

**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)

**Review Petition No. 04/NB/DB/2022
[In Claim Petition No. 67/NB/DB/2022]**

1. Secretary, Agriculture and Farmer Welfare, Uttarakhand Government, Dehradun.
2. Secretary, Personnel Department, Uttarakhand Government, Dehradun.
3. Director, Agriculture Department, Uttarakhand Government, Dehradun.

.....Review-Applicants

versus

1. Priyanka Singh, aged about 38 years, w/o Sri Bhupendra Kumar Singh, presently working as In-charge Chief Agriculture Officer, Almora.
2. Vinod Kumar Sharma, aged about 36 years, s/o Sri Ramesh Chandra Sharma, presently posted as Agriculture & Soil Conservation Officer, Badechhina, Almora.

..... Opposite Parties

Present: Sri Kishore Kumar, A.P.O., for the review-applicants (virtual)
Sri S.C. Virmani (virtual) & Sri S.K. Jain, Advocates (physical)
for the opposite party no. 1
Sri Amar Murti Shukla, Advocate,
for the opposite party no. 2 (virtual)

With

**Review Petition No. 01/DB/2023
[In Claim Petition No. 91/DB/2022]**

1. Secretary, Agriculture and Farmer Welfare, Uttarakhand Government, Dehradun.
2. Secretary, Personnel Department, Uttarakhand Government, Dehradun.
3. Director, Agriculture Department, Uttarakhand Government, Dehradun.

..... Review-Applicants

versus

Deepak Purohit aged about 36 years s/o Shri Rakesh Chandra Purohit, presently posted as Agriculture & Soil Conservation Officer, Chakrata, Dehradun.

.....Opposite Party

Present: Sri V.P. Devrani, A.P.O., for the review-applicants
Sri Amar Murti Shukla, Advocate, for the opposite party (Virtual)

With

Review Petition No. 02/DB/NB/2022

Vijay Deorari, aged 44 Officers years S/o Shri B.D. Deorari R/o VI4, Officiating Colony, Chief Roshnabad, Haridwar,, presently posted as Agriculture Officer, Haridwar.

..... Review-Applicant

IN

Claim Petition No. 91/DB/2022

Deepak Purohit aged about 36 years s/o Shri Rakesh Chandra Purohit, presently posted as Agriculture & Soil Conservation Officer, Chakrata, Dehradun.

..... Opposite Party

AND

Claim Petition No. 67/NB/DB/2022

1. Priyanka Singh, aged about 38 years, w/o Sri Bhupendra Kumar Singh, presently working as In-charge Chief Agriculture Officer, Almora.
2. Vinod Kumar Sharma, aged about 36 years, s/o Sri Ramesh Chandra Sharma, presently posted as Agriculture & Soil Conservation Officer, Badechhina, Almora.

..... Opposite Parties

VERSUS

1. Secretary, Agriculture and Farmer Welfare, Uttarakhand Government, Dehradun.
2. Secretary, Personnel Department, Uttarakhand Government, Dehradun.
3. Director, Agriculture Department, Uttarakhand Government, Dehradun.

.....State-Opposite Parties

Present: Sri Subhash Upadhyay, Advocate, for the review applicant (virtual)
 Sri S.C. Virmani (virtual) & Sri S.K. Jain, (physical), Advocates
 for opposite party no. 1 in claim petition no. 67/NB/DB/2022
 Sri Amar Murti Shukla, Advocate, for opposite party in claim petition
 no. 91/DB/2022 and opposite party no. 2 in claim petition no.
 67/NB/DB/2022 (virtual)
 Sri V.P. Devrani, A.P.O. (physical) and Sri Kishore Kumar, A.P.O. (virtual)
 for State-Opposite parties

**With
 Review Petition No. 03/NB/DB/2022**

Latika Singh aged 44 years w/o Shri Vinay Chandra R/o Flat No. B-103, Plot No. 153/ 11 Mangolia Mansion, Street No. 11, Rajendra Nagar, Dehradun, presently posted as Officiating Chief Agriculture Officer, Dehradun.

