

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

Present : Hon'ble Mr. Ram Singh

----- Vice Chairman (J)

&

Hon'ble Mr. D. K. Kotia

-----Vice Chairman (A)

**REVIEW PETITION NO. 01/NB/DB/2017  
(ARISING OUT OF JUDGMENT DATED 10.10.2017 IN  
CLAIM PETITION NO. 18/NB/DB/2015)**

Sunil Kumar, S/o Sri Bishan Lal, R/o C/o Sri Pratap Singh Garhiya,  
Village- Majhiyakhet Bageshwar, District Bageshwar, presently posted  
as Additional Assistant Engineer, Construction Division Peyjal Nigam,  
Bageshwar.

..... Petitioner

**VERSUS**

1. Chief Engineer (H.Q.) Uttarakhand Peyjal Nigam Headquarters, 11,  
Mohini Road, Dehradun.
2. Uttarakhand Peyjal Sansadhan Vikas Nirman Nigam, Head Office, 11  
Mohini Road, Dehradun through its Managing Director.
3. State of Uttarakhand through Secretary Peyjal Sansadhan Vikas Evam  
Nirman Nigam, Dehradun.
4. Sri Sanjay Kumar, S/o Sri Raghubir Singh,
5. Sri Pradeep Kumar, S/o Kashi Ram,
6. Sri Manvirendra Singh, S/o Sri Amar Singh.
7. Sri Sanjay Kumar, S/o Sri Sobha Ram,
8. Sri Piyush Dimri, S/o Sri Ganga Prasad Dimri,
9. Sri Rama Kant, S/o Sri Shiv Pujan Prasad,
10. Sri Vinod Prasad Raturi, S/o Sri Gunanand Raturi,

11. Sri Laxmi Chand Ramola, S/o Sri Puran Chand Ramola,
12. Sri Pramod Prasad, S/o Sri Anant Ram,
13. Sri Allah Diya, S/o Sri Maseeta Ali,
14. Sri Hem Chandra Belwal, S/o Sri J.K. Belwal,
15. Sri Shashipal Singh, S/o Sri Dal Chandra,
16. Sri Ajay Kumar Gurang, S/o Sri Tej Bahadur Gurang,
17. Sri Bishan Singh, S/o Sri Jeet Singh,
18. Sri Subhash Chandra Bhatt, S/o Sri Bhairav Dutt Bhatt,
19. Sri Ravindra Kumar, S/o Sri Chandrapal Singh,
20. Sri Lalit Gaur, S/o Sri Chandra Prakash Gaur,
21. Sri Mahendra Singh Manral, S/o Sri Kripal Singh Manral,
22. Sri Yatendra Singh Rawat, S/o Sri Bhopal Singh Rawat,
23. Sri Arvind Chandra Sundali, S/o Sri Rameshwar Prasad,
24. Sri Baldev Singh, S/o Sri Balbir Singh,
25. Sri Virendra Singh Rawat, S/o Sri Maharaj Singh Rawat,
26. Sri Deepak Kumar, S/o Sri Prem Chand,
27. Sri Prem Kumar, S/o Late Sri Deenanath,
28. Sri Rajeev Kumar, S/o Sri Ompal Sharma,
29. Sri Nand Kishore Sati, S/o Sri Bhola Dutt Sati,
30. Sri Harish Chandra Sharma, S/o Sri Devi Dutt Sharma,
31. Sri Kailash Chandra Nautiyal, S/o Sri Late Sri Gopal Krishna Nautiyal,
32. Sri Manoj Kumar Joshi, S/o Sri Harish Chandra Joshi,
33. Sri Mukesh Singh, S/o Sri Sohan Singh,
34. Sri Shailendra Singh Bhandari, S/o Sri Harendra Singh Bhandari,
35. Sri Bhupendra Singh, S/o Sri Kunwar Singh,
36. Sri Anuraj Agrawal, S/o Sri Om Prakash Gupta,
37. Sri Ambika Prasad Bhatt, S/o Sri Tota Ram Bhatt,
38. Sri Anup Singh Bhandari, S/o Sri Mahipal Singh Bhandari,
39. Sri Rajendra Prasad Budakoti, S/o Sri Kailash Chandra Budakoti,
40. Sri Anil Kumar, S/o Sri Chandra Shekhar Shukla,

