

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
DEHRADUN**

Present: Hon'ble Mr. Rajendra Singh

----- Acting Chairman

Hon'ble Capt. Alok Shekhar Tiwari

----- Member (A)

WRIT PETITION NO. 346 (S/B) OF 2020

**[RECLASSIFIED AND RENUMBERED AS CLAIM PETITION NO.
99/DB/2022]**

Sanjeeva Kumar, S/o Sri Kailash Nath, age about 52 years R/o Q-288, Phase III, Shivlik Nagar, B.H.E.L., Haridwar. At presently posted as Chief Fire Officer, Nainital.

.....Petitioner

Versus

1. State of Uttarakhand through Secretary, Department of Home, Dehradun.
2. Inspector General, Fire & Emergency Services, Uttarakhand, Dehradun.
3. Sandeep Kumar Rana, Presently posted as Deputy Director, Technical/Administration, Fire Services, Police Headquarters, Dehradun.

.....Respondents

Present : Sri L. K. Maithani, Advocate for the petitioner
Sri Ved Prakash Devrani, Ld. Assistant
Presenting Office for the respondents No. 1 & 2
Sri Uttam Singh, Advocate for the respondent
No. 3

JUDGMENT

DATED: 11th SEPTEMBER, 2026

Per : Capt. Alok Shekhar Tiwari, Member (A)

By means of this petition, the petitioner seeks the following reliefs:

- “I. Issue a writ, order or direction in the nature of certiorari quashing order dated 20-08-2020, issued by respondent no.1, annexed as, annexure No.1 as well as order dated 25-08-2020, annexed as annexure No.14, to the writ petition.
- II. Issue a writ, order or direction in the nature of Mandamus commanding the respondent no. 1 to redetermine and amend the seniority list dated 20-2-2019 by appropriately placing name of the petitioner above the name of the respondent no.3.
- III. Issue any suitable order or direction of any nature which this Hon’ble Court may deem fit and proper in the present circumstance of the case.
- IV. Award the cost of the writ Petition in favor of the petitioner.”

2. In brief, the facts of the case are that:-

- 2.1. The petitioner was initially appointed on the post of Fire Station, 2nd Officer vide order dated 8-12-1997.
- 2.2. The petitioner was thereafter promoted on the post of Fire Station Officer vide order dated 26-12-2005.
- 2.3. Thereafter petitioner’s candidature was considered for promotion to the post of Chief Fire Officer for the vacancies relating to recruitment year 2012-2013 and his two juniors were promoted as the ACR of the petitioner was incomplete and in respect of which petitioner, in fact was given ‘outstanding’ and aggrieved by the same petitioner preferred writ petition bearing no. 185 of 2013 (WPSB) before this Hon’ble Court.

2.4. During the pendency of the above mentioned writ petition, petitioner was promoted to the post of Chief Fire Officer vide order dated 30-3-2015 however for the vacancy of the year 2013-2014 and by applying the catchup rule, petitioner was notionally placed above his two juniors, namely Narendra Kumar and Rajendra S. Khati in the tentative seniority list of Chief Fire Officers(CFO) dated 5-11-2015, showing his appointment on the post of CFO as 30-3-2015 while his juniors date of appointment on the post of CFO was shown as 11-6-2013 and above petitioner, respondent no.3 was placed, showing his date of appointment as 18-2-2013.

2.5. Since issue of grant of promotion of the petitioner against the vacancies for the year 2012-2013 on the post of CFO was pending before this Hon'ble Court, no objection at that point of time could be made by the petitioner, against placing of respondent no.3 above him in the tentative seniority list and thereafter on 22-2-2019 final seniority list was also issued.

2.6. Vide Judgment and order dated 12-7-2019, passed in WPSB 185 OF 2013, this Hon'ble Court directed that for the fault of respondent officials in not evaluating the ACRs for the period 01-01-2006 till 27.08.2006, petitioner cannot be made to suffer and it was directed to constitute review DPC to assess whether petitioner was entitled to be promoted to the post of Chief Fire Officer for the year 2012-13.

2.7. In compliance of the Hon'ble Court's order review DPC was constituted on 16-03-2020 and petitioner was recommended to be promoted on the post of CFO for the vacancies for the recruitment year 2012-2013 vide recommendation dated 14-5-2020.

