

**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. 123/DB/2019**

Rakesh Chandra Deoli s/o Shri Ram Prasad Deoli, aged about 54 years, presently posted as C.O. Traffic, Dehradun.

.....Petitioner

**With**

**CLAIM PETITION NO. 139/DB/2019**

Vijendra Dutt Dobhal s/o Lt. Gajendra Dutt Dobhal aged about 55 years, presently posted as Dy. S.P., Circle Officer at Kankhal, Haridwar.

.....Petitioner

**With**

**CLAIM PETITION NO. 140/DB/2019**

Prakash Chandra Deoli s/o Shri Ram Prasad Deoli aged about 57 years, presently posted as Dy. S.P. Police Training College, Narendra Nagar.

.....Petitioner

**vs.**

1. State of Uttarakhand through Secretary (Home) Government of Uttarakhand, Secretariat, Dehradun, Uttarakhand.
2. Director General of Police, Uttarakhand, Dehradun.
3. Additional Director General of Police (Administration) Uttarakhand, Dehradun.
4. Shri Rajan Singh, Deputy Superintendent of Police, C/o Director General of Police, Uttarakhand, Dehradun.
5. Shri Shekhar Chandra Suyal, Deputy Superintendent of Police, C/o Director General of Police, Uttarakhand, Dehradun.
6. Smt. Kamla Bisht, Deputy Superintendent of Police, C/o Director General of Police, Uttarakhand, Dehradun.
7. Shri Abhay Kumar Singh, Deputy Superintendent of Police, C/o Director General of Police, Uttarakhand, Dehradun.

8. Shri Manoj Kumar Thakur, Deputy Superintendent of Police, C/o Director General of Police, Uttarakhand, Dehradun.
9. Shri Beer Singh, Deputy Superintendent of Police, C/o Director General of Police, Uttarakhand, Dehradun.

.....Respondents.

Present: Sri Shashank Pandey, Advocate for the Petitioners  
 Sri V.P.Devrani, A.P.O., for the Respondents No. 1, 2 & 3  
 Sri L.K.Maithani & Sri U.C.Dhaundiyal, Advocates  
 for Respondents No. 4 & 7.

### **JUDGMENT**

**DATED: OCTOBER 27, 2021**

**Per: Justice U.C.Dhyani**

Since the factual matrix of the above noted claim petitions and law governing the field is the same, therefore, these claim petitions are being decided together by a common judgment and order for the sake of brevity and convenience. Claim Petition No. 123/DB/2019 shall be the leading case.

By means of the present claim petition, the petitioner seeks the following reliefs:

- a. *To issue order or direction to call for records and to set aside/quash the seniority list dated 10.05.2018 [covering letter dated 11.05.2018] (Annexure: A1) in which the petitioner has been shown in cyclic order with appointees of the year 2015-16.*
- b. *To issue order or direction directing the respondents to keep the petitioner at the top in the seniority list as per the proviso to rule 8(3) of the Seniority Rules, 2002.*
- c. *To give any other relief that this Hon'ble Court may deem fit and proper in the circumstances of the case.*
- d. *To give cost to the petitioner.*

2. Brief facts giving rise to the present claim petition are, as follows:

When petition was filed, claim petitioner was posted as Circle Officer (C.O.), Traffic, Dehradun. He was appointed in June, 1989 as Platoon Commander in Police Armed Constabulary (PAC) and was promoted to the

post of Company Commander in the month of October, 1997. He was further promoted to the post of Deputy S.P. *vide* promotion order dated 28.11.2014, but his selection year was 2013-14. In 2015, *i.e.* the selection year 2015-16, some persons were given direct appointment on the post of Deputy S.P. A tentative seniority list was circulated on 16.02.2018, in which the petitioner was kept in a cyclic order with the direct recruits. The petitioner claims that he should be kept at the top of the seniority list as per the provisions of Rule 8(3) of the Uttarakhand Government Servant Seniority Rules, 2002. Hence, present claim petition.

3. Since there was delay in filing the claim petition, therefore, petitioner moved an application for delay condonation for condoning the same. On 22.10.2019, when the claim petition was taken up, for the first time by the Tribunal, learned A.P.O. objected to the maintainability to the claim petition *inter-alia* on the ground that there is delay of five months and therefore, he was granted time to file objections to the delay condonation application. *Vide* order dated 23.12.2019, claim petition was admitted and the issue of delay was left open to be decided at the final stage.

4. In the application for condonation of delay, it has been mentioned that although the applicant approached his Advocate on time, but it took lot of time for the applicant to collect papers for filing the present claim petition, due to work pressure. It was also mentioned that the delay is unintentional and applicant does not stand to gain anything because of this delay and no third party right has been created in favour of applicant because of this delay.

