

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

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

----- Chairman

Hon'ble Mr. D.K.Kotia

-----Vice Chairman (A)

**CLAIM PETITION NO. 69/2012**

Dr. Bhoop Narain Sachan aged about 71 years S/o Shri Jamuna Prasad Sachan, Retired Medical Officer, Tehri Garhwal (Uttarakhand), L.I.G. 195, Ratan Lal Nagar, Dehradun.

.....Petitioner

**VERSUS**

1. State of Uttarakhand through its Secretary, Department of Health, Medical and Family Welfare, Chikitsa Anubhag-2, Subhash Road, Dehradun.
2. State of Uttar Pradesh through its Principal Secretary, Chikitsa Anubhag 2, Department of Health, Medical and Family Planning, Uttar Pradesh, Lucknow.
3. Principal Secretary to the Govt. of Uttar Pradesh, Chikitsa-2, Department of Health, Medical and Family Welfare, Lucknow.

.....Respondents

Present: Sri J.P.Kansal, Ld. Counsel  
for the petitioner.  
Sri Umesh Dhaundiyal, Ld. A P.O.  
for the respondents.

**JUDGMENT**

**DATED: SEPTEMBER 30, 2014.**

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

1. The petitioner has filed this claim petition under Section 4 of the U.P. Public Services Tribunal Act, 1976 for the following relief:-  
"Therefore, the petitioner most respectfully and humbly prays this Hon'ble Tribunal that;

- (a) the impugned order Annexure-A1 to this claim petition be kindly held and declared arbitrary, wrong, against fundamental, constitutional and civil rights of the petitioner, illegal, against rules, orders natural justice and be kindly quashed and set aside;
  - (b) a declaration be made that the petitioner is entitled to have notional promotion to the pay scales of Dy. Chief Medical Officer and Joint Director w.e.f. 16.03.1979 and 01.01.1986 respectively under NEXT BELOW RULE or in the alternative on completion of every 12 years service i.e. 29.12.1982 and 29.12.1994 respectively with all consequential benefits of pay of the promoted posts, pension and other retiral benefits;
  - (c) the respondents be kindly ordered to pay to the petitioner arrears of his salary based on the promoted scales of pay, retiral benefits, revised Rate of pension etc. together with interest thereon @ 12% per annum from the date of accrual to the date of actual payment to the petitioner;
  - (d) any other relief in addition to or in modification of above, as the Hon'ble Tribunal deems fit and proper be granted to the petitioner against the respondents; and
  - (e) Rs.15,000/- as costs of this claim petition be awarded to the petitioner against the respondents."
2. It is admitted case of the parties that the petitioner was appointed to the post of Medical Officer in the year 1970 and one Dr. Raghav Chandra Yadav was also appointed as Medical Officer in the year 1971 on ad-hoc basis. The petitioner has been discharging his duties since then. The State Government in consultation of the Public Service Commission accorded approval to regularize 422 ad-hoc Doctors including the petitioner and the Dr. R.C.Yadav and they were made regular on 18.2.1975 by an order issued by the State of U.P., (Annexure-A-2 to the C.P.) The petitioner tendered his resignation w.e.f. 1.3.1973 but it was not accepted. The petitioner was not paid the salary for the said period from 1.3.1973 to 23.4.1975. The petitioner filed a claim petition before the U.P. Public Services Tribunal for the recovery of salary and allowances from the State of U.P. The said petition was allowed in the year 1993 and the State of U.P. was directed to make

payment of the dues of the petitioner for the period 24.9.1973 to 31.3.1975 together with interest. It was further directed that the petitioner would also get all the consequential benefits from 31.1.1981 onwards treating him to be in continuous service as if no resignation was ever tendered by him. Thereafter the petitioner was allowed to join and posted in Pithoragarh Hospital and thereafter he was transferred to Tehri Garhwal. In the year 1983, a seniority list was published; the persons who had been selected by the Public Service Commission in the year 1972, were placed senior to all the temporary appointees, even if they had been appointed prior to 1972 and the persons who were appointed prior to the direct recruits, were placed below the selected candidates. The matter was challenged before the Court. Ultimately the Hon'ble Supreme Court in Dr. Chandra Prakash & others Vs. State of U.P. allowed the claim of the appointees who were placed below the regularly appointed candidates by the Public Service Commission. The State Government was directed to fix the seniority of all the Doctors in P.M.H.S. Cadre from the date of the orders of their initial appointments within a period of six months from the date of the order of the Hon'ble Apex Court and they were also given all the consequential benefits including promotion and seniority. The Doctors, who were selected in the year 1972, 1977-78 and 1978-79 by Public Service Commission and were not issued any order of appointment and joined the services on the direction of the Hon'ble Court, will be treated as having been appointed on the date they actually joined the services and their seniority will be counted from that date. Thus, the petitioner also got the benefit of being senior to all the persons who were appointed by the Public Service Commission. The petitioner made several representations to the respondents for fixing his seniority and grant of promotion with promotional benefits which had been allowed to the juniors, but no heed was paid to his request. When the department did not pay any heed to the request of the petitioner, he preferred a claim petition before U.P. Public Services Tribunal bearing No. 1307/1995 for his promotion to the post of Deputy Medical Officer and