2.8. The recommendation made by the review DPC held on 16-03-2020 was accepted by the competent authority vide decision dated 23-6-2020 and consequential order promoting petitioner on the post CFO w.e.f. 11-6-2013 against the vacancies for the recruitment year 2012-2013 was passed on 04-07-2020.

2.9. Petitioner immediately thereafter preferred his representation for amending the seniority list dated 22-2-2019 before the respondent no.1.

2.10. The claim of the petitioner is based on Rule 23 of the Special Rules of 1984, wherein sub Rule(1) provide that seniority on a post between persons will be determined on the basis of their date of order of substantive appointment or if any other date is mentioned in the appointment order of such person and Rule 23(4) which provides that in case posts are to be filled up through direct recruitment as well as promotion, then seniority will be determined as per the list prepared as per Rule 18.

2.11. In the case in hand respondent no.3 was appointed vide order dated 18-2-2013, against the direct recruitment quota in the recruitment year 2012-2013 and it was specifically mentioned in the appointment order that **“appointment shall be deemed to**

be under the U.P. Fire Services (Gazetted Officers) Service Rules, 1984 from the date of taking of charge”.

2.12. Admittedly respondent no.3 gave his joining and took charge on 17-7-2013 and as such his date of appointment as per his appointment order is 17-7-2013 on the post of CFO and which is later to petitioner's date of appointment on the said post w.e.f. 11-6-2013, and in the subsequent recruitment year 2013-2014.

2.13. Secondly as per Rule 23(4) of the special Rules of 1984 in case there two sources for filling up a post, one being direct recruitment and other being promotion, then seniority will be determined as per the list prepared in terms of Rule 18 and Rule 18 provide for making of a joint selection list of the all the candidates who have been appointed in the same recruitment year, through direct recruitment as well as promotion, wherein name of the candidates mentioned in lists prepared under Rule 15 and 16 will be placed one after the other, and name of the candidate mentioned in list prepared under Rule 16 be placed first.

2.14. Under Rule 15, list of candidates directly recruited is prepared on the basis of marks obtained in the direct recruitment process and under Rule 16, name of the candidates promoted on the post of CFO on merit basis are placed. As such name of the petitioner which is at s.no.1 in the promotion list for the post of CFO as per Rule 16 ought to be placed above private respondent who is a direct recruitee for the year 2012-2013.

2.15. One more interesting issue is that respondent no.3 was even not at s.no.1 in the direct recruitment but he was at S.No.3 and thus by no stretch of imagination a person at S.No. 3 in the list as per Rule 15 can be placed above petitioner whose name now figures at S.No.1 in the list of promotes for the same recruitment year as per Rule 16.

2.16. The case in hand is not where there was short fall of appointments and more pertinently in terms of the appointment order, the substantive appointment of respondent on the post of CFO is 17-7-2013 and this falls in recruitment year 2013-2014 and not recruitment year 2012-2013.

2.17. While rejecting the representation of the petitioner vide order dated 20-8-2020, simultaneously and on the same date recommendation for promotion of respondent no.3 has been made by the committee headed by respondent no.1 and consequential promotion order has been issued on 25-8-2020 by respondent no.1. Thus not only the representation of the petitioner pending since July'2020 was rejected but in a tearing haste on the same date respondent no.3 was promoted so that without granting a reasonable time for assailing such order, consequential benefit has been extended in favour of respondent no. 3.

3. On 24.02.2021, Sri Vikas Pande, Standing Counsel, High Court of Uttarakhand at Nainital has filed Counter Affidavit on behalf of the Respondent No. 1 (State of Uttarakhand through

Secretary, Department of Home, Dehradun), in which it has been stated that-

3.1. In the year 2013 the respondent no.3 was appointed on the post of Chief Fire Officer (CFO) on 18.02.2013 by direct recruitment in the selection year 2012-13 against the vacancy of direct recruitment for the year 2010-11. It is imperative to state that in the appointment order itself the respondent no.3 was granted 04 month additional period for joining his services. In furtherance of the said appointment respondent No.3 joined his services on 17.07.2013.

