

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT DEHRADUN**

Present: Hon'ble Mr. Justice U.C.Dhyani

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

CLAIM PETITION NO. 37/DB/2018

1. Pranav Prakash s/o Shri Satya Prakash Narayan Sinha, r/o 5 Mayur Vihar, Phase-2, SD Road, Dehradun.
2. Mayank Nautiyal s/o Shri Dwarika Prasad, House No. 16, Rajeshwari Puram, Mohkampur, Dehradun.
3. Anju Bhardwaj d/o Shri R.C. Bhardwaj, Quarter No. 34, Nehru Vihar, Niranjapur, Majra, Dehradun.
4. Veenakshi d/o Shri Yashpal, A.E., E.C.D., UPCL, 132 KV, S/S, Hydell Colony, Haldwani, District Nainital.

.....Petitioners

vs.

1. State of Uttarakhand through Secretary, Department of Energy, Secretariat, Dehradun.
2. Uttarakhand Power Corporation Ltd., VCV Gabar Singh Urja Bhawan, Dehradun through its Managing Director.
3. Sanjeev Kumar s/o Sri Som Prakash Gupta, Executive Engineer (A), Electricity Civil Circle, Kaulagarh Power House, FRI Campus, Dehradun.
4. Ravindra Kumar s/o Sri Hardev Singh, Executive Engineer, Electricity Pole Division, Uttarakhand Power Corporation Limited, Ramnagar, Roorkee, District Haridwar.
5. Narendra Singh s/o Sri Virendra Mohan, Executive Engineer, Electricity Civil Division, UPCL, Srinagar, Garhwal.

.....Respondents.

And

CLAIM PETITION NO. 14/NB/DB/2017

1. Pranav Prakash s/o Shri Satya Prakash Narayan Sinha, r/o 5 Mayur Vihar, Phase-2, SD Road, Dehradun.
2. Mayank Nautiyal s/o Shri Dwarika Prasad, Electricity Civil Circle, Kaulagarh Power House, FRI Campus, Dehradun.
3. Anju Bhardwaj d/o Shri R.C. Bhardwaj, Quarter No. 34, Nehru Vihar, Niranjapur, Majra, Dehradun.

4. Veenakshi d/o Shri Yashpal, A.E., E.C.D., UPCL, 132 KV, S/S, Hydel Colony, Haldwani, District Nainital.

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1. State of Uttarakhand through Secretary, Department of Energy, Secretariat, Dehradun.
2. Uttarakhand Power Corporation Ltd., VCV Gabar Singh Urja Bhawan, Dehradun through its Managing Director.
3. Sanjeev Kumar s/o Sri Som Prakash Gupta, Sub Divisional Officer, Electricity Civil Division, UPCL, 132 K.V. Sub-Station Hydel Colony, Haldwani, District Nainital.
4. Ravindra Kumar s/o Sri Hardev Singh, Executive Engineer (In-Charge), Electricity Pole Division, Uttarakhand Power Corporation Limited, Ramnagar, Roorkee, District Haridwar.
5. Narendra Singh s/o Sri Virendra Mohan, Sub-Divisional Officer, Electricity Civil Division, UPCL, Srinagar, Garhwal.

.....Respondents.

Present: Sri L.K.Maithani, Advocate for the Petitioners.
Sri V.P.Devrani, A.P.O., for the Respondent No. 1
Sri S.C.Virman, Sri V.D.Joshi & Sri S.K.Jain, Advocates
for Respondent no. 2.
Sri I.P.Gairola, Advocate for private respondents No. 3 to 5.

JUDGMENT

DATED: NOVEMBER 30, 2021

Per: Justice U.C.Dhyani

Claim Petition No. 37/DB/2018 has been filed by the petitioners, during the pendency of the Claim Petition No. 14/NB/DB/2017, for the following reliefs:

“(a) To quash the interim seniority list dated 19.08.2017 of Assistant Engineer (Civil) issued by the respondent no. 2 with its effects and operation, declaring that the relaxation granted to the private respondents no. 3 to 5 is wrong and illegal.

(b) To issue an order or direction to the respondent No. 2 to redraw the fresh seniority list after preparing the combined waiting list according to the rule 15 of service regulation 1970 and rule 8 of the Seniority Rules, 1998 of Corporation declaring that the petitioners are entitled to get the seniority since the selection year 2008-09 as they are the recruitee of selection year 2008-09.

(c) To quash the promotion dated 16.05.2018 of the private respondent no. 3 to 5 on the post of Executive Engineer (Civil) or in alternate to issue an order or direction to the respondent No. 2 to

grant the promotion to the petitioners on the post of Executive Engineer (Civil) from retrospective effect since the date they were eligible and the post was vacant with all consequential benefits.

(d) Issue any other suitable order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

(e) Award the cost of the petition to the petitioner."

2. Counter Affidavits were filed by the respondents. Respondents have opposed the maintainability of the claim petitions, *inter-alia*, on the ground that the same are barred by limitation. Rejoinder Affidavits thereto have also been filed by the petitioners.

3. Regarding limitation, it has been pleaded that the cause of action arose to the petitioners, when tentative seniority list dated 19.08.2017 was issued by the respondents, granting the private respondents seniority over the petitioners. Prior to issuance of the order dated 19.08.2017, the petitioners were having no *locus* to assail the said order, as no prejudice was caused to them.

