशक के पद पर पदोन्नति हेतु ज्येष्ठता का निर्धारण पृथक-पृथक संवर्गों (शाखाओं) से ज्येष्ठता के आधार पर पदोन्नत हुए उप निदेशकों में से निर्धारित किया जाता है एवं उद्यान एवं खाद्य प्रसंस्करण विभाग के संरचनात्मक ढांचे के अन्तर्गत सृजित विभिन्न शाखाएं/अनुभाग, पृथक-पृथक संवर्ग होना उल्लेखित करते हुए उत्तराखण्ड सरकारी सेवक ज्येष्ठता नियमावली के नियम-7 के अनुसार ज्येष्ठता अवधारित की गयी है।

3.8 मा० अधिकरण द्वारा पारित निर्णय दिनांक 02.03.2023 तथा प्रभावित पक्षों द्वारा प्रतिवादी संख्या-1 को प्रस्तुत साक्ष्यों/अभिलेखों तथा तथ्यों के आधार पर अनुपालनार्थ कार्यवाही करते हुए प्रतिवादी संख्या-1 द्वारा सेवा नियमावली 1993/1991 के आलोक में अंतिम कोटिकम सूची दिनांक 19.11.2024 को प्रख्याति किया गया है। ऐसी स्थिति में स्वभाविक है कि कोटिकम सूची दिनांक 06.08.2021 स्वभाविक रूप से अधिकमित हो गयी है। इस सम्बन्ध में प्रतिवादी संख्या-1 द्वारा भी कोटिकम सूची दिनांक 06.08.2021

को अधिकमित किया गया है। उत्तराखण्ड सरकारी सेवक ज्येष्ठता नियमावली, 2002, सेवानियमावलियों एवं प्रभावित पक्षों द्वारा रखे गये पक्ष एवं वादी के द्वारा रखे गये पक्षों को प्रतिवादी संख्या—1 द्वारा सेवा नियमावलियों के आलोक में विभिन्न शाखाएं / अनुभाग, पृथक—पृथक संवर्ग होने के आलोक में उक्त नियमावली के नियम—7 के अनुसार ज्येष्ठता अवधारित करते हुए कोटिकम सूची दिनांक 19.11.2024 प्रख्यापित की गयी है। समस्त पहलुओं/तथ्यों एवं सेवा नियमावलियों एवं प्रभावित पक्षों तथा वादी द्वारा रखे गये पक्षों को ध्यान में रखते हुए ज्येष्ठता नियमावली के नियम—7 के अनुसार ही प्रतिवादी संख्या—1 द्वारा दिनांक 19.11.2024 को अंतिम कोटिकम सूची प्रख्यापित की गयी है। अतः याचिकाकर्ता के द्वारा योजित की गयी वर्तमान याचिका असत्य एवं भ्रामक तथ्यों पर आधारित है, जिस कारण उक्त याचिका खारिज होने योग्य है।

4. C.A./W.S has also been filed on behalf of respondent no. 1 separately stating therein that-

4-1 The posts outside the purview of Public Service Commission are governed by Uttaranchal Vibhageey Padoonoti Samiti Ka Gathan (Lok Seva Aayog Ki Paridhi Ke Bahar ke Pado ke Liye) Niyamawali, 2002 and Uttaranchal Sarkari Sevak (Padoonoti Dwara Bharti ke Liye Mandand) Niyamawali, 2004. The respondent no.3 (Brijesh Kumar Gupta) was promoted as Class-II officer in Experiment and Training Branch in Vegetation Section vide office order dated 02.02.2010. Dr. Shiv Kumar Singh was appointed in Development Branch vide order dated 26.02.1999 and respondent no.4 (Dr. Suresh Ram) was appointed in Experiment and Training Branch in Chemical Section vide office order dated 08.06.1999. The final seniority list dated 29.09.2020 was further revised after receiving representation from Dr. Jagdish Singh and Dr. R.K Singh and revised final seniority list dated 06.07.2021 was issued finding their representations legally tenable and therefore there was no requirement of giving an opportunity of being heard to the petitioner.

