

**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. 39/DB/2020**

Vimal Chandra Tamta, s/o Late Sri Basant Lal Tamta, Inspector, Uttarakhand  
Police, Dehradun, Uttarakhand.

.....Petitioner

**vs.**

1. State of Uttarakhand through Secretary, Home, Govt. of Uttarakhand.
2. Director General of Police, Headquarter, Dehradun, Uttarakhand.
3. Directorate, Vigilance Establishment, Uttarakhand, Dehradun.

....Respondents

Present: Dr. N.K.Pant, Advocate, for the petitioner.  
Sri V.P.Devrani, A.P.O., for the Respondents.

**JUDGMENT**

**DATED: DECEMBER 24, 2020.**

**Justice U.C.Dhyani (Oral)**

By means of present claim petition, the petitioner, *inter alia*, seeks to quash the Order No. DG-1(i)-151-2010 dated 22.06.2020, as also Order No.21/2020/862 dated 01.07.2020 and to direct the respondent to grant the promotion to the petitioner to the post of Dy.S.P. from the date his juniors were promoted with all consequential benefits.

2. Facts, giving rise to the present claim petition, as per the petitioner, are as follows:

Petitioner was appointed as S.I. in Uttar Pradesh Police in the year 1998. Presently he is working as Inspector in Uttarakhand Police in Vigilance establishment at Dehradun. In the year 1998, he was posted in District Saharanpur. A case under Section 409 IPC was registered against an accused. In connection with that criminal case, FIR under Sections 147,323, 452, 342, 504, 506, 354 IPC was registered against the petitioner in Chauki Ambehata, P.S. Nakud, District Saharanpur. The criminal case is pending in the Court of Ld. CJM, Saharanpur.

Petitioner was selected for the post of Inspector in the year 2008-09, but the promotion order was not issued by the Police Headquarters due to pendency of the criminal case against him in Saharanpur District. The FIR was registered against the petitioner in due discharge of his official duty. Respondent No.2 kept the recommendation of the selection committee in a sealed cover. Promotion of the petitioner was kept pending till March, 2011.

A Departmental Promotional Committee was held on 18.03.2011 for regular promotion to the post of Inspector. Service record of the petitioner was placed before the Departmental Promotional Committee. DPC decided to open the sealed envelope. Petitioner was promoted to the post of Inspector on *ad-hoc* basis under para 10 of G.O. No. 1595 dated 13.05.2003.

The criminal case is pending for more than 22 years, for no fault of him. As per petitioner's version, he was entitled to get the regular promotion once the sealed cover was opened. Respondent No.1 has prepared a seniority list of the Inspectors of the Department, but the petitioner's name does not find place in the same. He should be deemed to have been promoted on substantive basis and, therefore, petitioner's name should have figured in the seniority list. A letter was issued by Respondent No.2 on 29.04.2020 giving details of the Inspectors, who were to be promoted on the posts of Dy.S.P. Petitioner's name does not figure in the same. Petitioner will retire on 31.12.2020. Petitioner moved a representation on 21.05.2020, but the same was rejected by Respondent No.2 *vide* order dated 01.07.2020. In between, the

petitioner sent a legal notice to Respondent No.2 on 20.06.2020, but to no avail. Hence, present claim petition.

3. W.S. has been filed on behalf of respondents. Sri Biru Lal Tamta, Dy. S.P. (M) (Budget) PHQ, has filed C.A. to rebut petitioner's contentions. It has been mentioned in the C.A. that the representation dated 21.05.2020 of the petitioner has rightly been disposed of by S.P., Personnel, PHQ *vide* order dated 22.06.2020. Pendency of a criminal case in the Court of Ld. CJM, Saharanpur, is admitted. Departmental Promotion Committee adopted the procedure for sealed cover envelope as per Govt. Order No. 1595 dated 13.05.2003. In para 8 of the C.A., relevant paragraphs of the G.O. have been quoted in Hindi, which shall be adverted to by us while discussing the merits of the claim petition. When DPC was held on 18.03.2011 for considering the promotion for the post of Inspectors (C.P.), it was decided that the sealed cover should be opened. When the same was done, the petitioner was found suitable for promotion to the post of Inspector under Scheduled Castes category and his promotion was, therefore, recommended, as per G.O. dated 13.05.2003. Petitioner was promoted as Inspector (C.P.) on *ad-hoc* basis *vide* order dated 21.03.2011.
4. The petitioner was not granted regular promotion to the post of Inspector (C.P.) due to pendency of criminal case in the Court of Ld. CJM, Saharanpur. The petitioner has been promoted to the post of Inspector, C.P. on *ad-hoc* basis on the basis of G.O. dated 13.05.2003.
5. The averments contained in para 8 of the C.A. being important, are being reproduced herein below (to show *bonafide* on the part of respondents):

