

**UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT DEHRADUN**

Present: Sri V.K. Maheshwari

----- Vice Chairman (J)

&

Sri D.K. Kotia

----- Vice Chairman (A)

CLAIM PETITION NO. 12/2009

1. Sri Chand Singh Negi, S/o Shri G.S. Negi, presently posted as S.I. Teacher, 40 BN, P.A.C., Haridwar,
2. Hari Singh Negi, S/o Sri Shivcharan, presently posted as Sub-Inspector posted at Police Station GRP, District- Dehradun,
3. Lalita Prasad, S/o Shri Chandi Prasad, presently posted as Sub-Inspector at Police Station Cant., Dehradun,
4. Rajender Singh Dandiwal, S/o Late Sri Jitu Ram Singh, Presently posted as Sub-Inspector at Police Station Jwalapur, Haridwar,
5. Chandra Mohan Singh Rawat, S/o Sri Shoya Singh, presently posted as S.I. Teacher, 40BN PAC, Haridwar,
6. Surendra Singh Chaudhary, S/o Sri Sain Singh, presently posted as Sub-Inspector at Police Station, Tehri, Tehri Garhwal,
7. Chakradhar Prasad, S/o Sri Hari Ram, presently posted as Sub-Inspector at Police Station Doiwala, District Dehradun,
8. Purshottam Prasad S/o Sri Nagendra Dutt, presently posted as Sub-Inspector, at Police Station Nehru Colony, District Dehradun,
9. Surender Singh Sati, S/o Sri Jagat Singh, Presently posted as Sub-Inspector at Police Line, District Dehradun,
10. Kullo Singh, S/o Sri B.C.Gartyal, Presently posted as Sub-Inspector at Police Station, Patel Nagar, District Dehradun
11. Munni Devi, W/o Sri Kullo Singh, Presently posted as Sub-Inspector Posted at Police Station, Vasant Vihar, District Dehradun,

12. Bhupendra Singh, S/o Sri Devendra Singh, Presently posted as Sub-Inspector at Police Station Patel Nagar, District Dehradun.
13. Devendra Singh, S/o Sri Gopal Singh, Presently posted as Sub-Inspector at S.T.F., District Dehradun,
14. Gajendra Singh, S/o Sri Pratap Singh, presently posted as Sub-Inspector at Police Station, Rajpur, District Dehradun,
15. Veer Singh Panwar, S/o Sri Narayan Singh, Presently posted as Sub-Inspector at Police Station Kalagarh, Pauri,
16. Suresh Chand Kothiyal, S/o Sri Bhuneshwar Prasad, Presently posted as Sub-Inspector at Police Station, Devprayag, District Tehri Garhwal,
17. Basant Lal, S/o Sri Itwari Lal, Presently posted as Sub-Inspector, at Police Kotwali, District Dehradun,
18. Dayanand Pokhriyal, S/o Sri Grijanand, Presently posted as Sub-Inspector at Police Station Kankhal, Haridwar,
19. Sohan Lal Nautiyal, S/o Late Sri Sant Ram Nautiyal, Presently posted as Sub-Inspector at Police Station, Piran Kalier, Haridwar,
20. Jai Krit Singh Negi, S/o Late Sri Narayan Singh Negi, Presently posted as Sub-Inspector at Police Station-Jwalapur, District Haridwar,
21. Hukum Singh Rothan, S/o Late Sri Govind Singh, presently posted as Sub-Inspector at Police Station Kriti Nagar, Tehri Garhwal,
22. Madan Singh Bisht, S/o Late Sri Murkharia Singh, Presently posted as Sub-Inspector at Police Station Munikireti, Tehri Garhwal,
23. Inder Singh Bisht, S/o Sri Pratap Singh Bisht, Presently posted as Sub-Inspector at Police Station Chambha, Tehri Garhwal.
24. Sudhakar Nautiyal, S/o Sri Shashi Ballabh Nautiyal, Presently posted as Sub-Inspector at Police Station Vasant Vihar, District Dehradun,
25. Banmali Singh Bhandari, S/o Kuwar Singh, Presently posted as Sub-Inspector at Police Station Karan Prayag, Chamoli,
26. Man Singh Negi, S/o Sri Balvir Singh, Presently posted as Sub-Inspector at Police Station, District Uttarkashi,

27. Jagdamba Prasad Uniyal, S/o Sri Shankar Lal, presently posted as
Sub-Inspector at Police Station Rajpur, District Dehradun,

28. Kundan Singh Danu, S/o Sri Krishan Singh, Presently posted as
Sub-Inspector at Police Station Bhagwanpur, District Haridwar.

