BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT DEHRADUN

Present: Hon'ble Mr. Justice J.C.S.Rawat
------ Chairman

Hon'ble Mr. V.K.Maheshwari
-------Vice Chairman (J)

Hon'ble Mr. D.K.Kotia
-------Vice Chairman (A)

Claim Petition No. 12/2009

Sri Chand Singh Negi s/o Shri G.S.Negi aged about 50 years at presently posted as S.I. Teacher, 40 BN. P.A.C., Haridwar and 27 others.
……Petitioner

Versus.

1. State of Uttarakhand through Secretary Home, Uttarakhand Government, Dehradun.
2. Director General of Police, Uttarakhand, Dehradun.
3. Inspector General, Police Headquarter, Uttarakhand, Dehradun.
4. S.S.P., District Dehradun.

…….Respondents.

Present: Sri M.C.Pant, Ld. Counsel
for the petitioner.
Sri Umesh Dhaundiyal, Ld.A. P.O.
for the respondents.

JUDGMENT

DATED: APRIL 30, 2014.

(Hon'ble Mr.Justice J.C.S. Rawat, Chairman)

1. This matter has been referred by the Division Bench to a larger Bench of this Tribunal for consideration of following question:-

   "Whether the vires of rules, regulations, government orders or letters can be challenged before the Uttarakhand Public Services Tribunal."

2. The controversy arose before the Division Bench comprising of Hon'ble Sri V.K.Maheshwari, Vice Chairman(J) and Hon'ble Sri U.D.Chaube, Member(A) when the petitioner filed a petition before the Tribunal seeking following relief:-

   "In view of the facts mentioned in Para 4 above, of the petition prays for the following relief:-

   i. To issue an order or direction to set aside the impugned notification dated 24.12.2008 and the letter No. DG-1-201-08()2) of dated

20.12.2008 issued by respondent No.3, after calling the entire record and the aforesaid letter dated 20.12.2008 declaring the same as illegal and against the service rules of 2004 along with its effect and operation also.

ii. Issue an order or direction, directing to the respondents to determine the year wise vacancies of S.I. for promoted quota w.e.f. 9.11.2000 and to prepare the eligibility list year wise amongst the eligible candidates and to consider their case of promotion as per rules in vogue.

iii. To declare the petitioners duly promoted as S.I. in the S.I. cadre under promoted quota within the vacancies available under promoted quota w.e.f. 2001, ignoring the camouflage nomenclature of S.I. (Special Category) and further to declare them permanent S.I. after completion of their probation i.e. in 2007 along with all consequential benefits also.

iv. To declare that after the rules for promotion made by the State Government in 2004, the posts under promoted quota in the respondents department also to be filled up by these rules and no other mode for promotion can be made by the respondent Nos. 2 to 4 as the rules framed by the personnel department a re having overriding effect to all Government Departments.

v. To issue any other order or direction, which this Hon'ble Tribunal Court may deem fit and proper under the circumstances of the case.

vi. Award cost of the petition in favour of the petitioner."

3. Thereafter on 18.1.2011 the petitioner further amended his petition by adding following relief:

"To declare the provisions of Government Order dated 16.5.2005 specifically clause-6 as illegal and against the Police Act and Regulations and being inoperative and non-est in the eye of law and also discriminatory and further to hold that there is no difference amongst the regularly promoted S.I. and S.I. (Spl.)category in respect of work and duties and other service benefits including dress code ignoring the order dated 20.10.2008, which is running contrary to the judgment of this Tribunal and against the dress regulations."

4. The Ld. A.P.O. appearing for the State challenged that the Tribunal does not have the power or authority to declare any Government order, Rule, Regulation or Letter to be violative of the rules or law. This power vests upon the Hon'ble High Court only. Before the Tribunal, the petitioner relied upon a judgment passed by the Division Bench of this Tribunal in claim petition 126/T/2003 Smt. Sujata Vs. State of Uttaranchal & others in which the Government order was challenged and the Division Bench of the Tribunal held that the impugned Government order and adoption and modification order dated 7.11.2002 being in variance to UP Bal Vikas Avam Pushtahar Rules 1996, which are not applicable to the petitioner without approval of the Central Government and the claim petition was partly allowed. In view of the above, a Full Bench was constituted to decide the matter.

5. I have heard at length to the parties and perused the record. Ld. Counsel for the petitioner contended that the preamble of the Public Services Tribunal Act clearly provides that all the disputes in respect of the service matters relating to the employment of all public servants of the State and any matter pertaining to the employment can be decided by the Public Services Tribunal. He further relied upon Section 2(bb) which defines "the service matters" as the matter relating to the condition of service of a public servant. He further contended that Section 4 of the aforesaid act deals with references of claim of Tribunal and the language used in the said section clearly provides that a person who is or has been a public servant and is aggrieved by an order pertaining to a service mater within the jurisdiction of the Tribunal, may make a reference of claim to the Tribunal for redressal of his grievances. The explanation defines the order and by virtue of the amendment of the Act, omission has been included in the Act. The omission has been included by separate amendment Act by the State of Uttarakhand. Ld. Counsel for the petitioner further contended that the harmonious construction of Section 4 and relevant provisions of the Act itself indicates that the Legislature wanted to provide a speedy remedy to the Government servants of Uttarakhand regarding their service matters. Ld. Counsel further pointed out that the impugned order, which has been challenged by the petitioner, curtails the service conditions of the employees mentioned in the said impugned order. The said order has been

passed by the State Government in violation of Article 14 and 16 of the Constitution of India bifurcating the post of Sub Inspector into two categories, one of the rankers and other of Sub Inspectors of cadre and the rankers have been denied the benefits of perks which are available to the regular S.Is., as per Police Regulation. The said impugned order is violative to the Police Regulation; and the Government has passed this order beyond jurisdiction, which has not been vested in it.

6. Ld. Counsel for the State refuted the contention and contended that any circular, rule which has been framed by the Government, cannot be struck down by the Tribunal. The Tribunal has no power to examine the vires of any Rule, Regulation, Order passed by the Government though it may be in violation of mandatory provisions of law. Such of petition challenging the vires of rules, orders etc. can be filed before the Hon'ble High Court only.

7. In reply to the above contention of the respondents, Ld. Counsel for the petitioner contended that if the contention of Ld. Counsel for the State is accepted, even if a punishment order passed by the State Government against his employees does not follow the procedure as laid down under Article 311 of the Constitution of India and a punishment order has been passed by the State Government ignoring all the mandatory provisions contained in the Rules made under Article 309 of the Constitution, the Tribunal cannot set aside such orders; meaning thereby the Tribunal has no power except to dismiss the claim petition of the petitioner; this is not the intention of the legislature as he pointed out that the aims and objects of creating this Tribunal was to curtail the jurisdiction of the Civil Court as well as to provide a speedy and alternative remedy to the Government servants at the door step; the Government servants should not run pillar to post either in the Civil Court in a long process of law or in the High Court which was beyond their reach; the Tribunal cannot be said to be a substitute of the High Court, but is supplemental to the High Court also.

8. After going through the contentions of the Ld. Counsel for the parties, I have to decide as to whether the vires of any Rule, Regulation or Order can be challenged before the Tribunal or not. The Act itself provides that all disputes regarding the service matters of the State employee can be decided by the Tribunal. It is also apparent that the Tribunal cannot go beyond the

jurisdiction. I have to decide as to whether the Government orders pertaining to the service conditions of a Government employee or any order in violation of law passed by the Government in respect of the State employee can be quashed by this Court or not. Before entering into arena of the contentions of the parties I would like to refer the brief history of this legislation how it came into effect.

9. The Uttar Pradesh Public Services Tribunal Ordinance, 1975 was promulgated and thereafter it was enacted as an enactment relating to the public servants of the Government of Uttar Pradesh and the employees of the Government undertakings, local bodies etc. known as U.P. Public Services Tribunal Act, 1976 (hereinafter referred to as Act of 1976). The Government constituted five tribunals, each comprising of an I.A.S. officer as a Chairman and a Judicial officer of the rank of District Judge as a Judicial Member. Each tribunal was vested with the jurisdiction over service matters of the employees of the State Government. Section 4 of the original Act of 1976 provides as under:-

"If any person who is or has been a public servant claims that in any matter relating to employment as such public servant his employer or any officer or authority subordinate to the employer has dealt with him in a manner which is not in conformity with any contract, or-

(a) In the case of a Government servant, with the provisions of Article 16 or Article 311 of the Constitution or with any rules or law having force under Article 309 or Article 313 of the Constitution.

(b) In the case of a servant of a local authority or a statutory corporation, with Article 16 of the Constitution or with any rules or regulation having force under any Act of Legislature constituting such authority or corporation;

He shall refer such claim to the Tribunal, and the decision of the Tribunal thereon shall, subject to the provisions of Articles 226 and 227 of the Constitution, be final:

Provided that no reference shall ordinarily be entertained by the Tribunal until the claimant has exhausted his departmental remedies under the rules applicable to him.

Explanation- *For the purpose of this proviso, it shall not be necessary to require the claimant (in the case of a Government servant) to avail also of the remedy of memorial of the Governor before referring his claim to the Tribunal.*

10. The definition was amended time to time by introducing some of the clauses or phrases in the original definition till 1992.

11. In 1985 the Administrative Tribunals Act, 1985 (hereinafter referred to as Central Act, 1985) was enacted by the Parliament under Article 323(A) of the Constitution of India providing a Central Administrative Tribunal with its benches for adjudicating disputes in respect of the Central Government employees.

12. Two writ petitions were filed to challenge the various provisions of the Act 1976 before the Hon'ble Apex Court, **Krishna Sahai Vs. State of U.P. (1990)2SCC673 & Rajendra Singh Yadav Vs. State of U.P. (1990)2 SCC 763** to consider the feasibility of setting up appropriate Tribunal under the Central Act, 1985 in place of the Service Tribunal Act, 1976. After considering the aforesaid judgments, the State of U.P. amended Act in the year 1992 drastically. The provisions of the Act for adjudicating the disputes of the State employees were to be decided by one Tribunal having a separate Division Bench or the Single Member Benches in the said Tribunal. According to the provisions of the 1976 Amended Act 1992, the Tribunal was to consist one Chairman, one Vice Chairman & Judicial and Administrative Members. Under the Amended Act of 1992 a senior I.A.S. Officer was to be appointed as Chairman of the Tribunal. It was also made obligatory that one Judicial Member and one Administrative Member will constitute the Division Bench and will decide the serious matters as provided under the Act 'to be decided by the Division Bench'. Less important matters can be decided by a Bench of a Member sitting singly. Thereafter in the year 1993, Sanjay Kumar Srivastav filed a writ petition bearing No. 1619 M.B. of 1993 before the Hon'ble Allahabad High Court challenging the appointment of a non judicial Chairman of the Tribunal as well as the petitioner challenged the constitutional validity of provision of Section 5(3) (c) & 5(4) (c) of the Act as amended in 1992. The full bench of Hon'ble Allahabad High Court on 26.5.1995 struck down the provision of the appointment of non

judicial officer as a Chairman of the Tribunal. Thereafter, this Tribunal is also functioning though under State Act, 1976 amended in 1992 at par to the Administrative Tribunal Act constituted under 1985 enactment except with certain exceptions. The Tribunal has the same powers as provided under Section 4 of the original Public Services Tribunal Act 1976 after the amendment of the 1976 Act in the year 1992 and only following proviso was inserted, namely:-

"Provided also that where no final order is made by the competent authority that is to say the State Government or other authority or officer or othr person competent to pass such order with regard to the appeal preferred or representation made by the claimant within one year from the date on which such appeal was preferred or representation was made, the claimant may by a written notice require such competent authority to pass the order and if the order is not passed within one month of the service of notice the claimant shall be deemed to have exhausted his departmental remedies"

13. In the year 1999 His Excellency the Governor of U.P. promulgated an ordinance No. 17 of 1999 in which Section 4(1) was substitute in place of Section 4 of the principal Act which runs as follows:-

"*Subject to the other provisions of this Act, a person who is or has been a public servant and is aggrieved by an order pertaining to a service matter within the jurisdiction of the Tribunal, may make a reference of claim to the Tribunal for redressal of his grievance.*

Explanation- For the purpose of this sub-section "order" means an order made by the State government or a local authority or any other corporation or company referred to in clause (b) of section 2 of by an officer, committee or other body or agency of the State government or such local authority or corporation or company:

Provided that no reference shall, subject to the terms of any contract, be made in respect of a claim arising out of the transfer of a public servant."