3.2. The petitioner was appointed on the post of Fire Officer II on 08.12.1997 and later in the year 2005 on the basis of merit, the petitioner was promoted to the post of Fire Officer on 17.12.2005.

3.3. Fire and Emergency Services Uttarakhand sent a recommendation to Public Service Commission for filling up 02 vacant posts of Chief Fire Officer for the selection year 2012-13. In furtherance of the said recommendation the Public Service Commission after examining the relevant record of all the eligible candidates duly appointed two juniors of the petitioners namely Shri Narendra Kumar and Shri Rajendra S. Khati appearing at serial no. 2 & 3 respectively in the seniority list of the Fire Officers on the post of Chief Fire Officer vide order dated 11.06.2013. It is imperative to state that the petitioner though being at serial no.1 in the seniority list was not considered for the said promotion in

selection year 2012-13 because of incomplete ACR entries from 01.01.2006 to 27.08.2006.

3.4. Although the petitioner was eligible to be promoted to the post of Chief Fire Officer against the selection year 2012-13 but due to the fault of the Department he was not given his due promotion therefore the petitioner approached the Hon'ble High Court by way of filing WPSB No. 185/2013 Sanjeeva Kumar Vs. State of Uttarakhand & ors., inter-alia praying therein for review DPC.

3.5. During the pendency of the writ petition, since the ACR entries of the petitioner were incomplete therefore the petitioner sent a letter to the then Director General, Police Uttarakhand requesting therein to complete his ACR entries. In furtherance of the request made by the petitioner, vide order dated 18.11.2014 the petitioner was granted "Outstanding" entry for the period 01.01.2006 to 27.08.2006.

3.6. In the year 2015 again DPC was conducted by Public Service Commission for filling up 01 vacant post of Chief Fire Officer for the selection year 2013-14 and in the said DPC vide order dated 06.02.2015, approval was granted for promoting the petitioner against the said post and ultimately vide order dated 30.03.2015 (Annexure No.4 to the writ petition) passed by the Government, the petitioner was promoted to the post of Chief Fire Officer for the selection year 2013-2014.

3.7. After the creation of the State of Uttarakhand for the first time tentative seniority list of Chief Fire Officer was issued vide order dated 05.11.2015 under Uttaranchal Government Servant Seniority Rules, 2002 (hereinafter referred to as “the Seniority Rules of 2002”) and all the candidates were required to submit their objections in case they are aggrieved by the said tentative seniority list. It is imperative to state that in the said seniority list the respondent no. 3 was placed above the petitioner i.e. at serial no.3 and the petitioner was placed at serial no.4 and the petitioner vide letter dated 11.01.2016 duly submitted his NOC against the said tentative list.

3.8. Finally after disposing of all the objections against the said tentative Seniority list a final seniority list of Chief Fire Officer was issued on 20.02.2019 under Rule 9 (2) of the Seniority Rules of 2002 and in the said final seniority list also the respondent no.3 was placed above the petitioner.

3.9. Since the WPSB No. 185/2013 was already pending before the Hon'ble High Court therefore all the aforesaid facts were brought to the knowledge of the Hon'ble High Court and the Hon'ble High Court vide order dated 12.07.2019 (Annexure No.7 to the writ petition) was pleased to direct to constitute a review DPC to assess whether the petitioner was entitled to be promoted to the post of Chief Fire Officer for the year 2012-13 on the basis of the ACR for a period of 10 years preceding the selection year, alongwith the ACR evaluated for the period 01.01.2006 to 27.08.2006.

3.10. In light of the aforesaid order passed by the Hon'ble High Court the State Government was pleased to pass order dated 23.06.2020 by virtue of which the date of appointment of the petitioner i.e. 30.03.2015 to the post of Chief Fire Officer was cancelled and he was ordered to be promoted to the post of Chief Fire Officer w.e.f. 11.06.2013.

3.11. After the issuance of the aforesaid order dated 23.06.2020 the petitioner filed his representation dated 13.07.2020 (Annexure No.11 to the writ petition) requesting therein to amend the final seniority list of the Chief Fire Officer and place the petitioner above the respondent no.3. The issues raised by the petitioner in the said representation were not tenable and therefore the representation was duly rejected vide order dated 20.08.2020.