Chief Medical Officer. It is also necessary to mention here that the State of U.P. was reorganized on 09.11.2000 and the petitioner was holding and discharging his duties as a Medical Officer in Tehri Garhwal, which is now a part of State of Uttarakhand. This claim petition was decided by this Tribunal after being received from the U.P. Public Services Tribunal. The Tribunal directed to consider the claim of the petitioner on the basis of the representation and made his grievances in the claim petition by a speaking order within three months from the date of the order. The State of U.P. decided the representation against the petitioner. The petitioner had the grievance that his juniors had been given promotion and all the benefits in the State of U.P. but he has been deprived of the same benefits.

3. The petitioner has alleged that Dr. R.C.Yadav, at the time of bifurcation, who was junior to him and was posted Medical Officer in Kanpur Mahapalika and retired from U.P. on 31.8.2000. His seniority was re-determined according to the judgment and order of Hon'ble Apex Court and he was given promotions. Petitioner feeling aggrieved with the said order, preferred this claim petition on being deprived of the promotion.
4. The State of U.P. did not contest the claim petition and State of Uttarakhand filed its reply. According to the State of Uttarakhand, it is alleged in the W.S. that the State of Uttarakhand was carved out on 9.11.2000 and he remained posted in Tehri Garhwal till 31.12.2000 and thus, he served for total period of one month and twenty days under Section 73 of the Reorganization Act. The State Government has already paid all the benefits, which had to be paid by the State of Uttarakhand and the petitioner does not have any grievance against the State of Uttarakhand. It is further alleged that the petitioner has even not adopted the State of Uttarakhand in the final allocation, he opted the State of U.P. for his allocation and the Central Government could not issue the allocation order till his retirement.
5. It is admitted that the petitioner has no grievance against the State of Uttarakhand . He already had the grievance against the State of U.P.

that the State of U.P. had not given the benefits of seniority and other benefits which have been given to his juniors.

6. We have heard learned counsel for the parties and perused the record.
7. Ld. Counsel for the petitioner contended that the petitioner was appointed in the year 1970 and the State of U.P. has given the promotional benefits to the officers who were junior to him. It was further contended that the petitioner tendered his resignation, which was not accepted and the petitioner was not paid salary w.e.f. 1.3.1973 to 23.4.1975. Hence, he preferred a claim petition before the U.P. Public Services Tribunal, which was allowed by the Tribunal and directed the State of U.P. to pay the salary and also to give him all the consequential benefits treating him to be in continuous service. It was further contended that the Hon'ble Supreme Court in Chandra Prakash case has given the seniority to the petitioner from the date of initial appointment i.e. in the year 1970; further, Dr. R.C.Yadav, who was appointed in the year 1971, had been granted all the said promotional benefits but the petitioner had been denied.
8. Ld. A.P.O. refuted the contention and contended that the order of the State of U.P., Annexure-1, clearly reveals that according to his service book, the petitioner was shown absconder w.e.f. 25.12.1970 to 17.12.1994 and the period of resignation which is relevant, is w.e.f. 23.04.1975 to 14.12.1994 reveals that the petitioner had not served regularly in the department. He further pointed out that paragraph 4(8) of the claim petition reveals that the petitioner has stated that he did not receive the salary w.e.f. 1.3.1973 to 23.4.1995 because of tendering of the resignation, which was not accepted during the said period by the State of U.P. The petitioner preferred a claim petition before the U.P. Public Services Tribunal, in which the Tribunal had directed to pay the petitioner for the period from 24.9.1973 to 31.3.1975. Ld. A.P.O. further contended that the claim petition filed before this Tribunal and the facts mentioned in the claim petition filed before the U.P. Public Services Tribunal, Lucknow are inconsistent and it appears petitioner has tried to conceal the real facts before the Court and the petition is