.....Petitioners

VERSUS

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

.....Respondents

Present: Sri M.C.Pant, Counsel
for the petitioners

Sri Umesh Dhaundiyal, A.P.O.
for the respondents

JUDGMENT

DATE: AUGUST 05, 2015

DELIVERED BY SRI D.K.KOTIA, VICE CHAIRMAN (A)

1. This claim petition has been filed for seeking 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(02) 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.*

iiiA. *To declare the provisions of G.O. dated 16.5.05 specially Clause-6 as illegal and against the Police Act and Regulations and being inoperative and non-est in the eyes of law and also discriminatory and further to hold that there is no difference amongst the regular promoted S.I. and S.I. (Special 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 the Tribunal and against the Dress Regulations.*

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 respondents No. 2 to 4 as the rules framed by the personnel department are having overriding effect to all Government Departments.*

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

2. The relevant facts in brief are that all the 28 petitioners were initially appointed as constables between the years 1970 and 1982 in

the Police Department. All the petitioners were promoted to the post of Head Constable between the years 1977 and 1989. Government of Uttarakhand issued a Government Order (G.O.) dated 16.12.2001 and it was provided in the first para of this G.O. that the selection on the post of the sub-inspector will be made 50 per cent by promotion and 50 per cent by direct recruitment (Annexure: 2). The rest of the G.O. deals only with the procedure of selection by the direct recruitment.

3. The Government of Uttarakhand issued a G.O. on 16.05.2005(Annexure: 3) and created the posts of head constable (special category) and sub-inspector (special category) and also provided the procedure of promotion to these posts. The said G.O. dated 16.5.2005 is reproduced below:

“प्रेषक,
भास्करानन्द,
अपर सचिव,
उत्तरांचल शासन।

सेवा में,
पुलिस महानिदेशक,
उत्तरांचल, देहरादून।

गह अनुभाग-3

देहरादून: 16 मई, 2005

विषय- पुलिस हेड कान्सटेबिल (विशेष श्रेणी) एवं उप निरीक्षक (विशेष श्रेणी) के पदों का सृजन तथा पदोन्नति के सम्बन्ध में।

महोदय,

उपर्युक्त विषयक पुलिस मुख्यालय के पत्र संख्या: डीजी-1-153-2004 (1) दिनांक 01 मार्च, 2005 के सम्बन्ध में मुझे यह कहने का निदेश हुआ है कि श्री राज्यपाल महोदय हेड कान्सटेबिल संवर्ग में हेड कान्सटेबिल (विशेष श्रेणी) के 466 पद एवं उप निरीक्षक संवर्ग में उप निरीक्षक (विशेष श्रेणी) के 198 पदों को वेतनमान क्रमशः 3200-85-4900 तथा 5500-175-9000 में स्थायी रूप से शासनादेश के जारी होने की तिथि से अथवा पदों पर कार्यभार ग्रहण करने की वास्तविक तिथि से जो बाद में हो दिनांक 28.02.2006 तक यदि ये पद बिना किसी पूर्व सूचना दिये किसी भी समय समाप्त न कर दिये जाये, सृजित किये जाने की सहर्ष स्वीकृति प्रदान करते हैं। इन पदों के सृजन से रिक्त होने वाले परिणामी पद आस्थगित रखे जायेंगे।

2. उपरोक्त पद धारकों को समय-समय पर निर्गत शासनादेशों के अनुसार उक्त वेतनमान के साथ स्वीकृत मंहगाई भत्ता तथा अन्य भत्ते जो भी नियमानुसार अनुमन्य हों, देय होंगे।