It is made clear that after final decision in the criminal case, registered against the petitioner, by Ld. CJM, Saharanpur, action, as per Rules, will be taken in accordance with the provisions contained in G.O. dated 13.05.2003 in relation to regular promotion of the petitioner for the post of Inspector (C.P.). After providing regular promotion to the petitioner (on the post of Inspector, Civil Police), consequential

benefits, such as petitioner's confirmation, seniority and promotion to the post of Dy.S.P. shall be given as per Rules.

6. According to C.A., thus filed on behalf of respondents, there is no illegality or impropriety in granting *ad-hoc* promotion to the petitioner to the post of Inspector. Decision rendered by Hon'ble Apex Court in Union of India vs. Jankiraman, AIR 1991 SC 2010, has been relied upon by respondents in their C.A., praying that since the claim petition is devoid of merits, therefore, the same should be dismissed.
7. R.A. has been filed by the petitioner to reinforce the averments and reliefs claimed in the claim petition.
8. On the basis of pleadings of the parties, following issues arise for consideration of the Tribunal:
  - (i) When and under what circumstances 'sealed cover procedure' should be adopted?
  - (ii) Whether petitioner is entitled to the relief claimed on the ground that the 'sealed cover' was opened in March, 2011, while considering him for promotion as Inspector? Whether opening of 'sealed cover' confers any legal right for substantive promotion on the petitioner?
  - (iii) Whether petitioner is entitled to any relief ?
9. The first issue, which arises for consideration of this Tribunal is—when and under what circumstances 'sealed cover procedure' should be adopted?

The issue is no longer *res integra*. Hon'ble Apex Court in Union of India vs. K.V. Jankiraman, 1991(5) SLR 602: AIR 1991 SC 2010, has laid down the criteria for the same. Hon'ble Court has held that the 'sealed cover procedure' is to be resorted to only after the charge memo/charge sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the 'sealed cover procedure'.

There may be cases where the proceedings, whether disciplinary or criminal are, for example, delayed at the instance of the employee or the

clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee, in such circumstances, the concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does, the extent to which he deserves it.

An employee has no right to promotion. He has only a right to be considered for promotion. The promotion to a post depends upon several circumstances. To qualify for promotion, the least that is expected of an employee is to have an unblemished record. That is the minimum expected to ensure a clean and efficient administration and to protect the public interest. An employee found guilty of misconduct cannot be placed on par with the other employees and his case has to be treated differently. A denial of promotion, in such circumstances, is not a penalty but a necessary consequence of his conduct.

The normal rule of 'no work no pay' is not applicable to cases where the employee, although he is willing to work, is kept away from work by the authorities for no fault of his. It is for this reason that F.R. 17(1) will also be inapplicable to such cases.

Service jurisprudence related to 'sealed cover procedure' has been elaborately dealt by the Hon'ble Apex Court in Jankiraman case (*supra*), as follows:

8. The common questions involved in all these matters relate to what in service jurisprudence has come to be known as "sealed cover procedure". Concisely stated, the questions are:--(1) what is the date from which it can be said that disciplinary/criminal proceedings are pending against an employee? (2) What is the course to be, adopted when the employee is held guilty in such proceedings if the guilt merits punishment other than that of dismissal? (3) To what benefits an employee who is completely or partially exonerated is entitled to and from which date?' The 'sealed cover procedure' is adopted when an employee is due for promotion, increment etc. but disciplinary/criminal proceedings are pending against him at the relevant time and hence, the findings of his entitlement to the benefit are kept in a sealed cover to be opened after the proceedings in question are over. Hence, the relevance and importance of the questions.