liable to be dismissed on this ground alone. Ld. A.P.O. further pointed out that the judgment of the Hon'ble Apex court was rendered on 4.12.2002 by which he is claiming his seniority over his colleague Dr. R.C.Yadav. Ld. A.P.O. further pointed out that the petitioner had the grievance with Dr. R.C.Yadav since his appointment and the petitioner is seeking his promotion at the post of Deputy Chief Medical Officer and Joint Director w.e.f. 1979 and 1986 respectively; it is also clear from the perusal of the record that the petitioner has not been promoted even as Deputy C.M.O. since long and he had been representing the matter to the Government since 1995 and his claim is stale and petitioner cannot be granted the said relief. He relied upon the judgment of the State of Uttaranchal and another Vs. Shiv Charan Singh Bhandari reported in 2013 (6) SLR 629. Ld. A.P.O. further contended that this Court has no jurisdiction to entertain this claim petition because the petitioner is seeking the relief of promotion from the State of U.P. and no part cause of action has arisen in the territory of State of Uttarakhand; merely because the petitioner had been appointed for a one and half month in the State of Uttarakhand, the State of Uttarakhand has granted him all the benefits which were due to him according to rules and he has no grievance against the State of Uttarakhand. Hence, this Tribunal cannot issue directions to the State of U.P. to grant him promotion and other benefits vis-à-vis other officer, who had been posted in the State of U.P. . Dr. R.C. Yadav has not been arrayed as party in this claim petition. Thus, the exclusive cause of action has arisen before the State of U.P., hence the judgment of the Hon'ble Apex Court rendered in **Umakant Joshi 2012(1) UD 583** squarely covers the controversy. He further relied upon the judgment of Hon'ble Uttarakhand High Court rendered in writ petition No. **(S/B) No. 71/2013 State of U.P. & another Vs. Vinod Kumar Bahuguna**.

9. Ld. Counsel for the petitioner refuted the contention of the Ld. A.P.O. and contended that after the enforcement of U.P. Reorganization Act, 2000, the petitioner was directed to serve under the State Government of the Uttarakhand and in view of Section 73 & 75 of the Act, the

petitioner would be deemed an employee of the State of Uttarakhand after the date of reorganization. He, being a government servant of State of Uttarakhand and part cause of action arose to him in Uttarakhand by not granting him the seniority, he is entitled to prefer a claim petition before this Tribunal.

10. At the outset we would like to prefer to decide the question of territorial jurisdiction raised by the Ld. A.P.O.

11. Where the question of territorial jurisdiction is concerned, it is settled position of law that cause of action of a matter is a decisive question of the territorial jurisdiction of the Court. The cause of action implies a right to sue. The material facts which are imperative on the suitor to allege and prove constitute a cause of action. Cause of action is not defined. It has, however, been judicially interpreted *inter alia* to mean that every fact which would be necessary for the plaintiff to prove, if traversed, nor supports his right to the judgment of the Court. Negatively put, it would mean that everything which if not proved, gives the defendant a minimum right to judgment, would be part of cause of action. It is important beyond any doubt for every claim there has to be a cause of action, if not, the complaint or the pleadings in the petition either before the High Court or before the Tribunal as the case may be, shall be rejected summarily. Clause-2 of Article-226 of the Constitution of India reads as under:-

*[(2) The power conferred by clause(1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.]*

*Section 20 (C) of C.P.C. reads as under:-*

***Other suits to be instituted where defendants reside or cause of action arises-*** Subject to the limitation aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction-

(a) .....

(b) .....

(c) *the cause of action, wholly or in part, arises.*

<sup>1</sup>[\*\*\*]

Although, in view of Section 141 of C.P.C the provisions of CPC are not applicable to the writ petitions or petition before the Tribunal. Phraseology used in Section 20 (C) of the CPC and Clause 2 of Article 226 being in paramateria, the decisions of the Courts rendered on interpretation of Section 20 (C) shall apply to the writ proceedings also. It is also a settled position of law that the entire bundle of facts pleadings in the petition, need not constitute a cause of action as what is necessary to be proved before, the petitioner can obtain an order or decree is the material facts. The expression material fact is also known as integral facts. Sometimes the integral facts may have a single cause of action and some times it had a part cause of action in the territory of one Court and part cause of action may be in the territory of the other Court and there are also certain integral facts in which there is a continuous cause of action till the petition is filed before the Court. The part cause of action of the integral facts may be alike of a continuing cause of action. What would be the territorial jurisdiction of a particular case or a petition before the Court, Tribunal and the High Court have to decide the cause of action. It is the tritie of law that if there is single cause of action and the petitioner has pleaded a bundle of facts which did not disclose the cause of action or integral facts for the decision of the claim petition, the said Court where the single cause of action has arisen, would have the territorial jurisdiction over the matter. If the integral facts constitute a part cause of action in one of the territory of the Court, Tribunal or High Court, it should be filed in any of the Courts where the part cause of action has arisen. If the cause of action arises in part in different Courts, it would be open to the litigant who is *Dominus Litis* to have its *forum conveniens*. The litigant has a right to go to the Court where the part of cause of action has arisen. It is incorrect to say that the litigant chooses any particular Court. The choice of the litigant is by reason of the jurisdiction of the



Court being attracted by part cause of action arising with a jurisdiction of the Court. The continuous cause of action is alike a part cause of action theory and it is also relevant for the decision of the limitation as well as for filing the petition.