The said ordinance was replaced by an enactment in the later year.

14. Thereafter, a controversy arose before the Hon'ble Courts that the word 'Order' used under Section 4(1) under the new enactment as to whether a public servant can approach the Tribunal for the inaction on the part of the authorities in respect of his legal rights. The Hon'ble Apex Court held **in Public Service Tribunal Bar Association Vs. State of U.P., 2003(2) SLR 343** that if there was inaction on the part of the employer , a public servant had no remedy before the Tribunal and further the incumbent would not approach the Civil Court for the reason that the jurisdiction of the Civil Court has already been barred under Section 6 of the Act. Thereafter, the State of U.P. as well as State of Uttarakhand amended their Act and added the inaction in explanation of Section 4(1). At this stage, I would like to mention that the State of Uttarakhand was carved out from the State of U.P. by the U.P. Reorganization Act and the State of Uttarakhand has also adopted the said Act in the State of Uttarakhand. The Uttarakhand Government has amended it in the year 2013 as follows:-

(1) "Subject to the other provisions of this Act, a person who is or has been a public servant and is aggrieved by an order pertaining to a service matter within the jurisdiction of the Tribunal, may make a reference of claim to the Tribunal for the redressal of his grievances.

Explanation: For the purpose of this sub-section "order" means an order for omission or in-action of the State Government or a local authority or any other corporation or company referred to in clause (b) of section 2 or of an officer, committee or other body or agency of the State Government or such local authority or corporation or company:

Provided that no reference shall, subject to the terms of any contract, be made in respect of a claim arising out of the transfer of a public servant:

Provided further that in the case of the death of a public servant, his legal representative and where there are two or more such representative, all of them jointly, may make a reference to the Tribunal for payment of salary, allowances, gratuity, provident fund, pension and other pecuniary benefits relating to service due to such public servant."

15. Now in both the States, the word ‘omission’ has been added in Section 4 of the Act 1976 by which the employee has been empowered to approach the Tribunal for the inaction on the part of the authorities in respect of the legal right of the Government servant. The Tribunal has the powers akin to the Hon’ble High Court in granting the relief to the Government servants. Generally the High Court relegates the matter to this Tribunal and thereafter the Division Bench of the Tribunal decides the matter in the claim petition according to the U.P. Public Services Tribunal Act and in terms of L.Chandra Kumar Vs. Union of India1997 SCC(L&S)577 . Thus, it is apparent from the above discussion, the Central Act, 1985 holds the field for the central employees working in Uttarakhand and the Public Services Tribunal constituted under the 1976 Act is meant to decide the cases of the State employees in Uttarakhand. Thus, the power of judicial review of the action of State Government regarding their employees, has been conferred under Entry 41, List 2, Schedule 7 of the Constitution. Entry 41 clearly lays down the State can make legislation in respect of State Public Services & Public Service Commission. Thus, the State Government has the power to create the Tribunals to decide the matters which is akin to the Constitutional Courts. The power conferred under Article 226, 227 & 32 of the Indian Constitution is the part of the basic structure of the Constitution. The power of the Hon’ble Supreme Court as well as the Hon’ble High Court cannot be prohibited to entertain the petitions under Article 32, 226 & 227 under any provisions of the law. If any enactment is made under Article 32(3) of the Indian Constitution or under Schedule 7, List 2 & Entry, 41, these Courts, though the Tribunal has the jurisdiction akin to the Hon’ble High Courts, cannot be held that the Tribunal excludes the jurisdiction of the Constitutional Courts. The Tribunal, created under different legislation of the State or the Central Government cannot exercise the exclusive power of the judicial review of legislative action to the exclusion of the Constitutional Court Hon’ble High Court & Hon’ble Supreme Court. Article 227 of the Constitution clearly provides that the Tribunals function under the supervision of the Hon’ble High Court. Article 226 of the Constitution gives wide powers to Hon’ble High Courts to make the review of all the judicial and executive orders passed by the different Courts & authorities. The power conferred under

Article 226 is unfettered and it cannot be curtailed by any constitutional amendment or by any enactment because it is the basic structure of the Constitution. In view of the above, Court or Tribunal cannot perform the substitutional role of the Constitutional Court. Schedule 7, List 2 & Entry 41 clearly provide an additional power conferred upon the State Government to constitute the Tribunal for the redressal of grievances of its employees. Pursuant to the above power, the State Legislature enacted Act 1976. The Hon'ble Apex Court in the case of L. Chandra Kumar Vs. Union of India 1997 SCC(L&S)577 has specifically laid down so long as the jurisdiction of the High Court under Article 226 & 227 and that of Supreme Court under Article 32 is retained, there is no reason why the power to test the validity of legislation against the provisions of the Constitution cannot be conferred upon the Administrative Tribunal created under the Act or Tribunals created under Article 323 (B) of the Constitution.

16. The State Legislature has also the power and competence to affect changes in the jurisdiction of the High Court. This power is available to the State Legislature under Entry 65 of List 2. The Hon'ble Apex Court **in L. Chandra Kumar Vs. Union of India 1997 SCC(L&S)577** has held as under:-

"If the power under Article 32 of the Constitution, which has been described as the "heart" and "soul" of the Constitution, can be additionally conferred upon "any other court" there is no reason why the same situation cannot subsist in respect of the jurisdiction conferred upon the High Court under Article 226 of the Constitution. So long as the jurisdiction of the High Court under Article 226 & 227 and that of this Court(Supreme Court) under Article 32 is retained, there is no reason why the power to test the validity of legislation against the provisions of the Constitution cannot be conferred upon the Administrative Tribunal created under the Act or Tribunals created under Article 323 (B) of the Constitution. It is to be remembered that, apart from the authorization that flows from Articles 323-A and 323-B, both Parliament and the State Legislatures posses legislative competence to effect changes in the original jurisdiction of the Supreme Court and the High Courts. This power is available to Parliament under Entries 77,78, 79 &95 of List I and to the State Legislatures under

Entry 65 of List II; Entry 46 of List III can also be availed of both by Parliament and the State Legislatures for this purpose."

17. Thus, the above discussion clearly leads to the conclusion that the State Legislature has the power to constitute the supplemental not substitutional institutions to decide the matters within the exclusive jurisdiction of the High Court. The Article 226/ 227 of the Constitution of India and Article 32 of the Constitution are the basic structure of the Constitution, so these powers cannot be taken away by any of the Legislature. The judgments, orders passed by such supplemental Tribunals would be subject to the judicial review of the Hon'ble High Courts as well as Hon'ble Supreme Court under Article 226, 227 & 32 respectively.

18. The other aspect of the matter is that prior to the creation of the U.P. Public Services Tribunal, the Civil Court had the power to hear the service matters under Section 34 of the Specific Relief Act, 1963, which runs as follows:-

"34-Discretion of court as to declaration of status or right.- Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so. Explanation.- A trustee of property is a" person interested to deny" a title adverse to the title of some one who is not in existence, and for whom, if in existence, he would be a trustee."

19. Apart from that Section 9 of the C.P.C. also provides that the Civil Court shall have the jurisdiction to try all civil suits of its civil nature excepting suits of which their cognizance is either expressly or impliedly barred. The service matters are also of the civil nature, hence the Civil Court had the power to entertain the suits regarding the service matters. Section-6 of U.P. Public Services Tribunal Act barred the jurisdiction of the Civil Court, which runs as follows:-

"(1) No suit shall lie against the State Government or any local authority or any statutory corporation or company for any relief in

respect of any matter relating to employment at the instance of any person who is or has been a public servant, including a person specified in [clauses (a) to (g)] of sub-section 94) of Section 1.

(2) All suits for the like relief, and all appeals, revisions, applications for review and other incidental or ancillary proceedings (including all proceedings under Order XXXIX of the first schedule to the Code of Civil Procedure, 1908 (Act V of 1908), arising out of such suits, and all applications for permission to sue or appeal as pauper for the like relief, pending before any court subordinate to the High Court and all, revisions (arising out of interlocutory orders) pending before the High Court on the date immediately proceeding the appointed date shall abate, and their records shall be transferred [to the Tribunal] and thereupon the Tribunal shall decide the cases in the same manner as if they were claims referred to it under Section 4.

Provided that the Tribunal shall, subject to the provisions of Section 5, recommence the proceedings from the stage at which the case abated as aforesaid and dead with any pleadings presented or any oral or documentary evidence produced in the court as if the same where presented or produced before the Tribunal.

(3) All appeals pending before the High Court on the date immediately preceding the appointed date arising out of such suits shall continue to be heard and disposed of by that court as heretofore as if this Act has not come into force:

Provided that if the High Court considers it necessary to remand or refer back the case under Rule 23 of Rule 25 of Order XXL of the first Schedule to the Code of Civil Procedure, 1908 (Act V of 1908), the order of remand or reference shall be directed [to the Tribunal] instead of to the subordinate court concerned and the Tribunal shall thereupon decide the case or issue, subject to the directions of High Court, in the same manner as if it were a claim referred to it under Section 4."

20. Thus, it is apparent from the perusal of the above that the Civil Court has been barred to entertain the civil suits in respect of the service matters and the residuary provision of this section also provides that the pending civil suits before the Civil Court would be transferred to the Tribunal along with the record and the Tribunal will decide the cases in the same manner as if

the claim petition had been instituted under this Act. The appeals and revisions pending before the Hon'ble High Court would be heard and decided by the Hon'ble High Court. The Civil Court has also the power to see validity of any of the rules, orders made by the competent authority because Section 9 gives an unfettered power to the Civil Court, however there is a provision under Section 113 of the C.P.C. which provides a prohibition on the power of the Civil Court which is as under:-

"Reference to High court- Subject to such conditions and limitations as may be prescribed, any Court may state a case and refer the same for the opinion of the High Court may make such order thereon as it thinks fit:

[Provided that where the Court is satisfied that a case pending before it involves a question as to the validity any Act, Ordinance or Regulation or of any provision contained in an Act, Ordinance or Regulation, the determination of which is necessary for the disposal of the case, and is of opinion that such Act, Ordinance, regulation or provision is invalid or inoperative, but has not been so declared by the High Court to which that Court is subordinate or by the Supreme Court, the Court shall state a case setting out its opinion and the reasons therefor, and refer the same for the opinion of the High Court".

21. It is clear from the perusal of the above section that if the validity of any Act, Ordinance or Regulation is challenged before the Civil Court and after adopting the procedure of Order 27 (A) of the C.P.C. and after recording the reasons, the Civil Court would make a reference to the High court and the High Court will decide the said reference. Thus, the C.P.C., in view of Section 9 C.P.C. had the unfettered powers to go into the validity of the Rules and Regulations. But that power has been restricted by virtue of Section 113 C.P.C.. This clearly denotes that Section 9 confers the jurisdiction to nullify the Rules & Regulations and the Act & Ordinance because it comes within the purview of the phrase 'Civil Nature' and within the parameter of Section 9 C.P.C.. So the Parliament put an embargo upon the rights of the Civil Court to decide the matter independently by them.

22. The U.P. Public Services Tribunal Act, 1976 confers the jurisdiction of the Civil Court without putting any embargo like Section 113 of the C.P.C. to the Tribunal. Thus, the Tribunal has the ample power to examine all aspects of the matter including the vires of the order and Rules etc. Section

19 of the Central Administrative Act and Section 4 are identical and the only difference is that the word 'omission' has been added in the Section 4 by virtue of the judgment of Hon'ble Supreme Court in Public Services Tribunal Bar Association Vs. State of U.P., 2003(2) SLR 343. Section 5 of the U.P. Public Services Tribunal Act puts certain embargos regarding granting of interim injunction and stay orders. The said power, which has been curtailed by the U.P. Public Services Tribunal Act, is available to the Central Administrative Tribunal. The Apex Court has held in **Public Services Tribunal Bar Association Vs. State of U.P. 2003(2)SLR 343** that sub Section 5(b) of the Act provides that the Tribunal shall not have the power to make interim order (whether by way of injunction, stay order or any other matter) in respect of an order made or purporting to be made by an employer for suspension, dismissal, removal, reduction in rank, termination, compulsory retirement or reversion of a public servant, but the Hon'ble Apex Court further held that the power of the Tribunal to grant interim relief in the above matters has been taken away qua not completely; the power has been taken away in matters where grant of said relief at the interim stage would result in giving the relief which normally be given while disposing of the case finally, simply because in rare cases of miscoscopic number a case is made out for stay of order of suspension, dismissal, removal, reduction in rank, termination, compulsory retirement or reversion of a public servant and the employee is liable to approach the Hon'ble High Court for interim stay. Apart from the above category of the cases, the Tribunal has the power to grant the interim relief. The Hon'ble Apex Court in Para 11 of the judgment of **Secretary Minor Irrigation Services U.P. Vs. Shambhu Ram Arya (2002) 5 SCC 521** has held as under:-

> "**11**. *These appeals are preferred against the order made by the High Court of Judicature at Allahabad in Civil; Misc W.P. No. 47130 of 2000 etc. on 1.2.2001. A Division Bench of the High court of Allahabad by the impugned judgment has held that the petitioner in the said writ petitions has an alternative remedy by way of petitions before the U.P. Public Services Tribunal (the Tribunal), and had permitted the writ petitioner therein to approach the Tribunal and directed the Tribunal entertain any such petition to be filed by the writ petitioner without raising any*

objection as to limitation. There was a further direction to the Tribunal to decide the matter expeditiously.