3. उप निरीक्षक (विशेष श्रेणी) के पदों पर ऐसे हेड कान्सटेबिलों की पदोन्नति की जायेगी, जो चयन वर्ष की पहली जुलाई को कम से कम 24 वर्ष की अनवरत संतोषजनक सेवा पूर्ण कर चुके हों तथा इस अवधि में समयमान वेतनमान प्राप्त कर चुके हो एवं कम से कम 5500-175-9000 के वेतनमान में हो। पदोन्नति का मापदण्ड "अनुपयुक्तों को छोड़कर ज्येष्ठता" होगा।

4. हेड कान्सटेबिल (विशेष श्रेणी) के पदों पर ऐसे कान्सटेबिलों की पदोन्नति की जायेगी, जो चयन वर्ष की पहली जुलाई को कम से कम 14 वर्ष की अनवरत संतोषजनक सेवा पूर्ण कर चुके हों तथा इस अवधि में समयमान वेतनमान प्राप्त कर चुके हों एवं कम से कम 3200-85-4900 के वेतनमान में हो। पदोन्नति का मापदण्ड "अनुपयुक्तों को छोड़कर ज्येष्ठता" होगा।

5. उप निरीक्षक (विशेष श्रेणी) एवं हेड कान्सटेबिल (विशेष श्रेणी) के प्रशिक्षण की समुचित व्यवस्था पुलिस महानिदेशक द्वारा की जायेगी।

6. विशेष श्रेणी के पद धारकों को 3 माह के प्रशिक्षण प्राप्त करने के उपरान्त उन्हें निम्न दायित्वों का निर्वहन करना होगा:-

- उप निरीक्षक (विशेष श्रेणी)
1. हेड कान्सटेबिल के सभी कार्य।
 2. शिकायती पत्रों / प्रार्थना पत्रों की जांच का कार्य।
 3. समन्स श्रेणी के अपराधों की विवेचना का कार्य
 4. मृत्यु के कारणों की जांच (इन्क्वैस्ट)

- हेड कान्स0 (विशेष श्रेणी)
1. कान्स 0 के सभी कार्य
 2. गार्ड/आधे सेक्सन / इकाई (6 कार्मिक या कम) के प्रभारी कार्य

7. उपरोक्त स्वीकृति से सम्बन्धित व्यय चालू वित्तीय वर्ष 2005-2006 के आय व्ययक अनुदान संख्या -10 गृह विभाग के लेखाशीर्षक 2055-पुलिस आयोजनेत्तर के सुसंगत मानक मदों के नामे डाला जायेगा।

8. यह आदेश वित्त विभाग के अशासकीय संख्या 428/XXVII(1)/2005 दिनांक 11 मई, 2005 से प्राप्त उनकी सहमति से जारी किये जा रहें हैं।

भवदीय

(भास्करानन्द)
अपर सचिव।

4. In pursuant to the above G.O. dated 16.5.2005 along with others, all 28 petitioners were promoted from head constable to the post of sub-inspector (special category). The promotion order was issued on 30.08.2005(Annexure: 4). The petitioners completed their training, posted in various districts of the State and completed their probation period of 2 years. The petitioners admittedly are deemed to be confirmed on the post of sub-inspector (special category).

5. It has been contended by the petitioners in their claim petition that the post of sub-inspector (special category) is a post in sub-inspector cadre and they should be treated as regular sub-inspectors. They have been assigned limited duties as per G.O. dated 16.05.2005 (reproduced in para-3) while they should have been assigned duties of a sub-inspector as prescribed under Regulation 51 of the Police Regulations. They have specifically challenged para 6 of the GO dated 16.05.2005. The petitioners have also contended that the petitioners should also have been allowed dress code prescribed for a sub-inspector under Regulation 16 of the Police Regulations. They have also challenged the separate dress code prescribed for sub-inspector (special category) vide G.O. dated 20.10.2008 (Annexure: 19).

6. Petitioners in their claim petition have also challenged the circular dated 24.12.2008 (Annexure: 1) based on the letter of the I.G. Police, Police Headquarters dated 20.12.2008 by which the departmental examination for selection by promotion from the post of head constable to the post of sub-inspector has been notified and the applications for the same have been invited. The said notification has been challenged on the ground that the promotion from head constable to sub-inspector should have been made according to 'The Uttaranchal Government Servants (Criterion for Recruitment by Promotion) Rules, 2004' (hereinafter referred to as Rules of 2004)

which lays down 'seniority to the rejection of the unfit' as the promotion criterion.