41. Sri Pramod Chandra Kothiyal, S/o Sri Bhagwati Prasad Kothiyal,
42. Sri Anand Singh, S/o Sri Hari Singh Bisht,
43. Sri Sushil Bahuguna, S/o Sri Kundan Lal,
44. Sri Neeraj Kumar Kapil, S/o Sri Sumer Chandra Sharma,
45. Sri Narendra Mohan Garkoti, S/o Sri Keshav Dutt Garkoti,
46. Sri Ravindra Singh Panwar, S/o Sri Chandan Singh Panwar,
47. Sri Mukesh Kumar, S/o Sri Hari Singh,
48. Sri Deepak Vattsa, S/o Sri D. K. Vattsa,
49. Sri Vinod Prasad Semwal, S/o Sri Ghananand Semwal,
50. Sri Balam Singh Negi, S/o Sri Khem Singh Negi,
51. Sri Bharat Singh Rawat, S/o Sri Manohar Singh Rawat,
52. Sri Dharmendra Prasad, S/o Late Sri Ishwari Dutt Kukreti,
53. Sri Ravindra Singh, S/o Sri Bachan Singh,
54. Sri Nitesh Kumar, S/o Sri Shankar Singh Yadav,
55. Sri Sanjay Kumar, S/o Sri Sita Ram,
56. Sri Satendra Kumar Gupta, S/o Sri Ravindra Kumar,
57. Sri Sandeep Kumar Nautiyal, S/o Sri Mangat Ram Nautiyal,
58. Sri Anil Juyal, S/o Sri Hari Prasad Juyal,
59. Sri Harish Prasad, S/o Sri Bharat Ram,
60. Sri Santosh Kumar, S/o Sri Fakeer Chandra Panwar,
61. Sri Anant Kumar Badula, S/o Sri B. K. Badula,
62. Sri Mohd. Parvez, S/o Sri Mohd. Imran,
63. Sri Jagdish Singh, S/o Sri Gajendra Singh,
64. Sri Pradeep Singh, S/o Sri Raghuvir Singh Bhandari,
65. Sri Jitendra Kumar Suyal, S/o Sri Naval Kishore Suyal,
66. Sri Bhajan Singh, S/o Sri Darban Singh,
67. Sri Arvind Kumar, S/o Sri Sukendra Pal Singh,
68. Sri Bhushan Singh, S/o Sri Prasadi Singh,
69. Sri Ashok Kumar, S/o Sri Ram Nath Sharma,
70. Sri Ravindra Singh, S/o Sri Raipal Singh,

71. Sri Yashbir Malla, S/o Sri Amar Bahadur Malla,
72. Sri Azad Singh, S/o Sri Prem Singh,
73. Sri Ram Kumar, S/o Sri Rishipal Singh,
74. Sri Rajvir Singh Rana, S/o Sri Lakhan Singh Rana,
75. Sri Radhey Shyam Singh, S/o Sri Jaswant Singh,
76. Sri Raj Mohan Lal Gupta, S/o Sri Jagmohan Lal Gupta,
77. Sri Mustaq Alam, S/o Sri Zahiduddin,
78. Sri Kamal Kishore, S/o Sri Mohan Singh,
79. Sri Irshad Hasan, S/o Sri Iliyas Hasan,
80. Sri Wahid Hussain, S/o Sri Nizamuddin,
81. Sri Tripan Singh Bhandari, S/o Sri Khushal Singh Bhandari,
82. Sri Mohd. Amzad Khan, S/o Sri Babu Hasan

..... Respondents

Present : Sri Rakesh Thapliyal, Ld. Counsel for the petitioner.