12*. Mr. Sunil Gupta, learned counsel appearing for the petitioner contended that the remedy before the Tribunal under the U.P. Public Services (Tribunals) Act is wholly illusory inasmuch as the Tribunal has no power to grant an interim order. Therefore, he contends that the High Court ought not to have relegated the petitioner to a fresh proceeding before the said Tribunal. We do not agree with these arguments of the learned counsel. When the statute has provided for the constitution of a Tribunal for adjudicating the disputes of a government servant, the fact that the Tribunal has no authority to grant an interim order is no ground to bypass the said Tribunal In an appropriate case after entertaining the petitions by an aggrieved party if the Tribunal declines an interim order on the ground that it has no such power then it is possible that such aggrieved party can seek remedy under Article 226 of the Constitution but that is no ground to bypass the said Tribunal in the first instance itself. Having perused the impugned order, we find no infirmity whatsoever in the said order and the High Court was justified in directing the petitioner to approach the Tribunal. In the said view of the matter, the appeals are dismissed. No costs.*"

23. Thus it may be contended that the U.P. Public Services Tribunal Act has put an embargo in granting the interim orders in respects of suspension, dismissal, removal, reduction in rank, termination, compulsory retirement or reversion. So it is not an alternative and efficacious relief. The Hon'ble Apex Court has said in the aforesaid judgment that the Tribunal being a supplemental Court, the aggrieved party should not bypass the Tribunal in the first instance itself. In L. Chandra Kumar Vs. Union of India (supra) Hon'ble Apex Court has held that the high Constitutional Courts, the Hon'ble Supreme Court and the Hon'ble High Courts have equally their duty to oversee that the judicial decision rendered by those, who man the Tribunals do not fall foul of strict standards of legal correctness and judicial independence. **It is important that the Tribunals created under ordinary Legislation can exercise the power of judicial review of legislative action not to the exclusion of the Hon'ble High Court and Hon'ble Supreme Court. There is no constitutional provision against their performing a**

supplemental as opposed to a substitutional role in this respect. We have gone through the entire provision of U.P. Public Services Tribunal Act and there is no prohibition against their performing /exercising the power of judicial review of legislative action provided in the C.P.C. under Section 113. The Hon'ble Apex Court in the judgment of L.Chandra Kumar (supra) has held in Para 93 as under:-

"Before moving on to other aspects, we may summarise our conclusions on the jurisdictional powers of these Tribunals. The Tribunals are competent to hear matters where the vires of statutory provisions are questioned. However, in discharging this duty, they cannot act as substitutes for the High Courts and the Supreme Court which have, under our constitutional setup, been specifically entrusted with such an obligation. Their function in this respect is only supplementary and all such decisions of the Tribunals will be subject to scrutiny before a Division Bench of the respective High Courts. The Tribunals will consequently also have the power to test the vires of subordinate legislations and rules. However, this power of the Tribunals will be subject to one important exception. The Tribunals shall not entertain any question regarding the vires of their parent statutes following the settled principle that a Tribunal which is a creature of an Act cannot declare that very Act to be unconstitutional. In such cases alone, the concerned High Court may be approached directly. All other decisions of these Tribunals, rendered in cases that they are specifically empowered to adjudicate upon by virtue of their parent statutes, will also be subject to scrutiny before a Division Bench of their respective High Courts. We may add that the Tribunals will, however, continue to act as the only courts of first instance in respect of the areas of law for which they have been constituted. By this, we mean that it will not be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except, as mentioned, where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the concerned Tribunal."

24. The status of the Tribunal has been recognized by the Constitution. Article 136 of the Constitution empowers the Hon'ble Apex Court to grant special leave to appeal against any judgment, degree, sentence and order passed by

any Tribunal in India. Article 227 of the Constitution also empowers the High Courts of the respective States to exercise the power of superintendence over all Tribunals situated within their territory. It is also needed to mention that Article 323 A and 323 B were also inserted in the Constitution vide 42nd Amendment Act, 1976 in which the Central Government was authorized to constitute the Tribunals for the different matters as assigned in the said amendment to adjudicate upon the disputes of the respective sphere. Pursuant to the above Constitutional amendment, the Central Government constituted the Income Tax Tribunal, Excise Tribunal, Administrative Tribunal etc. in the Country. However. The U.P. Public Services Tribunal Act was in existence since 1976 in a different form as stated earlier. The Hon'ble Apex Court in the year 1990 (as I have stated in the preceding paragraphs) directed the State of U.P. to constitute the said Tribunals like Administrative Tribunal created under the Administrative Tribunal Act. Here it is necessary to mention that the Administrative Tribunal Act 1985 has the benches in each State. There is a provision in the Act, if the State Government recommends to the Central Government to authorize its State a Bench of the said Tribunal for the hearing of the State employees cases, the Central Government may do so in their State. The State of U.P. instead of making a request to authorize the State Bench of the Administrative Tribunal, amended their act and the provisions of the U.P. Public Services Tribunal Act, 1976 were made more effective and giving more power to the Tribunal. However, the power of the Tribunal to grant the interim relief with regard to the suspension, dismissal, removal, reduction in rank, termination, compulsory retirement or reversion of a public servant was taken away. Apart from that the matters which have been assigned to the Tribunal, are exclusively within the domain of the Tribunal like an Administrative Tribunal. The Service Tribunal has a statutory origin. The Administrative Tribunal, created by the Parliament, is also adjudicating bodies and it also decides and adjudicates the matters in service dispute of the parties. As I have discussed earlier that the U.P. Service Tribunal Act came into existence in the year 1976 and the Administrative Tribunal Act came into existence in the year 1985. The Hon'ble Supreme Court in **Associated Cement Companies Ltd. Vs. P.N.Sharma AIR 1965SC 1595** has held that the Tribunals which fall within

the purview of Article 136(1) of the Constitution, have their special own function under the scheme of the Constitution. These Tribunals are created to decide the special matters in question entrusted to them to decide. It is not possible or expedient to attempt to describe exhaustively the features which are common to the Tribunals and the Courts and the features which are distinct and separate. The basic and fundamental feature which is common to both the Court and the Tribunal is that they discharge judicial functions and exercise judicial powers which inherently vest in a sovereign State. Thereafter, the matter came up in **Madhya Pradesh Industries Ltd. Vs. Union of India AIR 1966 SC 671** in which the Hon'ble Court has held:-

> "…….There is an essential distinction between a court and an administrative tribunal. A Judge is trained to look at things objectively, uninfluenced by consideration of policy or expediency; but, an executive officer generally looks at things from the stand-point of policy and expediency. The habit of mind of an executive officer so formed cannot be expected to change from function to function or from act to act. So it is essential that some restrictions shall be imposed on tribunals in the matter of passing orders affecting the rights of parties; and the least they should do is to give reasons for their orders. Even in the case of appellate Courts invariably reasons are given, except when they dismiss an appeal or revision in limine and that is because the appellate or revisional court agrees with the reasoned judgment of the subordinate Court or there are no legally permissible grounds to interfere with it. But the same reasoning cannot apply to an appellate tribunal, for as often as not the order of the first tribunal is laconic and does not give any reasons. That apart, when we insist upon reasons, we do not prescribe any particular form or scale of the reasons."

25. Factors to be taken into account by the Court when deciding whether to grant relief by judicial review when an alternative remedy is available are,

(i) whether the alternative remedy will resolve the question of issue fully and finally;

(ii) whether the statutory procedure would be quicker or slower than the procedure by way of judicial Courts;

(iii) whether the matter depends on some particular or technical knowledge which is more readily available to the alternative

appellate body. Further a Court should bear in mind the purpose of judicial review and essential difference between the appeal and the review.

26. Now I will discuss each of them with regard to the Public Services Tribunal constituted under U.P. Public Services Tribunal Act, 1976 applicable to Uttarakhand. As I have pointed out Section 4 of the Act clearly empowers that any order passed by the State Government or any other corporation or authority owned by the State Government, can be challenged before a Tribunal and the Tribunal has the power to pass the order with regard to the grievance of the claimant. It is also noteworthy that in all the cases, the State is a necessary party and as such the dispute is in between the State and the State employees in the claim petitions. The Public Services Tribunal provides an effective relief to the litigants. The Hon'ble High Court has held (in Krishna Sahai & others Vs. State of U.P. (1990) 2 SCC 673 & others & Rajendra Singh Yadav & others Vs. State of U.P. & others (1990) 2 SCC763) that the Public Services Tribunal constituted under the Act, 1976 has power to adjudicate effectively the redressal of the grievance of the employees.

27. The second question for consideration is as to whether the procedure adopted in the disposal of the petition is quicker or slower. Section 5 of the said Act clearly provides that the Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure or the rules of evidence contained in the Indian Evidence Act. But it shall be guided by the principles of natural justice or subject to the provisions of the Act and any rule made under Section 7, the Tribunal shall have the power to regulate its own procedure. Thus, it is apparent that power and procedure of the Tribunal has specifically been defined in the said Act. It is also defined under the Act, how a reference of the claim would be filed in the Tribunal. The rules have been made under Section 7 of the said Act and a detailed procedure has been laid down in the rules and the Tribunal has also framed the regulation to regulate its functioning in the day-to-day working. Thus, the evidence is taken on affidavit by the parties. Regulation 67 also provides how up to what extent the provisions of C.P.C. would apply to the said proceeding. The procedure, which is adopted in the Tribunal is akin to

Hon'ble High Court and is very quick and speedy. So the U.P. Public Services Tribunal also fulfills the second requirement as pointed earlier.

28. Now I have to discuss the third requirement about the manning of the Tribunal to deal with the matters. Section 3(3) of the U.P. Public Services Tribunal Act, 1976 provides that the Chairman of the said Tribunal would be a Judge of the High Court or a Vice Chairman, who had at least two years held the office of Vice Chairman. There was also a third clause by which a member of Indian Administrative Service who has held the post of a Secretary to the Government of India or any other post under the Central or the State Government equivalent thereto can also hold the office of the Chairman at the initial stage. The said clause was challenged before the Hon'ble High Court and the said clause was struck down by the Full Bench of Hon'ble Allahabad High Court in **Sanjay Kumar Srivastav Vs. State of U.P. in writ petition No.1619 MB 1999** after considering the decision of the Hon'ble Supreme Court in **S.P.Sampat Kumar Vs. Union of India 1987 (1)SCC 124** and Sri R.K. Jain Vs. Union of India AIR 19931769. Thus, it is apparent , now the Tribunal is chaired by a High Court Judge, Vice Chairman(Judicial) of the Tribunal can be appointed from the persons held the post of District Judge or any other post equivalent thereto at least for 5 years and a person who has held the post of District Judge or any other post equivalent thereto, can be appointed as Judicial Member of the Tribunal. Whereas the appointment of the Vice Chairman(Administrative) and Member (Administrative) is concerned, the Vice Chairman should have possessed the post of Administrative Member at least for two years or at least he has held two years a post of Additional Secretary to the Government of India or any other post under the Central or a State Government carrying the same pay scale. Thus, this Tribunal had been manning by the judicial, administrative members, who have knowledge of the day-to-day working of the service matters. A sound justice delivery system is sin qua non for the efficiency of a country wedded to rule of law. In a democracy governed by rule of law, the only acceptable repository of justice is a Court of law. Judicial review is an integral part of legal system and basic and essential feature of the Constitution. The Tribunal has been conferred the supplemental power to have a judicial review over the decisions of the administrative authorities.