7. Respondents No. 1 to 3 opposing the claim petition have stated in their joint written statement that the promotion from head constable to sub-inspector is made in Uttarakhand as per the Government Orders issued by the Uttar Pradesh Government from time to time. The Government of Uttarakhand has not framed its own rules and the G.Os. of Uttar Pradesh have been adopted. It has further been contended that the Rules of 2004 are not applicable for various promotions in the Police Department of the Uttarakhand State. As the petitioners had become over-age (maximum age limit prescribed for promotion from head constable to sub-inspector is 40 years), it was decided by the Government of Uttarakhand to create the post of sub-inspector (special category) to provide promotion opportunity to the petitioners vide G.O. dated 16.5.2005 (Annexure: 3). The post of sub-inspector (special category) was specially created and the duties, dress code and other service conditions are separately prescribed by G.Os and the post of sub-inspector (special category) cannot be equated with the post of sub-inspector. The GOs issued in respect of the post of sub-inspector (special category) are in accordance with the Police Act and are valid as per law. The petitioners are not entitled for any claims/reliefs sought in the petition.

8. Petitioners have also filed the rejoinder and the same points have been reiterated and elaborated which have been stated in the claim petition.

9. Heard learned A.P.O. for the respondents No. 1 to 3. Learned counsel for the petitioner was granted opportunities and adjournments many times for hearing but it was not availed. An

opportunity was also provided to file written submissions. The same were also not filed. The petition is, therefore, being decided on merit. We have gone through all the records carefully.

10. Firstly, we would like to examine the issue of applicability of Rules of 2004 in order to decide the validity of the notification dated 24.12.2008 (Annexure: 1).

11. It would be useful to reproduce Rule 2 and Rule 4 of ‘The Uttaranchal Government Servants (Criterion for Recruitment by Promotion) Rules, 2004’:-

*“2. **Overriding effect**—These rules shall have effect notwithstanding anything to the contrary contained in any other Service rules made by the Governor under the proviso to Article 309 of the Constitution, or Orders, for the time being in force.*

*4. **Criterion for Recruitment by Promotion**—Recruitment by promotion to the post of Head of Department to a post just one rank below the Head of Department and to a post in any Service carrying the pay scale the maximum of which is Rs. 18,300 or above shall be made on the basis of merit, and to the rest of the posts in all services to be filled by promotion, including a post where promotion is made from a Non-gazetted post to a Gazetted post or from one Service to another Service, shall be made on the basis of seniority to the rejection of the unfit.”*

12. It has been contended by the petitioners in the claim petition that the promotions from head constable to sub-inspector are required to be made as per criterion of ‘seniority to the rejection of the unfit’ according to Rule 4 of the Rules of 2004. The Rules of 2004, according to its Rule 2, have over-riding effect. Therefore, the

notification issued by the respondents on 24.12.2008 for promotion from head constable to sub-inspector (which prescribes written examination, age limit of 40 years, etc.) is not valid and the promotion can be made only under the Rules of 2004.

13. Respondents have contended that the promotions to the post of sub-inspector are made as per the procedure laid down under Government Orders issued by Uttar Pradesh from time to time and the same have been adopted by the Government of Uttarakhand (Annexure 1 to the written statement).The Government Orders of the U.P. have been issued under the Police Act, 1861 and the Police Act being the specific Act, the general Rules framed by the Government of Uttarakhand (Rules of 2004) are not applicable in Police Department.

14. It would be appropriate to reproduce Section 2 and Section 46 of the Police Act, 1861:

*“2. **Constitution of force**:-- The entire police establishment under a State Government shall for the purposes of this Act, be deemed to be one police force, and shall be formally enrolled, and shall consist of such number of officers and men, and shall be constituted in such manner, as shall from time to time be ordered by the State Government.*

Subject to the provisions of this Act the pay and all other condition of service of members of the subordinate ranks of police force shall be such as may be determined by the State Government.