5. Learned Counsel for the petitioner submitted, and has mentioned in his written arguments also, that the claim petitioner has filed present claim petition against the seniority list dated 10.05.2018. The limitation period for filing the claim petition expired on 10.5.2019. Admittedly, the petition has been filed after expiry of period of limitation. A delay condonation application has been filed along with the claim petition stating that the petitioner has approached his lawyer within time but the delay was caused in collecting necessary papers.

6. Learned Counsel for the petitioner submitted that if there is any lacuna on the part of the Advocate for which petitioner is not responsible and the application for condoning the delay is rejected for the fault of his Advocate, the same would tantamount to punishing a litigant who remains supremely confident after entrusting his case to an Advocate.

7. Learned Counsel for the petitioner placed a catena of decisions in support of his arguments, which decisions are as follows:

- (i) Rafiq and another vs. Munshilal and another, (1981) 2SCC 788.
- (ii) Delhi Development Authority vs. Bhola Nath Sharma, AIR 2011 SC 428.
- (iii) Ramchandra Shankar Deodhar vs. State of Maharashtra, 1974 SCC 259.
- (iv) Dehri Rohtas Light Railway Company Limited vs. District Board Bhojpur and others (1992) 2 SCC 598.
- (v) Ex.Capt.Harish Uppal vs. Union of India (1994 SCC, Supl.(2)).
- (vi) Collector, Land Acquisition, Anantnag & another vs. Mst. Katiji & others (AIR 1987 SC 1353).

8. All the above noted decisions, in the humble opinion of this Tribunal, relate either to the writ petitions or the appeals or applications. 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 a 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).

9. The issue of limitation shall now be dealt with in detail, as below:

10. 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]*

11. 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.

12. 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]*

13. 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 provisions.

14. 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.

15. 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]*

16. **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.**

17. The petitioner, in his claim petition, has attributed reasons for condoning the delay in filing claim petition. 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 sufficient cause, therefore, this Tribunal is unable to condone the delay in filing present claim petition, howsoever reasonable petitioner's plight may appear to be.

18. 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.

19. Claim petition is liable to be dismissed on this ground alone but since we are in final hearing, therefore, it seems to be appropriate to briefly discuss the merits of the claim petition also.

\* \* \*

20. The petitioner was appointed as Platoon Commander in PAC in June 1989. He was promoted to the post of Company Commander in October, 1997 and was further promoted to the post of Deputy S.P. on 28.11.2014 in the selection year 2013-14 (Annexure: A2). According to learned Counsel for the petitioner, he was in fact, promotee of the year 2013-14 inspite of the fact that he was only promoted on 28.11.2014 *i.e.* in the selection year 2014-15. Proviso (ii) to Rule 8(3) of the Uttarakhand Govt. Servant Seniority Rules, 2002 is attracted and the petitioner and others should have been kept *enblock* senior to the direct recruits.

21. The petitioner was promoted on 28.11.2014. Respondents No. 5 to 9 were appointed on 01.01.2015. The petitioner as well as respondents have been kept in alternate cyclic order riding on the strength of the Rule position contained in 8(3) of the Seniority Rules of 2002.

22. Learned Counsel for the petitioner placed a decision of Hon'ble High Court of Uttarakhand rendered in WPSB No. 297 of 2017, Dr. Sunita Pandey vs. State of Uttarakhand & others, in which the words "any one selection" were explained in paras 59 to 67 of the judgment and order.

23. The petitioner and respondents No. 5 to 9, to be put in the cyclic order, they should have been appointed as a result of any one selection, which is not the case here. The respondents and the petitioner have been appointed as a result of different selection processes. But instead of Rule 8(2) and (3), which have been applied, Rule 8(1) would be applicable. Rule 8(1) requires seniority to be determined from the date of substantive appointment. As far as respondent no. 4 is concerned Respondent no.1, in para 12 of the Counter Affidavit, has accepted that the respondent no. 4 was junior to the petitioner in the feeding cadre and was promoted only because of reservation. That being the situation, the petitioner should have regained the seniority. The provisions of Seniority Rules of 2002, will determine the seniority of the petitioner vis-à-vis private respondent no. 4.