29. The Central Administrative Tribunal also consists of a Chairman and other Members of both categories, judicial and administrative. Every bench should consist of at least two members, a judicial as well as an administrative. The Chairman cannot be appointed unless he is or has been a High Court Judge or has held the office of Vice Chairman for two years. Provision has also been made for appointment of Members of the Tribunal judicial & administrative. The Hon'ble Chief Justice of India has to be consulted before appointing the Chairman and Members. The provision contained in U.P. Public Services Tribunal Act, 1976, applicable to Uttarakhand is parameteria to the Administrative Tribunal Act 1985. In Act 1976, the Hon'ble Chief Justice of Uttarakhand High Court is to be consulted before making any appointment of the Chairman, Vice Chairmen and Members either judicial or administrative. Proceeding before the Public Services Tribunal Act is judicial within the meaning of Rule 5(9) of the Public Services Tribunal Act, 1976.

30. Thus, the constitution of the State Tribunal, created under 1976 Act is at par with the Central Administrative Tribunal. Section 17 of the Administrative Tribunal Act provides that the Tribunal shall have to exercise the same jurisdiction and powers and authority in respect of contempt of itself as a High Court has and may exercise for the purpose the provisions of Contempt of Court Act 1971 would have affected with certain modifications. The Service Tribunal have to exercise, jurisdiction, power and authority in respect of contempt of itself as the High Court has and may exercise, in respect of contempt of itself and for the provisions of Contempt of Court's Act 1971 would have the effect with certain modifications. Thus, the State Tribunal has also the same power, which has been vested upon the Central Administrative Tribunals with regard to the enforcement of their order by drawing the proceeding of contempt in case of disobedience of the orders.

31. At this place I would like to mention that the decision rendered by the Service Tribunal is final. There is no statutory appeal or revision provided under the Act. There are two types of finalities regarding a judgment; firstly, the finality which is known as statutory finality, where the provisions of the Act or the statute under which the order has been passed, clearly indicates that the order will be final. There is second type of finality,

where the Act does not provide any authority before whom the appeal and the revision would be filed. It is called the order has been made impliedly final. In the Act of 1976, the revision and the appeal has not been provided except a remedy under Article 136 of the Constitution, so the order passed by the Tribunal is final. The said orders, judgments passed by the Tribunal are either can be challenged under Article 136 of the Constitution or by way of a judicial review under Article 226, 227 & 32 of the Constitution. No statutory appeal has been provided under this Act. The same is the position under the Administrative Tribunal Act 1985 also.

32. Initially the U.P. Public Services Tribunal was created to overcome the increasing overload of work of the Civil Courts and the long pendency of the cases. The purpose for creating the Tribunal has been indicated in the Prefatory Note-Statement of Objects and Reasons of the U.P. Public Services Tribunal Act 1976 which is as under:- "*The number of cases in the courts pertaining to the employment matters of the Government servants was constantly on the increase. This, besides increasing the work load in the courts, also delayed considerably the disposal of such cases. Such litigation also involved money and time of the Government servants. In these circumstances it was decided to establish Public Service Tribunals to deal with cases pertaining to employment matters of Government servants and also of the employees of the local authorities and Government corporations and companies, so that the employees may get quick and inexpensive justice. It was also decided that after the establishment of the tribunals such suits be barred from being filed in the subordinate courts*."

33. The U.P. Public Services Tribunal Act was enacted for adjudication of the disputes relating to the public servants of the State Government and the employees of the Government undertakings, local bodies etc. Before the Act come into force, the public servants of the State were approaching the Civil Court for redressal of their grievances arising out of their service mattes by filing a civil suit before the Civil Court. When this Act came into force the State Government created and constituted five tribunals, each comprising of an I.A.S. Officer as a Chairperson and a Judicial Officer of the rank of District Judge as the Judicial Member. Each Tribunal was vested with the jurisdiction over service matters of the different departments by State Government, so by virtue of this creation the constitution of the

benches was not vested upon Chairman because there were five distinct Chairman of each Tribunal, so the doubts were created about their judicial ability, independence as well as to the approach of the benches. Due to the creation of such Tribunals, actual functioning of the Tribunals unfortunately was far from satisfaction in the employees of State of U.P. They lack the competence, objectivity and judicial approach. These five Tribunals failed to inspire confidence in public mind and were not successful in creating alternative institution mechanism as intended by the State. Then the matters came up before the Hon'ble Supreme Court in the year 1990 in **Krishna Sahai & others Vs. State of U.P. and other (1990)2 SCC 673**. Hon'ble Supreme Court in para 5 has held as under-

" 5. In case the Uttar Pradesh Services Tribunal set up under the U.P. No. 17 of 1976 is continued, it would be appropriate for the State of Uttar Pradesh to change its manning and a sufficient number of people qualified in Law should be on the Tribunal to ensure adequate dispensation of justice and to maintain judicial temper in the functioning of the Tribunal. We find that in Writ Petition No. 373 of 1989 relating to the self-same question a Bench of this Court has issued notice wherein the proposal for additional Benches at places like Allahabad, Meerut and Agra apart from the seat at Lucknow have been asked to be considered. We are of the view that if the Services Tribunal is to continue, it is necessary that the State of Uttar Pradesh should plan out immediately diversification of the location of the Benches for the Tribunal so that service disputes from all over the State are not required to be filed only at Lucknow and on account of a single tribunal disputes would not pile up without disposal."

34. Hon'ble Supreme Court in the Para 6 & 7 in the case **of Rajendra Singh Yadav & others Vs. State of U.P. and others (1990)2SCC 763** has held as under:-

"6. We have been told that the Services Tribunal mostly consists of Administrative Officers and the judicial element in the manning part of the Tribunal is very small. As was pointed out by us in S.P. Sam path Kurnar v. Union of India & Ors., [1986] INSC 261; [1987] 1 SCC 124, the disputes require judicial handling and the adjudication being essentially judicial in character it is necessary that an adequate number of Judges of the appropriate level should man the Services Tribunals. This would create the appropriate temper and generate the atmosphere suitable in an adjudicatory Tribunal and the institution as well would command the requisite confidence of the disputants. We have indicated in the connected matter that steps should be taken to replace the Services Tribunals by Tribunals under the Central

Administrative Tribunals Act of 1985. That would give the Tribunal the necessary colour in terms of Article 323A of the Constitution. As a consequence of setting up of such Tribunals, the jurisdiction of the High Court would be taken away and the Tribunals can with plenary powers function appropriately. The disputes which have arisen on account of the Services Tribunals not having complete jurisdiction to deal with every situation arising before it would then not arise.

7. We have pointed out that notice has been issued in a later case for the State's response to the question of Tribunals to be located at different parts of the State. State of Uttar Pradesh territorially is the second largest State in India but considering the population it comes first. Almost every part of the State is well advanced and service litigation in such setting is likely to arise every- where. To locate the seat of the Tribunals at the State capital in such a situation is not appropriate. The accepted philosophy relevant to the question today is that justice should be taken to everyone's doors. This, of course, is not a statement which should be taken literally but undoubtedly the redressal forum should be available nearabout so that litigation may be cheap and the forum of ventilating grievance may not be difficult to approach. Keeping that in view which is a legitimate consideration it would be appropriate for the State Government to consider, firstly, increase in the number of Benches of the Tribunal and secondly, to locate them not at the same station but at various sectors or depending upon the number of institution of disputes and pendency at the level of independent Commissionerate or by clubbing two or three of them together. This, of course, is a matter which would require further 176 examination at the administrative level and, therefore, we express no opinion regarding location of such Tribunal although we are of the definite view that there should be Tribunals available in different parts of the State and all the Benches of the Tribunal should not be located at one place."

35. The Hon'ble Apex Court in the aforesaid pronouncements has held that the State Government should take steps to replace the Service Tribunal constituted under the State Act under the Administrative Tribunal Act, 1985. It was further directed that the Tribunal should be headed by a person of judicial acumen, execution and hearing of cases should be of judicial character. It is necessary an adequate number of judges should man Service Tribunal. The third proposition which was laid down anticipating that if the State Government is not going to adopt and recommend, the Central Government to hear the service disputes of the State employees by the Bench of the Administrative Tribunal, the State Govt. should locate the Benches of State Service Tribunal in different parts of the State. The State

of Uttarakhand has decentralized the sittings of the Tribunal. The Tribunal has its principal seat in Capital Dehradun and a permanent Bench in Nainital, where the Hon'ble High Court is situated. The other circuit bench can be held at Haridwar. Mostly the litigation pertains to these areas.

36. Pursuant to the above direction of the Hon'ble Supreme Court the Public Services Tribunal Act, 1976 was amended drastically in the year 1992 by which one Tribunal with separate division and single benches was substituted and it was also made mandatory that one of the Member of the bench, would be Judicial Member. As I have pointed out earlier, the Chairman of the Tribunal had been delegated the power to constitute the benches and allocate the jurisdiction of the different benches like Administrative Tribunal constituted under the 1985 Act. The Tribunal has been manning like a Tribunal constituted under the Administrative Tribunal Act.

37. It is also essential to see that the Tribunal can discharge the onerous duty independently or not. For the service conditions of the Judges and the Members of the Tribunal, separate Rules have been framed, which has been amended time to time. Rule 14(A) provides as under:- "

> "**Notwithstanding anything contained in rules 5 to 14, the Chairman, who has been a judge of a High court, shall be governed by the provisions of the High Court Judge (Condition of Service) Act, 1954, High Court Judges Rules 1956 and High Court Judges (Travelling Allowance) Rules, 1956 and such Government orders are applicable to a Judge of a High court and shall be entitled to all the privileges, amenities and perquisites as are admissible to a Judge of a High Court**."

The Chairman has been given the pay scale of Chief Justice of the State and the Vice Chairmen are being paid the salary of the Judges of the High Court and the Members are getting the salary of Principal Secretary of the State Government. Apart from that they are being provided all the facilities of leave travel concession and other facilities at par with the Central Government officers. As such the service conditions, which had been made by the State Government, are at par with the Administrative Tribunal Act.

38. Thus, I can very well conclude that the U.P. Public Services Tribunal Act, 1976 applicable to Uttarakhand is at par with the Administrative Tribunal Act, 1985 in all respects.

39. Now I have to see as to whether the power of the judicial review regarding the constitutional validity or otherwise of any statute, statutory regulation or notification can be assailed before the Tribunal. The Constitutional Bench in S.P. Sampat Kumar (supra) held that the Administrative Tribunal is supplement of the High Court, had the necessary jurisdiction, power and authority to adjudicate upon all disputes relating to service matters including the power to deal with all questions pertaining to the constitutional validity or otherwise of such loss as offending to Article 14, 16(1) of the Constitution that being so the contention advanced that the Administrative Tribunal has no authority or jurisdiction to strike down the notification to amend the rules is of no avail to the petitioner. The Hon'ble Apex Court in **R.K. Jain Vs. Union of India (1993)4 SCC 120** has expressed certain doubts about the working of the Tribunal.

