

## Raj Kumar Sharma Vs State of U.P.

**Court:** Allahabad High Court

**Date of Decision:** July 26, 2006

**Acts Referred:** Uttar Pradesh Government Servants (Seniority) Rules, 1991 – Rule 3, 6, 7, 8(1), 8(2)

**Citation:** (2006) 7 ADJ 13 : (2006) 6 AWC 5630

**Hon'ble Judges:** V.C. Misra, J; Amitava Lala, J

**Bench:** Division Bench

**Advocate:** Vikas Budhwar and S.C. Budhwar, for the Appellant; Vijendra Singh and J.S. Tomar and S.C., for the Respondent

**Final Decision:** Allowed

### Judgement

Amitava Lala, J.

The challenge in the writ petition is the seniority list dated 3.9.2004, whereby his placement was made differently from

two candidates one Sri Chokhey Lal Gupta and another Sri Sabir Ali Khan. All along we find that the place of Sri Chokhey Lal Gupta is before

the petitioner and Sri Sabir Ali Khan is after the petitioner in the seniority list.

2. By filing counter affidavit the respondents have taken the plea that as because the seniority of the petitioner was approved by the State Public

Service Commission subsequent to the approval of the Governor, therefore, his placement is figuring at a place much after Sri Chokhey Lal Gupta

and Sri Sabir Ali Khan. However, the petitioner has challenged the seniority list.

3. According to learned Counsel appearing for the petitioner, seniority in the State services shall be governed by U.P. Government Servant

Seniority Rules, 1991 (hereinafter called as Rules, 1991). Rule 3 of the Rules, 1991 says that these rules shall have effect notwithstanding anything

to the contrary contained in any other service rules made heretobefore. In effect this is an overriding clause.

4. Rule 8(1) of speaks about seniority by promotion and by direct recruitment. It says, where according to the service rules appointments are

made both by promotion and by direct recruitment, the seniority or persons appointed shall, subject to the provisions of the following sub-rules, be

determined from the date of the order of their substantive appointments, and if two or more persons are appointed together, in the order in which

their names are arranged in the appointment order.

5. In respect of inter se seniority under Rule 8(2)(b) it appears that by promotion it shall be as determined in accordance with the principles laid

down in Rule 6 or Rule 7, as the case may be, according to the promotion are to be made from a single feeding cadre or several feeding cadres.

6. Rule 6 speaks about the promotion from a single feeding cadre. It says where according to the service rules, appointments are to be made only

by promotion from a single feeding cadre, the seniority inter se of persons so appointed shall be the same as it was in the feeding cadre.

7. The explanation is that a person senior in the feeding cadre shall, even though promoted after the promotion of a person junior to him in the

feeding cadre shall, in the cadre to which they are promoted, regain the seniority as it was in the feeding cadre.

8. The petitioner's case, according to the learned Counsel appearing for the petitioner, is covered by a judgment of the Supreme Court reported in

Keshav Deo and Another Vs. State of U.P. and Others, By showing paragraph 13(g) of the judgment he says that seniority of such person has to

be counted from that date whether he was working on that post on officiating or ad hoc basis.

9. From the factual aspect of the matter we find that the petitioner was promoted on ad hoc basis on the post of Assistant Engineer by Government

Order dated 6.6.1981 as against substantive post. All the three persons were working from 6.6.1981. At all material time, we find that in the

seniority list their names were shown before and after the name of the petitioner except the list which, is under challenge.

10. Learned Standing Counsel has faintly taken a plea that as because Chokhey Lal and Sri Sabir Ali Khan were appointed against the vacancy of

the year 1981-82 their names were figuring at serial Nos. 1152 and 1153 but since the petitioner was selected against the vacancy of the year

1985-86 his name has been placed subsequently. Therefore, he is not entitled for the seniority list.

11. We cannot accept such contention because of the reason that all alone the name of Sri Sabir Ali Khan is placed after the petitioner and at no

point of time such dispute was cropped up. Therefore, such analysis cannot be accepted.

12. Having so, the writ petition is allowed. The seniority lists dated 3.9.2004 and 25.10.2004 are quashed. The authority concerned is directed to

prepare the seniority list keeping eyes open in respect of position of the three persons only as before ignoring the dates of approval of the Public

Service Commission.

13. No order is passed as to costs.

V.C. Misra, J.

14. I agree.