..... Review-Applicant

**IN
 Claim Petition No. 91/DB/2022**

Deepak Purohit aged about 36 years s/o Shri Rakesh Chandra Purohit, presently posted as Agriculture & Soil Conservation Officer, Chakrata, Dehradun.

..... Opposite party

AND
Claim Petition No. 67/NB/DB/2022

1. Priyanka Singh, aged about 38 years, w/o Sri Bhupendra Kumar Singh, presently working as In-charge Chief Agriculture Officer, Almora.
2. Vinod Kumar Sharma, aged about 36 years, s/o Sri Ramesh Chandra Sharma, presently posted as Agriculture & Soil Conservation Officer, Badechhina, Almora.

.....Opposite Parties

VERSUS

1. Secretary, Agriculture and Farmer Welfare, Uttarakhand Government, Dehradun.
2. Secretary, Personnel Department, Uttarakhand Government, Dehradun.
3. Director, Agriculture Department, Uttarakhand Government, Dehradun.

.....State-Opposite Parties

Present: Sri Subhash Upadhyay, Advocate, for the review applicant (virtual)
Sri S.C. Virmani (virtual) & Sri S.K. Jain (physical), Advocates,
for opposite party no. 1 in claim petition no. 67/NB/DB/2022
Sri Amar Murti Shukla, Advocate, for opposite party in claim petition
no. 91/DB/2022 and opposite party no. 2 in claim petition no.
67/NB/DB/2022 (virtual)
Sri V.P. Devrani, A.P.O. (physical) and Sri Kishore Kumar, A.P.O. (virtual)
for State-Opposite parties

WITH

Execution Petition No. 10/NB/DB/2022
[Arising out of judgement 31.08.2022, passed in Claim
Petition No. 67/NB/DB/2022]

Vinod Kumar Sharma, aged about 36 years, s/o Sri Ramesh Chandra Sharma, presently posted as Agriculture & Soil Conservation Officer, Bادهचना, Almora.

.....Petitioner-Executioner

VERSUS

1. Secretary, Agriculture and Farmer Welfare, Uttarakhand Government, Dehradun.
2. Secretary, Personnel Department, Uttarakhand Government, Dehradun.
3. Director, Agriculture Department, Uttarakhand Government, Dehradun.

.....Respondents

(virtual)

Present: Sri Amar Murti Shukla, Advocate, for the petitioner-executioner
Sri Kishore Kumar, A.P.O. for the respondents

WITH

Execution Petition No. 11/NB/DB/2022
[Arising out of judgement 31.08.2022, passed in Claim
Petition No. 67/NB/DB/2022]

Priyanka Singh, aged about 38 years, w/o Sri Bhupendra Kumar Singh, presently working as In-charge Chief Agriculture Officer, Almora.

.....Petitioner-Executioner

VERSUS

1. Secretary, Agriculture and Farmer Welfare, Uttarakhand Government, Dehradun.
2. Secretary, Personnel Department, Uttarakhand Government, Dehradun.
3. Director, Agriculture Department, Uttarakhand Government, Dehradun.

.....Respondents

Present: Sri S.C. Virmani (virtual) and Sri S.K. Jain (physical) Advocates,
for the petitioner-executioner
Sri Kishore Kumar, A.P.O. for the respondents

Judgement

Dated: 13th January, 2023

Justice U.C. Dhyani (Oral)

Two petitions were decided by this Tribunal on 31.08.2022. Those two petitions were filed by (i) Ms. Priyanka Singh and another and (ii) Sri Deepak Purohit, against the State of Uttarakhand and others. Relevant paragraphs of the judgement dated 31.08.2022 are excerpted herein below for convenience:

“

13. **The sole question, which arises for consideration of this Tribunal is- whether the promotional exercise for the post of Dy. Director/ Chief Agriculture Officer should be conducted according to the Rules of 1992 or the new Rules of 2021?**

14. This question is no longer *res integra* and is subject matter of a catena of decisions. In the decision of *Y.V. Rangaiah and others vs. J.Sreenivasa Rao and others, AIR 1983 SC 852*, Hon'ble Apex Court has observed as follows:

.....