4. Claim Petition No. 14/NB/DB/2017 was filed by the petitioner in the Nainital Bench of this Tribunal and was subsequently got transferred to the Principal Bench at Dehradun, in which, the petitioners seek the following reliefs:

"i. Issue an order or direction for quashing the resolution bearing item no.40.10 of the minutes of the 40th meeting of Board of Directors of Respondent no. 2 dated 11.11.2008 whereby the relaxation in minimum service period for promotion from Junior Engineer to the post of Assistant Engineer has been provided from 10 years to 6 years.

ii. Issue an order or direction for quashing the resolution item no.40.22 of the minutes of the 40th meeting of Board of Director of Respondent No. 2 dated 11.11.2008, whereby the eligibility of a candidate as on the first date of recruitment year has been modified and relaxed to be calculated on the date of DPC.

iii. Issue an order or direction for quashing the order dated 22.01.2009 issued by Respondent no. 2 by means of which the aforesaid 40th resolution has been made applicable for the selection year 2008-09.

iv. Issue an order or direction for quashing the proceedings of DPC dated 30.06.2009 as well as for quashing the consequential promotion orders dated 30th June, 2009 by means of which the private respondents herein have been promoted from the post of Junior Engineer to the post of Assistant Engineer.

v. To pass any other suitable order which this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."

5. In this claim petition, the petitioners have prayed for quashing the resolution bearing Item No. 40.10 of the Minutes of 40th meeting of the Board of Directors of Respondent No. 2, dated 11.11.2008, whereby the relaxation in minimum service period of promotion from Junior Engineer to the post of Assistant Engineer has been given, from 10 years to 6 years, and for quashing the resolution item no. 40.22 of the Minutes of 40th Meeting of the Board of Directors of Respondent no. 2, dated 11.11.2008, whereby the eligibility of a candidate as on the first date of recruitment year *i.e.* 1st July has been modified and relaxed to be calculated on the date of DPC. Petitioners also prayed for quashing the order dated 22.01.2009 issued by Respondent No.2 by means of which the aforesaid 40th resolution has been made applicable for the selection year 2008-09 and for quashing the proceedings of DPC dated 30.06.2009 as well as for quashing the consequential promotion orders dated 30.06.2009 by means of which the private respondents herein have been promoted from the post of Junior Engineer to the post of Assistant Engineer. Copy of resolution dated 11.11.2008, copy of order dated 22.01.2009, copy of O.M. issued by the State Govt. on 23.06.2003 as well as resolution Item No. 40.22, copy of recommendation of the DPC dated 30.06.2009 and copy of the seniority list dated 19.08.2017 have been enclosed as Annexures No. (As) 1,2, 3, 4 and 5 to the claim petition.

6. In para 54 of the Counter Affidavit of the respondent no. 2, it has been stated that the claim petition is time barred. According to respondent no. 2, petitioners are not entitled to be considered to put their names in the seniority list for the selection year 2008-09 along with the private respondents because the petitioners have joined Uttarakhand Power Corporation Ltd., in the selection year 2009-10. Petitioners are challenging the DPC dated 30.06.2009 and subsequent promotion orders. They have also challenged the relaxation order dated 22.01.2009 issued by the Respondent no. 2. The petitioners have also

challenged the DPC agenda dated 11.11.2008. Petitioners themselves came into service in December 2009 and January 2010. The petitioners are challenging the events which happened prior to their coming into service. Moreover, the events under challenge are grossly time barred. The petitioners have no *locus standi* to challenge the promotions which have taken place prior to their entry into service. The source of recruitment of Assistant Engineers (Civil) is through direct recruitment as well as through promotion as per quota fixed in the Regulation of Engineering Officers, 1970 and as per the amendment made in the Regulations, and as has been mentioned by the petitioners in paras 6 & 7, Uttarakhand Power Corporation Ltd. issued the order dated 22.01.2009 only after getting the approval from the Board of Directors of the Company.

7. The reply of the petitioners is that right to challenge relaxation and promotion of private respondents to the petitioners arose only when the interim seniority list was issued, due to which the service benefits of the petitioners have been adversely affected.

8. During the course of hearing, it transpired that the objections to the tentative seniority list dated 19.08.2017 were yet to be decided by the respondents and final seniority list was yet to be issued. Therefore, the amendment application was moved by the petitioners on 6.11.2017 for amending the claim petition and relief cause in respect of seniority list dated 19.08.2017. In the amendment application, in para 4 and 5, the relief in respect of seniority list dated 19.08.2017 was deleted. The amendments, as set out in the body of the application, were allowed.

9. On 26.11.2019, the following was observed by this Tribunal:

“During arguments, it was pointed out by learned Counsel for the petitioner that on the basis of the seniority list dated 19.08.2017 (Annexure: A1) (in claim petition No. 37/DB/2018), promotion order has been made. This seniority list is an interim seniority list, issued on 19.08.2017, whereas, promotion order was made on 16.05.2018. In the meantime, the seniority list might have

been finalized, but learned Counsel for the department, is unable to clarify whether this interim seniority list was finalized or not.

None of the parties has filed any final seniority list, issued after the interim seniority list dated 19.08.2017. On this point, clarification is required.”

10. On 16.12.2019, the following was observed by this Tribunal:

“The respondent No. 2, in para 5 of the affidavit, has clarified that the seniority list upto the year 2008-09, issued on 19.08.2017 was treated to be finalized for the post of Assistant Engineer, for promotion to the next higher post, but they have not annexed the order, for finalizing the said seniority list along with the affidavit. Hence, the order passed on 26.11.2019 has not fully been complied with. Respondent No. 2 is directed to file copy of the order, finalizing the said list, as alleged in para-5 of their affidavit.”