4-2 The Claim Petition No. 129/DB/2021 filed by Shri. Shiv Kumar Singh was dismissed by the Tribunal vide order dated 07.03.2023. The representation of the petitioner dated 11.04.2022 was not received by the answering respondent. Further, the promotion at that

relevant point of time on the post of Joint Director was done in accordance with the Uttar Pradesh Horticulture and Food Processing Group "A" Service Rules, 1991. During the pendency of the representation of the petitioner dated 21.02.2022, respondent no. 3 and 4 were promoted on the post of Joint Director on the basis of seniority list dated 06.07.2021 and in the said promotion order, it was categorically mentioned that the promotion shall be subject to the outcome of decision in claim petition no. 129/DB/2021, Shiv Kumar Singh Vs. State of Uttarakhand. Since, the said claim petition was dismissed vide order dated 07.03.2023 upholding the seniority list dated 06.07.2021 therefore, the said promotion is legal and valid. Furthermore, since the representation dated 21.02.2022 of the petitioner was pending before the State, therefore the petitioner filed a claim petition no. 37/NB/DB/2023 which was disposed off vide order dated 02.03.2023 directing the State to dispose of the said representation. For ensuring compliance of the order, the petitioner again filed a representation dated 13.03.2023. The representation of the petitioner was disposed off vide order dated 19.11.2024.

4-3 The restructuring of Horticulture and Food Processing Department was issued vide office order dated 03.11.2016. Under the said restructuring, there were different branches under Class I and II like Horticulture Development Branch, Food Processing Branch, Experiment and Training Branch, Insect and Plant Testing Branch, Mushroom Development Branch, Statistic and Planning Branch. Under Experiment and Training Branch, there is Horticulture, Vegetation and Floristry, Chemistry, Soil Testing. Simultaneously under Mushroom Development Branch and in Experiment and Training Branch, there is sub branch of Vegetation. Under Uttar Pradesh Horticulture and Food Processing Group "B" Service Rules, 1993 different posts and educational qualifications is laid down for the different branches/cadres. Under Rule 4(3) of Uttar Pradesh Horticulture and Food Processing Group "A" Service Rules, 1991 different posts are divided under different department/branches.

Under Uttar Pradesh Horticulture and Food Processing Group "B" Service Rules, 1993 and Uttar Pradesh Horticulture and Food Processing Group "A" Service Rules, 1991 there cannot be any transfer from one department to another or sub department.

4.4 The respondent no.3 was appointed on the post of Senior Research Assistant Subordinate Service Group-1 in Experiment and Training Branch, sub department Vegetation as a direct recruitee on 28.07.1990. Thereafter, he was promoted on 02.02.2010 under Class II under his parent department i.e. Experiment and Training Branch, sub department Vegetation. Thereafter only against vacant post of Deputy Director, Class-I available in Experiment and Training Branch, sub department Vegetation, the petitioner was promoted on the post of Deputy Director in the same branch vide order dated 19.09.2014. The appointment/ promotion of the petitioner and respondent no. 3 and 4 and Shiv Kumar was always done in the same department / sub department in which they were originally appointed.

4.5 Under the Uttar Pradesh Horticulture and Food Processing Group "A" Service Rules, 1991 and Uttar Pradesh Horticulture and Food Processing Group "B" Service Rules, 1993, there is a provision for promoting the officers of Horticulture Development Section (Branch) Class "3", Group-I, Class II to the post of Deputy Director/Chief Horticulture Officer Class-1 and from the post of Deputy Director/Chief Horticulture Officer Class-1 to Joint Director Class-1. Schedule B-2, Rule 5 of Uttar Pradesh Horticulture and Food Processing Group "A" Service Rules, 1991, mentions those feeding cadre for the "Hilly Cadre", the officers of which are eligible for promotion to the post of Deputy Director, Horticulture Development Section (Horticulture Development Branch). As per the restructuring of Horticulture and Food Processing Department, the department wise seniority list of Class "3", Class I and II has been promulgated. The seniority list of Class-II officers of one Section/Branch cannot be challenged by the Class-II officers of another Section/Branch.