As discussed above, now I would like to visit the various pronouncements of the Hon'ble Apex Court in this background. In the single cause of action theory, the **Hon'ble Apex Court in the Aligarh Muslim University Enterprises (P) Vs. V.Vinay Engineering Enterprises (P) 1994 (4) SCC 710, in para 2** has held as under:-

*“2. We are surprised, not a little, that the High Court of Calcutta should have exercised jurisdiction in a case where it had absolutely no jurisdiction. The contracts in question were executed at Aligarh, the construction work was to be carried out at Aligarh,, even the contracts provided that in the event of dispute the Aligarh Court alone will have jurisdiction. The arbitrator was from Aligarh and was to function there. Merely because the respondent was a Calcutta-based firm, the High Court of Calcutta seems to have exercised jurisdiction where it had none by adopting a queer line of reasoning. We are constrained to say that this is a case of abuse of Jurisdiction and we feel that the respondent deliberately moved the Calcutta High Court ignoring the fact that no part of the cause of action had arisen within the jurisdiction of that Court. It clearly shows that the litigation filed in the Calcutta High Court was thoroughly unsustainable”*

Thus in that case the total work was executed in Aligarh and the Arbitrator was also of the Aligarh who discharged his functions in Aligarh in arbitration proceedings merely because the firm who contacted to construct the work was of Calcutta based firm. There was nothing to do with the work at Calcutta. The High Court of the Calcutta entertained the writ petition ignoring the facts no part cause of action arose within the jurisdiction of the Calcutta High Court. The petition had error of lack of jurisdiction so it was not sustainable.

In **Union of India Vs. Adani Export Ltd 2002(1) SCC 567**, the Hon'ble Apex Court has held that in order to confer jurisdiction of High Court or the Tribunal to entertain a petition, it must disclose that the integral facts pleaded in support of it, constitute a cause so as to empower the Court to decide the dispute in the entire or a part of it arose within its jurisdiction.

In **National Textile Corporation Ltd.Vs. Haribox Swalram<sup>6</sup> (2004)9 SCC 786** Hon'ble Apex Court in para 12.1 has held as under:-

*"12.1. As discussed earlier, the mere fact that the writ petitioner carries on business at Calcutta or that the reply to the correspondence made by it was received at Calcutta is not an integral part of the cause of action and, therefore, the Calcutta High Court had no jurisdiction to entertain the writ petition and the view to the contrary taken by the Division bench cannot be sustained. In view of the above finding, the writ petition is liable to be dismissed."*

Thus, it is apparent from the above decision of the Hon'ble Apex Court that the petition must have nexus on the basis whereof a prayer can be granted.

12. In the case of **Kusum Ingots & Alloys Ltd. Vs. Union of India 2004(6) SCC 254** (before Hon'ble Justice V.N.Khare, C.J. and Hon'ble Justice S.B.Sinha and Hon'ble Justice S.H.Kapadia, JJ ) the appellant was a company registered under the Indian Companies Act. Its registered office was at Mumbai. It obtained a loan from the Bhopal Branch of State Bank of India. Respondent no. 2 issued a notice for repayment of the said loan from Bhopal purported to be in terms of the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Questioning the vires of the said act, a writ petition was filed before the Delhi High Court by the appellant which was dismissed on the ground of lack of territorial jurisdiction. The only submission made on behalf of the appellant before the High Court as also before the Supreme Court was that the

constitutionality of a parliamentary Act was in question, the High Court of Delhi had the requisite jurisdiction to entertain the writ petition. The question that arose for consideration before the Supreme Court was whether the seat of Parliament or the legislature of a State would be a relevant factor for determining the territorial jurisdiction of a High Court to entertain a writ petition under Article 226 of the Constitution.

A parliamentary legislation when it receives the assent of the President of India and is published in the Official Gazette, unless specifically excluded, will apply to the entire territory of India. If passing of a legislation gives rise to a cause of action, a writ petition questioning the constitutionality thereof can be filed in any High Court of the country. It is not so done because a cause of action will arise only when the provisions of the Act or some of them which were implemented shall give rise to civil or evil consequences to the petitioner. A writ court, it is well settled, would not determine a constitutional question in a vacuum. Therefore, a writ petition questioning the constitutionality of a parliamentary Act shall not be maintainable in the High Court of Delhi only because the seat of the Union of India is in Delhi.”