24. According to learned A.P.O., petitioner was promoted from the post of Inspector to the post of Deputy S.P. under 50% departmental quota on 28.11.2014 under the vacancies of selection year 2013-14 and 2014-15. Hence the date of substantive appointment of the petitioner is his date of promotion, which is 28.11.2014. Private respondents No. 5 to 9 are the officers appointed directly through Uttarakhand Public Service Commission to the post of Deputy S.P. under 50% direct recruitment quota, on 01.01.2015. The date of substantive appointment of the directly recruited Deputy S.Ps. from Public Service Commission is 01.01.2015 and the vacancy year is 2014-15. Hence, recruitment year (selection year of both directly recruited Deputy S.Ps. and promotee Deputy S.Ps. is the same). Learned A.P.O. has therefore, submitted that the seniority list dated 10.05.2018 has rightly been issued by the State Govt. pursuant to the Rule 8(2) of the Seniority Rules of 2002, inasmuch as, petitioner was promoted from the post of Inspector to the post of Deputy S.P. under 50% departmental quota and accordingly the petitioner has rightly been placed in the seniority list dated 10.05.2018. Learned A.P.O.

also relied upon the Rule 8(3) of the Seniority Rules of 2002 for determination of *inter-se* seniority between directly recruited Deputy S.Ps. vis-à-vis promotee Deputy S.Ps.. Learned A.P.O. therefore, submitted that there is no illegality in the impugned seniority list dated 10.05.2018. The claim petition should, therefore, be dismissed.

25. Sri L.K.Maithani, learned Counsel for the respondents No. 4 & 7 submitted that there is inordinate delay in filing the claim petition and since there is no provision for condonation of delay in a Civil Suit, therefore, the claim petition is liable to be rejected on this ground alone. Learned Counsel for the respondents no. 4 & 7 further submitted that the respondent no. 4 is a member of Schedule Caste, who was promoted to the post of Deputy S.P. on 01.08.2011 against the vacancy of selection year 2011-12. In the year 2011-12, petitioner, a general class candidate, was not eligible for promotion. On 01.08.2011, the petitioner has not been deprived from promotion because of the promotion of respondent no. 4, therefore, principle of regaining the seniority is not applicable to him.

26. Learned Counsel for the respondents further submitted that respondent no. 4 also got second promotion on the post of Additional S.P. (para 3 of C.A.) therefore, benefit of regaining the seniority cannot be given to the petitioner on the basis of seniority of Inspector cadre (para 8 of C.A.). Petitioner was promoted on the post of Deputy S.P. on 28.11.2014 and respondent no. 7 is a direct recruitee. The selection year of both the petitioner and the respondent no. 7 is the same i.e. 2014-15. Therefore, inter-se seniority of the petitioner and respondent no. 7 will be determined under the provisions of Rule 8(3) of the Seniority Rules of 2002 (Para 9 and 10 of CA). Learned Counsel for the respondents No. 4 & 7 therefore, submitted that the inter-se seniority of the petitioner vis-à-vis respondents no. 4 & 7 has rightly been fixed in the impugned seniority list dated 10.05.2018 (Annexure: A1).

27. The seniority list dated 10.05.2018 (Annexure: A1) is under challenge in present claim petition. Facts, as noted above, are not in dispute.

Rule 8(3) of the Seniority Rules of 2002, is reproduced herein below for facilitating the discussion:

*“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.*

.....

*Provided that--*

*(i) .....*;

*(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) .....*”

28. The words ‘any one selection’ have been explained by the Hon’ble High Court of Uttarakhand in the decision of Dr. Sunita Pandey’s case (*supra*) with the following paragraphs:

*“59. The significant words in Rule 8(2) is “any one selection”. While it is contended, on behalf of the petitioners, that the aforesaid words can only mean ‘a year of recruitment’, as defined in Rule 3(o) of the 1983 Rules, Mr. C.D. Bahuguna, learned Senior Counsel, would contend to the contrary and submit that, accepting such a construction, would result in the substitution of words in Rule 8(2)(a) and (b) of the 2002 Rules which is impermissible a literal construction should be applied to Rule 8(2)(a) and (b); and, when so applied, the words “any one selection” used in Rule 8(2)(b) must take its colour from Rule 16 of the 1983 Rules.*

*60. The words “any one selection” are used not only in Rules 8(2)(a) and (b), and Rule 8(3) of the 2002 Rules, but also in Rule 19(3) of the 1983 Rules. These words, however, do not find expressions either in the 1983 Rules or in the 2002 Rules. The scope and ambit of the words “any one selection” is no longer res integra. A Division Bench of this High Court in Mr. Rakesh Nautiyal, held that sub-rule (1) of Rule 8 of the Uttar Pradesh Government Servants Seniority Rules, 1991 (the “1991 Rules” for short) dealt with seniority of persons, who had been promoted as well as persons who had been directly appointed; it provided that both the said classes of persons shall be entitled to their seniority from the*