3.12. On the other hand since the Police Headquarter had duly sent a letter dated 11.05.2020 to the State Government to fill one vacant promotional post of Deputy Director (Technical/Administration) in Uttarakhand Fire and Emergency Service from amongst the Chief Fire Officer appearing in the final seniority list dated 20.02.2019 therefore the State Government on the basis of the approval of the DPC dated 20.08.2020 duly promoted the respondent no.3 on the post of Deputy Director (Technical/Administration) in Uttarakhand Fire and Emergency Service vide order dated 25.08.2020.

3.13. Aggrieved by 02 aforesaid orders dated 20.08.2020 and 25.08.2020 the petitioner has filed the instant writ petition.

3.14. The contents of paragraph no. 1 of the said petition are admitted in so far as they are a matter of record. In reply it is imperative to state that the impugned order dated 20.08.2020 is a legal and proper order because the representation of the petitioner has been rightly rejected vide the said order. Further although the special rule's governing the service conditions of the petitioner exists but since after the issuance of Seniority Rules of 2002 as per section 2 mandatorily the same apply to all the government servants in State of Uttarakhand in respect of their recruitment and condition of service irrespective of the fact whether particular rules may or may not have been made under the proviso to Article 309 of the Constitution of India. By virtue of Section 3 of Seniority Rules of 2002 they have been given overriding effect hence, the petitioner is governed by the Seniority Rules of 2002. The petitioner cannot be given any benefit of the judgment dated 29.07.2013 passed in WPSS No. 273/2009, Keshav Dutt Tiwari & ors., because the facts and circumstances in that particular case were completely different as all the promotional exercise had already been undertaken without considering the general rule. Moreover, in paragraph no.23 of the said judgment it has been categorically held that where the intention of the rule making authority is made clear either expressly or impliedly, as to which law should prevail, the same shall be given effect. In this regard special reference is being

made to section 3 of the Seniority Rules of 2002 which gives it an overriding effect. Hence in the present case the rules which are applicable are the Seniority Rules of 2002.

3.15. That the contents of paragraph no. 2 of the said petition do not call for any reply.

3.16. That the contents of paragraph no. 3 to 6 of the said petition are admitted in so far as they are matter of record.

3.17. That the contents of paragraph no. 7 of the said petition are wrong, misleading and vehemently denied. It is imperative to point out that the matter that was pending before the Hon'ble High Court i.e. WPSB No. 185/2013 was filed by the petitioner praying therein for review DPC as the petitioner was aggrieved by the promotion of his two juniors' i.e. Narendra Kumar and Rajendra S Khati. The said petition did not dealt with any of the fact regarding respondent no.3. Hence, after the issuance of the tentative seniority list dated 05.11.2015 the petitioner was at complete liberty to file his objection against the same, in case he was aggrieved by the placement of the respondent no.3 above him. Infact it was in exercise of the said power that the petitioner instead of filing his objection, vide letter dated 11.01.2016 duly submitted his NOC against the said tentative list (Annexure A-3) which shows that he was not aggrieved by the placement of the respondent no.3 above him. Thus now at the subsequent stage the petitioner cannot challenge the placement of the respondent no.3 as the same is barred by the Principle of Estoppel.

3.18. That the contents of paragraph no. 8 to 10 of the said petition are admitted in so far as they are matter of record.

3.19. That the contents of paragraph no. 11 of the said petition are admitted in so far as they are matter of record. However, it is imperative to point out herein that the issues raised by the petitioner in the said representation were not tenable and therefore the representation was rightly rejected vide order dated 20.08.2020. (Annexure No.1 to the writ petition).

3.20. That the contents of paragraph no. 12 are admitted only in so far as they are a matter of record, rests of the contents are vehemently denied. At the cost of brevity it is reiterated that Seniority Rules of 2002, have an overriding effect over any other service rules which were in force prior to the 2002 Rules. Rule 2 and Rule 3 of Seniority Rules of 2002 are reproduced hereunder for the kind perusal of this Hon'ble Court:-

“2. “These rules shall apply to all Government servants in respect of whose recruitment and conditions of service, rule may be or have been made by the Government under the proviso to Article 309 of the Constitution.”

3. “These rules shall have effect notwithstanding anything to the contrary contained in any other services rules made here to before.”