10. The Government of India (Deptt. of Personnel & Training) issued an Office Memorandum No, 22011/1/79. Estt. (A) dated January 30, 1982 on the subject of promotion of officers in whose cases "the sealed cover procedure" had been followed but against whom disciplinary/court proceedings were pending for a long time. The Memorandum stated that according to the existing instructions, cases of officers (a) who are under suspension or (b) against whom disciplinary

proceedings are pending or a decision has been taken by the competent disciplinary authority to initiate disciplinary proceedings or, (c) against whom prosecution has been launched in a court of law or sanction for prosecution has been issued, are considered for promotion by the Departmental Promotion Committee (hereinafter referred to as the 'DPC') at the appropriate time but the findings of the Committee are kept in a sealed cover to be opened after the conclusion of the disciplinary/court proceedings. While the findings are kept in the sealed cover, the vacancy which might have gone to the officer concerned is filled only on an officiating basis. If on the conclusion of the departmental/court proceedings, the officer concerned is completely exonerated, and where he is under suspension it is also held that the suspension was wholly unjustified, the sealed cover is opened and the recommendations of the DPC are acted upon. If the officer could have been promoted earlier, he is promoted to the post which is filled on an officiating basis, the officiating arrangement being terminated. On his promotion, the officer gets the benefit of seniority and fixation of pay on a notional basis with reference to the date on which he would have been promoted in the normal course, but for the pending disciplinary/ court proceedings. However, no arrears of salary are paid in respect of the period prior to the date of actual promotion. The Memorandum goes on to state further that it was noticed that some- times the cases in the courts or the departmental proceed- ings take unduly long time to come to a conclusion and the officers undergo considerable hardship, even where it is not intended to deprive them of promotion for such a long time. The Government, therefore, in consultation with the Union Public Service Commission examined how the hardship caused to the Government servant in such circumstances can be mitigated and has laid down the following procedure in such cases:

"3. (i)(a) It may be ascertained whether there is any departmental disciplinary-proceedings or any case in a court of law pending against the individual under consideration, or

(b) there is a prima-facie case on the basis of which a decision has been taken to proceed against the official either departmentally or in a court of law. '

(ii) The facts may be brought to the notice of the Departmental PromOtion Committee who may then assess the suitability of the official(s) for promotion to the next grade/post and for the purpose of this assessment, the D.P.C. shall not take into consideration the fact of the pending case(s) against the official. In case an official is found "unfit for promo- tion' on the basis of his record, without taking into consideration, the case(s) pending against him, the findings of the D.P.C. shall be recorded in the proceedings. In respect of any other kind of assessment, the grading awarded by the D.P.C. may be kept in a sealed cover.

(iii) After the findings are kept in a sealed cover by the Departmental Promotion Committee subsequent D.P.Cs., if any, held after the first D.P.C. during the period the disciplinary/court proceedings may be pending, will also consider the officer's case and record their findings. which will again be kept in sealed cover in the above manner.

In the normal course, on the conclusion of the disciplinary/court proceedings, the sealed cover or covers may be opened, and in case the officer is completely exonerated i.e. no statutory penalty, including that of censure, is imposed, the earliest possible date of his promotion but for the pendency of the disciplinary/court proceedings against him, may be determined with reference to the position(s) assigned to him in the findings in the sealed cover/covers and with reference to the date of promotion of his next junior on the basis of such position. The officer concerned may then be promoted, if necessary by reverting the junior most officiating person, and he may be given a notional promotion from the date he would have been promoted, as determined in the manner indicated above. But no arrears of pay shall be payable to him for the period .of notional promotion proceeding the date of actual promotion.

If any penalty is imposed on the officer as a result of the disciplinary proceedings or if he is found guilty in the court proceedings against him, the findings in the sealed cover/covers shall not be acted upon. The officer's case for promotion may be considered in the usual manner by the next D.P.C. which meets in the normal course after the conclusion of the disciplinary/court proceedings. The existing instructions provide that in a case where departmental disciplinary proceedings have been held under the relevant disciplinary rules, "warning" should not be issued as a result of such proceedings. If it is found as a result of the proceedings that some blame attaches to the officer, then the penalty of censure at least should be imposed. This may be kept in view so that no occasion arises for any doubt on the point whether or not an officer has been completely exonerated in disciplinary proceedings held against him."

11. Clause (iv) of Para 3 of the Memorandum then lays down the procedure for ad hoc appointment of the concerned officer when the disciplinary/court proceedings are not concluded even after the expiry of two years from the date of the DPC which first considered him for promotion and whose findings are kept in the sealed cover, provided however that the officer is not under suspension. It is not necessary to reproduce that clause in extenso here. Suffice it to say that the Memorandum urges that in making the ad hoc promotion in such cases, his case should be placed before the DPC which is held after the expiry of the said period of two years, and the ad hoc promotion has to be made on the basis of the totality of the record of service etc.