11. On 02.1.2020, learned Counsel for the respondent No. 2 submitted that this is the final order by which seniority list was also finalized (*it has not been filed*).

12.1 The facts in both the claim petitions are almost similar. The Counter Affidavit filed on behalf of the respondent no. 2 is almost on the same lines, as was filed in Claim Petition No.37/DB/2018. Counter affidavit has also been filed on behalf of private respondents No. 3, 4 & 5. In para 3 of the Counter Affidavit of the private respondents, it has been mentioned that impugned order dated 19.08.2017 cannot be challenged by the petitioners as this is only tentative seniority list. Promotion order dated 16.05.2018 has been issued on the basis of seniority of the private respondents in the year 2008-09, when they were promoted from the post of Junior Engineer (Civil) to the post of Assistant Engineer (Civil). Private respondents were only Assistant Engineers (Civil), promoted from the post of Junior Engineer (Civil) in the year 2008-09 and there was no other recruitment to the post of Assistant Engineer (Civil). The claim petition has been filed beyond the period of limitation of one year from the date of issuance of the order and therefore, claim petition is time barred and is liable to be dismissed on this ground alone.

12.2 Petitioners have been appointed on 11.12.2009 and according to Rule 8(3) proviso (ii) of U.P. State Electricity Board Employees Seniority Rules, 1998 (Annexure: A8) they are entitled to get the seniority only in the year of their appointment *i.e.* 2009-10. The Board of Directors, U.P.C.L., is competent to reduce or extend the period of one year training and therefore, the said relaxation in the period of one year training of the private respondents is legal. Moreover, the claim petitioners who are Assistant Engineers of the year 2009-10, have no right to challenge the relaxation given to the private respondents in the year 2002-03.

12.3 The selection grade was abolished by the Board of Directors of UPCL in the year 2006. Private respondents were promoted *vide* order dated 30.06.2009 to the post of Assistant Engineer (Civil) in the year 2008.09. In other words, seniority of the claim petitioners is of the year 2009-10, whereas, private respondents were Assistant Engineers of the year 2008-09 and therefore, there cannot be parity between petitioners and private respondents. G.O. dated 10.12.2008 and letter dated 22.12.2008 have nothing to do with the relaxation in period of service for promotion from the post of Junior Engineer to the post of Assistant Engineer. The relaxation was given only one time to the private respondents when they were considered for promotion from the post of Junior Engineer to the post of Assistant Engineer. So far as the training is concerned, it is the jurisdiction of the authority concerned to issue a certificate of completion of training. There is no Service Regulation for Junior Engineer (Civil) and therefore, there is no prescribed training for them [Junior Engineers (Civil)]. The promotion of the private respondents to the post of Executive Engineer has no connection with the interim seniority list. So far as the seniority of the private respondents in the year 2008-09 is concerned, the same was declared in the final seniority list in the year 2014.

12.4 The respondents No. 3, 4 and 5 were selected and appointed as Junior Engineers in the year 2002-03. In the year 2008-09, as per Seniority Regulations of 1998 and Regulations of 1970, after proper DPC held on 30.06.2009 and recommendation of the Board, they were promoted to the post of Assistant Engineer under promotion quota. The petitioners challenged the selected candidates on the ground that they were not qualified to be promoted, as they required six years' service as ordinary GDE Junior Engineer and 4 years in selection grade, total 10 years' qualifying service. In compliance of Govt. Order No.1869/1(2)/2007-06(3)/72/2003 dated 06.11.2007, the post of selection grade JE was abolished from the department *w.e.f.* 14.02.2007 according to Office Memorandum dated 18.12.2007 annexed as Annexure No. 3 of the Claim petition. The relaxation in qualifying service (minimum service period for promotion was granted *vide* office order No.360 dated 22.01.2009). The Board *vide* Notification No.360 dated 22.01.2009 clarified that total experience shall be counted on the date of DPC and these provisions in Uttarakhand Power Corporation will be applicable for the selection year 2008-09 only.

12.5 The petitioners fall in the selection year 2009-10 (as they entered into service in the month of December, 2009 and January, 2010). The case of the petitioners is that they had applied for the post on the basis of advertisement in the year 2006 hence, they are entitled to seniority over the private respondents. The Board of Directors has been vested with the powers under Article 49 and 50 in the Articles of Memorandum of Association of the Company/Corporation and in Clause 28 of the Engineers Service Regulation 1970. Exigency of service (of the department) required concession to the Respondents, as petitioners were not borne in the cadre at that point of time. Petition suffers from latches. Petitioners are challenging the matter after 9 years. Stealthily, the petitioners also filed petition No. 37/DB/2018 before this Hon'ble Tribunal. In the seniority list prepared for promotion to the post of Executive Engineer, the name of petitioners and private respondents

were included. The petitioners were unsuccessful because the petitioners had 7 years of experience and promotees had more experience than the petitioners.

12.6 It is also pointed out that an interim order was given by Hon'ble High Court of Uttarakhand at Nainital in WPSB No.579 of 2017, which interim order reads as below:

“Neither the pendency of the writ petition, nor the interim order passed will stand in the way of the petitioner in carrying out promotions, to the post of Executive Engineer in terms of the Seniority List dated 03.01.2015, which was impugned before the Public Service Tribunal. We however, make it clear that the promotions will be subject to the result of the writ petition. We further make it a condition that, in case, such promotions are made, the condition that the promotion will be subject to the decision of this writ petition will be made clear in that order.”