Sri V. P. Devrani, A.P.O. for the respondent No. 3.

Sri B.P. Nautiyal, Senior Advocate, Assisted by Sri Pooran Singh Rawat, Counsel for the respondents No. 1 & 2.

Sri Alok Mehra, Ld. Counsel for the respondents No. 15, 18, 19, 22, 29, 33, 39, 51, 53, 58, 63, 64, 66, 68, 69, 72, 73, 76, 79 & 82.

Sri M.C. Pant, Ld. Counsel for the respondents No. 7, 9, 10, 12, 16, 17, 20, 21, 23, 24, 25, 30, 31, 32, 34, 35, 36, 41, 50, 57, 70, 74, 75 & 78.

None for the other private respondents.

### **ORDER**

**DATED: NOVEMBER, 23 2017**

**(HON'BLE MR. D. K. KOTIA, VICE CHAIRMAN (A))**

1. The present petition is a review petition filed by the petitioner to review the judgment in Claim Petition No. 18/NB/DB/2015, Sunil Kumar Vs. Chief Engineer and others which was dismissed by the Tribunal on 10.10.2017.

2. The prayer of the petitioner in this review petition is as under:

*“It is, therefore, most respectfully prayed that this Hon’ble Court Hon’ble Tribunal may graciously be pleased to allow this review petition and the judgment and order dated 10.10.2017 passed by this Tribunal in Claim Petition no. 18/N/B/D/B of 2015 Sunil Kumar Vs. Chief Engineer and others may be reviewed/recalled and the claim petition be decided strictly as per the provision set out in regulation 1979 or to pass any other order which this Hon’ble Tribunal may deem fit and proper under the facts and circumstances of the case otherwise the petitioner shall suffer irreparable loss and injury.”*

3. At the outset, it would be appropriate to mention that the Regulation of 1979 which have been mentioned by the petitioner in above prayer and also throughout the review petition was stated by the petitioner as Rules of 1978 in the claim petition. In the judgment dated 10.10.2017 also these Regulations have been referred as Rules of 1978. These Regulations were enclosed by the petitioner in his claim petition as Annexure-7. The title of these Regulations and Regulation 1(1) read as under:

“उत्तर प्रदेश जल निगम अधीनस्थ अभियंत्रण सेवा विनियमावली, 1979

1(1) यह नियमावली “उत्तर प्रदेश जल निगम अधीनस्थ अभियंत्रण सेवा विनियमावली, 1978” कही जायेगी।”

In fact, these Regulations were notified on 02.1.1979 and, therefore, perhaps the title of the Regulations mentions the year 1979 but Regulation 1(1) has made it clear that these Regulations will be known as Uttar Pradesh Jal Nigam Subordinate Engineering Service Regulations, 1978 (hereinafter these Regulations will be referred as Services Rules of 1978).

4. As a brief background, the facts are that the state respondents issued an advertisement for recruitment of Junior

Engineers (Civil) in the year 2004. For selection, the Punjab University was engaged as an agency. After written test and interview, a merit list was prepared on the basis of the total marks secured by all the candidates in the written test and interview. The state respondents, thereafter, issued an appointment letter on 13.05.2005 in which names of the petitioner and some other selected persons were included. In pursuance to the same advertisement/selection, the respondents issued further appointment letters on 27.06.2005, 09.08.2005, 27.09.2005 and 16.12.2005 to remaining candidates who were also available in the single merit list prepared for the recruitment of Junior Engineers (Civil).

5. While in the claim petition, the petitioner challenged the seniority list of Junior Engineers (Civil) issued on 28.11.2014 on the basis of the Service Rules of 1978, the respondents in their written statements pointed out that the Regulation 23 of the Service Rules of 1978 was amended by adding Rule 23 (क) to the Service Rules of 1978 on 18.01.1999 and the case is covered under the Rule 23(क) and not the Rule 23 of the Service Rules of 1978. The respondents also emphasised in their written statements that in the case, the Uttarakhand Government Servant Seniority Rules, 2002 (hereinafter referred as the Seniority Rules of 2002) are also applicable. It is pertinent to note here that Rule 23(क) and the Seniority Rules of 2002 are identical and the fact that these Rules are exactly same is admitted to all the parties.