15. In *State of Rajasthan vs. R. Dayal and others*, decided on 17th February, 1997, Hon'ble Supreme Court has observed, as below:

.....

16. In the decision of *B.L.Gupta and another vs. M.C.D., (1998) 9 SCC 223*, following has been observed by Hon'ble Supreme Court in Paras 9, 10 and 11:

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17. In Para 30 of *State of Punjab and others vs. Arun Kumar Aggarwal and others, (2007) 10 SCC 402*, following has been observed by Hon'ble Supreme Court:

.....

18. In the decision of *Arjun Singh Rathore & others vs. B.N. Chaturvedi*, rendered on 12.October, 2007, following has been observed by Hon'ble Supreme Court:

.....

19. In the decision of *Richa Mishra vs. State of Chhattisgarh and others*, (2016) 4 SCC 179, following has been observed by Hon'ble Supreme Court in Para 18:

.....

20. In *WPSB No.532 of 2016, Rajesh Chauhan vs. State of Uttarakhand and others*, Hon'ble High Court has observed, as below:

.....

21. In *WPSS No.1470 of 2018, Hema Karki vs. State of Uttarakhand and others*, Hon'ble High Court has observed, as below:

.....

22. In *WPSS No.556 of 2020, Smt. Seema Rawat and others vs. State of Uttarakhand and others*, Hon'ble High Court has observed, as below:

“.....

1. *A.A. Calton v. Director of Education & Anr.*, reported in (1983) 3 SCC 33

2. *Y.V. Rangaiah and Ors. Vs. J. Sreenivasa and Ors.*, reported in (1983) 3 SCC 284

3. *State of Punjab and Ors. Vs. Arun Kumar Aggarwal and Ors.*, reported in (2007) 10 SCC 402

4. *Arjun Singh Rathore and ors. Vs. B.N. Chaturvedi and Ors.*, reported in (2007) 11 SCC 605

5. *Writ Petition (S/B) No.532 of 2016 Rajesh Chauhan vs. State of Uttarakhand and others*, decided on 10.03.2017

6. *Hema Karki vs. State of Uttarakhand and others, WPSS No.1470 of 2018*, decided on 21.05.2019.

.....”

.....

25. In view of the aforesaid, this Tribunal comes to the conclusion that the present petition is squarely covered by the decisions rendered by Hon'ble Supreme Court in *Y.V. Rangaiah and others vs. J.Sreenivasa Rao and others* ; *State of Rajasthan vs. R. Dayal and others*; *State of Punjab and others vs. Arun Kumar Aggarwal and others*; *B.L.Gupta and another vs. M.C.D. (supra)* and other decisions quoted in the body of this judgment, therefore, the petition should be decided in terms of the aforesaid decisions.

26. We, accordingly, dispose of the petitions by directing the respondents to consider promotion of the petitioners, if they are found suitable, as per the Rules prevalent before the amendment that came into force on 10.12.2021. In the circumstances, no order as to costs.

.....”

2. State of Uttarakhand, as also Ms. Latika Singh and Sri Vijay Deorari, have filed the review applications for reviewing the order

dated 31.08.2022 on the ground that the decision rendered by Hon'ble Apex Court in *Y.V. Rangaiah and others vs. J. Sreenivasa Rao and others*, AIR 1983 SC 852, was overruled in Civil Appeal Nos. 9746-47 of 2011, *State of Himachal Pradesh vs. Raj Kumar and others*. According to the review-applicants, the decision of *Y.V. Rangaiah (supra)* was overruled on 20.05.2022 in *State of Himachal Pradesh vs. Raj Kumar and others (supra)*.