It is further stated that in the present case the seniority has been determined under Rule 8 of Seniority Rules of 2002 and Second Proviso to Rule 8(3) of Seniority Rules of 2002 is analogous to Second Proviso to Rule 23(4) Special Rules of 1984

on which the petitioner is placing reliance. In this regard the second proviso to Rule 8(3) of the Seniority Rules of 2002 is reproduced hereunder:-

“where appointments from any source of fall short of the prescribed quota, and appointment against such unfilled vacancies are made in subsequent year or years, the persons so appointed shall not get seniority of any earlier year but shall get the seniority of the year in which their appointments are made, so however, that their names shall be placed at the top followed by the names, in the cyclic order of the other appointees.”

In the present case, it is an admitted fact that respondent no. 3 has been appointed on the post of CFO against the vacancy of 2010-11. Whereas the petitioner has been appointed on the post of CFO against the vacancy 2012-13, although the selection year for both the petitioner and the respondent no. 3 is same, i.e., 2012-13, but as per application of second proviso of Rule 8 (3) of the Seniority Rules of 2002 the respondent no. 3 under all circumstance has to be placed above the petitioner since his appointment has been made w.r.t. the vacancy of a previous year.

3.21. That the contents of paragraph no. 13 of the said petition do not call for any reply.

3.22. That the contents of paragraph no. 14 of the said petition are not admitted as stated. Firstly, the petitioner cannot raise the claim of his placement and the placement of the respondent no. 3 in the seniority list in a cyclic order because as stated above both have been appointed against the vacancies of

different year by virtue of which the respondent no.3 is bound to be placed above the petitioner. Secondly, although the respondent no.3 has joined in the July 2013, but as per rule 8(1) of the Seniority Rules of 2002, the seniority has to be determined from the date of appointment order and not the date of joining, which in case of respondent no.3 is 18.02.2013, which is prior to 11.06.2013.

3.23. That the contents of paragraph no. 15 to 17 of the said petition are repetitive and already been replied to in detail in the preceding paragraph and are therefore not being repeated for the sake of brevity. However, it is imperative to reiterate that the seniority has to be determined under Seniority Rules of 2002 wherein the respondent no.3 has rightly been given the benefit of the Second Proviso to rule 8(3) of the Seniority Rules of 2002.

3.24. That the contents of paragraph no. 18 of the said petition are wrong, false and vehemently denied. At the cost of brevity it is reiterated that although the respondent no.3 was appointed in the selection year 2012-13 but the said appointment was w.r.t the vacancy for the year 2010-11. Further, his seniority of the respondent no.3 has to be determined as per the date of his appointment order and not his date of joining. Thus the relevant date is 18.02.2013 and not 17.07.2013. Hence even by wildest stretch of imagination the recruitment year of respondent no.3 cannot be 2013-14.

3.25. That the contents of paragraph no. 19 of the said petition are wrong, misleading and vehemently denied. After

disposing of all the objections against the tentative seniority list a final seniority list of Chief Fire Officer was issued on 20.02.2019 (Annexure No.6 to the writ petition) under Rule 9(2) of the Seniority Rules of 2002, wherein likewise tentative seniority list, against which the petitioner had given his NOC, the respondent no. 3 was placed above the petitioner. It is imperative to point out that the final seniority list w.r.t the Chief Fire Officers has rightly been issued under the relevant rules and therefore the same is completely legal and deserves to be upheld. Based on the said final seniority list the respondent no.3 has rightly been promoted to the post of Deputy Director (Technical/Administration) in Uttarakhand Fire and Emergency Service. Hence the said order also deserves to be upheld.

3.26. That the contents of paragraph no. 20 of the said petition are wrong, false and vehemently denied. The impugned action of the answering respondent is legal, justified and deserves to be upheld.

3.27. That the contents of paragraph no. 21 do not call for any reply from the answering respondent.

3.28. That in reply to the contents of paragraph no. 21 of the said petition it is stated that the petition is baseless and the grounds on the basis of which the writ petition has been filed are not legally tenable. Thus the petition lacks merit and therefore deserves to be dismissed.

4. On 03.04.2021, Sri Vikas Pande, Standing Counsel, High Court of Uttarakhand at Nainital has filed Counter Affidavit on behalf of the Respondent No. 2 (Inspector General, Fire & Emergency Services, Uttarakhand, Dehradun), reiterating the averments made in the Counter Affidavit filed on behalf of the respondent No. 1.