13. In the case of **Nasiruddin Vs. State of U.P. 1975 (2) SCC 761** the decision of the Hon'ble Supreme Court in the above case is the authority on the proposition of part cause of action theory for the territorial jurisdiction. In the Nasiruddin case which has been decided by a Constitutional bench of five Hon'ble Judges of Supreme Court (Ray, A.N. (CJ) Mathew, Kuttibil Kurien Krishnaiyer, V.R. Fazalali, Syed Murtaza JJ) United Province High Courts (Amalgamation) Order 1948 provides that the chief Court of Avadh was amalgamated in the existing High Court of Allahabad and it was provided in the amalgamation order, the new High Court shall have the jurisdiction of any area outside the united provinces. All such original appellate and other jurisdiction as under the law in force immediately before the appointed day, is exercisable in respect of any areas outside the

United Provinces by either of the existing High Court. The new High Court shall have in respect of any area outside the United Provinces all such original appellate and other jurisdictional as under the law in force immediately before the appointed day is exercisable in respect of that area in the High Court in Allahabad. According to the Amalgamation Order 1948 the judges of the new High Court shall sit at Allahabad or at any such other place in United Province as Chief Justice may, with the prior approval of the Governor of the United Province appointed and there will be a strength of judges not less than two in number as nominated by the Chief Justice by the new High Court for the said seat and they will sit in Lucknow after the concurrence of the Governor of the Avadh in order to exercise in respect of cases arising in such areas and the Chief Justice was empowered to confer the jurisdiction of the cases in Lucknow also. Clause 14 proviso (2) of the amalgamation order further provides that the Chief Justice in its discretion, order 'any case' or 'class of case arising' in the said area, shall be heard at Allahabad. A dispute arose when a writ petition was filed by the petitioner before the Lucknow High Court for quashing an order passed by the State Appellate Tribunal, Lucknow and the said writ petition belongs to Ruhelkhand Division, which was within exclusive jurisdiction of the seat of Allahabad; the point of jurisdiction was raised that the Lucknow Bench has no jurisdiction to entertain and decide the said petition and a full court of the Allahabad High Court held that because the matter arose from the Ruhelkhand area, the specific jurisdiction lies with the seat of Allahabad High Court so the seat of Lucknow has no jurisdiction to entertain the said petition. So the appeals were preferred before the Hon'ble Apex Court. The Hon'ble Apex Court has held that amalgamation order describes Allahabad High Court as the new High Court. The two High Courts have amalgamated in the new High court and the seat of the new High Court is at Allahabad or such place as may be determined (Lucknow), there is no permanence attached to the Allahabad. The Lucknow was the seat of the Government and

Allahabad had its own historical facts that the High Court was also there before the amalgamation order. It was further held, the Chief Justice cannot reduce the area of Avadh by taking away the jurisdiction from Avadh to Allahabad. Once the power is exercised in Clause-14 about the seat of the Avadh, the words used "as the Chief Justice may direct", means that exercise the power to direct what areas in Avadh area are for exercise of jurisdiction by judges at Lucknow Bench. Once that power is exercised, it is exhausted. In pith and substance and the spirit of the order, the Lucknow became the seat in respect of the cases arising in area in Avadh. While deciding the case of **Nasiruddin, the Hon'ble Apex Court in para 37** has held as under:-

*"The meaning of the expression "in respect of cases arising in such areas in oudh" in the first proviso to paragraph 14 of the order was answered by the High Court that with regard to applications under Article 226 the same will be "a case arising within the areas in oudh, only if the right of the petitioner in such an application arose first at a place within an area in oudh. The implication according to the High Court is that if the right of the petitioner arose first at any place outside any area in oudh and if the subsequent orders either in the revisional or appellate stage were passed by an authority within an area in oudh then in such cases the Lucknow Bench would not have any jurisdiction. The factor which weighed heavily with the High Court is that in most cases where an appeal or revision would lie to the State Government, the impugned order would be made at Lucknow and on that view practically all writ petitions would arise at Lucknow.*

*The conclusion as well as the reasoning of the High Court is incorrect. It is unsound because the expression "cause of action" in an application under Article 226 would be as the expression is understood and if the cause of action arose because of the appellate order or the revisional order which came to be passed at Lucknow then Lucknow would have jurisdiction though the original order was passed at a place outside the areas in oudh. It may be that the original order was in favour of the person applying for a*