40. In **Chandra Kumar Vs. Union of India (1995) 1 SCC400** the Division Bench of the Hon'ble Supreme Court expressed the view that the decision of S.P.Sampat Kumar rendered by the Constitutional Bench of the Hon'ble Supreme Court comprising of 5 Hon'ble Judges of the Court needs reconsideration and a fresh look by larger bench. Thereafter, a larger bench was constituted and the judgment was delivered by the larger Constitutional Bench and reconsidered the judgment of Hon'ble Supreme Court rendered by the Constitutional Bench in S.P. Sampat Kumar case (supra) and part of the judgment of Sampat Kumar was held per-incuriam and held that Clause 2(d) of Article 320 A and Clause 3(d) of Article 323 D of the Constitution is ultra vires and unconstitutional and violative of basic structure of the Constitution. The Hon'ble Apex Court has summed up his findings in para 99 which reads as under:-

> "In view of the reasoning adopted by us, we hold that Clause 2(d) of Article 323A and Clause 3(d) of Article 323B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution, are unconstitutional. Section 28 of the Act and the "exclusion of jurisdiction" clauses in all other legislations enacted under the aegis of Articles 323A and 323B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers conferred

by Articles 226/227 and 32 of the Constitution. The Tribunals created under Article 323A and Article 323B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the concerned Tribunal falls. The Tribunals will, nevertheless, continue to act like Courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the concerned Tribunal. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated"

41. Ld. Counsel for the petitioner submitted his written arguments and has submitted therein that there is an inconsistency between the two Acts(Administrative Tribunal Act, 1985 & U.P. Public Services Tribunal Act, 1976) and keeping in view the provisions of Article 254 of the Constitution, the union law must prevail and the inconsistency between two acts must be viewed accordingly. Ld. A.P.O. refuted the contention and contended that the Constitution was amended by 42nd constitutional amendment introducing the Article 323 A and 232 B in the Constitution. In the year 1976 the said constitutional amendment empowered the Parliament to constitute the Tribunals to decide and adjudicate the disputes of a particular nature. The State has also the power under the Constitution to make laws with regard to the public servants, so there is no inconsistency. After due consideration of the submissions made by the Ld. Counsel for the parties, I could gather that the Ld. Counsel tried to emphasize that Article 323 A & 323 B have taken the right of the State legislature to create or establish the State Service Tribunal when particularly the Administrative Tribunal Act 1985 has already been enacted. It is not in dispute that the Central government while enacting the Central Legislation, has also taken into consideration the State recommendation to constitute the Tribunal in their respective States to decide the matters of the State employees. But in the Central legislation, it has been kept open to adopt the system or to enact its own legislation. The said constitutional amendment of 1976 had not amended the entry provided in the State list and the Central list. Thus, the intention of the law was to continue the system which was prevailing in

the country prior to 1976 to constitute the Tribunals by the State under Entry 41 of List II, Schedule 7. This controversy came before the Hon'ble **Allahabad High Court in Bharat Ram Gupta Vs. State of U.P. 1979(1) SLR** in which the Hon'ble Court has held as under:-

"The arguments raised by Mr. Jain with regard to Articles 323-A and 323-B of the Constitution of India have been dealt with in the case of Bharat Ram Gupta v. State of U.P. (supra), wherein the Apex Court observed as under :-

'On a perusal of Article 323-A, however, we are not inclined to except the submission made by Counsel for the petitioner that the intention of the Parliament in inserting Article 323-A was to take away the legislative competence of the State Legislature of enacting law in regard to administrative tribunals under Entry 41 aforesaid and to confer the said power exclusive on the Parliament. On a plain reading of Article 323-A it is apparent that power has been conferred on Parliament also by the said Article entitling it by law to provide for the adjudication or trial by the administrative tribunals of disputes or complaints referred to therein. The use of the word "may" after the word "Parliament" and before the words "by law" is significant. We are aware that "may" can in certain circumstances be also read as "shall". The intention in enacting Article 323-A seems to us to be that in case the Parliament in exercise of the power conferred on it by the said Article chooses to make a law as contemplated by the said Article, the provisions contained to Article 254 of the Constitution will be attracted. The view which we take finds support from the circumstance that even though by Section 57 of the Constitution (42nd Amendment) Act, 1976 certain new entries were inserted in the various lists of the 7th Schedule to the Constitution and certain amendments were also made therein, but no entry in List I conferring exclusive power on the Parliament to make laws in regard to the Administrative Tribunals was inserted. This indicates that it was not the intention of the Parliament to cover the whole field in regard to the Administrative Tribunals. Under Article 323-A of the Constitution there is no obligation on the Parliament to make a law in regard to administrative tribunals. If the submission made by Counsel for the petitioner is accepted the State Legislature would cease to be competent to enact laws in regard to the administrative tribunals in spite of Entry 41 of List 2 of the 7th Schedule to the Constitution being allowed to remain intact by the Constitution (42nd Amendment) Act, 1976, even if the Parliament does not choose to make any law in exercise of the power conferred on it by Article 323-A. There is nothing in Article 323-A including its Clause (3) referred to above which may have the effect of repealing the parent Act enacted by the State Legislature. So it continues to be in force. As already seen Parliament is not bound to pass on Act on the subject. Suppose some lacuna is pointed out and it becomes necessary to amend the parent

Act but the Union Government is for some reason not inclined to introduce the necessary legislation in Parliament, it would create a stalemate if the interpretation placed by Counsel for the petitioner on Article 323-A is accepted. This does not seem to be the intention of the Parliament in inserting Article 323-A in the Constitution and an interpretation which is likely to create such an anomalous situation and render an enactment validly passed by the State Legislature and still in force unworkable cannot be accepted. The only reasonable interpretation of Article 323-A including its Clause (3), in our opinion, seems to be that if Parliament chooses to enact a law on the subject the provisions of Article 254 of the Constitution, as already pointed out above will be attracted. U.P. Act No. 1 of 1977, by which Section 5-B was in-serted in the Act, as already seen above, was assented to by the President on January 10, 1977. We are consequently unable to take the view that Section 5-B of the Act is ultra vires the powers of the State Legislature."

Legislative competence of the State Legislature was again considered in the case of Lal Ji Harijan v. State of U.P. and Ors., 1982(8) ALR 97, wherein it has been held that it is not necessary that an Entry in the Constitution should itself provide for the creation of a Tribunal. It is enough if powers are given to legislate on certain topic. The Entries in the various lists of the VII Schedule have to be given widest amplitude. When Entry 41 of the List 11 speaks of State Public Services, it deals with all matters pertaining thereto, including the Tribunal for adjudication of service disputes. Further there is nothing in Entry 41 of List II of 7th Schedule of the Constitution which could prevent the legislature from constituting tribunals to adjudicate disputes pertaining to employment State Public Services, including the creation of the Tribunal for adjudication of service disputes and Article 323-A of the Constitution does not take away the powers of the State Legislature to enact a law in respect of State public services.

In the case of Raniashraya Yadav v. State of U.P. and, Ors., 1982(8) ALR 292, a Division Bench of this Court held that Article 323-A is merely an enabling provision and it cannot itself oust the jurisdiction of the Tribunals created by any Act. The enactment of U.P. Public Services (Tribunals) Act, 1976 was within the legislative competence of the State Legislature under Entry II of the Seventh Schedule of the Constitution. In absence of a law enacted by the Parliament in exercise of the power conferred by Article 323-A, the question of repugnancy cannot arise. It has been further held that lack of power for granting interim order during the pendency of the claim petition before the Tribunal does not affect the question whether the remedy of preferring a claim petition is adequate or not.

The next case in this series is of Hanuman Prasad v. State of U.P. and Ors., 1988(57) FLR 381 (All.), wherein a Division Bench of this Court held as under:-

"10. Neither Articles 323-A nor 323-B is self executing provision. They merely authorise the specified Legislature to make laws and set up such Tribunals and to include therein ancillary provisions, in other words, they only offer the constitutional authority for such legislation. It follows that so long as no law is made under Articles 323-A(2)(d) or 323-B(3)(d), the existing jurisdiction of the Tribunals created under a valid legislation would continue and will not be ousted simply because, according to the 42nd amendment Act, these matters are triable by Tribunals to the exclusion of the Courts including the Tribunals created by the State Legislature. Article 323-A(1) read with Clause (d) would indicate that these are enabling provisions which have been given a constitutional authority for making of a law excluding the jurisdiction of the Civil Courts including that of the High Court."

In para 12 of the above judgment the Division Bench observed as under :

"12. The Administrative Tribunal Act, 1985 did not become applicable ipso facto to the State employees and those who were governed by the U.P. Public Services (Tribunals) Act, 1976. It is admitted that no such notification, as is provided under Sub-section (4) of Section 1 of Act No. 13 of 1985, had been notified. Consequently, the Administrative Tribunal Act, 1985 does not apply to the State employees. The disputes relating to their service conditions are governed by the U.P. Public Services (Tribunals) Act, 1976."

42. Hon'ble Allahabad High Court in the Full Bench decision has considered the judgment of the Division Bench and has held and endorsed the view delivered by the Division Bench in the above case. The said Full Bench decision has also been affirmed by the Hon'ble Supreme Court in 2003(2)SLR 2343. In view of the above I do not fine any force in the contention of the Ld. Counsel for the petitioner.

43. Ld. Counsel for the petitioner further contended that there is a judgment of a Division Bench of the Hon'ble Allahabad High Court in which the issue came up before the Division Bench and the Division Bench comprising of Hon'ble Mr. Justice Palok Basu (J) & Hon'ble Mr. Justice R.L. Mahajan (J) has held in Para 12 of the judgment authored by Hon'ble Mr. Justice R.K.Mahajan (J) of the Hon'ble Allahabad High Court that they are not agreeable to the contention of the Ld. Counsel for the petitioner that if vires of the rules has been challenged, the Tribunal has no jurisdiction. The Ld. Counsel for the State refuted the contention. I have gone through the entire judgment. A petition was filed regarding quashing of the Forest

Service Rules as well as seeking promotion of the petitioner according to the Forest Service Rules, 1952. Maintainability of the petition in the High Court was challenged. The Division Bench of Hon'ble High Court comprising of Hon'ble Mr. Justice Palok Basu (J) & Hon'ble Mr. Justice R.K.Mahajan (J) held that the petitioner has an alternative efficacious relief before the Tribunal. The matter may be remitted to the Tribunal. The judgment authored by Hon'ble Mr. Justice R.K.Mahajan definitely has held that the Tribunal has the power to examine the vires of the rules. The judgment authored by Hon'ble Mr. Justice Palok Basu(J) another Hon'ble Judge of the Division Bench, in Para 2 & 3 of the judgment held that the prayer which has been made in the claim petition, could be made before the U.P. Public Services Tribunal in view of the alternative remedy available. His Lordship concurs that the view taken by the Hon'ble Mr. Justice R.K.Mahajan(J) that the petition should be relegated to the P.S.T. and the petition is liable to be dismissed on this ground only. Hon'ble Mr. Justice Palok Basu (J) in its next para has held that the findings recorded in respect of other facts are the opinion of Hon'ble Mr. Justice R.K.Mahajan only.

44. The only question arose that whether the above findings are binding precedent which should be followed by the tribunal or not. Ld. A.P.O. pointed out that the judgments of Hon'ble High Court are binding upon the Tribunal, but if only opinion has been expressed by a Single Member, which has not been concurred by the other Members, this is not a binding precedent but at the same time he pointed out that it is generally seen that if there is a difference of opinion, the matter is referred to larger bench and the judgment delivered by the larger bench becomes precedent for the same. The main controversy which was before the Hon'ble Allahabad High Court, I have dealt in the preceding paragraphs in detail; whether the above judgment's findings are binding or not. The opinion of Hon'ble Mr. Justice R.K.Mahajan (J) supports my view also.

45. Ld. Counsel for the petitioner further contended that the rule of interpretation of statue regarding vires can be traced from the Mimansa Text. He has relied upon the interpretation made in the Mimansa and also relied upon the judgment of the Hon'ble Apex Court rendered in Vijay Narayan Thate Vs. State of Maharashtra 2009(6)SCC203. I have gone

through the contents of the judgment of the Hon'ble Apex Court. It is settled law that if the law has been codified, the interpretation of the law would be made according to the intention of the legislature. If it is un-codified, then the law can be traced out by Mimansa or from Maxwel interpretation of statute and from other texts of their interpretation. If the law is codified and there is some ambiguity and the interpretation is to be made of any clause, then the interpretation be made according to the principle of the interpretation of the statue; it may be either of the Mimansa or Maxwel etc. or any other western thinker. In the said judgment the main controversy before the Hon'ble Apex Court was that as to whether the notification made under Section 6 of the Land Acquisition Act 1894 was time barred or not. In the said pretext the Hon'ble Court held that Section 6 of the aforesaid Act had a proviso in which it is provided that no declaration in respect of any particular land covered by a notification under Section 4(1) shall be made after expiry of one year from the date of the publication of the notification. It was clear that after one year the notification of Section 6 is made, that would be void. The language of proviso is couched with negative language. The Hon'ble Apex Court further held , if the proviso gives a negative or predatory order, that is mandatory and it cannot be interpreted liberally. The Hon'ble Apex Court further held that provisions of Section 6 are mandatory, traced the interpretation of statute of Mr. G.P. Singh, Mimansa and other western thinkers text and Hon'ble Court came to the conclusion for quashing the notification issued by the State under section 6 it being a time barred. While going through the provisions of the Public Services Tribunal Act 1976, Ld. Counsel for the petitioner could not demonstrate that there is any negative or any prohibitory provisions that the Tribunal cannot decide the matter where the vires of the order has been challenged. The above judgment of the Hon'ble Apex Court is not applicable in the present case.