*date of their substantive appointment, subject to the other sub-rules contained in the said Rule; sub-rule (3) of Rule 8 said that, where appointments are made both by promotion and direct recruitment on the result of any one selection, the seniority of promotees vis-à-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; it then gave an illustration and thereby made it clear that the first would be a promotee, the second would be a direct recruit, and so on; the learned counsel for the petitioners had submitted that the word "one selection", used in Sub-Rule (3) of Rule 8, should be read as selection in one recruitment year; it was submitted that, in order to give true meaning to the intention contained in sub-rule (3) of Rule 8, recourse to supplying such meaning should be taken, otherwise the sub-rule would become otiose; it was not possible to conclude that, in one selection, promotion and direct recruitment cannot be considered; that being the conclusion, it would not be proper to expand the meaning of Sub-Rule (3) of Rule 8 of the 1991 Rules; in the event, the same was the intention, there was no difficulty on the part of the framers of the rule to incorporate the same in so many words; since it was not possible to definitely hold that, in one selection, promotion and direct recruitment cannot be considered, it would be beyond the competence of the Court to attempt to give further clarification to, or amplification of, Sub-Rule (3) of Rule 8 of the 1991 Rules, as it was not required for the purpose of saving the same; the conclusion, therefore, would be that, if Sub-Rule (3) of Rule 8 does not apply, the seniority, vis-à-vis the petitioners and the respondents, is required to be fixed only on the basis of the mandate contained in Sub-Rule (1) of Rule 8 of the 1991 Rules; there was no dispute that the petitioners were substantively appointed on being promoted after the respondents were substantively appointed either by direct recruitment or by promotion; and the challenge thrown by the petitioners to the final seniority list, impugned in the writ petitions, was of no substance.)*

61. ....

62. *It is difficult for us to accept the submission of Mr. C.D. Bahuguna, learned Senior Counsel, that Rule 8(2)(b) of the 2002 Rules takes its colour from Rule 16 of the 1983 Rules, since Rule 16 merely prescribes the manner of selection by promotion to the posts of Assistant Commissioner, and nothing more. The said rule does not relate to determination of inter-se seniority between direct recruits and promotees. The question, which then arises for consideration, is what do these words "any one selection" mean?*

63. ....

64. ....

65. ....

66. ....

67. *As noted hereinabove, Rule 14 of the 1983 Rules requires the appointing authority to determine, and intimate the Commission,*

*the number of vacancies on the post of Assistant Commissioners to be filled during the course of the year. On being so intimated, the exercise of selecting Assistant Commissioners for their appointment, either by promotion or by direct recruitment, is required to be undertaken by the Uttarakhand Public Service Commission. As the stipulation is of "one selection", and not "selection in one year" or "selection in a recruitment year", it is not necessary that the selection must take place in one year. While the process of selection may spread over more than a year, it must relate to "one selection" to satisfy the requirement of the Rule. "One selection" can be said to take place, say in cases where the State Government sends one intimation for selection of candidates for appointment to the post of Assistant Commissioners both by promotion and by direct recruitment or, even in cases where different requisitions are sent, the Public Service Commission undertakes the selection process simultaneously, for selecting candidates both by promotion and by direct recruitment. It is only then can "one selection" be said to have taken place, in which event alone would Rules 8(2)(a) and (b) be attracted, and not Otherwise."*

29. Hon'ble High Court has thus held that as the stipulation is of "one selection", and not "selection in one year" or "selection in a recruitment year", it is not necessary that the selection must take place in one year. While the process of selection may spread over more than a year, it must relate to "one selection" to satisfy the requirement of the Rule. "One selection" can be said to take place, say in cases where the State Government sends one intimation for selection of candidates for appointment to the post of Assistant Commissioners both by promotion and by direct recruitment or, even in cases where different requisitions are sent, the Public Service Commission undertakes the selection process simultaneously, for selecting candidates both by promotion and by direct recruitment. It is only then can "one selection" be said to have taken place, in which event alone would Rules 8(2)(a) and (b) be attracted, and not otherwise.

30. Thus, for petitioners and respondents No. 5 to 9 to be put in cyclic order, they should have been appointed as a result of any one selection, which is not the case. The respondents and the petitioners have been appointed as a result of different selection processes. Thus, instead of Rule 8(2) and (3) that have been applied, Rule 8(1) would be applicable. Rule 8(1)

requires seniority to be determined from the date of substantive appointment.