3. Relevant paragraphs of *State of Himachal Pradesh vs. Raj Kumar and others (supra)* are extracted herein below for convenience:

“1.1 These appeals arise out of the decision of the High Court of Himachal Pradesh allowing the writ petition and directing the State to consider the case of the writ petitioners, Respondents no. 1 to 3 herein, for promotion under Rules that existed when the vacancies arose and not as per the subsequently amended rules. These directions were based on the decision of this Court in the case of *Y.V. Rangaiah v. J. Sreenivasa Rao*, (1983) 3 SCC 284, hereinafter referred to as '*Rangaiah*'. As we noticed a number of decisions of this Court that have followed *Rangaiah*, and far more decisions that have distinguished it, we had to examine the issue afresh. The question is whether appointments to the public posts that fell vacant prior to the amendment of the Rules would be governed by the old Rules or the new Rules. After examining the principle in the context of the constitutional position of services under the State, and having reviewed the decisions that have followed or distinguished *Rangaiah* in that perspective, we have formulated the legal principles that should govern services under the State. Applying the said principles, **we have held that the broad proposition formulated in *Rangaiah* does not reflect the correct constitutional position**. We have thus allowed the appeals following the principles that we have laid down.

.....

2. The solitary argument advanced on behalf of Respondents No. 1 to 3, which was accepted by the Division Bench was that the vacancies which arose prior to the promulgation of New Rules were to be filled only as per the 1966 Rules and not as per the New Rules. The High Court formulated the issue and proceeded to allow the Writ Petition on the ground that it is covered by the decision of this Court in *Y.V. Rangaiah v. J. Sreenivasa Rao (supra)*. The operative portion of the judgment is extracted herein for ready reference:

“The question whether the vacancies occurring before the amendment to the Recruitment and Promotion Rules are to be filled up as per the old Recruitment and Promotion Rules or by way of new Recruitment and Promotion Rules is no more res integra in view of the law laid down by their Lordships of this Court in Y.V. Rangaiah and others versus J. Sreenivasa Rao, (1983) 3 SCC 284.”

.....

4.1 The real question is whether the vacancies which arose prior to the promulgation of the new rules are to be filled only as per the old rules and not as per the amended rules? It is argued that this principle is no more *res-integra* as the Supreme Court recognised such a right in *Rangaiah's* case and it has been followed in a large number of subsequent decisions. A list of such judgments was forwarded to the Court by the Respondents. On the other hand, while submitting that there is no such right, an even larger list of decisions of this Court that distinguished *Rangaiah* was forwarded to us on behalf of the State.

4.2 We have taken note of the fact that there are a large number of decisions that have either followed the principle in *Rangaiah* or have distinguished it. The principle in *Rangaiah's* case has given rise to a number of decisions, most of them have disappplied *Rangaiah* and have in fact, watered-down the principle while distinguishing it. In this view of the matter, and for clarity and certainty, it is necessary for us to review the subject and restate the principle in simple and clear terms.

.....

5.2 The question that arose in *Rangaiah's* case related to the mandatory obligation under the old rules to prepare an approved list of candidates and also the number of persons to be placed in the list as per the vacancies available. It is in this context that the Court observed that the *vacancies would be governed by the old rules*. This decision is not to be taken to be laying down an invariable principle that vacancies occurring prior to the amendment of the rules are to be governed by old rules. It is important to note that the Court has not identified any *vested right* of an employee, as has been read into this judgment in certain subsequent cases.

5.3 However, as the observation in *Rangaiah's* case has been construed as a general principle that vacancies arising prior to the amendment of rules are to be filled only as per the old rules, it is necessary for us to examine the correct position of law. For this purpose, we will examine the constitutional position and the *status* that governs the relationship between an employee and the State.

.....