*writ. In such case an adverse appellate order might be the cause of action. The expression "cause of action is well-known. If the cause of action arises wholly or in part at a place within the specified oudh areas, the Lucknow Bench will have jurisdiction. If the cause of action arises wholly within the specified oudh areas, it is indisputable that the Lucknow Bench would have exclusive jurisdiction in such a matter. If the cause of action arises in part within the specified areas in oudh it would be open to the litigant who is the dominus litis to have his forum conveniens. The litigant has the right to go to a Court where part of his cause of action arises. In such cases, it is incorrect to say that the litigant chooses any particular Court. The choice is by reason of the 519 jurisdiction of the Court being attracted by part of cause of action arising within the jurisdiction of the Court".*

14. It is apparent from the perusal of the above judgment that even if a person is posted anywhere or a policy decision regarding any district is taken at Lucknow at the principal seat of the Government, the Hon'ble Apex Court has held the Allahabad High Court, in case the district falls within territorial jurisdiction of the new High Court and the seat of Lucknow of the Allahabad High Court would have the jurisdiction to entertain the petition. Thereafter, the matter came up again before the Hon'ble Apex Court in **U.P. Rashtriya Chini Mill Adhikari Parishad Vs. State of U.P. 1995 (4) SCC 738**. Hon'ble Apex Court following the decision of Nasuriddin's case has held as follows:-

*"The conclusion as well as the reasoning of the High Court is incorrect. It is unsound because the expression "cause of action" in an application under Article 226 would be as the expression is understood and if the cause of action arose because of the appellate order or the revisional order which came to be passed at Lucknow than Lucknow would have jurisdiction though the original order was passed at a place outside the areas in Oudh. It may be that the original order was in favour of the person applying for a writ. In such case an adverse appellate order might be the cause of action. The expression "cause of action" is well-known. If the cause of action arises wholly or in part at a*

*place within the specified Oudh areas, the Lucknow Bench will have jurisdiction. If the cause of action arises wholly within the specified Oudh areas, it is indisputable that the Lucknow Bench would have exclusive jurisdiction in such a matter. If the cause of action arises in part within the specified areas in part within the specified areas in Oudh it would be open to the litigant who is the dominus litis to have his forum conveniens. The litigant has the right to go to a Court where part of his cause of action arises. In such cases, it is incorrect to say that the litigant chooses any particular Court. The choice is by reason of the jurisdiction of the Court being attracted by part of cause of action arising within the jurisdiction of the Court. Similarly, if the cause of action can be said to have arisen partly within specified areas in Oudh and partly outside the specified Oudh areas, the litigant will have the choice to institute proceedings either at Allahabad or Lucknow. The Court will find out in each case whether the jurisdiction of the Court is rightly attracted by the alleged cause of action." While reaching the above conclusion this Court kept in view the plain language of clause 14 of the Amalgamation Order. No provision of the Code of Civil Procedure was noticed, referred to or taken into consideration directly or indirectly. The territorial jurisdiction of a Court and the "cause of action" are interlinked. To decide the question of territorial jurisdiction it is necessary to find out the place where the "cause of action" arose. We, with respect, reiterate that the law laid down by a Four-Judge Bench of this Court in Nasiruddin's case holds good even today despite the incorporation of an Explanation to Section 141 to the Code of Civil Procedure.*

*There is no dispute that the Amalgamation Order is a special law which must prevail over the general law. This Court interpreted the relevant expression in Clause 14 and did not take any support from any general law. The discussion by the Division Bench of the High Court by evolving the so called theory of "exercise of jurisdiction revolving on the place of sitting" as compared to the theory of "cause of action" is wholly misconceived and has no legal basis whatsoever. This part of the High Court judgment is mentioned to be rejected'*

15. Thereafter the matter came up for consideration in **the Uttarakhand Forest Rangers Association (Direct Recruitment) and others Vs. State of U.P. and others 2006(10)SCC 346** before the Hon'ble Apex Court. The Hon'ble Apex Court in Para 44 of its decision has held as under:-

*“44. The second impugned order dated 12.4.2004 is further vitiated for the following reasons:*

*(d) Forum.- The seniority list under challenge in the second writ petition was the seniority list of the Uttarakhand State Government of 2002 and such challenge could not have been made before the Lucknow Bench of the Allahabad High Court.*

*(e) Parties.- None of the direct recruits who would be directly affected by the order were made parties to the writ petition. Therefore the High Court did not have the benefit of competing arguments in the matter. Even though, the Principal Secretary of the State of Uttarakhand was made a party, the said party was never served. The only respondent which was heard was the State of U.P. which had no stake in the matter at all since all the writ petitioners before the Lucknow Bench of the Allahabad High Court were employees of the State of Uttarakhand on the relevant date. It is, therefore, evident that the relevant material was not placed before the Allahabad High Court for the purpose of deciding the writ petition. Accordingly, the permission had to be taken from this Court by the present appellants to prefer the SLPs.”*