31. Common issues involved in the bunch of SLPs/ Appeals, before Hon'ble Apex Court in the landmark decision of *S. Panneerselvam and others vs. Government of Tamilnadu and others*, (2015) 10 SCC 292, were:

“(i) In the absence of policy decision taken by the State/rules framed pursuant to the enabling provision of [Article 16 \(4A\)](#) of the Constitution of India whether a reserved category candidate promoted on the basis of reservation earlier than his senior general category candidate in the feeder category can claim consequential seniority in the promotional post; (ii) In the absence of policy decision taken by the State with regard to Tamil Nadu Highways Engineering Service Rules, whether Division Bench was right in holding that [Article 16\(4A\)](#) of the Constitution of India by itself would give consequential seniority in addition to accelerated promotion to the roster- point promotees”.

In para 3 of the said decision, background facts were mentioned. On the concept of ‘*catch- up rule*’ and ‘*consequential seniority*’, in para 9, the Hon'ble Apex Court observed thus:

“9.The concept of ‘*catch-up rule*’ and ‘*consequential seniority*’ is judicially evolved concepts to control the extent of reservation. The question of reservation and the associated promotion and the consequential seniority have been the matter of discussion in various decisions of this Court. The matter regarding reservation in promotions was considered by a nine Judge Bench of this Court in [Indra Sawhney And Ors. vs. Union of India And Ors.](#), (1992) Supp. 3 SCC 217 and this Court held that the reservation under [Article 16\(4\)](#) of the Constitution of India is confined only to initial appointment and cannot extend to reservation in the matter of promotion. In order to nullify the effect of the aforesaid dicta, there was an amendment to [Article 16](#) by Constitution (Seventy-seventh Amendment) Act with effect from 17.06.1995. Vide this Amendment, after Clause (4), Clause (4A) was inserted in [Article 16](#) of the Constitution.”

Hon'ble Apex Court reproduced Article 16(4) and (4A) of the Constitution and commented upon the same as below:

“10. Clause (4) and Clause (4A) of [Article 16](#) of the Constitution of India read as under:-

“Clause 4. Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

Clause 4A. Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.”

11. [Article 16 \(4\)](#) of the Constitution of India enables the State to make a provision for reservation for appointments or posts in favour of any backward class of citizens which in its opinion is not adequately represented in the services under the State. The constitutional position on the insertion of Clause (4A) in [Article 16](#) is that the State is now empowered to make provision for reservation in the matter of promotions as well, in favour of SCs and STs wherever the State is of the opinion that the SCs and STs are not adequately represented in the service under the State. Clause (4A) of [Article 16](#) of the Constitution is only an enabling provision which empowers the State to make any provision for reservation for SC and ST candidates in the matter of promotion as well.”

Hon’ble Apex Court took us to the principles enunciated in a catena of decisions thus:

“12. [In Union of India And Ors. vs. Virpal Singh Chauhan And Ors.](#), (1995) 6 SCC 684, a question had arisen as to whether a person in SC or ST category who gets accelerated promotion because of reservation would also get consequential seniority in the higher post if he gets that promotion earlier than his senior in general category and this Court held that such an employee belonging to SC/ST category on promotion would not get consequential seniority and his seniority will be governed by the panel position. It was held as under:-

“24. ...In short, it is open to the State, if it is so advised, to say that while the rule of reservation shall be applied and the roster followed in the matter of promotions to or within a particular service, class or category, the candidate promoted earlier by virtue of rule of reservation/roster shall not be entitled to seniority over his senior in the feeder category and that as and when a general candidate who was senior to him in the feeder category is promoted, such general candidate will regain his seniority over the reserved candidate notwithstanding that he is promoted subsequent to the reserved candidate. There is no unconstitutionality involved in this. It is permissible for the State to so provide...”

13. The decision in Virpal Singh Chauhan case led to another Constitution Amendment and the Parliament enacted Constitution (Eighty- fifth [Amendment\) Act](#) 2001 whereby Clause (4A) of [Article](#)

[16](#) was further amended enabling the State to make a provision for reservation in matters of promotion with consequential seniority. Amended Clause (4A) reads as under:-

“4A. Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion with consequential seniority to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.” Eighty-fifth Amendment was made effective retrospectively from 17.06.1995, that is, the date of coming into force the original Clause (4A) of [Article 16](#) of the Constitution of India.

14. [In Ajit Singh Januja And Ors. vs. State of Punjab And Ors.](#), (1996) 2 SCC 715, by placing reliance on the principle laid down in Indra Sawhney case and also the Constitution Bench judgment in [R.K. Sabharwal And Ors. vs. State of Punjab And Ors.](#), reported in (1995) 2 SCC 745, a three Judge Bench accepted the principle of ‘catch-up rule’ as laid down in Virpal Singh Chauhan case observing that the balance must be maintained in such a manner that there was no reverse discrimination against the general category candidates and that any rule/circular or order which gives seniority to the reserved category candidates promoted at the roster-point would be violative of Articles 14 and 16 of the Constitution of India.