5. Sri Shobhit Saharia, Advocate has also filed Rejoinder Affidavit against the Counter Affidavit filed on behalf of the respondents, reiterating the facts mentioned in the present writ (claim) petition.

6. On 06.01.2022, Supplementary Counter Affidavit has been filed on behalf of the Respondent No. 1 by Sri Vikas Pande, Standing Counsel, High Court of Uttarakhand at Nainital reiterating the averments mentioned in the Counter Affidavit filed on behalf of the respondent No. 1.

7. On 30.05.2022, Sri Shobhit Saharia, Advocate has also filed Supplementary Rejoinder Affidavit against the Supplementary Counter Affidavit filed on behalf of the respondent No. 1, reiterating the facts mentioned in the rejoinder affidavit.

8. Both the parties have filed their written arguments also.

9. At the outset only, it is apparent that this claim petition had been filed originally before the Hon'ble High Court of Uttarakhand at Nainital as Writ Petition No. 346 (S/B) of 2020,

which was relegated by the Hon'ble High Court to this Tribunal vide its order dated 27.08.2022, and the same is being adjudicated by this Tribunal in the same form, treating it as a claim petition. Therefore, the prayers put forward by the petitioner in the original writ petition, have been adjudicated upon by this Tribunal considering it as a claim petition only, notwithstanding the original prayers for issue of a writ, order or direction in the nature of certiorari/mandamus etc., which are beyond the jurisdiction of this Tribunal. For this clerical mistake, the claim petition is not being dismissed.

10. We have heard the learned Counsels for the parties and perused the records carefully.

11. Learned Counsel for the petitioner, in his oral arguments, argued as follows:-

(a). The instant petition for promotional seniority pertains to the promotion year beginning 01.07.2012 for which the petitioner was eligible as per his seniority. Instead respondent No. 3 has been promoted maliciously due to the fact that he is an officer of direct recruitment.

(b). Initially, the petitioner had been given a seniority of year 2015 due to the fact that his ACRs were not complete. Later on once his ACRs got completed he was given seniority of 11.06.2013.

(c). Though the respondent No. 3 had been given initially the appointment letter on 18.02.2013, nevertheless he joined his service on 17.07.2013, meaning thereby, that the respondent No. 3 is definitely junior to the petitioner in the departmental seniority.

(d). The respondent-department was bound to prepare an amalgamated seniority list of directly recruited officers and the promotee officers for this promotion as per the rules, wherein the promotee officer would get a priority over the directly recruited officer. By not following this dictum the respondent-department has made a fundamental blunder.

At this juncture, the Tribunal noticed in the paragraph-7 of the petition that the petitioner had submitted an NOC to the respondent-Department regarding the promotion of the respondent No. 3 against the vacancies for the year 2012-13 on the post of CFO. Obviously, this NOC (Annexure No. 03 to the Counter Affidavit)) dated 11.01.2016 stands opposed to the petitioner's claim insinuating promotional irregularity conducted by the respondent-department. The learned Counsel for the petitioner could not satisfactorily explain the petitioner's locus standi pertaining to such an NOC and prayed the Tribunal that this question of the Tribunal would be addressed appropriately in his written arguments.

12. Learned Counsel for the petitioner has relied upon Civil Appeal Nos. 8324-8327 of 2022 (Arising out of Special Leave Petition (Civil) Nos. 30734-30737 of 2014) Amit Singh Vs. Ravindra Nath Pandey & others Etc. Etc. and (2007) 1 Supreme Court Cases (I) State of Uttaranchal and another Vs. Dinesh Kumar Sharma in Civil Appeal No. 5573 of 2006, decided on December 4, 2006.

13. Learned A.P.O. representing the respondents No. 1 & 2 made a short argument and drew the attention of the Tribunal towards Annexure No. 12, which is the appointment letter of the respondent No. 3 G.O. No. 192/XX-4/2013-2(06)/2009 dated 18.02.2013 in which it is clearly mentioned in the paragraph No. 2 that this service would be subject to U.P. Fire (Gazetted Officer) Service Rules, 1984. This service rule provides the conditions in Rule-23 (2) and (5) as follows:-

“23 (2) the seniority inter se of person appointed directly on the result of **any one selection**, shall be the same as determined by the Commission or as the case may be by the Selection Committee

Provided that a candidate recruited directly may lose his seniority if he fails to join without valid reasons when vacancy is offered to him. The Decision of the appointing authority as to the validity of reasons shall be final.