4.6 As per Rule-7 of the Uttarakhand Government Servant Seniority Rules, 2002, after the promotion of the officers of different Sections/Branches of Class-II to the post of Deputy Director/ Chief Horticulture Officer Class-1, a single seniority list is promulgated. Thereafter for promotion to the post of Joint Director, seniority of promoted Deputy Director is determined on the basis of seniority list of different branches. Since, the petitioner and Dr. Shiv Kumar belong to the same branch, their inter-se seniority was determined as per Rule 6 of the aforesaid Seniority Rules. Whereas, respondent no.3 and 4 belong to different branches therefore their seniority was determined as per Rule 7 of the aforesaid Seniority Rules, 2002. Following the aforesaid principle, the final seniority list of Class-I officers of Horticulture and Food Processing Department has been issued vide office order dated 19.11.2024, wherein the petitioner has been placed at serial no.11 i.e below the respondent no. 3 and 4 but above Shri. Shiv Kumar.

4.7 In compliance of order dated 02.03.2023 passed by the Hon'ble Tribunal in Claim Petition No. 37/NB/DB/2023, the representation of the petitioner dated 21.02.2022 and 13.03.2023 were sent by the answering respondent for seeking opinion from the Personnel Department. Before any decision could be taken on the aforesaid representation, the petitioner again sent representations dated 22.06.2023 and 05.09.2023 to the answering respondent and the file was again sent to the Personnel and Law Department for seeking necessary opinion. Thereafter a meeting was convened on 12.06.2024 under the Chairmanship of Secretary, Agriculture and farmer Welfare department wherein the concerned officers were required to submit different representations at individual levels. All the representations were duly perused and finally the representation of the petitioner dated 21.02.2022 and 13.03.2023 was disposed of vide order dated 19.11.2024 by virtue of which petitioner has been placed at serial no.11 i.e below the respondent no. 3 and 4 but above Shri. Shiv Kumar.

4.8 Under Group "A" of Horticulture Department, officers are promoted from different branches. Since promotions are made to Class-1 posts from different feeding cadres therefore seniority is determined as per Rule 7 of the aforesaid Seniority Rules of 2002. The finding given in the paragraph no.16 of the impugned order is based on the provision given in Rule 7 of the aforesaid Seniority Rules of 2002, which has already been reproduced in the preceding paragraphs. Under Rule 4(3) of Uttar Pradesh Horticulture and Food Processing Group "A" Service Rules, 1991 different posts are divided under different department / branches. As per the aforesaid Rules there cannot be any transfer from one department to another or sub department as each and every branch is separate, distinct and independent from each other. The claim petition is devoid of merits and therefore, the petitioner is not entitled for the grant of any relief, thus the petition deserves to be dismissed.

5. Respondents No. 3 & 4 were given sufficient notices to file written statements/ Counter affidavit but they did not file. They did not appear in the hearing also.

6. We have heard the learned counsel for the petitioner, learned APO and perused the record carefully.

7. Learned Counsel or the petitioner argued that the petitioner was appointed on 18/11/1998 as District Horticulture Officer a class - 2 post in the Horticulture Development Branch and promoted to the post of the Chief Horticulture, Class -I post on 02/06/2017. The private respondents Dr Brijesh Kumar Gupta Respondent No. 3 initially appointed on group-C was promoted on class -2 post on 03/02/2010 in Department of Horticulture and Food processing and subsequently on the post of Deputy Director, Experiment and Training Branch, Class -I post on 19/9/2014. Dr Suresh Ram Respondent No- 4 was appointed on class -2 post on 06/06/1999 and Dr Shiv Kumar Singh was appointed as Nursery Development officer on 26/02/1999 was promoted on the post of Deputy Director (Establishment/ Chief

Horticulture officer) in the department of Horticulture and Food processing on 16/03/2017. The group -A and B officers of the Department of Horticulture and Food Processing in the State of Uttarakhand are governed by the Uttar Pradesh Horticulture and Food Processing Rules, 1991 and these Rules are adopted by the Govt. of Uttarakhand.