6. The petitioner filed three rejoinder affidavits against the written statements of the state respondents and the private respondents and admitted in the pleadings that Regulation 23(क) and Rule 5 of the Seniority Rules of 2002 are applicable in the case and the petitioner pleaded that according to these Rules and their correct interpretation, he was required to be placed above the private

respondents in the seniority list which was issued on 28.11.2014. The admission of the petitioner regarding applicability of the Regulation 23(क) and the Rule 5 of the Seniority Rules of 2002 is clear from para 6 and para 7 of the rejoinder affidavits. These paragraphs of the rejoinder affidavits read as under:

*“6. That the answering respondents taking the shelter of a new provision inserted i.e: Regulation 23 (Ka) which in fact is identical to Rule-5 of the Government Servants Seniority Rules, 2002. The correct interpretation of Rule-5 which provides that the seniority should be based upon the merit list the mandatory requirement for this is that the person should be appointed in other words, the criteria for seniority on the basis of merit is only arise amongst the persons appointed and it does not mean that the person who appointed by a subsequent appointment letter and joined thereafter will occupy his placement in the seniority list on the basis of merit list from the date even when neither he was appointed nor he had joined. Otherwise if the criteria of merit list is adopted for determination of seniority to a person appointed by different appointment orders is to give a benefit of seniority from a retrospective date when neither he was appointed nor he joined. The correct interpretation of this provision is that inter-se seniority of the persons appointed by one appointment order should be based upon the merit list. Under the service jurisprudence there is no provision for giving a Retrospective seniority.”*

*“7. That apart from this as per the correct interpretation of the Rule 5 if we see proviso for determination of seniority offer of vacancy in other words offer of appointment is mandatory and despite offering if person fails to join he will lose his seniority so, for determination of seniority offer of appointment and joining is main deciding factor and if the persons appointed*

*by single appointment order then their seniority will be based upon merit.”*

7. As the petitioner as well as respondents all admitted Rule 23(क) and Rule 5 of the Seniority Rules of 2002, the Tribunal decided the petition accordingly taking into consideration the pleadings and after hearing all the parties.

8. After the judgment of this Tribunal on 10.10.2017, the petitioner has changed the stand regarding the applicability of Regulation 23(क) and Rule 5 of the Seniority Rules of 2002. The petitioner has now stated in this review petition that Rule 23 of the Service Rules of 1978 was not amended by adding Regulation 23(क) to the Service Rules of 1978. The contention of the petitioner is that Regulation 23(क) was added to the Rule 23 in another Regulations known as Uttar Pradesh Jal Nigam Engineering (Public health Services) Service Regulation, 1978 which were framed for the post of Assistant Engineers onwards and, therefore, Regulation 23 of the Service Rules of 1978 (which are in respect of the Junior Engineers) has not been amended and it still exists and is applicable in the case in hand and Regulation 23(क) and Rule 5 of the Seniority Rules of 2002 are not applicable.

9. It is very surprising to note that the petitioner clearly admitted in the pleadings that Rule 23(क) and Rule 5 of the Seniority Rules of 2002 are applicable and the petitioner vehemently argued that the claim petition deserves to be allowed on the basis of the Rule 23(क) and Rule 5 of the Seniority Rules of 2002, but after the judgment of the Tribunal dated 10.10.2017 on the basis of Rule 23(क) and Rule 5 of the Seniority Rules of 2002, the petitioner has now changed the pleadings and submitted in the review petition that only Regulation 23 of the Service Rules of 1978 is relevant for determining the seniority of the petitioner and the private

respondents. In our view, the petitioner should have raised this issue before the Tribunal during the pendency of the claim petition and before the judgment of the Tribunal on 10.10.2017 in his pleadings and oral hearing.