46. Ld. Counsel for the petitioner further contended that the Division Bench in this matter has referred to decide the correctness of the law laid down by the Division Bench of this Tribunal in case No.12/2009 and the Division Bench has also raised its doubts to the correctness of law laid down by the Division Bench. In view of the above, the Full Bench has been constituted to decide the issue raised by the Division Bench of the Tribunal. Ld.

Counsel for the petitioner further contended that the Act does not empower the Chairman to constitute the Full Bench and as such the Chairman has no power to constitute such Full Bench. He has referred the different provisions of the U.P. Public Services Tribunal Act and contended that the aforesaid Act is completely silent on the said aspect, so the legislature has not vested the right to the Chairman to constitute the Full Bench in the Tribunal. Ld. Counsel for the State refuted the contention and contended that the Chairman has the power to constitute the Full Bench to resolve the issues referred to the larger bench in the interest of justice. He further contended that if the judgment has been delivered by division bench and the matter could not be referred to a larger bench, the subsequent division bench would have to bow down before the judgment of the coordinate bench even though the subsequent co-ordinate bench was not agreeable to the view taken by the earlier division bench.

47. To deal with this issue I will first see the provisions of the Administrative Tribunal Act, 1985. Section 5 (6) of the Administrative Tribunal Act, "Notwithstanding anything contained in the preceding provision of Section 5 which also covers such sub section 5(2) & (4), it would be competent for the Chairman or any other Member authorized by the Chairman in this behalf to function as a Bench consisting of a Single Member and exercise the jurisdiction, powers and authority of the Tribunal in respect of such classes of cases or such matter pertaining to such classes of cases as the Chairman may by general or special order specify. The Hon'ble Apex Court in **Amulya Chand Kaltia Vs. Union of India & others 1991 SCC(L&S) 145** has held that Section 5(1) sets out the constitution of the Tribunal and adds that the jurisdiction, power and authority of the Tribunal may be exercised by the benches thereof. Sub section (2) of that Section provides that a bench shall consist of one judicial member and an administrative member. No provision to the contrary is shown to the Hon'ble Apex Court. The Hon'ble Court further held that it is the statutory recognition that every bench of the Tribunal must consist of a judicial member and an administrative member. It is, therefore obvious that the administrative member alone could not have heard and decided the matter. Constitution of a Full Bench has not been defined or provided in the U.P. Public Services Tribunal Act. Ld. Counsel for both the parties could not demonstrate me that there is a specific

provision for constitution of the Full Bench in Administrative Tribunal Act, 1985. Our Act (U.P. Act of 1976) also provides the powers of the Chairman under Section 4(A) that the Chairman may from time to time constitute the benches consisting of a single member or two members for the disposal of such references of claims and other matters as may be specified by him. It is further provided in the said provision that the Chairman can also sit as a judicial member in the bench and he can nominate himself as such. It is further provided that the bench consisting of two members shall include a judicial member and an administrative member. In sub section 4(A) (5) further details that a reference of claim against an order pertaining to matters specified in Schedule shall be heard and finally decided by a bench consisting of two members. Proviso has been added that the evidence may be received and proceeding therefore may be conducted by a single member. It is further provided in sub section that a reference of claim other than that referred to in clause (a) may be heard and finally decided by a bench consisting of a single member. Thus, this Act specifically provides that the matters which have been given in Schedule, will be heard by the division bench and only to less serious matters would be decided by a member sitting singly. The U.P. Public Services Tribunal Act 1976 is silent about the Full Bench constitution by the Chairman. The above section only provides that a bench consisting of two members, one judicial and another administrative will be the members of the bench. It is also provided under the Administrative Tribunal Act that Section 5(6) that if part of hearing of any such case or matter, it appears to the Chairman or Members that it should be heard by a bench of consisting of two members, the case or the matter may be transferred by the Chairman to such bench as the Chairman may deem it fit. Thus, the single member of the bench constituted under the Administrative Tribunal Act, may also refer it to a division bench. From the perusal of the Administrative Tribunal Act, 1985 it is apparent that the Tribunal functions by way of different benches constituted either in the principal seat at Delhi or the different benches constituted in the different States. The judgment and the orders rendered by the division benches or the single benches are to be held the judgments and orders of the Tribunal. Likewise, the U.P. Public Services Tribunal Act 1976 also provides that the Tribunal would be constituted consisting of

single member or two members benches in which one of the member would be an administrative member and the other would be the judicial member. Thus, different benches may function in the Tribunal. It is also provided in the Act that where there is a conflict of opinion about a particular matter, the matter shall be referred to another member nominated by the Chairman and the decision of such other member shall be final and operative. The decisions rendered by the benches of the Tribunal would be the judgment of the Tribunal and not of the bench. Both the Acts (Administrative Tribunal Act, 1985 & U.P. Act, 1976) do not prohibit to constitute a Full Bench more than two members. Perusal of the provisions of the 1976 Act clearly reveals that if there is no statutory prohibition than the Chairman is not competent to decide a matter by referring it to a larger bench. It is obligatory on the part of the Chairman under Section 4-A that at least a bench of two members consisting of an administrative member and a judicial member, should be constituted. If more than one or two members are added, keeping the balance of judicial and administrative members, there is no prohibition under the Act. The minimum requirement of two members, one administrative and one judicial member is to be fulfilled. If more than two members decide a matter, that would not be illegal or irregular. The minimum requirement of the two members as indicated above, should be completed. Apart from that Ld. Counsel for the parties could not demonstrate that the Administrative Tribunal Act, 1985 and the U.P. Public Services Tribunal Act, 1976 or rules made there under by the Central Government or by the State Governments respectively had provided the provisions of the Full Bench. When I go through the regulations, which have been framed by the Tribunal itself under Section 22 of the Administrative Tribunal Act, they have provided the procedure to prepare the record for the Full Bench. Thus, the Full Benches can be constituted under the Administrative Tribunal Act, 1985 and the Chairman has been constituting the Full Benches in the Administrative Tribunal to decide the matters. There is no provision as such a Full Bench or a larger bench can be constituted about the proportionality of the member in the said bench. If the larger benches are constituted, it should be kept in mind that the sufficient judicial members as well as the administrative ;members should also remain in the bench. The requirement of the Act and intention of the

Hon'ble Supreme Court laid down in the different pronouncements, as I have pointed out in preceding paragraphs of the judgment, should be kept in mind. I have pointed out earlier that the judgment of the division bench or of the single bench is delivered, the said judgment is supposed to be the judgment of the Tribunal and each division bench and the members sitting singly are bound by the decision of the coordinate benches. If a judgment has been rendered by a single member bench, that can be overruled by the division bench and if the judgment and the proposition of law has been laid down by the division bench, the coordinate benches has two options; either to accept the proposition of law, and if the division bench is not agreeable to the proposition of law, the matter should be referred to a larger bench. If the proposition, which has been projected by the Ld. Counsel for the petitioner is accepted, the coordinate bench would have no option but to follow the judgment inspite of its unwillingness. This cannot be the intention of law. The law is based on equity and good consciences and if the law is silent on any point or interpretation of law given an adverse effect to the other party and the Judges are supposed to do the justice and to decide the matter with equity and good conscience. As I have pointed out that the Public Services Tribunal Act is silent about the constitution of the Full Bench by the Chairman. The aims and objects of the Act clearly provide the speedy disposal of the grievance of the State employees. It is also provided that the judgment of the Tribunal would be final. It is settled principle of law that in case where the statutory provisions are plain and unambiguous, the Court should not interpret the same in different manner, only because harsh consequences arising therefrom. It is also well settled that the Court's jurisdiction to interpret a statute, can be invoked when the same is ambiguous. It is also well known that the Court can iron out the fabric but it cannot change the texture of the fabric. The Court cannot enlarge the scope of the legislature's intention when the language of the provision is plain and unambiguous. The Hon'ble Apex Court in Para 37 in the case of **Nasiruddin & others Vs. Sita Ram Agarwal 2003(2) SCC 577** has held as under:-

"The court's jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case the Court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract words

to a statute or read something into it which is not there. It cannot re-write or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well-settled that the real intention of the legislation must be gathered from the language used. It may be true that use of the expression 'shall or may' is not decisive for arriving at a finding as to whether statute is directory or mandatory. But the intention of the legislature must be found out from the scheme of the Act. It is also equally well-settled that when negative words are used the courts will presume that the intention of the legislature was that the provisions are mandatory in character."

In the instant case the language of the statute i.e. Public Services Tribunal Act is not unambiguous regarding the constitution of the Full Bench by the Chairman and the Act is silent about the constitution of the Full Bench. If the Full Bench is not constituted in the larger interest, that would cause harm to the public servant and the decision which has been rendered by the Division Bench, which has not been upset by the Hon'ble High Court, would prevail in the bench, even though the members of the other co-ordinate bench are not agreeable to the decision of the previous co-ordinate bench. In these circumstances liberal interpretation of the statute cannot be done. In construing a statutory provision, the first and the foremost rule of construction is the literary construction; all that the Court has to see at a very outset, is what does that provision say. If the provision is unambiguous and if from the provision the legislative intent is clear, the Court need not call into the aid the other rules of construction of statute. The other rules of construction or statue are called into aid only when legislature intention is not clear. In the instant case the statute is silent about the constitution of the Full Bench by the Chairman, so the liberal interpretation could not help to interpret the statute, hence the Court will have to adopt the second method of interpreting the statute as held above. The Hon'ble Apex Court in Para 9 in the case of **B. Premanand Vs. Mohan Koikal (2011)1 SCC(L&S) 679** has held as under:-

"It may be mentioned in this connection that the first and foremost principle of interpretation of a statute in every system of interpretation is the literal rule of interpretation. The other rules of interpretation e.g. the mischief rule, purposive interpretation etc. can only be resorted to when the plain words of a statute are ambiguous or lead to no intelligible results or if read literally would nullify the very object of the statute. Where the words of a statute are absolutely clear and

unambiguous, recourse cannot be had to the principles of interpretation other than the literal rule, vide Swedish Match AB vs. SEBI."

48. Apart from above in a multi Members Tribunal, the members and the benches thereof are bound by the precedents and the procedures. The judicial decorum and the legal propriety demands that where a single member of the Tribunal or a division bench of the Tribunal does not agree with the decision of the bench of the coordinate jurisdiction, the matter should be referred to a larger bench. The controversy arose before the Hon'ble Apex Court **in Union of India Vs. Raghuvir Singh & others 1989 (2) SCC 754. Hon'ble Court in Para 27 & 28** has held as under :-

"**27**. What then should be the position in regard to the effect of the law pronounced by a Division Bench in relation to a case raising the same point subsequently before a Division Bench of a smaller number of Judges? There is no constitutional or statutory prescription in the matter, and the point is governed entirely by the practice in India of the Courts sanctified by repeated affirmation over a century of time. It cannot be doubted that in order to promote consistency and certainty 336 in the law laid down by a superior Court, the ideal condition would be that the entire Court should sit in all cases to decide questions of law, and for that reason the Supreme Court of the United States does so. But having regard to the volume of work demanding the attention of the Court, it has been found necessary in India as a general rule of practice and convenience that the Court should sit in Divisions, each Division being constituted of Judges whose number may be determined by the exigencies of judicial need, by the nature of the case including any statutory mandate relative there- to, and by such other considerations which the Chief Justice, in whom such authority devolves by convention, may find most appropriate. It is in order to guard against the possibility of inconsistent decisions on points of law by different Division Benches that the rule has been evolved, in order to promote consistency and certainty in the development of the law and its contemporary status, that the statement of the law by a Division Bench is considered binding on a Division Bench of the same or lesser number of Judges. This principle has been followed in India by several generations of Judges. We may refer to a few of the recent cases on the point. In John Martin v. The State of West Bengal, [1975] INSC 10; [1975] 3 SCR 211 a Division Bench of three Judges found it right to follow the law declared in Haradhan Saha v. State of West Bengal, [1974] INSC 152; [1975] 1 SCR 778 decided by a Division Bench of five Judges, in preference to Bhut Nath Mate v. State of West Bengal, [1974] INSC 24; AIR 1974 SC 806 decided by a Division Bench of two Judges. Again in Smt. India Nehru Gandhi v. Shri Raj Narain, [1976] 2 SCR 347 Beg, J. held that the Constitution Bench of five Judges was bound by the