12.7 The writ petition, according to learned Counsel for the parties, is yet to be decided finally. It is the law of the land that a person who is not borne in the cadre, is not entitled to seniority before he enters into the service.

12.8 The relaxation in the training period was granted by the management and the Appointing Authority due to shortage of manpower and in exigency of work. The private respondents were given charge of J.E. after one week. Compulsory on-Job training in Power Sub-stations was given. The petitioners have joined Uttarakhand Power Corporation Ltd. as Assistant Engineer (Trainee) through direct recruitment and were required to undergo 1 year's training and two years of probation as per rules and were required to pass departmental examination also before getting promoted to the post of Executive Engineer. As per the Uttar Pradesh *Rajya Vidyut Parishad Jyeshthata Viniyamawali, 1998* (as applicable in Uttarakhand Power Corporation Ltd.), the seniority of an employee is calculated from the date of actual joining in the corporation. Since Shri Pranav Prakash, Sh. Mayank Nautiyal, Ms. Anju Bhardwaj and Ms. Veenakshi have joined the services in the Corporation on 01.01.2010, 29.12.2009, 31.12.2009 and 08.01.20210 respectively, therefore, their

names would appear only in the selection year 2009-10. The selection year is taken from 1st July to 30th June. Hence, question of giving them seniority prior to their joining does not arise. Hon'ble Supreme Court in Civil Appeal No. 3767 of 2010, State of Bihar vs. Arbind Jee, has observed in para 12 of the judgment dated 28.09.2021 thus:

“12. The principles enunciated in *Shitla Prasad Shukla*, 1986(2) SLR, 628 are applicable to the case at hand. The compassionate appointment of the respondent is not being questioned here but importantly he is claiming seniority benefit for 10 years without working for a single day during that period. In other words, precedence is being claimed over other regular employees who have entered service between 1985 to 1996. In this situation, the seniority balance cannot be tilted against those who entered service much before the respondent. Seniority benefit can accrue only after a person joins service and to say that benefits can be earned retrospectively would be erroneous. Such view was expressed in many cases and most recently in *Ganga Vishan Gujrati and ors. vs. State of Rajasthan and Ors.* Justice Dr. D. Y. Chandrachud speaking for the Court opined as under:-

“41. A consistent line of precedent of this Court follows the principle that retrospective seniority cannot be granted to an employee from a date when the employee was not borne on a cadre. Seniority amongst members of the same grade has to be counted from the date of initial entry into the grade. This principle emerges from the decision of the Constitution Bench of this Court in *Direct Recruit Class II Engineering Officers' Association vs State of Maharashtra*, (2019) 16 SCC 28. The principle was reiterated by this Court in *State of Bihar v Akhouri Sachindra Nath*, 1991 Suppl. (1) SCC, 334 and *State of Uttaranchal vs Dinesh Kumar Sharma*, Civil Appeal No. 5573 of 2006, Decided on 04.12.2006.”

13 Rejoinder affidavits thereto were also filed on behalf of the petitioners. Certain documents were also filed by the petitioners in the Tribunal. Objections thereto have also been filed on behalf of UPCL, respondent no. 2.

Discussion

14 In these claim petitions, the petitioners have challenged the following:

- (i) Interim seniority list dated 19.08.2017 [*deleted subsequently*]
- (ii) Promotion order dated 16.05.2018 of the private respondents.
- (iii) Quashing of Resolution of Board of Directors of UPCL dated 11.11.2008, to the extent the relaxation in minimum service period for

promotion from the post of Junior Engineer to the post of Assistant Engineer was given & eligibility of a candidate as on the first date of recruitment year has been modified and relaxed to be calculated on the date of DPC.

(iv) Order dated 22.01.2009 whereby Resolution of the Board of Directors of UPCL in its 40th meeting has been made applicable for the selection year 2008-09.

(v) Quashing of proceedings of DPC dated 30.06.2009.

(vi) Quashing of consequential promotion order dated 30.06.2009. Prayer has also been made for redrawing fresh seniority list declaring that the petitioners are entitled to get the seniority since the selection year 2008-09. Learned A.P.O., as also Sri V.D.Joshi/Sri S.K.Jain, learned Counsel for the UPCL and Sri I.P.Gairola, learned Counsel for the private respondents have vehemently opposed the maintainability of the claim petitions, *inter-alia*, on the ground that the same are barred by limitation.

15 The Tribunal finds substance in such objections of learned Counsel for the respondents. The reliefs have been sought for quashing the Resolutions dated 11.11.2008, 22.01.2009, proceedings of the DPC dated 30.06.2009 as well as for quashing consequential promotion order dated 30.06.2009. One claim petition has been filed in the year 2017 and another in the year 2018. The claim petitions have, therefore been filed after several years of the events, which are under challenge in the present claim petitions.

16 This Tribunal has held, in various other recent decisions that the petition filed by the petitioner before this Tribunal is neither a writ petition, nor appeal, nor application. It is just like a suit, as is evident from a bare reading of Section 5(1)(b) of the U.P. Public Services (Tribunal) Act, 1976 (for short, the Act). The words used in Section 5(1)(b) of the Act are- ".....as if a reference were a suit filed in Civil Court so, however, that-(i) notwithstanding the period of limitation prescribed in the Schedule to the Act (*Limitation Act, 1963*), the period of limitation for such reference shall be one year;" . It is not such claim petition in which the petitioner made a

statutory representation or filed an appeal, revision or any other petition, in accordance with the Rules or orders relating to his conditions of service so as to exclude the period during which such representation, appeal or revision was pending (reference: Section 5(1)(b)(ii) of the Act).