10. The state respondents as well as private respondents have opposed the review petition and they have argued that the petitioner cannot go against the pleadings made in the claim petition and on this ground alone, the review petition is liable to be dismissed.

11. It has further been argued by the respondents that Uttar Pradesh Jal Nigam Engineering (Public Health Services) Service Regulation, 1978 also covers the Junior Engineers as the promotion to the post of Assistant Engineer is made from Junior Engineers also and the Annexure -1 of the said Rules also deals with the qualification of the Junior Engineers. It is also the contention of the respondents that Regulation 23(क) which has been added to the Service Rules vide Office Memorandum dated 18.1.1999 has been introduced by the Government of Uttar Pradesh in all Service Rules of all Public Undertakings of the State and, therefore, it would not be proper to say that the addition of the Regulation 23(क) should be read only with reference to only one Service Rules of Pey Jal Nigam. Respondents have also contended that the intention of the Office Memorandum dated 18.1.1999 is clear in the first paragraph of the said Office Memorandum which has been reproduced in paragraph 4.2 of the Tribunal's order dated 10.10.2017. Respondents have also argued that the Seniority Rules of 2002 are applicable to all the government servants and the employees working under the State Government. The Seniority Rules of 2002 have been applied for deciding the dispute relating to seniority by this Tribunal as well as by the Hon'ble High Court at Nainital in many cases pertaining to the Pey Jal Nigam.

12. Though the review petition may not be taken cognizance on the basis of the reasons mentioned in paragraph 9 and 10 above yet, since the question of applicability of rules has been raised (even though it is at a belated stage), we find it appropriate in the interest of justice, to deal with the contention of the petitioner and would like to discuss and give our finding on Regulation 23 of the Service Rules of 1978.

13. The relevant Regulations of the Service Rules of 1978 are reproduced below:

“उत्तर प्रदेश जल निगम अधीनस्थ अभियंत्रण सेवा विनियमावली, 1979

संक्षिप्त नाम व प्रारम्भ

1(1) यह नियमावली “उत्तर प्रदेश जल निगम अधीनस्थ अभियंत्रण सेवा नियमावली, 1978” कही जायेगी।”

रिक्तियों का अवधारण

14. नियुक्ति प्राधिकारी भरी जाने वाली रिक्तियों की संख्या अवाधारित करेगा तथा समाचार पत्रों में विज्ञापन के माध्यम से आवेदन पत्र आमंत्रित करेगा।

भरती की प्रक्रिया

15(1) भरती निगम द्वारा गठित चयन समिति करेगी।

(2) भरती प्रतियोगिता परीक्षा तथा साक्षात्कार के माध्यम से की जायेगी।

प्रतियोगिता परीक्षा तथा साक्षात्कार के माध्यम से भरती

16(1) रिक्ति होने पर जब भरती करनी हो तो नियुक्ति प्राधिकारी अभ्यर्थियों से प्राप्त सभी आवेदन पत्रों की समीक्षा करेगा और ऐसे अभ्यर्थी/अभ्यर्थियों को जो इस विनियमावली के अधीन भरती के लिये पात्र पाये जायेंगे, लिखित प्रतियोगिता परीक्षा की दिनांक सूचित करेगा। .....

(2) नियुक्ति प्राधिकारी अभ्यर्थियों की सूची योग्यता के क्रम में, जैसा कि लिखित परीक्षा से प्रकट हो, तैयार करेगा और ऐसे अभ्यर्थियों को जो निगम द्वारा निर्धारित मानक के अनुसार अर्हता प्राप्त करें, साक्षात्कार के लिये बुलायेगा। प्रत्येक अभ्यर्थी द्वारा साक्षात्कार में प्राप्त किये गये अंकों को लिखित परीक्षा में प्राप्त अंकों में जोड़ा जायेगा। अभ्यर्थियों की अन्तिम स्थिति उनके द्वारा प्राप्त किये गये अंकों के कुल योग से अवधारित की जायेगी और तदनुसार सूची बनाई जायेगी। .....