Constitution Bench 01' thirteen Judges in His Holiness Kesavananda Bharati Sripadagalavaru v. State of Kerala, [1973] Suppl. 1 SCR. In Ganapati Sitaram Balvalkar & Anr. v. Waman Shripad Mage (Since Dead) Through Lrs., [1981] 4 SCC 143 this Court expressly stated that the view taken on a point of law by a Division Bench of four Judges of this Court was binding on a Division Bench of three Judges of the Court. And in Mattulal v. Radhe Lal, [1974] INSC 103; [1975] 1 SCR 127 this Court specifically observed that where the view expressed by two different Division Benches of this Court could not be reconciled, the pronouncement of a Division Bench of a larger number of Judges had to be, preferred over the decision of a Division Bench of a smaller number of Judges. This Court also laid down in Acharaya Maharajshri Narandrapra- sadji AnandprasadjiMaharaj etc. etc. v. The State of Gujarat & Ors., [1974] INSC 193; [1975] 2 SCR 317 that even where the strength of two differing Division Benches consisted of the same number of Judges, it was not open to one Division Bench to decide the correctness or other-wise of the views of the other. The principle was reaffirmed in Union of India & Ors. v. Godfrey Philips India Ltd., [1985] 4 337 SCC 369 which noted that a Division Bench of two Judges of this Court in Jit Ram v. State of Haryana, [1980] INSC 85; [1980] 3 SCR 689 had differed from the view taken by an earlier Division Bench of two Judges in Motilal Padampat Sugar Mills v. State of U.P., [1978] INSC 254; [1979] 2 SCR 641 on the point whether the doctrine of promissory estoppels could be defeated by invoking the defence of executive necessity, and holding that to do so was wholly unacceptable reference was made to the well accepted and desirable practice of the later Bench referring the case to a larger Bench when the learned Judges found that the situation called for such reference.

28. We are of opinion that a pronouncement of law by a Division Bench of this Court is binding on a Division Bench of the same or a smaller number of Judges, and in order that such decision be binding, it is not necessary that it should be a decision rendered by the Full Court or a Constitution Bench of the Court. We would, however, like to think that for the purpose of imparting certainty and endowing due authority decisions of this Court in the future should be rendered by Division Benches of at least three Judges un- less, for compelling reasons that is not conveniently possible.

Hon'ble Supreme Court in para 26 & 27 in **U.P. Gram Panchayat Adhikari Sangh Vs. Daya Ram Saroj & others (2007)2SCC 138** has held as under:

"26. JUDICIAL DISCIPLINE Judicial discipline is self discipline. It is an inbuilt mechanism in the system itself. Judicial discipline demands that when the decision of a co-ordinate Bench of the same High Court is brought to the notice of the Bench, it is respected and is binding, subject of course, to the right to take a different view or to doubt the correctness of the decision and the permissible course then often is to

refer the question or the case to a larger Bench. This is the minimum discipline and decorum to be maintained by judicial fraternity.

The doctrine of judicial discipline has been succinctly enunciated by the three Judge Bench of this Court in Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav & Anr. (2005) 2 SCC 42 in paragraph 19 SCC as under:

"The principles of res-judicata and such analogous principles although are not applicable in a criminal proceeding, still the courts are bound by the doctrine of judicial discipline having regard to the hierarchical system prevailing in our country. The findings of a higher court or a coordinate Bench must receive serious consideration at the hands of the court entertaining a bail application at a later stage when the same had been rejected earlier. In such an event, the courts must give due weight to the grounds which weighed with the former or higher court in rejecting the bail application. Ordinarily, the issues which had been canvassed earlier would not be permitted to be re-agitated on the same grounds, as the same would lead to a speculation and uncertainty in the administration of justice and may lead to forum hunting."

Hon'ble Supreme Court in **Para-3 of Usha Kumar Vs. State of Bihar & others 1998(2) SCC44 has held as under:-**

"In the impugned judgment of a Division Bench of the Patna High Court (Hon'ble Aftab Alam and A.N. Trivedi, JJ.) dated 1-5-1995, the Division Bench has taken a view which is different from the view taken by the two earlier Division Benches of the same High Court. The judgment itself sets out that normally the matter should have been referred to a larger Bench; but this may further delay the matter and hence the Division Bench was proceeding with its judgment. This course which is taken by the Division Bench has created obvious difficulties. Judicial discipline requires that if two Division Benches of the same High Court take different views, the matter should be referred to a larger Bench. One Division Bench cannot ignore or refuse to follow the decision of an earlier Division Bench of the same Court and proceed to give its decision contrary to the decision given by the earlier Division Bench. If it is inclined to take a different view, a request should be made to the Chief Justice to refer the same to a Full Bench. Even the purpose of saving time has not been served in the present case. The decision has merely generated these appeals which are filed in view of the conflicting views taken by two Division Benches. The State has also come in appeal before us. All the parties are agreed that the appropriate course would be to refer the matter to the Full Bench of the Patna High Court. All these appeals are, therefore, remanded to the High Court of Patna. The Chief Justice of that High Court may constitute a Full Bench for deciding all issues which were raised before the Division Bench in the impugned judgment. Although the departure from the earlier decisions of the

Division Bench may not be on all issues raised before the Court, since the appeals are being remanded to the High Court, it is desirable that the Full Bench, in considering all these matters, deals with all the issues which were raised and considered by the Division Bench in the impugned judgment"

Hon'ble Supreme Court in **Para-3 & 4 of State of Tripura Vs. Tripura Bar Association & others 1998(5) SCC637 has held as under**

"3. In the impugned judgment, the High Court has, however, gone into the question of inter se seniority of the Judicial Officers who were impleaded as respondents in the writ petition. The said matter of inter se seniority had earlier been considered by a Division Bench of the same High Court in the case of Durgadas Purkayastha v. Hon'ble Gauhati High Court, (1988) 1 Gau LR 6 in respect of the same officers which judgment has become final. In the impugned judgment the Division Bench of the High Court has taken a view different from that taken in the earlier judgment in the case of Durgadas Purkayasiha.

4. We are of the view that the Division Bench of the High Court which has delivered the impugned judgment being a coordinate Bench could not have taken a view different from that taken by the earlier Division Bench of the High Court in the case of Durgadas Purkayastha (Supra). If the latter Bench wanted to take a view different than that taken by the earlier Bench, the proper course for them would have been to refer the matter to a larger Bench. We have perused the reasons given by the learned Judges for not referring the matter to a larger Bench. We are not satisfied that the said reasons justified their deciding the matter and not referring it to the larger Bench. In the circumstances, we are unable to uphold the impugned judgment of the High Court insofar as it relates to the matter of inter se seniority of the Judicial Officers impleaded as respondents in the writ petition. The impugned judgment of the High Court insofar as it relates to the matter of seniority of the respondent Judicial Officers is set aside. The appeals are disposed of accordingly. No costs"

49. From the perusal of the pronouncements of the Hon'ble Apex court, it is clear that the judicial system prevailing in the country is based on the precedence. As I have pointed out earlier that the jurisdiction of the Tribunal is supplemental to the Hon'ble High Court. The Tribunal also functions in benches in order to promote the consistency and certainty. The law laid down by the courts, either by way of division benches or single benches, but the consistency can also be maintained when the judicial discipline is maintained among the members of the Courts or the judicial Tribunals to keep the consistency, decorum and discipline. Courts have to

function with the consistency to maintain the consistency and the Tribunal should function to provide the consistency by way of constituting the larger benches if coordinate bench creates doubt about the correctness of law propounded in any judgment. But judicial decorum is inherent basis of the entire system otherwise inconsistency would create 'Jungle Raj' in the judicial system.

50. In view of the above, I conclude that the Chairman has the inherent power to constitute the Full Bench to decide the issue referred to him by the division bench about the consistency of law laid down by the Tribunal..

51. In view of the above discussion, I conclude that the Tribunal has the power to quash Rules, Regulations and Government Orders of Uttarakhand regarding the service conditions of a State Government employee and the view taken by the Division Bench in 126/T/2003 Sujata Vs. State & others that the vires of the order issued by the State of Uttarakhand regarding the service conditions of the State employees can be examined and can be held violative to the Constitution, statute and rules by the Tribunal. So I reply the question in affirmative referred to the larger Bench. The vires of any Rule, Regulation, Government order, Letter can be challenged before the Tribunal.

(**JUSTICE J.C.S.RAWAT**)
CHAIRMAN

DATE: APRIL 30, 2014
DEHRADUN.

VM

(By Hon'ble Mr.V.K.Maheshwari, Vice Chairman (J))

(For himself and on behalf of Hon'ble Sri D.K.Kotia, Vice Chairman(A)

1. Following reliefs have been sought in this claim petition :-
   i. To issue an order or direction to set aside the impugned notification dated 24.12.2008 and the letter no. DG-1-201-08(02) dated 20.12.2008 issued by respondent no. 3, and to declare the same as illegal and against the service rules of 2004.
   ii. To issue a order or direction, directing the respondents for determination of the vacancies of S.I. for promoted quota w.e.f 9.11.2000 on yearly basis and to prepare the eligibility list year wise amongst the eligible candidates and to consider their case of promotion as per rules in vogue,
   iii. To declare the petitioners duly promoted in the S.I. cadre under the quota for promotees within the vacancies available within their quota w.e.f 2001, ignoring the camouflage nomenclature of S.I. (Special Category) and further to declare them permanent S.I after completion of their probation i.e. in 2007 along with all consequential benefits,
   iv. To declare that after the rules for promotion made by the State Government in 2004, the posts under promotees's quota in the department are filled under these rules and no other mode for promotion be made by the respondents no. 2 to 4 as the rules framed by the personnel department are having overriding effect to all Government Departments. "
2. The facts in brief are that the petitioners had joined the service as Constable on different dates. Subsequently, they were promoted to the post of Head Constable.
3. The Govt. of Uttarakhand had issued a notification on 16.12.2001 by which a provision was made for filling the posts of Sub-Inspector Police. According to this Govt. Order, the 50% posts were to be filled by way of promotion and 50% by direct recruitment.

4. Thereafter, the State Govt. had created the post of Head Constable Police (Spl.) Category and Sub. Inspector Police (Spl) Category vide Govt. Order no. 829/2004 dated 16.5.2005. In consequence to this order, the petitioners were promoted as Sub-Inspector of Police (Spl. Category) and were put on probation for a period of two years. After completion the period of probation, the petitioners stood confirmed automatically. The petitioners had also undergone training for Sub-Inspectors at different places and thereafter were posted as Sub-Inspectors.
5. The Inspector General of Police had also made a recommendation to the State Govt. for granting permission to the petitioners for conducting investigation. The petitioners were also permitted the same dress code as has been provided to the regular sub-Inspectors and the petitioners are also drawing the same salary as the regular Sub-Inspectors. Subsequently, another Govt. Order was issued on 27.12.2007 whereby the different dress code was prescribed for the Sub-Inspectors (Spl. category), which was also challenged before the Tribunal in Claim Petition No. 10/2008. An order was also issued on 30.8.2006, which prescribes the S.Is, promoted from the post of Head Constables to wear only one star, which was also challenged before this Tribunal in claim petition no. 66/2006 and both these claim petitions were clubbed.
6. It is further stated that the petitioners are regular employees of the police force and it is discriminatory to prescribe different criteria and dress code for the petitioners. Therefore, the petitioners had challenged a Govt. Order dated 24.12.2008.
7. The petition has been opposed on behalf of the respondents on different grounds and it has been stated that the procedure/scheme for selection of promotees to the post of Sub-Inspector has not been yet fixed, therefore, the promotions were made in accordance with the Govt. Order dated 927/X/(3)-36/Police/ 2013 dated 24.8.2007. The petitioners have been selected against the 198 posts created as Sub-Inspectors (Spl. Category).After the completion of period of probation, the petitioners shall be deemed to have been confirmed only on the post of S.I. (Spl. Category). It is further sated that the Claim 10/2008 is still pending and the petitioners are not entitled for any relief and petition is liable to be dismissed.