17 Clause (b) of sub-section (1) of Section 5 of the Uttar Pradesh Public Services (Tribunal) Act, 1976 provides for limitation in respect of claim petitions filed before the Tribunal, which reads as below:

“(b) The provisions of the Limitation Act, 1963 (Act 36 of 1963) shall mutatis mutandis apply to the reference under Section 4 as if a reference were a suit filed in civil court so, however, that-

(i) Notwithstanding the period of limitation prescribed in the Schedule to the said Act, the period of limitation for such reference shall be one year;

(ii) In computing the period of limitation the period beginning with the date on which the public servant makes a representation or prefers an appeal, revision or any other petition (not being a memorial to the Governor), in accordance with the rules or orders regulating his conditions of service, and ending with the date on which such public servant has knowledge of the final order passed on such representation, appeal, revision or petition, as the case may be, shall be excluded:

Provided that any reference for which the period of limitation prescribed by the Limitation Act, 1963 is more than one year, a reference under Section 4 may be made within the period prescribed by that Act, or within one year next after the commencement of the Uttar Pradesh Public Services (Tribunals) (Amendment) Act, 1985 whichever period expires earlier;

.....”

[Emphasis supplied]

18 The period of limitation, therefore, in such reference is one year. In computing such period, the period beginning with the date on which the public servant makes a statutory representation or prefers an appeal, revision or any other petition and ending with the date on which such public servant has knowledge of the final order passed on such representation, appeal, revision or petition, as the case may be, shall be excluded.

19 It will be useful to quote Section 5 of the Limitation Act, 1963, as below:

“Extension of prescribed period in certain cases.—Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation.—The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.”

[Emphasis supplied]

20 It is apparent that Section 5 of the Limitation Act applies to appeals or applications (but not to applications under Order 21 CPC, *i.e.*, Execution of Decrees and Orders). Petitioners file claim petitions, pertaining to service matters, before this Tribunal. Claim petition is neither an appeal nor an application. It is a ‘reference’ under Section 4 of the Act, as if it is a suit filed in Civil Court, limitation for which is one year. It is, therefore, open to question whether Section 5 Limitation Act, 1963, has any application to the provisions of the Act [of 1976]. In writ jurisdiction, the practice of dealing with the issue of limitation is different. Also, there is no provision like Section 151 C.P.C. or Section 482 Cr.PC (inherent powers of the Court) in this enactment, except Rule 24 of the U.P. Public Services (Tribunal) (Procedure) Rules, 1992, which is only for giving effect to its orders or to prevent abuse of its process or to secure the ends of justice. It is settled law that inherent power cannot be exercised to nullify effect of any statutory provision.

21 This Tribunal is not exercising the jurisdiction under Article 226 of the Constitution. The Act of 1976 is self contained Code and Section 5 of such Act deals with the issue of limitation. There is no applicability of any other Act while interpreting Section 5 of the Act of 1976.

22 It may be noted here, only for academic purposes, that the language used in Section 21 of the Administrative Tribunals Act, 1985 (a Central Act) is different from Section 5 of the U.P. Public Services (Tribunal) Act, 1976 (a State Act). It is not a *pari materia* provision. Relevant distinguishing feature of the Central Act is being reproduced herein below for convenience:

“21. Limitation- (1) A Tribunal shall not admit an application—

(a).....within one year from the date on which such final order has been made.

(3) Notwithstanding anything contained in sub-section (1) or sub section (2), an application maybe admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period.”

[Emphasis supplied]

23 **It, therefore, follows that the extent of applicability of limitation law is self contained in Section 5 of the Uttar Pradesh Public Services (Tribunal) Act, 1976. Section 5 of the Act [of 1976] is the sole repository of the law on limitation in the context of claim petitions before this Tribunal.**

24 To recapitulate, as per the scheme of law, the Tribunal can consider the delay in filing the claim petition only within the limits of Section 5 of the Act [of 1976] and not otherwise. It may be noted here that the period of limitation, for a reference in this Tribunal, is one year. In computing the period of limitation, period beginning with the date on which the public servant makes a representation or prefers an appeal, revision or any other petition (not being a memorial to the Governor), in accordance with the rules or orders regulating his conditions of service, and ending with the date on which such public servant has knowledge of the final order passed on such representation, appeal, revision or petition, as the case may be, shall be excluded. Apart from that, this Tribunal is not empowered to condone the delay on any other ground, in filing a claim petition. It may also be noted here that delay could be condoned under Section 5 of the Limitation Act, 1963, only in respect of an appeal or an application in which the appellant or applicant is able to show sufficient cause for condoning such delay. A reference under the Act [of 1976] before this Tribunal is neither an appeal nor an application. Further, such power to condone the delay is available to a Tribunal constituted under the Administrative Tribunals Act, 1985. In such Tribunal, delay in filing application might be condoned under Section 21, “if the applicant satisfies the Tribunal that he/she had ‘sufficient cause’ for not

making the application within such period.” Since this Tribunal has not been constituted under the Administrative Tribunals Act, 1985 and has been constituted under the Uttar Pradesh Public Services (Tribunal) Act, 1976, in which there is no such provision to condone the delay on showing such sufficient cause, therefore, this Tribunal cannot condone the delay in filing a claim petition, howsoever reasonable one’s plight may appear to be.