17(1) चयन समिति द्वारा तैयार की गयी अभ्यर्थियों की सूची को नियुक्ति प्राधिकारी नियुक्ति हेतु अनुमोदित करेगा। रिक्तियों, जो वर्तमान हो या भविष्य में होने वाली हो, इस सूची के अभ्यर्थियों द्वारा भरी जायेगी।

इस विनियमावली के प्रारम्भ के पूर्व नियुक्त अवर अभियन्ता

18(1) उन व्यक्तियों के नामों को जो तदर्थ रूप से तत्कालीन स्वायत्त शासन अभियन्त्रण विभाग द्वारा ओवरसियर/ जूनियर इंजीनियर के पद पर नियुक्ति किये गये थे परन्तु नियमित रूप से अभी तक नियुक्त नहीं किये गये हैं, चयन समिति के समक्ष नियमित नियुक्ति हेतु प्रस्तुत किया जायेगा।

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(2) जो व्यक्ति जल निगम के गठन के पश्चात एवं इस विनियमावली के प्रवृत्त होने के पूर्व अवर अभियन्ता के पद पर तदर्थ रूप से नियुक्त किये गये थे और अभी तक उनकी नियमित नियुक्ति नहीं हुई है उनके विषय में भी चयन समिति द्वारा विचार किया जायेगा.....

नियुक्ति

20. रिक्तियों होने पर नियुक्ति प्राधिकारी अभ्यर्थियों को विनियम 16 (2) तथा 17 या 18 के अधीन तैयार की गयी सूची में दिये गये क्रमानुसार नियुक्ति करेगा।

परन्तु यह कि सर्वप्रथम विनियम 18(1) एवं उसके बाद 18(2) के अन्तर्गत बनाई गई सूची में से नियुक्तियों की जायेगी और तदोपरान्त विनियम 16 (2) तथा 17 के अन्तर्गत तैयार की गयी सूची में से नियुक्ति की जायेगी।

ज्येष्ठता

23. (1) इस विनियम में तथा 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 जायें, वहाँ उस क्रम के अनुसार जिसमें उनके नाम अनुमोदित सूची में रखे गये हों, अवधारित की जायेगी।

14.1 It is clear from the above quoted rules that the Service Rules of 1978 prescribe the procedure of the recruitment, appointment and determination of the seniority.

14.2 Rule 14 provides that the appointing authority will determine the number of vacancies to be filled up and the

applications will be invited from the candidates through publication of the advertisement in the newspapers.

14.3 Rule 15 prescribes that the recruitment will be made by a selection committee after conducting written examination and interview of the candidates.

14.4 Rule 16 provides that after the written examination and interview, the marks of each and every candidate in written examination will be added to the marks in interview. The final position of the candidates regarding selection will be determined on the basis of the total marks (in written test and interview) and a merit list of all the candidates will be prepared accordingly.

14.5 Rule 17 provides that the list prepared by the selection committee will be approved by the appointing authority for the appointment. Rule 17(1) also provides that the current vacancies as well as vacancies which will occur in future will be filled up from this merit list.

14.6 Rule 18 deals with the candidates who are already working on adhoc basis and the procedure for their regular recruitment on the post of Junior Engineer. Rule 18 is not relevant in the case in hand as there is no ad hoc appointment is involved in the case.

14.7 **Rule 20 deals with the “appointment”. This rule provides that the appointment will be made out of the list of selected candidates prepared under Rule 16 and 17. It is pertinent to note that Rule 20 also prescribes that the appointment will be made in the order in which names appear in the merit list prepared under Rule 16 and 17.**

14.8 **Rule 23 deals with the seniority and it provides that the seniority of the persons appointed will be determined from the date of appointment and in case two or more persons are appointed on**

**the same date, the names in the seniority list will be placed in the order in which their names appear in the approved list of appointment.**

15.1 A careful examination of the Service Rules of 1978 shows that the Regulation 23 which determines the seniority is to be read with Rules 14,15,16,17,18 and 20 of the said Rules. It is to be noted that a merit list (based on marks in written test and interview) of the candidates is prepared and approved for the appointments against the current vacancies as well as future vacancies. It is, therefore, clear that more than one appointment orders can be issued in pursuant to one selection as per need and requirement. Regulation 20 is quite important which provides that the appointments will be made in the order in which names appear in the merit list.