11. In view of the above principles, flowing from the constitutional *status* of a person in employment with the State, we have no hesitation in holding that the observations in *Rangaiah* that posts *which fell vacant prior to the amendment of Rules would be governed by old Rules and not by new Rules do not reflect the correct position of law*. We have already explained that the *status* of a Government employee involves a relationship governed exclusively by rules and that there are no rights outside these rules that govern the services. Further, the Court in *Rangaiah's* case has not justified its observation by locating such a right on any principle or on the basis of the new Rules. (In fact, the case of *Dr. K. Ramulu & Anr v. Dr. S Suryaprakash Rao* (supra) is exactly this where there was a specific requirement in the new amended rules to fill up the old vacancies as per the new amended rules. The repealed rules had a provision for filling up the past vacancies as per the new rules. Also, in *P. Ganeshwar Rao v. State of A.P.*, 1988 Supp SCC 740 the intendment was to fill the vacancies as per the old rules.) As there are a large number of judgments which followed *Rangaiah* under the assumption that an overarching principle has been laid down in *Rangaiah*, we have to necessarily examine the cases that followed *Rangaiah*. We will now examine how subsequent decisions understood, applied or distinguished *Rangaiah*.

.....

36. A review of the fifteen cases that have distinguished *Rangaiah* would demonstrate that this Court has been consistently carving out exceptions to the broad proposition formulated in *Rangaiah*. The findings in these judgments, that have a direct bearing on the proposition formulated by *Rangaiah* are as under:

.....

37.3 The consistent findings in these fifteen decisions that *Rangaiah's* case must be seen in the context of its own facts, coupled with the declarations therein that there is no rule of universal application to the effect that vacancies must necessarily be filled on the basis of rules which existed on the date which they arose, compels us to conclude that the decision in *Rangaiah* is impliedly overruled. However, as there is no declaration of law to this effect, it continues to be cited as a precedent and this Court has been distinguishing it on some ground or the other, as we have indicated hereinabove. For clarity and certainty, it is, therefore, necessary for us to hold;

(a) The statement in *Y.V. Rangaiah v. J. Sreenivasa Rao* that, “the vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules”, does not reflect the correct proposition of law governing services under the Union and the States under part XIV of the Constitution. It is hereby overruled.

(b) The rights and obligations of persons serving the Union and the States are to be sourced from the rules governing the services.

.....”

[emphasis supplied]

4. There is no doubt, in the mind of the Tribunal, that the decision rendered by Hon’ble Apex Court in *Y.V. Rangaiah (supra)*, on which the Tribunal’s judgement dated 31.08.2022 was based, stood overruled on the date of Tribunal’s judgement. It is an error apparent on the face of record. Had *Y.V. Rangaiah's* decision (*supra*) been overruled after the decision of the Tribunal, the same would not have been a ground for review, in view of Order 47 C.P.C., which reads as below:

“1. Application for review of judgement. — (1) Any person considering himself aggrieved—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes.

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applied for the review.

[Explanation.—The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.]”

5. Sri S.C. Virmani, learned Counsel for opposite party no. 1 in Rev-03/NB/DB/2022; opposite party no. 1 in Rev-04/NB/DB/2022 and opposite party no. 1 in Rev-02/NB/DB/2022, has placed reliance on the decisions rendered by Hon’ble Apex Court in Northern India Caterers vs. Lt. governor of Delhi, 1980 AIR 674; Smt. Meera Bhanja vs. Smt. Nirmala Kumari Choudhary, AIR 1995 SC 455 and Civil Appeal No. 7648 of 2004, Haridas Das vs. Smt. Usha Banik and others, to argue that review application is not maintainable. Normally, this Tribunal would have readily agreed to such submission of Sri S.C. Virmani, Advocate, but for the reasons that the decision of Y.V. Rangaiah (*supra*) stood overruled even before our rendering the judgement dated 31.08.2022, which the Tribunal did not notice or was not brought to Tribunal’s notice, which is an error apparent on the face of record, and therefore, the order dated 31.08.2022 should be reviewed.

6. Sri S.C. Virmani, Advocate, also submitted that the review application is barred by limitation. In reply, Sri V.P. Devrani, learned A.P.O. submitted that an application for condonation of delay has been filed alongwith review application.

7. Rule 17 of the U.P. Public Services Tribunal (Procedure) Rules, 1992, reads as under:

“17. Review Petition- (1) No petition for review shall be entertained unless it is filed within thirty days from the date of the order of which the review is sought.