25 It may be reiterated, at the cost of repetition, that only a ‘reference’ is filed in this Tribunal, which is in the nature of a ‘claim’. It is not a writ petition, for the same is filed before Constitutional Courts only. Limitation for filing a reference in the Act [of 1976] is one year, as if it is a suit. ‘Suit’ according to Section 2(l) of Limitation Act, 1963 does not include an application. As per Section 3 of the Limitation Act, 1963, every suit instituted, appeal preferred and application made after the prescribed period shall be dismissed. Section 5 of the Limitation Act, 1963 has no applicability to ‘references’ filed before this tribunal. Section 5 of the Act of 1976 is self contained code for the purposes of limitation, for a ‘reference’ before this Tribunal.

26 In Claim Petition No. 37/DB/2018, petitioners have also sought quashing of promotions made on 16.05.2018 of the private respondents on the post of Executive Engineers (Civil). Such relief is NOT barred by limitation. The Tribunal shall deal with such relief of the petitioners in Part-II of this judgment. Claim petitions, but for relief in respect of promotions dated 16.05.2018, are barred by limitation.

* * *

27 The gravamen of petitioners’ case is, why relaxation in the training period was given to the private respondents? Had such relaxation not been given, they would have, according to the petitioners, been senior to the private respondents, whose case is that the relaxation given to them in training period was given as per the Rules and in exigency of service.

Whereas, petitioners have assailed the seniority of the selection year given to them, the respondents have made an endeavor to defend the same.

28 The question is, whether Board of Directors of UPCL could have given such relaxation.

29 Although relaxation dates back to the years 2008, which pertains to the selection year 2008-09 in which DPC was held on 30.06.2009 and consequential promotions made on selfsame date 30.06.2009, and relief in respect of which is clearly barred by limitation, but since we are in the final hearing therefore, it will be appropriate to deal with the validity of such decisions on merits also.

30 Relaxation has been defended by the UPCL on the ground of (i) shortage of man power(ii) exigency of work (iii) compulsory 'on-the-job' training in power sub-stations. The relaxation has been given to the private respondents (within the rules) by the Board of Directors. Regulation 28 of the Uttar Pradesh State Electricity Board Services of Engineers Regulations, 1970, reads as under:

"28. Relaxation: (1) Nothing in these Regulations shall be construed to limit or abridge the powers of the Board to deal with the case of any person appointed by the Board and governed by these Regulations in such a manner as may appear just and equitable:

Provided that where any of the forgoing regulations is applicable to the case of any person, the case shall not be dealt with in a manner less favorable to him than that provided by that regulation.

(2) when, in the opinion of the Board, it appears necessary to do so, the Board may make any appointment or appointments to the service in relaxation of these regulations, or in partial relaxation of any or some of the regulations and in case of any appointment which is not in strict accord with these regulations, the Board shall be deemed to have made the appointment(s) in relaxation of these Regulations."

According to the Regulations of 1970, the Board of Directors have powers to grant any relaxation, therefore, the Tribunal does not find any illegality in the same.

31 The petitioners joined the UPCL as Assistant Engineers (Trainee) through direct recruitment and were required to undergo one year's training

and two years probation as per Rules. They were required to pass departmental examination before being promoted to the post of Executive Engineer.

32 According to *Uttar Pradesh Rajya Vidyut Parishad Jyeshthata Viniyamwali, 1998*, as applicable to UPCL, the seniority of an employee is calculated from his date of actual joining in the Corporation. The petitioners, joined the service in UPCL on different dates in the years 2009 and 2010. Their names would therefore, appear in the selection year 2009-10. Selection year starts from 1st July to 30th June. The question of giving them seniority prior to their joining, therefore, would not arise. Hon'ble Supreme Court has clearly laid down the seniority benefit can accrue only after a person joins service. The seniority cannot be earned retrospectively. Retrospective seniority cannot be granted to an employee from the date when the employee was not borne in cadre.

33 The petitioners are challenging the promotions of the private respondents as Assistant Engineers (Civil) in the year 2008-09 and their subsequent promotions as Executive Engineer (Civil). The seniority of employees of UPCL is governed by UPSEB Seniority Regulations, 1998. According to proviso to Regulation 8(3), the seniority of an employee shall be placed in the year of appointment/promotion and in case the appointment has been made against the vacancies of previous years even then the employee shall get his seniority in the year in which he has been appointed but he shall be placed at the top of the list of appointment, but in no case, an employee can get seniority of the previous years. Regulation 8(3) reads as below:

8(3) Where appointments are made both by promotion and direct recruitment on the result of any one selection the seniority of promotees vis-a-vis direct recruits shall be determined in a cyclic order the first being a promotee as far as may be, in accordance with the quota prescribed for the two sources.

Illustrations--(1) *Where the quota of promotees and direct recruits is in the proportion of 1:1 the seniority shall be in the following order :--*

| | | |
|---------------|--------------|-----------------------------------|
| <i>First</i> | <i>.....</i> | <i>Promotee</i> |
| <i>Second</i> | <i>.....</i> | <i>Direct recruits and so on.</i> |

(2) Where the said quota is in the proportion of 1:3 the seniority shall be in the following order :--

| | | |
|------------------|-------|----------------------------|
| First | | Promotee |
| Second to fourth | | Direct recruits |
| Fifth | | Promotee |
| Sixth to eight | | Direct recruits and so on. |

Provided that--

(i) where appointments from any source are made in excess of the prescribed quota, the persons appointed in excess of quota shall be pushed down, for seniority, to subsequent year in which there are vacancies in accordance with the quota;

(ii) where appointments from any source 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;

(iii) where, in accordance with the service rules the unfilled vacancies from any source could, in the circumstances mentioned in the relevant service rules be filled from the other source and appointment in excess of quota are so made, the persons so appointed shall get the seniority of that very year as if they are appointed against the vacancies of their quota.