8. Learned counsel for the petitioner argued that the petitioner has been appointed as Group B officer prior to the private respondents, different sections in the department are not separate cadres. The seniority list should be prepared based on the Rule -6 of the Uttarakhand Govt. Servants Seniority Rules, 2002 and the seniority list dated 19.11.2024 is liable to be quashed and the claim petition is liable to be allowed.

9. Learned APO on behalf of the respondents 1&2 argued that the Group-B officer in the department is governed by the Uttar Pradesh Horticulture and Food processing Group-B Service Rules, 1993. The petitioner was appointed in the Horticulture Development Branch, Dr Brijesh Kumar Gupta Respondent No. 3 was in the Experiment and Training branch, Dr Shiv Kumar in the Horticulture Development branch, Dr. Suresh Kumar in the Chemistry Division of Experiment and Training Branch. As per the opinion of the department of Personnel different sections have been constituted in the department of Horticulture as per section -5 of the Uttar Pradesh Horticulture and Food processing Group-B Service Rules, 1993. As per Rule-8, recruitment Rules for the different group-B posts in these sections are different, name of the posts and the required qualifications for these posts are also different. The level of promotion for these posts in different sections are also different. Transfer of a person from one section to another is also not allowed. These sections are different cadres, and the Joint Director is a common cadre and a promotional post. Deputy Director and equivalent is a feeder cadre at the level of section/ sub section for the post of the Joint director. The seniority up to Deputy Director level is determined as per Rule -6 and for the

promotion to the post of the Joint Director, the combined seniority is determined as per Rule-7 of the Rules of 2002 considering the feeder Deputy Directors are more than one. The Claim petition no. 129/DB/2021 filed by Dr Shiv Kumar Singh in this Tribunal was dismissed on 07/03/2023 on the ground on non-prosecution. Since Dr. Shiv Kumar and the petitioner belong to the same cadre, their seniority has been rightly determined as per the Rule -6. Hence, the claim petition is liable to be dismissed.

10. Based on the arguments of the counsels for the parties and perusal of the record, we find that the petitioner along with the private respondents were appointed in the Group -B posts through direct recruitment and by promotion. But they were appointed in different sections in the department. The petitioner and the private respondents were governed by the Uttar Pradesh Horticulture and Food processing group B service Rules, 1993. Rule-4 of these Rules provides that transfer from one section to another and one sub-section to another will not be permissible. Rule- 5 provides that the source of recruitment under various sections/subsections at the level of Group-2, will be through promotion as well as direct recruitment. The promotion will be from different feeder cadres. Rule-8 shows that the eligibility for posts in different sections is different. Deputy director and equivalent, Joint director, Additional Director and Director level posts are Group-A posts which are governed by the Uttar Pradesh Horticulture and Food Processing Rules, 1991. The posts of the Deputy Director and equivalent in different sections are filled from among the officers in the feeder cadres in the respective sections on the basis of seniority- cum fitness and who have completed 5 years of service. Whereas the Joint Directors are appointed from the feeder cadre of Deputy Director and equivalent in the different sections, who have completed two years of service on seniority basis. This shows that the seniority in the sections at the level of the Deputy Director and equivalent is determined as per Rule-6 of the Uttarakhand Govt. Servants Seniority Rules, 2002. But for promotion to the post of Joint

Director, a combined seniority list of the Deputy Directors and equivalent has to be made, which will be determined as per Rule-7 of the Uttarakhand Govt. Servants Seniority Rules, 2002.

11. The petitioner was promoted on the post of Chief Horticulture a Deputy Director level post (Grade-1) in the section on 02/06/2017. The private respondent no. 3 was promoted on the post of the Deputy Director (Grade-1) on 19/9/2014 and the respondent no.4 on 13/01/2016. So, in the combined seniority list dated 19.11.2024, the petitioner at sl. No. 11, the respondent no-3 at Sl. no. 7 and the respondent no 4 at Sl. no 8 have been rightly placed as per Rule- 7 of the Seniority Rules of 2002 and the petitioner is not entitled to get any relief. 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)

*DATE:FEBRUARY 05, 2026
DEHRADUN.
KNP*