12. Para 4 of the Memorandum states that if the officer concerned is acquitted in the court proceedings on the merits of the case or exonerated in departmental disciplinary proceedings, the ad hoc promotion already made may be confirmed and the promotion treated as a regular one from the date of the ad hoc promotion with all attendant benefits. In such cases, the sealed cover may be opened and the official may be assigned his place in the seniority list as he would have got in accordance with the recommendation of the DPC.

13. Paras 5, 6 and 7 of the Memorandum then read as follows :

"5. Where the acquittal in a court case is' not on merits but purely on technical grounds, and the Government either proposes to take the matter to a higher court or to proceed against the officer departmentally, the appointing authority may review whether the ad-hoc promotion should be continued.

6. Where the 'acquittal by court is on technical grounds, if the Government does not propose to go in appeal to a higher court or to take further departmental action, action should be taken in the same manner as if the officer had been acquitted by the court on merits.

7. If the officer concerned is not acquitted/exonerated in the court proceedings or the departmental proceedings, the ad-hoc promotion already granted should be brought to an end by the issue of the "further order" contemplated in the order of ad-hoc promotion (Please see para 3(vi) above) and the officer concerned reverted to the post from which he was promoted on ad-hoc basis. After such reversion, the officer may be considered for future promotion in the usual course by the next D.P.C."

*[Emphasis supplied]*

10. Govt. of Uttarakhand has issued a G.O. No. 1595/Karmik-2002 dated 13.05.2003, prescribing the modalities and implications of 'sealed cover procedure', on the basis of the decision rendered by Hon'ble Apex Court in Jankiraman's case (*supra*). The Tribunal does not feel it

necessary to translate the said G.O.. Suffice will it be to say that the G.O. is based upon the directions given by the Hon'ble Apex Court in Jankiraman case (*supra*) [GO's opening sentence], in which Hon'ble Apex Court has discussed, in para 10 of the judgment, contents of Office Memorandum dated 30.01.1982, issued by the Govt. of India (Department of Personnel and Training), on the subject of promotion of officers in whose cases 'sealed cover procedure' had been followed, but against whom disciplinary/ court proceedings were pending for a long time. Court proceedings means, the employees against whom prosecution has been launched in a court of law or sanction for prosecution has been issued. Such employees are considered for promotion by the Departmental Promotion Committee at the appropriate time, but the findings of the Committee are kept in a sealed cover, to be opened after the conclusion of the disciplinary/ court proceedings. While findings are kept in the sealed cover, the vacancy which might have gone to the officer concerned is filled only on an officiating basis. If on the conclusion of the departmental/court proceedings, the officer concerned is completely exonerated, the sealed cover is opened and the recommendations of the DPC are acted upon. If the officer could have been promoted earlier, he is promoted to the post which is filled on an officiating basis, the officiating arrangement being terminated. On his promotion, the officer gets the benefit of seniority and fixation of pay on a notional basis with reference to the date on which he would have been promoted in the normal course, but for the pending disciplinary/ court proceedings.

11. Para 10 of G.O. dated 13.05.2003 contemplates that *ad-hoc* promotion can be given, in certain circumstances, to an employee in whose case the departmental proceeding/ prosecution has not been completed within a year of holding of DPC. **Respondent department, in the instant case, has already undertaken that the petitioner will be given notional promotion from the date when his juniors were given promotion, with all consequential benefits, as and when the petitioner is exonerated of the charges levelled against him in the criminal case pending in the Court of Ld. CJM, Saharanpur.**