8. The abovementioned petition was listed for hearing before a Division Bench. As the matter regarding virus of the Govt. Order was in question. The Division bench had framed the following question and referred it to larger Bench:

   i. Whether the vires of any rule, regulation, Govt. Order or letter can be challenged before the Uttarakhand Public Services Tribunal.

9. Honble Chairman was pleased to constitute a bench consisting three members. The matter was heard by that Bench.
10. We have heard the counsel for both the parties at length and also perused the written submissions also.
11. It has been contended on behalf of the petitioners that the powers vests in the Tribunal for adjudication of the virus of any rule, regulation or Govt. Order. While this contention was rebutted on behalf of the respondents on the ground that the vires of any Rule, regulation or Order can only be challenged before the Hon'ble High Court and there is no authority or power to the Tribunal for adjudication on the point of authority of issuing any order or rule. In order to consider the extent of jurisdiction of this Tribunal, first of all, it has to be seen as to how this Tribunal was constituted. In fact, this Tribunal was constituted by the erstwhile State of U.P. named as Uttar Pradesh Public Services Tribunal Act, 1976 with the following aims and objectives:

"An act to provide for to adjudicate disputes in respect of matters relating to employment of all public servants of the State."

Initially the Tribunal was constituted in 1975 by way of ordinance promulgated on September 17, 1975 and Tribunal came into being on November 24, 1975, which was replaced by the another ordinance promulgated on February 16, 1976. Thereafter, the Uttar Pradesh Public Services (Tribunal) Act. 1976 was passed by the Uttar Pradesh Legislature and it was published in the gazette on May 01, 1976. At the time of enactment of the aforesaid Act, there was no provision in the Constitution of India for the establishment of the Tribunals. This Tribunal came into existence on the basis of statue. Therefore, initially it was a statutory Tribunal. Later on, the Constitution of India was also amended by way of 42nd Amendment and a new part XIV-A and the new

Articles 323-A and 323-B were added in the Constitution of India. Which made a specific provision for the establishment of Adminstrative Tribunals by the Union Govt as well as the State Govt. The article 323 A and 323 B reads as follows:

323-A. Administrative Tribunals*-(1) Parliament may, by law, provide for the adjudication or trial by administrative tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation owned or controlled by the Government.*

(2) A law made under clause (1) may-

(a) Provide for the establishment of an administrative tribunal for the Union and a separate administrative tribunal for each State or for two or more States;

(b) Specify the jurisdiction, powers (including the power to punish for contempt) and authority which may be exercised by each of the said tribunals;

(c) provide for the procedure (including provisions as to limitation and rules of evidence) to be followed by the said tribunals;

(d) exclude the jurisdiction of all courts, except the jurisdiction of the Supreme Court under Article 136, with respect to the disputes of complaints referred to in clause(1);

(e) provide for the transfer to each such administrative tribunal of any cases pending before any court or other authority immediately before the establishment of such tribunal as would have been within the jurisdiction of such tribunal if the causes of action on which such suits or proceedings are based had arisen after such establishment;

(f) Repeal or amend any order made by the President under clause (3) of Article 371-D;

(g) contain such supplemental, incidental and consequential provisions (including provisions as to fees) as Parliament may deem necessary for the effective functioning of, and for the speedy disposal of cases by, and the enforcement of the orders of, such tribunals.

(3) The provisions of this Article shall have effect notwithstanding anything in any other provision of this Constitution or in any other law for the time being in force.

***323-B. Tribunal for other matters**- (1) The appropriate Legislature may, by law, provide for the adjudication or trial by tribunals of any disputes, complaints, or offences with respect to all or any of the matter specified in clause(2) with respect to which such Legislature has power to make laws.*

(2) The matter referred to in clause (1) are the following, namely,-

(a) Levy, assessment, collection and enforcement of any tax;

(b) Foreign exchange, import and export across customs frontiers;

(c) industrial and labour disputes;

(d) land reforms by way of acquisition by the State of any estate as defined in Article 31-A or of any rights therein or the extinguishment or modification of any such rights or by way of ceiling on agricultural land or in any other way;

(e) ceiling on urban property;

(f) Elections to either House of Parliament or the House or either House of the Legislature of a State, but excluding the matters referred to in Article 329 and Article 329-A;

(g) production, procurement, supply and distribution of food-stuffs (including edible oilseeds and oils) and such other goods as the President may, by public notification, declare to be essential goods for the purpose of this Article and control of prices of such goods;

[(h) rent, its regulation and control and tenancy issues including the right, title and interest of landlords and tenants;]

(i) offences against laws with respect to any of the matters specified in sub-clauses (a) to (h) and fees in respect of any of those matters;

(j) any matter incidental to any of the matters specified in sub-clauses (a) to (i);

(3) A law made under clause (1) may-

(a) provide for the establishment of a hierarchy of tribunals;

(b) specify the jurisdiction, powers (including the power to punish for contempt) and authority which may be exercised by each of the said tribunals;

(c) provide for the procedure (including provisions as to limitation and rules of evidence) to be followed by the said tribunals;

(d) exclude the jurisdiction of all courts, except the jurisdiction of the Supreme Court under Article 136, with respect to all or any of the matters falling within the jurisdiction of the said tribunals;

(e) provide for the transfer to each such tribunal of any cases pending before any court or any other authority immediately before the establishment of such tribunal as would have been within the jurisdiction of such tribunal if the causes of action on which such suits or proceedings are based had arisen after such establishment;

(f) contain such supplemental, incidental and consequential provisions (including provisions as to fees) as the appropriate Legislature may deem necessary for the effective functioning of and for the speedy disposal of cases by, and the enforcement of the orders of, such tribunals.

(4) The provisions of this Article shall have effect notwithstanding anything in any other provision of this Constitution or in any other law for the time being in force.

Explanation- *In this Article, "appropriate Legislature", in relation to any matter, means Parliament or, as the case may be, a State Legislature competent to make laws with respect to such matter in accordance with the provisions of Part XI.]*

12. After insertion of the above provision in the Constitution of India for establishment of Administrative Tribunals, the preamble of the Uttar Pradesh Public Services Tribunal Act, 1976 was also amended and the word 'Constitution of a Tribunal ' were inserted by U.P. Act No. 7 of 1992 came into force on 31.3.1993 and preamble of the aforesaid Act thereafter reads as under:

"An Act to provide for the constitution of a Tribunal to adjudicate disputes in respect of the matters relating to employment of all public servants of the State."

From the aforesaid facts, it becomes crystal clear that this Tribunal though constituted by a statute but after the insertion of the provisions for constitution of Administrative Tribunals in the Constitution of India, the Uttar Pradesh Public Services Tribunal Act was also amended and now it can very well be said that Service Tribunal has got the constitutional validity. The same Act has been adopted by the State of Uttarakhand after its creation.

13. In the backdrop of the aforesaid facts, it has to be looked into as to whether the vires can be challenged before the Tribunal. It is a established fact that the Tribunal act as a supplemental institution of the Honble High Court, therefore, authority to pass any order can also be scrutinized by the Tribunal also. The same question arose before

Division Bench of Allahabad High Court in Yaspal Singh Malik and others Vs. State of U.P., through the Secretary, Forest Department, U.P. and another, (1997(2) A.W.C., 809) and the Hon'ble High Court has laid down as follows:

14. *"The Tribunal has power to punish for contempt under Section 5A of the Act of 1976. Civil suit is also not maintainable under Section 6 of the Act of 1976. It is a cardinal principle of law under Section 5 of Civil Procedure Code and it is now settled by the Apex Court that the civil court is not to entertain any suit expressly or impliedly barred by statue or any other provision of law.*

Remedy in the nature of writs under Article 226 of the Constitution of India is discretionary and if there is alternative and efficacious remedy the High Court has to stay its hand and is not to assume the role of Tribunal by entertaining petition. The dockets in the High Courts are already full to the brim and if such type of litigation is encouraged perhaps there would be piling up of more litigation and in that event the genuine litigants who are waiting in so many matters for more than fifteen years would be left in the lurch . This would be travesty of justice and the High court should discourage it.

We are also unable to agree with the counsel for the petitioner that since the vires of the rule have been challenged and the Tribunal has no jurisdiction."

15. Thus the High Court of Allahabad is of the clear view that vires of any rule , regulation or order passed by the State can be reviewed by the Tribunal. The matter regarding the extent and limits of the jurisdiction of the Tribunal has also come before the Constitutional Bench Supreme Court of India consisting of 7 judges Supreme Court of India in the celebrated case of L. Chandra Kumar vs. Union of India & others, (1997 , Supreme Court Cases (L&S), 577). The Hon'ble Supreme Court has concluded as follows:

"In view of the reasoning adopted by us, we hold that Clause 2(d) of Article 323A and Clause 3(d) of Article 323B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court underArticles 226/227 and 32 of the Constitution, are

unconstitutional. Section 28 of the Act and the "exclusion of jurisdiction" clauses in all other legislations enacted under the aegis of Articles 323A and 323B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The Tribunals created under Article 323A and Article 323B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the concerned Tribunal falls. The Tribunals will, nevertheless, continue to act like Courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the concerned Tribunal. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated"

16. Thus, from the principles laid down by the Hon'ble Supreme Court as well as before the High Court of Allahabad, it becomes clear that the Tribunal acts as supplement to the Hon'ble High Court and it vested with powers for judicial scrutiny of the Govt. Order or Rule.It is also pertinent to mention that this Tribunal after the amendment in 1992, can be deemed to have been constituted under the Articles 323 of the Constitution of India.

17. Apart from the above mentioned priniciple laid down by the Honble Apex Court and the Honble Allahabad High Court, the same question has also arisen before this Tribunal in Claim Petition No. 126/T/2003, Smt. Sujata Vs. State of Uttaranchal & others, decided by the Division

Bench of this Tribunal on 31.10.2007. Tribunal in that petition held as follows:

> *". Thus, Hon'ble Supreme Court has very specifically held that the vires of statutory provisions can be scrutinized by the Tribunal subject to the scrutiny by Hon'ble High Court and Hon'ble Supreme Court. Hon'ble Supreme Court further held that Tribunal will also have powers to test the vires of subordinate legislation and rules. In view of the Hon'ble Supreme Court's pronouncement as stated above, we are of the view that the Tribunal is competent to test the vires of the subordinate legislation and rules. Thus, the doubt expressed by Ld. A.P.O. on the point of jurisdiction to test the vires of subordinate jurisdiction is against the pronouncement of Hon'ble Supreme Court*."

Thus, from the aforesaid view of the Tribunal itself, it becomes clear that the Tribunal is vested with sufficient power for scrutinizing the legality and validity of any Govt. Order or Rule.

It is also not out of place to mention that any public servant has a right to challenge any order before this Tribunal in case he feels aggrieved by it.No purpose will be solved if authority is not looked into by this Tribunal. The purpose of this Tribunal can only be fulfilled if it is vested with sufficient jurisdiction to go into the validity of the order also.

18. From the aforesaid facts, we are of the considered opinion that the Tribunal vests with sufficient power for scrutinizing the legality, validity and vires of any Govt. Order, Rule or Regulation. Therefore, the question is replied in affirmative.

(**D.K. KOTIA)** **(V.K.MAHESHWARI**)
VICE CHAIRMAN (A) VICE CHAIRMAN(J)

DATE: APRIL 30, 2014

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CONCLUSION:-

There are two judgments which have been authored by us; one judgment has been authored by the Chairman and the second judgment has been authored by Sri V.K.Maheshwari, Vice Chairman (J) for himself and on behalf of brother Hon'ble Sri D.K.Kotia, Vice Chairman(A). We have gone through the judgment of each other and in both the judgments the conclusion is common and we have unanimously held that the Tribunal has the power to quash the Rules, Regulations and Government orders of Uttarakhand regarding service conditions of a State Government employee, which are violative to the Constitution, Enactments, Rules and Regulations. We also conclude that the decision taken by the Division Bench in 126/T/2003 Sujata Vs. State & others is correct and we approve the view taken by the Division Bench.

Thus, reply to the question referred to the Full Bench is decided in affirmative. Let the matter be sent to the Division Bench for disposal of in accordance with law. The parties shall appear before the Division Bench on 21.5.2014.

D.K.KOTIA	**V.K.MAHESHWARI**	**JUSTICE J.C.S.RAWAT**
VICE CHAIRMAN(A)	VICE CHAIRMAN (J)	CHAIRMAN

Date: APRIL 30, 2014
DEHRADUN.

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