Thereafter in **State of Uttarakhand and another Vs. Umakant Joshi 2012(1) UD 583 (Division Bench of Hon'ble G.S. Singhvi and Hon'ble Sudhansu Jyoti Mukhopadhaya, J.J.)**, in which the relief claimed by the petitioner was found within the jurisdiction of the Allahabad High Court, Hon'ble Apex Court has laid down that the Allahabad High Court has got the jurisdiction to entertain the writ petition as filed by the petitioner. The Respondent No.1 (hereinafter called petitioner) filed a writ petition before the Uttarakhand High Court for issuance of mandamus to the State Government of U.P. as well as to the State Government of Uttarakhand to promote him w.e.f. 16.11.1989 i.e. the



date the persons junior to him were promoted to Class-I post. The petitioner was awarded adverse entries in the annual confidential report for the year 1987-88, 1988-89, 1989-90 and 1991-92. Apart from it, departmental enquiry was also initiated against the petitioner between July, 1996 and March 1997. Thus, enquiries were culminated in issuance of order dated 23.1.1999 whereby the punishment of reduction to the minimum of the pay scale was imposed on the petitioner. As a sequel to this, an adverse entry was made in the A.C.R. of the petitioner for the year 1995-96. The petitioner made a representation on 14.1.2000 to the State of U.P. for consideration/review of the order of punishment. He also filed writ petition in the Allahabad High Court for quashing the order of punishment. The State of Uttaranchal (now Uttarakhand) and the High Court of Uttaranchal (now Uttarakhand) were carved out on 9.11.2000. The said writ petition was transferred by the Allahabad High Court to the Uttarakhand High Court and the said writ petition was disposed of by relegating the petitioner's petition to the Uttarakhand Public Services Tribunal. During the pendency of the petition before the Tribunal, the Govt. of Uttarakhand considered the representation of the petitioner and punishment order was withdrawn vide order dated 11.8.2005 and expunged the adverse entry recorded in the A.C.R. of the petitioner for the year 1995-96. The Tribunal taking cognizance of the said fact, decided the petition as infructuous. Thereafter, the petitioner again filed a writ petition before the Hon'ble High Court of Uttarakhand claiming in the petition that the petitioner may be given the benefits of the time scale and selection grade respectively w.e.f. the date of completion of 8 years and 14 years of service and notional promotion to Class-I post from 1989. He also placed reliance of his claim upon the orders passed in favour of Sri R.K.Khare who was promoted to Class-I post w.e.f. 16.11.1989. He also relied upon the order dated 22.1.2001 passed by the Government of State of U.P. and Uttarakhand and he also claimed the seniority w.e.f. 16.11.1989. It is apparent from the perusal of the record that the petitioner was bypassed or made junior,

promoting the other juniors to a higher scale due to the adverse entries as well as punishment awarded by the State of U.P. The State of U.P. was never made a party to the writ petition and no officer, who was aggrieved by the said relief, was made party to the writ petition. He independently sought the relief of Mandamus to fix his seniority w.e.f. 16.11.1989 and the seniority of selection grade as well as other benefits w.e.f. 1989. One of the appellants before the Hon'ble Supreme court was allotted to the new State of Uttarakhand and the other appellant was appointed in U.P. and he opted the Hill Cadre in 1992. The main contention of the petitioner before the Hon'ble Supreme Court was that the Hon'ble High Court of Uttarakhand which came in existence on 9.11.2000, did not have the jurisdiction to entertain the writ petition filed by the petitioner and to issue a mandamus to the State Government to promote him to Class-I post w.e.f. 16.11.1989, more so because the issue is raised and the writ petition involved examination of legality of the decision taken by the State of U.P. to promote Sri R.K. Khare w.e.f. 16.11.1989 and other officers who were promoted to Class-I post vide order dated 22.1.2001 with retrospective effect. The State of Uttarakhand also raised a contention before the Hon'ble Apex Court that the High Court was not competent to issue direction of promotion of the petitioner w.e.f. a date prior to the formation of new State and that too without hearing the State of U.P. that is why the High Court did not examine the issue of jurisdiction to entertain the prayer made by the petitioner. In this regard the total cause of action arose before the State of U.P. and no part of cause of action arose in the State of Uttarakhand. In view of the above facts, the Hon'ble Apex Court held that the entire petition was a misconceived petition and as such the High Court of Uttarakhand has no jurisdiction to entertain the petition.