12. Earlier, one *ad-hoc* promotion, promoting the petitioner to the post of Inspector has already been given. Now, according to the petitioner, he is due for promotion to the post of Dy.S.P. The contention of respondent department is that the petitioner is only substantively appointed Sub-Inspector and, therefore, one *ad-hoc* promotion to the post of Inspector has already been given to him on the basis of earlier DPC after opening sealed cover. Petitioner, therefore, cannot be considered for giving second *ad-hoc* promotion when criminal case is already pending against him and 'sealed cover procedure' is already on. This Tribunal finds substance in the said contention of respondent department (projected through Ld. A.P.O.).
13. Ld. Counsel for the petitioner relied upon the decision rendered by Hon'ble Apex Court in Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. and Another, 1999 SCC (L&S) 810, to argue that the petitioner should be considered for regular promotion even if criminal proceedings are pending against him in the court of Ld. CJM, because he is not responsible for causing delay in decision of such criminal case. The ratio of M. Paul Anthony's case is entirely on different footing than what has been argued by Ld. Counsel for the petitioner. Hon'ble Supreme Court has held that since the departmental proceedings and criminal proceedings, in the case of Capt. M. Paul Anthony, were based on the same set of facts, which were sought to be proved by the same witnesses (*viz*, Police Officers) and the Court had already acquitted the appellant by rejecting the prosecution story, therefore, findings recorded against the appellant in an *ex-parte* disciplinary inquiry could not be sustained. The distinguishable feature of the instant case is that, neither departmental proceedings have been initiated against the petitioner, nor are pending against him. 'Sealed cover procedure' has been adopted in his case only on account of the fact that a criminal case is pending against him in the Court of Ld. CJM, Saharanpur. The petitioner has already been given one *ad-hoc* promotion, considering the fact that there is nothing against him except pending criminal proceedings, which were in due discharge of his official duties. No benefit of Cap. M. Paul Anthony's case (*supra*), therefore, can be given to the petitioner.

14. Decision rendered by Hon'ble Apex Court in Union of India vs. Dr. Sudha Salhan, (1998) 3 SCC 394, has also been relied upon by Ld. Counsel for the petitioner, in which the following was held:

“If on the date on which the name of a person is considered by the DPC for promotion to a higher post, such person is neither under suspension nor has any departmental proceedings been initiated against him, his name, if he is found meritorious and suitable, has to be brought on the select list and the sealed cover procedure cannot be adopted. The recommendation of the DPC can be placed in a sealed cover only if on the date of consideration of the name for promotion, the departmental proceedings had been initiated or were pending or on its conclusion, final order had not been passed by the appropriate authority. If the officer, against whom the departmental proceedings were initiated, is ultimately exonerated, the sealed cover containing the recommendation of the DPC would be opened, and the recommendation would be given effect to.”

Dr. Sudha Salhan's decision (*supra*) is also distinguishable from the facts of present case, inasmuch as, Hon'ble Supreme Court had no occasion to observe anything in respect of pending prosecution against the delinquent, whereas the petitioner, in the instant case, is facing criminal charges, in which judgment is yet to come. In Sudha Salhan's decision (*supra*) Hon'ble Apex Court directed, that the recommendation of the DPC which have been kept in a 'sealed cover', would be opened and the recommendation be given effect to because the delinquent was neither under suspension nor facing any charge under the departmental proceedings. . In the instant case, the petitioner has already been given one *ad-hoc* promotion on the basis of his service record notwithstanding the fact that he is still facing criminal charge in a competent Court having jurisdiction. The petitioner cannot, therefore, be given benefit of ratio rendered in Dr. Sudha Salhan's case (*supra*). Para 6 of the aforesaid decision would make the things more clear. The same is reproduced herein below for convenience:

“The question, however, stands concluded by a Three Judge decision of this Court in Union of India and Ors. Vs. K.B.Jankiraman & Ors. (1991) (4) SCC 109 in which the same view has been taken. We are in respectful agreement with the above decision. We are also of the opinion that if on the date on which the name of a person is considered by the Departmental Promotion Committee for promotion to the higher post, such person is neither under suspension nor has any departmental proceedings been initiated against him, his name, if he is found meritorious and suitable, has to be brought on the select list and the "sealed cover" procedure cannot be adopted. The recommendation of the Departmental Promotion Committee can be placed in a "sealed cover" only if on the date of consideration of the name for promotion, the departmental proceedings had been initiated or were pending or on its conclusion, final orders had not been passed by the appropriate authority. It is obvious that if the officers, against whom the departmental proceedings were initiated, is ultimately exonerated, the

sealed cover containing the recommendation of the Departmental Promotion Committee would be opened, and the recommendation would be given effect to.”

15. The second issue, which arises for consideration of this Tribunal is— Whether petitioner is entitled to the relief claimed on the ground that the ‘sealed cover’ was opened in March, 2011, while considering him for promotion as Inspector? Whether opening of ‘sealed cover’ confers any legal right for substantive promotion on the petitioner?