(2) A review petition shall ordinarily be heard by the same bench which has passed the order, unless, for reasons recorded in writing, the Chairman directs that it be heard by any other Bench.

(3) Where a petition for review of any judgement or order has been disposed of, no further petition for further review shall lie.”

Whereas Sri S.C. Virmani, Advocate, submitted that the review application should have been filed within 30 days, Sri V.P. Devrani and Sri Kishore Kumar learned A.P.O.s, submitted that Section 5 of the Limitation Act, 1963 applies to the applications and therefore, the delay in filing the same should be condoned.

8. Sri S.C. Virmani, Advocate, further submitted that the State Govt. and the ordinary litigants have to be treated on equal footing. According to him, no preferential treatment should be given to the State Govt. and therefore, application for condoning delay in filing the application should be dismissed.

9. Section 5 of the Indian Limitation Act, 1963, envisages that the delay in filing the application should be condoned, if sufficient cause is shown. Law also envisages that when substantial justice and technical justice are pitted against each other, the Courts should adopt pragmatic approach of providing substantial justice. Even if review application of the State is allowed, which is likely to be allowed, it is not the end of the road for the petitioners of the petitions no. 67/NB/DB/2022 and 91/DB/2022, for both the parties shall again be heard, on merits. No one is a loser if the review application is allowed. The delay in filing the review application is, therefore, condoned.

10. In para 22 of the decision rendered by Hon'ble Apex Court in S. Madhusudhan Reddy vs. Narayana Reddy and others, 2022 SCC *Online* 1034, which has been placed before us by Sri Subhash Upadhyay, Advocate, it has been observed that the term 'mistake or error apparent' by its very connotation signifies an error which is evident per se from the record of the case and does not

require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 CPC. To put it differently, an order or decision or judgement cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the Court/ Tribunal on a point of fact of law.

11. To put it straight, the Tribunal's order dated 31.08.2022 was solely based on the decision rendered by Hon'ble Apex Court in Y.V. Rangaiah (*supra*), which was followed by the Courts in catena of decisions, which fact has been mentioned by Hon'ble Apex Court in State of Himachal Pradesh vs. Raj Kumar and others (*supra*) and since Y.V. Rangaiah's decision (*supra*) had expressly been overruled in State of Himachal Pradesh vs. Raj Kumar and others (*supra*), even before our rendering the judgement-under-review, it is definitely an error apparent on the face of record and therefore Tribunal's order dated 31.08.2022 needs to be reviewed.

12. Review Applications No. Rev-01/DB/2023, Rev-04/NB/DB/2022 and Rev-02/NB/DB/2022 are allowed. The judgement-order under review is set aside. Petitions no. 67/NB/DB/2022 and 91/DB/2022 are restored to their original number and shall be heard on merits on 28.02.2023.

13. Doubts have been raised about maintainability of review application filed by Ms. Latika Singh. Sri Amar Murti Shukla, learned Counsel for opposite party no. 2 in Rev-03/NB/DB/2022; opposite party in Rev-01/DB/2023; opposite party no. 2 in Rev-04/NB/DB/2022 and opposite party no. 2 in Rev-02/NB/DB/2022, submitted that since Ms. Latika Singh was not a party to any of the petitions when petitions no. 67/NB/DB/2022 and 91/DB/2022 were heard, therefore, review filed by her is not maintainable. Since the question regarding maintainability of review filed by Ms. Latika

Singh is of academic interest only, therefore, the Tribunal does not think it necessary to express any opinion on the maintainability of the review application filed by Ms. Latika Singh.

14. Execution Applications No. Exec.-10/NB/DB/2022 and Exec.-11/NB/DB/2022 have rendered infructuous. The same are dismissed as infructuous.

15. Let copies of this judgement be placed in the files of Rev- 04/NB/DB/2022, Rev-02/NB/DB/2022, Rev-03/NB/DB/2022, Exec-10/NB/DB/2022 and Exec-11/NB/DB/2022.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: January 13, 2023
DEHRADUN
RS