34 The petitioners were appointed in the year 2009-10 as Assistant Engineers (Civil) (Trainee) and were appointed as Assistant Engineers in the year 2010-11 after successful completion of one year's training. Therefore, the petitioners would get their seniority in the year 2010-11 as Assistant Engineers (Civil). It would be incorrect to infer that they will get seniority of the earlier year.

35 Private respondents were promoted as Assistant Engineers (Civil) on 30.06.2009 *i.e.* in the selection year 2008-09. The private respondents have been given seniority as Assistant Engineers (Civil) in the selection year 2008-09. The petitioners, therefore, cannot claim seniority before 2010-11, the selection year, in which they were appointed as Assistant Engineers (Civil).

36 During final hearing, an application for taking certain documents on record was given by Sri L.K.Maithani, learned Counsel for the petitioners. Although such application was opposed by learned Counsel for the respondents, but the same is taken on record along with the objections of UPCL. Sri L.K.Maithani, learned Counsel for the petitioners submitted that in "Uttar Pradesh State Electricity Board, Assistant Engineers (Civil) Service Regulations, 1970", in Appendix-B, the qualification for promotion to the post

of Assistant Engineers (Civil) from the post of Junior Engineer (Civil) has been given, as under:

“Junior Engineers (Civil) who are confirmed on the post and have rendered atleast 10 years of service in the cadre, out of which 4 years must be in the selection grade.”

37 Sri L.K.Maithani, learned Counsel for the petitioners, therefore, submitted that from a bare perusal of proceedings of DPC dated 30.06.2009 (Annexure: A 11), it is revealed that relaxation was granted to those Junior Engineers (Civil) in 4 years selection grade who have completed 10 years of service on the post. Selection grade was therefore, part of Junior Engineers' Service Rules. In the DPC dated 30.06.2009, 100% relaxation in selection grade service was given to those Junior Engineers (Civil) only who have completed 10 years of service on the post on such date of DPC, the service of private respondents on the post of Junior Engineers (Civil) was less than 10 years. As such there was no relaxation in selection grade of Junior Engineer (Civil) (private respondents having less than 10 years service on the post). Thus according to Sri L.K.Maithani, learned Counsel for the petitioners, the promotion of private respondents without completing 4 years' selection grade service is illegal, as, for the post of Assistant Engineer (Civil), the educational qualification is degree in Civil Engineering while for the Junior Engineers, the educational qualification is diploma in engineering, which is an inferior qualification, therefore, the qualifying service on the post Junior Engineer is not a simple qualifying service but an educational qualification for Junior Engineers for promotion to the post of Assistant Engineer. After Reorganization of State of U.P., the Rules of UPSEB were made applicable to UPCL.

38 In the reply to the application of the petitioners, filed during the course of arguments, it has also been stated in Para 5 of the affidavit of Sri K.B.Chaube, that Junior Engineer (Civil) Regulations do not exist in UPCL.

39 The petitioners have also raised the question of selection grade in the cadre of Junior Engineers. Such selection grade was abolished in UPCL

w.e.f. 14.02.2007 and therefore, the question of selection grade in the year 2008-09 does not arise

40 Sri V.D.Joshi, learned Counsel for the UPCL would reply that O.M. dated 31.05.2013 (Annexure: SA1) and O.M. dated 01.01.2021 (Annexure: SA2) are the documents of UPPCL. These documents are not applicable to UPCL. The Tribunal finds substance in the submissions of Sri V.D.Joshi, learned Counsel for the UPCL that Annexure: SA1 and SA-2 were since issued by UPPCL, after the 'appointed day', therefore, the documents will not be applicable to UPCL by virtue of U.P. Reorganization Act, 2000.

41 True copy of the Office Order No. 1599/Aa. *Evam Pra.Mi./UPCL* dated 05.12.2001 has been filed along with Affidavit of Sri K.B. Chaube, General Manager (HR), UPCL, to clarify that notification of UPPCL issued on or after 01.11.2001 *ipso facto* will not be applicable to the UPCL, unless they are so adapted by UPCL. Selection grade in Junior Engineer (E&M) has been abolished *vide* O.M. No. 8786 dated 18.12.2007, a copy of which has been filed along with affidavit. It has also been submitted that only the draft Regulations were framed in the year 2017 which are pending for approval before the Govt. of Uttarakhand. The petitioners are therefore, not entitled to any benefit on the basis of the documents which have been filed, on their behalf, along with affidavit, during the course of arguments.