Two orders have been put to challenge by the petitioner:

(i) Order dated 01.07.2020 (Annexure: A 3), whereby S.P., PHQ, Vigilance Establishment has intimated S.P., Vigilance Establishment, Dehradun to inform the petitioner that his representation for inclusion of his name in the seniority list, to be considered for promotion to the post of Dy.S.P., has been taken note of, to say that petitioner’s name for promotion as Inspector, (C.P.) shall be considered only when the criminal case no. 61/1999 under Sections 147,323, 452, 342, 504, 506 IPC pending in the Court of Ld. CJM, Saharanpur is decided. Petitioner has also been informed *vide* letter dated 01.07.2020 that petitioner-Sub Inspector has already been promoted as Inspector (C.P.) on *ad-hoc* basis.

(ii) A letter dated 22.06.2020 written by S.P., Personnel PHQ to S.P., Vigilance Headquarter, Dehradun, whereby petitioner’s prayer for inclusion of his name in the seniority list of Inspectors due for promotion as Dy.S.P., was considered to say that since criminal case is pending in the Court of Ld. CJM, Saharanpur, therefore, his promotion shall be considered only when the said criminal case is decided.

16. Another relief has been sought by the petitioner to direct the respondent to promote him to the post of Dy.S.P. from the date his juniors were promoted and grant all consequential benefits. Respondent department has already stated that the petitioner’s name for regular promotion shall certainly be considered once the criminal case pending against him is decided ( in his favour) by the Court at Saharanpur. Apparently, there seems to be no illegality in the same, in view of the decision rendered by Hon’ble Apex Court in Jankiraman’s case (*supra*).

17. It has been argued by Ld. counsel for the petitioner that petitioner's earlier promotion as Inspector on *ad-hoc* basis should be deemed to be regular promotion, inasmuch as the DPC in the year 2011 had opened the 'sealed cover'. The said fact has not been mentioned in petitioner's representation dated 21.05.2020 (Annexure: A 2), addressed to DGP. The petitioner was promoted as Inspector on *ad-hoc* basis in March, 2011. Petitioner has never before challenged his *ad-hoc* promotion as such, saying that the same should have been substantive promotion. We are afraid, this Tribunal cannot entertain such prayer in respect of an event which occurred in the year 2011, as it is highly time barred.

18. Section 5 of the Uttar Pradesh Public Services (Tribunal) Act, 1976 (for short, the Act) provides for limitation in respect of claim petitions filed before the Tribunal. Section 5 of the Act reads as below:

**"5. Powers and procedure of the Tribunal-** (1) (a) The Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 (Act 5 of 1908), or the rules of evidence contained in the Indian Evidence Act, 1872 (Act 1 of 1872), but shall be guided by the principles of natural justice, and subject to the provisions of this section and of any rules made under Section 7, the Tribunal shall have power to regulate its own procedure (including the fixing of places and times of its sittings and deciding whether to sit in public or in private):

*Provided* that where, in respect of the subject-matter of a reference, a competent court has already passed a decree or order or issued a writ or direction, and such decree, order, writ or direction has become final, the principle of *res judicata* shall apply;

**(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:

*Provided* further that nothing in this clause as substituted by the Uttar Pradesh Public Services (Tribunals) (Amendment) Act, 1985, shall affect any reference made before and pending at the commencement of the said Act.

(2) .....

(3).....”

*[ Emphasis supplied]*

The period of limitation, therefore, in a reference (in respect of any relief) is one year. Section 5 of the Limitation Act, 1963 applies to appeals or applications. Claim petition filed under the Uttar Pradesh Public Services (Tribunal) Act, 1976, is neither an appeal nor an application.

19. The extent of applicability of Limitation Act, 1963 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.

20. Even on considering the case on merit, the following situation emerges:

Para 10 of the above G.O. does not prescribe the opening of the sealed envelope of earlier selection year while considering a charged employee for ad-hoc promotion. Departmental Selection Committee did exceed its brief by opening the sealed envelopes but it cannot be interpreted to mean that the petitioner would be deemed to be regularly promoted as the sealed envelopes had been opened. The criminal case against the petitioner is still pending in the Court of C.J.M., Saharanpur. Only after receipt of the final judgment, consideration about regular promotion of the petitioner to the post of Inspector can be made. The effect of earlier opening of the sealed envelopes is only to the extent that it is now openly known that if the petitioner is considered for regular promotion after the judgment of the Court, he shall be promoted with respect to the first recommendation made in the first selection year 2008-09.