15. [In Jagdish Lal And Ors. vs. State of Haryana And Ors.](#), (1997) 6 SCC 538, another three Judge Bench opined that seniority granted to the Scheduled Caste and Scheduled Tribe candidates over a general category candidate due to his accelerated promotion does not in all events got wiped out on promotion of general category candidate.

16. In [Ajit Singh And Ors.\(II\) vs. State of Punjab And Ors.](#), (1999) 7 SCC 209, the Constitution Bench was concerned with the issue whether the decisions in Virpal Singh Chauhan and Ajit Singh Januja case which were earlier decided to the effect upholding the ‘catch-up rule’, that is, the seniority of general category candidates is to be confirmed or whether the later deviation made in Jagdish Lal case against the general category candidates. In Ajit Singh (II) case, inter-alia, the following points arose for consideration:-

(i). Can the roster-point promotees count their seniority in the promoted category from the date of their continuous officiation vis-à-vis general candidates, who were senior to them in the lower category and who were later promoted to the same level?

(ii) Have Virpal [(1995) 6 SCC 684] and Ajit Singh [(1996) 2 SCC 715] been correctly decided and has Jagdish Lal [(1997) 6 SCC 538] been correctly decided?

(iii) Whether the “catch-up” principles are tenable?

17. The Constitution Bench held that Articles 16(4) and (4A) did not confer any fundamental right to reservation and that they are only

enabling provisions. Overruling the judgment in Jagdish Lal case and observing that rights of the reserved classes must be balanced against the interests of other segments of society in para (77), this Court held as under:-

“77. We, therefore, hold that the roster-point promotees (reserved category) cannot count their seniority in the promoted category from the date of their continuous officiation in the promoted post, — vis-à-vis the general candidates who were senior to them in the lower category and who were later promoted. On the other hand, the senior general candidate at the lower level, if he reaches the promotional level later but before the further promotion of the reserved candidate — he will have to be treated as senior, at the promotional level, to the reserved candidate even if the reserved candidate was earlier promoted to that level. We shall explain this further under Point 3. We also hold that Virpal, (1995) 6 SCC 684 and Ajit Singh, (1996) 2 SCC 715 have been correctly decided and that Jagdish Lal, (1997) 6 SCC 538 is not correctly decided. Points 1 and 2 are decided accordingly.”

18. Constitutional validity of Clauses (4A) and (4B) of [Article 16](#) of the Constitution was challenged in [M. Nagaraj And Ors. vs. Union of India And Ors.](#), (2006) 8 SCC 212. The question that came up for consideration was whether by virtue of impugned constitutional amendments, the power of Parliament was so enlarged as to obliterate any or all of the constitutional limitations and requirements upholding the validity of the said Articles with certain riders. On the concept of ‘catch-up rule’ and consequential seniority, this Court held as under:-

“79. Reading the above judgments, we are of the view that the concept of “catch-up” rule and “consequential seniority” are judicially evolved concepts to control the extent of reservation. The source of these concepts is in service jurisprudence. These concepts cannot be elevated to the status of an axiom like secularism, constitutional sovereignty, etc. It cannot be said that by insertion of the concept of “consequential seniority” the structure of [Article 16\(1\)](#) stands destroyed or abrogated. It cannot be said that “equality code” under Articles 14, 15 and 16 is violated by deletion of the “catch-up” rule. These concepts are based on practices. However, such practices cannot be elevated to the status of a constitutional principle so as to be beyond the amending power of Parliament. Principles of service jurisprudence are different from constitutional limitations. Therefore, in our view neither the “catch-up” rule nor the concept of “consequential seniority” is implicit in clauses (1) and (4) of [Article 16](#) as correctly held in Virpal Singh Chauhan, (1995) 6 SCC 684.”

19. ....

20. While considering the validity of Section 3(7) of Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and [Other Backward Classes](#)) Act, 1994, and Rule 8A of U.P. Government Servants Seniority Rules, 1991 which provided for consequential seniority in promotions given to SCs/STs by virtue of rule of reservation/roster and holding that [Section 3\(7\)](#) of the 1994

Act and Rule 8A of 1991 Rules are ultra vires as they run counter to the dictum in M. Nagaraj's case in [Uttar Pradesh Power Corporation Limited vs. Rajesh Kumar And Ors.](#), (2012) 7 SCC 1, in paragraph (81), this Court summarized the principles as under: "(i) Vesting of the power by an enabling provision may be constitutionally valid and yet "exercise of power" by the State in a given case may be arbitrary, particularly, if the State fails to identify and measure the backwardness and inadequacy keeping in mind the efficiency of service as required under [Article 335.](#)"