16. As we have discussed the different judgments of the Hon'ble Apex Court given on the subject matter; from the perusal of the above, it is revealed that the territorial jurisdiction had three facets is to be determined with reference to the facts of each case taking into

consideration the substance of the matter rather than the form of action. Perusal of the above judgment divides the territorial jurisdiction of a Court on two categories, namely, the pecuniary jurisdiction and the territorial jurisdiction. In the case of territorial jurisdiction, the cause of action exclusively arises before a High Court or the Tribunal who has the jurisdiction to decide the case exclusively. If part cause of action has arisen under the territorial jurisdiction of one High Court or Tribunal and part cause of action has arisen in the territorial jurisdiction of other High Court or the other Tribunal, both the High Court and the Tribunal had the jurisdiction to entertain the petition and to decide it in accordance with law in view of the Article 226(2) of the Constitution of India and Section 20 of the Civil Procedure Code. This principle has also been laid down in explicit terms in the judgment rendered by the Constitutional Bench of Hon'ble Apex Court in Nasiruddin's case (supra).

17. The third category of the cases may be, where the total cause of action falls within one State and under the territory of one High Court or Tribunal and due to reorganization of the State, if the Government servant only serves in the successor State and he has exclusively some grievances with the erstwhile undivided State. The petitioner has an option to file the writ petition or the claim petition before the Hon'ble High Court or the Tribunal, who had the jurisdiction at the time of the accrual of the cause of action. Merely he was posted in the successor State, he cannot claim to issue direction to the erstwhile undivided State to decide his claim by Court of the successor State. If part cause of action has arisen in both the States, then the petitioner has the right to opt his forum of territorial jurisdiction. This principle has been laid down in the case of **Umakant Joshi** and in the case of **State of U.P. and another Vs. Dr. Vinod Kumar Bahuguna (S/B) NO.71/2013**.

18. Now in the light of the above principle of law laid down by the Court, we will analyze the facts of the present case. The petitioner is seeking his notional promotion of Deputy Chief Medical Officer and Joint Director w.e.f. 16.3.1979 to 01.01.1986 respectively and in alternative

he is seeking pension and retiral benefits on completion of every 12 years' service i.e. on 29.12.1982 and 29.12.1994 respectively and he is also claiming his arrears of salary which have not been paid to the petitioner by the State of U.P. It is also clear from the perusal of the relief claimed that no relief has been claimed against the State of Uttarakhand. It is clear that all and the relief can be granted by the U.P. Public Services Tribunal, Lucknow and not by this Tribunal. Moreover, it is also alleged in the written statement that the State of Uttarakhand has paid all his dues, which were due against the petitioner and there is nothing to be paid by the Respondent No.1.

19. In the light of the above, it is clear that the total cause of action has arisen in the State of U.P. and in view of the judgment of Umakant Joshi (supra), the case is cognizable by the U.P. Public Services Tribunal, Lucknow and whereas no part cause of action has arisen in the territory of State of Uttarakhand, in view of the judgment of Nasiruddin's case (supra) this Court cannot issue any direction beyond its territorial jurisdiction. The Hon'ble High Court of Uttarakhand in the case of State of U.P. and another Vs. Dr. Vinod Kumar Bahuguna (supra) has held as under:-

*"The State of Uttar Pradesh as well as the State of Uttarakhand were made parties to the claim petition. The Tribunal held that the State of U.P. is required to decide the pending matters regarding grant of voluntary retirement and consequential benefits, including sanction of leave to her. We are of the view that the Tribunal at Uttarakhand had no power or jurisdiction to issue orders as have been issued by it by the impugned order dated 17<sup>th</sup> February, 2009 passed on Claim Petition No. 13 of 2002 against the State of Uttar Pradesh. We, accordingly, allow the writ petition and set aside the order of the Public Services Tribunal, Uttarakhand impugned in the writ petition with liberty to Mr. Vinod Kumar Bahuguna, the husband of Smt. Pushpa Bahuguna, to approach the Tribunal at Lucknow or the Allahabad High Court as he may be advised pertaining to settlement of all claims of his wife, namely, Dr. Smt. Pushpa Bahuguna, who is since deceased."*

In view of the above discussion the claim petition is liable to be failed. The petitioner would be at liberty to file the claim petition before the U.P. Public Services Tribunal, Lucknow.

**ORDER**

The claim petition is hereby dismissed. The petitioner would be at liberty to file the claim petition before the U.P. Public Services Tribunal, Lucknow.

Sd/

**(D.K.KOTIA)**  
VICE CHAIRMAN (A)

Sd/

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

DATED: SEPTEMBER 30, 2014  
DEHRADUN

VM