21. If it is argued that opening of the sealed envelopes by the Departmental Selection Committee in the year 2011 has vitiated the proceedings of the Committee, then ad-hoc promotion of the petitioner

itself needs to be reversed. The petitioner is unnecessarily stretching the premature opening of the sealed envelopes to confer on him the right of getting regular promotion. It is very clear that regular promotion can be granted only after the full exoneration of the petitioner or exoneration on technical basis when no further appeal or disciplinary proceedings are contemplated. The provisions of para 10 of the above G.O. only facilitate to the extent of ad-hoc promotion and not beyond that in any case. Keeping in view the possibility of conviction/ punishment, the provision of reversion of the ad-hoc promotion has also been provided, which shall not be possible after making regular promotion

22. The next issue for consideration of this Tribunal is— Whether petitioner is entitled to any relief ?

Summary of findings of Issues No.1 and 2 is as below:

Para 10 of the Govt. Order No. 1595/ Karmik-2/2002 dated 13.05.2003 lays down the procedure when the final result of the disciplinary proceedings or prosecution of the charged employee is not received for a long time and provides for promotion on ad-hoc basis with certain restrictions in such cases. According to sub-clause (5) of this para, the Departmental Selection Committee will evaluate the work of such employee on the basis of his entire record and will recommend to promote him on ad-hoc basis or not to promote him on such basis. Sub-clause (8) of this para 10 further provides that after the final result of the disciplinary proceedings or prosecution is received, further action in respect of the employee will be taken as would have been taken in case he had not been given ad-hoc promotion. Para 7 of this G.O. spells the procedure for disposal of sealed envelope, after the final result of the disciplinary proceeding or prosecution has been received. According to this para, if the employee has been fully exonerated or if after his exoneration by the Court, appeal against the judgment or disciplinary proceeding is not proposed, then the sealed envelope shall be opened and action shall be taken according to the recommendations contained therein and if the concerned employee has been recommended for promotion, then he shall be deemed to be promoted from the date of the

promotion of his junior, notionally, on the basis of the recommendation of the concerned selection year.

23. While considering the claim petitioner for ad-hoc promotion in the year 2011, the Selection Committee followed the procedure of para 10 of the above G.O. and they also opened the two sealed envelopes. They also took consideration of the fact that in these sealed envelopes the petitioner has been recommended in both the selection years for promotion to the post of Inspector. As per the provision of para 10 of the above G.O., the Departmental Selection Committee recommended the ad-hoc promotion of the petitioner till further orders with restrictions that this ad-hoc promotion can be terminated any time and accordingly the petitioner can be reverted to the post from which he was promoted. They also recorded that after the final decision of the Hon'ble Court in the case against the petitioner is received, further action shall be taken in same way as would have been taken had he not been given ad-hoc promotion and action prescribed in para 10 of the above G.O. shall be taken.
24. Mere opening of the 'sealed cover', while promoting the petitioner as Inspector on *ad-hoc* basis in the year 2011, would not confer any legal right on the petitioner, to convert his ad-hoc promotion into regular promotion (on substantive basis), although the law provides that the Members of DPC should have refrained from opening the 'sealed cover'.
25. It is clear from the above that the petitioner is liable to be reverted to the post of Sub-Inspector in case of adverse finding of the Court, as he is substantively working as S.I. only and, therefore, he cannot be included in the gradation list of the Inspectors or considered for further promotion. The above G.O. does not envisage a situation where the disciplinary proceedings or Court proceedings continue so long that in their absence the employee would have become eligible for consideration of the second promotion. There is no provision for second ad-hoc promotion because even the first ad-hoc promotion is liable to be reversed any time. The best course for the petitioner will be to follow-up the criminal case against him in the Court to get an early decision. It is also made clear that when the criminal case against him is decided,

consideration of his regular promotion to the post of Inspector and further actions for his confirmation and consideration of promotion to the post of Dy.S.P. will be taken as per Rules by the respondents as has also been stated in their C.A.

26. **Petitioner is, therefore, not entitled to any relief in present claim petition. He shall, however, be entitled to be considered for promotion to the post of Dy.S.P. from the date his juniors were promoted along with consequential benefits, if any, once he secures clear acquittal from CJM's Court at Saharanpur.**
27. Claim petition thus stands disposed of. In the circumstances, there shall be no order as to costs.

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

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

*DATE: DECEMBER 24, 2020*  
*DEHRADUN*

*VM*