In para 81 of the decision rendered by the Hon'ble Supreme Court in [Uttar Power Corporation Limited vs. Rajesh Kumar and others](#), (2012) 7 SCC 1, the following was observed:

*"81. From the aforesaid decision in M. Nagaraj case and the paragraphs we have quoted hereinabove, the following principles can be carved out: -*

*i) Vesting of the power by an enabling provision may be constitutionally valid and yet 'exercise of power' by the State in a given case may be arbitrary, particularly, if the State fails to identify and measure backwardness and inadequacy keeping in mind the efficiency of service as required under [Article 335.](#)*

*ii) [Article 16\(4\)](#) which protects the interests of certain sections of the society has to be balanced against [Article 16\(1\)](#) which protects the interests of every citizen of the entire society. They should be harmonized because they are restatements of the principle of equality under [Article 14.](#)*

*iii) Each post gets marked for the particular category of candidates to be appointed against it and any subsequent vacancy has to be filled by that category candidate.*

*iv) The appropriate Government has to apply the cadre strength as a unit in the operation of the roster in order to ascertain whether a given class/group is adequately represented in the service. The cadre strength as a unit also ensures that the upper ceiling-limit of 50% is not violated. Further roster has to be post-specific and not vacancy based.*

*v) The State has to form its opinion on the quantifiable data regarding adequacy of representation. Clause (4A) of [Article 16](#) is an enabling provision. It gives freedom to the State to provide for reservation in matters of promotion. Clause (4A) of [Article 16](#) applies only to SCs and STs. The said clause is carved out of [Article 16\(4A\)](#). Therefore, Clause (4A) will be governed by the two compelling reasons – "backwardness" and "inadequacy of representation", as mentioned in [Article 16\(4\)](#). If the said two reasons do not exist, then the enabling provision cannot be enforced.*

*vi) If the ceiling-limit on the carry-over of unfilled vacancies is removed, the other alternative time-factor comes in and in that event, the time-scale has to be imposed in the interest of efficiency in administration as mandated by [Article 335](#). If the time-scale is not kept, then posts will continue to remain vacant for years which*

would be detrimental to the administration. Therefore, in each case, the appropriate Government will now have to introduce the duration depending upon the fact-situation.

vii) If the appropriate Government enacts a law providing for reservation without keeping in mind the parameters in [Article 16\(4\)](#) and [Article 335](#), then this Court will certainly set aside and strike down such legislation.

viii) The constitutional limitation under [Article 335](#) is relaxed and not obliterated. As stated above, be it reservation or evaluation, excessiveness in either would result in violation of the constitutional mandate. This exercise, however, will depend on the facts of each case.

ix) The concepts of efficiency, backwardness and inadequacy of representation are required to be identified and measured. That exercise depends on the availability of data. That exercise depends on numerous factors. It is for this reason that the enabling provisions are required to be made because each competing claim seeks to achieve certain goals. How best one should optimize these conflicting claims can only be done by the administration in the context of local prevailing conditions in public employment.

x) [Article 16\(4\)](#), therefore, creates a field which enables a State to provide for reservation provided there exists backwardness of a class and inadequacy of representation in employment. These are compelling reasons. They do not exist in [Article 16\(1\)](#). It is only when these reasons are satisfied that a State gets the power to provide for reservation in the matter of employment.”

“24. [Article 16\(4A\)](#) of the Constitution is only an enabling provision which specifically provides that the concerned State may make any provision for providing reservation of appointments or posts in favour of any backward class citizens which is not adequately represented in the services under the State. Articles 16(4) and 16(4A) have to be read with [Article 335](#) of the Constitution which deal with norms of Scheduled Castes and Scheduled Tribes to services and posts and lay down that the claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State. In the absence of any policy decision taken by the State of Tamil Nadu, Eighty-fifth Amendment per se will not protect the consequential seniority granted to the respondents who were promoted to the post of Assistant Divisional Engineers following the rule of reservation.

26. The true legislative intent under [Article 16 \(4A\)](#) of the Constitution is to enable the State to make provision or frame rules giving consequential seniority for the accelerated promotion gained based on the rule of reservation. **Rule 12 evidently does not provide for the consequential seniority for reserved category promotees at any point of time. The consequential seniority for such reserved category promotees can be fixed only if there is express provision for such reserved category promotees in the State rules. In the absence of any specific provision or policy**

decision taken by the State Government for consequential seniority for reserved category accelerated promotees, there is no question of automatic application of [Article 16 \(4A\)](#) of the Constitution.”

27. .... Rule 12 does not protect the consequential seniority to ADEs who were promoted following the rule. The appellants belonging to the general category are not questioning the accelerated promotion granted to the Junior Engineers/Assistant Engineers by following rule of reservation but are only seeking fair application of the ‘catch up rule’ in the fixation of seniority in the category of ADEs.