Rule-5 Where according to the service rules appointments are to be made only by the direct recruitment the seniority inter se of the persons appointed on the result of **any one selection** shall be the same as it is shown in the merit list prepared by the commission or the committee, as the case may be

Provided that a candidate recruited directly may lose his seniority, if he fails to join without valid reasons **when vacancy is offered to him**, the **decision of the appointing authority** as to the validity of reasons, shall **be final**.” Therefore, the seniority of Respondent No. 3 is correctly mentioned as 18.02.2013.

14. Learned Counsel for the respondent No. 3, in his written arguments has discussed in detail as to why the delayed joining of service by the respondent No. 3 has been considered as a valid reason, and the decision of the Appointing Authority as to the validity of the reasons had become final as per the Rule-23 of U.P. Fire (Gazetted Officer) Service Rules, 1984. Therefore, the seniority of the respondent No. 3 would be legally counted as 18.02.2013, whereas the seniority of the petitioner stands as 11.06.2013.

15. The learned Counsel for the respondent No. 3 has relied upon Civil Appeal No. 8833-8835 of 2019 (Arising out of SLP (C) Nos. 19565-19567 of 2019 K Meghchandra Singh v. Ningam Sero 19.12.2019 and Writ-A No. 69714 of 2015 Sunil

Kumar Dubey and 46 others Vs. State of U.P. and 13 others
6.4.2015.

So far as the petitioner's claim regarding amalgamated seniority list and resultant cyclic promotion is concerned the learned Counsel for the petitioner has relied upon the judgment dated 21.07.2020 of the Hon'ble High Court of Uttarakhand at Nainital in Dr. Sunita Pandey Vs. State of Uttarakhand in Writ Petition (S/B) No. 297 of 2017.

16. After having gone through the record, citations and pleadings of the learned Counsels the Tribunal has enlisted the significant facts as follows:-

- (i). The petitioner is a promotee officer whose seniority was initially determined as the year 2015, but later on up-graded as 11.06.2013 in the seniority list.
- (ii). The appointment of respondent No. 3 had been done on 18.02.2013, but he joined the service due to valid reasons on 17.07.2013, wherein the validity of reasons for a delayed joining has been accepted by the Appointing Authority as legally affirmative and finally determined his seniority as 18.02.2013.
- (iii). Therefore, so far as the inter se seniority is concerned, the petitioner's contention is not acceptable.

- (iv). At this juncture, this is a very important to note that the NOC submitted on 11.01.2016 by the petitioner giving his consent for the proposed seniority in the tentative seniority list dated 05.11.2015 would be legally considered as binding upon the petitioner. Therefore, his alibi regarding this matter as submitted in Paragraph-7 of the petition appears to be a lame excuse and afterthought. Obviously, the petitioner has not appeared before this Tribunal with clean hands and his averments are not honest, but manipulative.
- (v). So far as the petitioner's emphasis upon creation of an amalgamated seniority list, and priority to be given to the promoted officer is concerned, it is petitioner's misplaced interpretation of the promotional laws. The amalgamated seniority list is created in case of multiple promotions in the same DPC. Where there is only a single promotion to be made, then the senior most employee would have to be promoted irrespective of the fact as to whether he is a promoted officer or a direct recruitment. On this acid test, obviously the respondent-department has not erred. The relied upon citations also confirm to the abovementioned

conclusions of the Tribunal and not the other way round.

17. Thus, the petitioner has not been able to establish his claims as good in the eyes of law. The petition lacks substance, and deserves to be dismissed.

ORDER

Accordingly, the writ (claim) petition is hereby dismissed. No order as to costs.

(CAPT. ALOK SHEKHAR TIWARI)
Member (A)

(RAJENDRA SINGH)
Acting Chairman
(Virtual)

DATED: 11th SEPTEMBER, 2026
NAINITAL

BK