42 To recapitulate, the private respondents were selected and appointed as Junior Engineers in the year 2002-03. In the year 2008-09, as per seniority Regulations, 1998 and Regulations of 1970, after holding DPC, on 30.06.2009 and recommendations of the Board of UPCL, they were promoted to the post of Assistant Engineer under promotion quota. Petitioners have challenged the selection of the private respondents on the ground that they were not qualified to be promoted, as they require six years service as ordinary GDE Engineer and four years in selection grade=total accounting to 10 years' qualifying service. In compliance of Govt. Order dated 06.11.2007, the post of selection GDE Junior Engineer was abolished in the department *w.e.f.* 14.02.2007 according to Office Memorandum dated 18.12.2007

annexed as Annexure: A3 of the claim petition. The relaxation in qualifying service (minimum service period for promotion) was granted *vide* Office Order dated 22.01.2009 (Annexure: A1). UPCL Board *vide* Notification dated 22.01.2009 has clarified that the total experience shall be counted on the date of DPC and these provisions in UPCL will be applicable for the selection year 2008-09 only. The petitioners fall in the selection year 2009-10, as they came into service in the month of December 2009 and January 2010. The case of the petitioners is that they had applied for the post on the basis of advertisement in the year 2006, hence, they are entitled to be listed in the seniority list. In exigency of service, the department required concession of service to the private respondents. At that point of time, the petitioners were not borne in the cadre. Board of Directors of UPCL has been vested with such powers under Article 49 and 50 in the Articles of Memorandum of Association of the Company and in Clause 28 of the Engineers Service Regulations, 1970. In the seniority list prepared for promotion to the post of Executive Engineer, the names of petitioners and private respondents were included. The promotees had more experience than the petitioners. They were selected. A person, who is not borne in the cadre, is not entitled to be entered in the seniority list. Seniority cannot be granted with retrospective effect.

Claim petition No. 37/DB/2018 was filed during the pendency of the claim petition no.14/NB/DB/2017. Relaxation in training period was granted by the Management and the Appointing Authority due to shortage of manpower and exigency of work. Respondents were given on-the-job training while giving charge of Junior Engineer after one week. The petitioners joined UPCL as Assistant Engineer (Trainee) through direct recruitment. As per the Seniority Rules of 1998, the seniority of an employee is reckoned from the date of his actual joining in the Corporation. The petitioners were in the selection year 2009-10, therefore, giving them seniority before their joining, does not arise. Retrospective seniority cannot be granted to an employee from the date when he was not borne on cadre. This principle emerges from a decision of the Constitutional Bench of Hon'ble Apex Court in *Direct Recruit*

Class-II Engineering Officers Association vs. State of Maharashtra, (2019) 16 SCC 28.

Claim petitions challenge the promotion of private respondents as Assistant Engineer (Civil) in the year 2008-09 and the promotions of the private respondents as Executive Engineer (Civil). Seniority of employees of UPCL is governed by UPSEB Seniority Regulations, 1998. Proviso to Regulation 8(3) states that seniority of an employee shall be placed in the year of appointment/promotion and in case the appointment has been made against the vacancies of previous years, even then the employee shall get the seniority in the year in which he has been appointed, but he shall be placed at top of the list of appointments. But in no case an employee can get seniority of the previous years. The petitioners were appointed in the year 2009-10 as Assistant Engineers (Civil) (Trainee) and were appointed as Assistant Engineers in the year 2010-11 after successful completion of one year training. Therefore, the petitioners shall get their seniority in the year 2010-11 as Assistant Engineers (Civil). They cannot get seniority of the earlier years. Private respondents were appointed as Assistant Engineer (Civil) on 30.06.2009 (selection year 2008-09). The respondents would get their seniority as Assistant Engineer (Civil) in the year 2008-09. The petitioners cannot be given seniority before 2010-11. The relaxation has been granted to the private respondents by the Board of Directors of UPCL. Service Regulations of Assistant Engineers (Civil), 1970, provides that the Board of Directors of UPCL has powers to grant relaxation. Selection grade was abolished in the Corporation *w.e.f.* 14.02.2007 and therefore, the question of selection grade in the year 2008-09 would not arise.

43 Office Memorandum dated 31.05.2013 (Annexure: SA1) and O.M. dated 01.01.2021 (Annexure: SA2) issued by the U.P. Rajya Vidyut Udpadan Nigam Ltd. and UPPCL have been filed, along with application, supported by an affidavit on behalf of the petitioners during final hearing. It may be noted here that Annexure: SA1 and Annexure: SA2 are the Office Memoranda of the Power Corporations of U.P. after the 'appointed day' (09.11.2000). They are not applicable to the State of Uttarakhand. Office Memorandum dated

05.12.2001 has been filed along with the objections (by respondent UPCL) to show that any order issued by UPPCL on or after 01.11.2001 shall not, *ipso facto* be applicable to UPCL, unless the same are adapted by the Uttarakhand Power Corporation. Further, Office Memorandum dated 18.12.2007, filed along with the objections of the respondent-UPCL, indicates that the post of Junior Engineer selection grade, as mentioned in U.P. State Electricity Board Subordinate Electrical & Mechanical Engineers Service Regulations, 1972 has been abolished *w.e.f.* 14.02.2007. Thus the Office Memoranda issued by the U.P. Power Corporation Ltd. or any U.P. Govt. Undertaking, shall not, *ipso facto* be applicable to UPCL or any of its undertakings. To the contrary, the office memoranda issued by the Power Corporations of the Successor State of Uttarakhand only shall govern the field, after the 'appointed day'.

44 Furthermore, the claim petitions, except one relief, are barred by limitation. That single relief also owes its genesis to the old time barred relief besides being devoid of merits. The claim petitions have no legs to stand on merits either. The same are liable to be dismissed on the ground of delay and laches also.

45 The petitioners are not entitled to any relief, on the basis of above discussion

ORDER

46 The claim petitions, therefore, fail and are dismissed. No order as to costs.

47 Let a copy of this order be kept on the file of Claim Petition No. 14/NB/DB/2017.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: NOVEMBER 30, 2021.

DEHRADUN

KNP