.....

36. In the absence of any provision for consequential seniority in the rules, the ‘catch up rule’ will be applicable and the roster-point reserved category promotees cannot count their seniority in the promoted category from the date of their promotion and the senior general candidates if later reach the promotional level, general candidates will regain their seniority. The Division Bench appears to have proceeded on an erroneous footing that [Article 16 \(4A\)](#) of the Constitution of India automatically gives the consequential seniority in addition to accelerated promotion to the roster-point promotees and the judgment of the Division Bench cannot be sustained.”

*(Emphasis supplied)*

32. A reference of *Virpal Singh Chauhan’s* decision, already finds place in the judgment rendered by Hon’ble Apex Court in its judgment in *Panneerselvam decision (supra)*. In *Virpal Singh Chauhan’s* decision, Hon’ble Apex Court held that while the reserved category candidates were entitled to accelerated promotion, they would not be entitled to consequential seniority. Seniority between the general and reserved candidate in promoted category would continue to be the same as was at the time of initial appointment, provided both belong to the same grade. Once total number of reserved posts in a cadre are filled up, roster would become inoperative. Percentage of reservation would be worked out in relation to number of posts which form the cadre strength and not in relation to number of vacancies. Such principle would be directed to be operative from the date of judgment of *R.K.Sabharwal, i.e., 10.02.1995*.

33. In *Ajit Singh Januja & others vs. State of Punjab & others*, AIR 1996 SC, 1189, the following was held:

*“22. We respectfully concur with the view in Union of India vs. Virpal Singh Chauhan, 1995(6) SCC684 that seniority between the reserved category candidates and general candidates in the promoted category shall continue to be governed by their panel position i.e. with reference to their inter se seniority in the lower grade. The rule of reservation gives accelerated promotion, but it does not give the accelerated consequential seniority'. If a Scheduled Caste/Scheduled Tribe candidate is promoted earlier because of the rule of reservation/roster and his senior belonging to the general category candidate is promoted later to that higher grade the general category candidate shall regain his seniority over such earlier promoted scheduled caste/tribe candidate. As already pointed out above that when a scheduled caste/tribe candidate is promoted earlier by applying the rule of reservation/roster against a post reserved for such scheduled caste/tribe candidate, in this process he does not supersede his seniors belonging to the general category. In this process there was no occasion to examine the merit of such scheduled caste/tribe candidate vis-a-vis his seniors belonging to the general category. As such it will be only rational, just and proper to hold that when the general category candidate is promoted later from the lower grade to the higher grade, he will be considered senior to a candidate belonging to the scheduled caste/tribe who had been given accelerated promotion against the post reserved for him. Whenever a question arises for filling up a post reserved for scheduled caste/tribe candidate in still higher grade then such candidate belonging to scheduled caste/tribe shall be promoted first but when the consideration is in respect of promotion against the general category post in still higher grade then the general category candidate who has been promoted later shall be considered senior and his case shall be considered first for promotion applying either principle of seniority cum merit or merit cum seniority. If this rule and procedure is not applied then result will be that majority of the posts in the higher grade shall be held at one stage by persons who have not only entered in service on basis of reservation and roster but have excluded the general category candidates from being promoted to the posts reserved for general category candidates merely on the ground of their initial accelerated promotions. This will not be consistent with the requirement or the spirit of Article 16(4) or Article 335 of the Constitution.”*

34. According to the rule position and decisions of Hon'ble Supreme Court and Hon'ble High Court, which have been mentioned above, the petitioner appears to have a case on merits. He should have been placed above respondent No. 4. Other private respondents are admittedly below respondent no. 4. The official respondents should, accordingly, find out as to how the quota of promotees vis'a-vis direct recruits can be maintained specially when the vacancies since 2011 have not been filled up.

35. Petitioner's name therefore, appears to have been wrongly shown in the seniority list dated 10.05.2018, which requires reconsideration.

36. The Tribunal would have discussed the claim petition further, on merits, but only for the reason that the claim petition is barred by limitation, we are not discussing it further and dismissing the claim petition, as barred by limitation.

37. It will be open to the Government to review/revise its own decision, if deemed appropriate, as per law.

38. Let copies of this judgment be placed on the files of Claim Petition No. 139/DB/2019 and 140/DB/2019.

**(RAJEEV GUPTA)**  
VICE CHAIRMAN (A)

**(JUSTICE U.C.DHYANI)**  
CHAIRMAN

*DATE: OCTOBER 27, 2021*  
*DEHRADUN*  
*KNP*