15.2 **Regulation 23 provides that the seniority of the persons will be determined from the date of appointment. When Regulation 23 is read with Regulation 20, it becomes clear that appointments are to be made in the order of names in the merit list (Regulation 20) and the seniority will be determined from the date of appointment (Regulation 23). It is, therefore, clear that the basis of the appointment and seniority is the merit list and it will make no difference whether one appointment order is issued or more than one appointment orders are issued as appointments under Regulation 20 are to be made in accordance with the merit list.**

15.3 In view of above, Regulation 23 very clearly recognizes the merit list of selected candidates and seniority is necessarily to be determined according to the merit irrespective of the issuance of one or more appointment orders.

15.4 It is also to be noted that the recruitment of the Junior Engineers is only by the method of direct recruitment. The source of appointment of Junior Engineers by promotion is not there. So, there

cannot be a situation when appointments of direct recruits are made on different dates and in the mean time some promotions also take place. The present case is a case of determination of the seniority between direct recruits and direct recruits appointed on various dates as a result of one selection and, therefore, as discussed above, the seniority is to be determined on the basis of the common merit list.

15.5 It is also pertinent to note that there is “one selection” of all the persons including the petitioner and the private respondents. There is one advertisement; one written test/interview; one selection committee and one list of selected candidates though as many as five appointment orders have been issued at various points of time to fill up the posts out of the single merit list. Thus, there is only one selection and single merit list and issuance of more than one appointment orders cannot mean that there are previous and subsequent selections.

15.6 The petitioner admits that the advertisement is one and the merit list is one but pleads that there are different orders of appointment and the persons who have been appointed by subsequent orders cannot be placed above in the seniority list to the persons who were appointed by earlier order of appointment. It is difficult to agree with the argument of the petitioner. **The petitioner has relied on Regulation 23 in isolation. As has been discussed above, Regulation 23 is to be read with other Regulations specially Regulation 20 and the seniority is to relate back to the merit list.**

15.7 In the present case, the difficulty has arisen because appointment orders on various dates were not issued strictly in the order in which names appear in the merit list as has been prescribed under Regulation 20 of the Service Rules of 1978. To that extent, the state respondents committed an error at the time of issuing the

appointment orders in 2005 but this issue was not raised by any party neither in 2005 when appointment orders were issued nor when the dispute of seniority arose. However, in spite of this, the principles for fixation of seniority prescribed in Regulation 20 and Regulation 23 have to be followed. Issuance of appointment orders on various dates, not in accordance with the merit list (violating the Regulation 20 of the Service Rules of 1978), cannot be accepted to fix the seniority under Regulation 23 of the Service Rules of 1978. To do so will amount to alteration of merit which was prepared by the Selection Committee on the basis of total marks in written test and interview in accordance with the Service Rules of 1978. Regulation 23 of the Service Rules of 1978 does not at all allow to place more meritorious candidates below the less meritorious candidates merely because appointment orders of the persons higher in the merit list were issued at later dates. Regulation 23 does also not allow discrimination among persons recruited through the same selection and the single merit list on the ground of different dates of appointment.

16. For the reasons stated above, we do not find any merit in the review petition and the same is liable to be dismissed.

### **ORDER**

Review petition is hereby dismissed. No order as to costs.

**(RAM SINGH)**  
VICE CHAIRMAN (J)

**(D.K.KOTIA)**  
VICE CHAIRMAN (A)

DATE: NOVEMBER 23, 2017  
NAINITAL

KNP