*46. **Scope of Act.** –(1) This Act shall not by its own operation take effect in any presidency, State or place. But, the State Government by an order to be published in the official Gazette may extend the whole or any part of this Act to any presidency, State or place; and the whole or such portion of this Act as shall*

be specified in such order shall thereupon take effect in such presidency, State or place.

(2) When the whole or any part of this Act shall have been so extended, the State Government may, from time to time, by notification in the official Gazette, make rules consistent with this Act:

(a) to regulate the procedure to be followed by Magistrates and police officers in the discharge of any duty imposed upon them by or under this Act:

(b) to prescribe the time, manner and conditions within and under which claims for compensation under Section 15-A are to be made, the particulars to be stated in such claims, the manner in which the same are to be verified, and the proceedings (including local inquiries, if necessary) which are to be taken consequent thereon; and

(c) generally, for giving effect to the provisions of this Act.

(3) All rules made under this Act may from time to time be amended, added to or cancelled by the State Government.”

15. The question whether the Rules of 2004 or the Police Act, 1861 is applicable for promotion was decided by the Hon’ble High Court of Uttarakhand at Nainital in the following Special Appeals by a common order on 19.2.2010:

Special Appeal No. **70 of 2008**, Naresh Chandra Jakhmola and 50 others vs. State of Uttarakhand and others along with connected Special Appeal No. **85/2008**, State of Uttarakhand & others Vs. Girish Chandra Pant & 23 others, Special Appeal No. **138 of 2006**, State of Uttarakhand & others Vs. Thakur Singh & 4 others and Writ Petition No. **99 of 2008**, H.C.P. Kushal Singh and others Vs. State of Uttarakhand & others.

16. Hon’ble High Court at Nainital has held the following in its judgment:-

“12. The answer to the issue raised in these appeals, in our opinion, is squarely covered by the decision of the Supreme Court in **Chandra Prakash Tiwari (supra)**. [**Chandra Prakash Tiwari and Others Vs. Shakuntala Shukla and Others** 2002(6) SCC 127] The issue involved in the said case was whether the promotion from Sub Inspector to Inspector in the State of U.P., in the year 1997, was to be made on the basis of seniority subject to the rejection of unfit as provided in the **Uttar Pradesh Government Servants (Criteria for Recruitment by Promotion Rules, 1994)** framed under Article 309 of the Constitution or on the basis of merit as provided in the Government Order dated 05.11.1965. The High Court of Allahabad held that the criteria for selection was seniority subject to the rejection of the unfit as laid down in the Rules of 1994. The Supreme Court after careful analysis of the provisions of Police Act, the rules and the regulations framed therein and after considering the Rules of 1994 framed under Article 309 of the Constitution held that the promotion was required to be made as per the Government Order dated 05.11.1965 issued under the Police Act and that the Rules of 1994 framed under Article 309 of the Constitution was not applicable. The Supreme Court in the case of **Chandra Prakash Tiwari (supra)** has held as follows:-

“24. As a matter of fact, a perusal of the provisions of the Act, in particular that of Section 46, makes it abundantly clear that the statute (the Police Act) ought to be treated as a complete code by itself — there is thus a special statute concerning the police force and within its fold are included the appointment, dismissal, placement and all other steps required to reorganise the police and

make it a more efficient instrument for the prevention and detection of crime. Administrative instructions have admittedly been in use since the beginning of the formation of a separate cadre of police in Uttar Pradesh.”

“29. that while the State Legislature passed the Act of 1994 but by reason of the provisions of a special statute, namely, the Police Act, read with the authorisation contained therein to frame rules by way of executive orders, the Government of Uttar Pradesh obviously did not in fact intend to apply the general law to all and sundry.”

“36. On a conspectus of the whole issue, it is thus difficult to comprehend that the General Rules framed under Article 309 should or would also govern the existing special rules concerning the Police Rules. Admittedly, the guidelines as contained in the government order dated 5-11-1965 have been under and in terms of the provisions of the Police Act. There is special conferment of power for framing of rules dealt with more fully hereinbefore, which would prevail over any other rule. Since no other rule stands formulated and the government order of 1965 being taken as the existing rule pertaining to the subject-matter presently under consideration with recent guidelines as noted above,

its applicability cannot be doubted. Unless the General Rules specifically repeal the effectiveness of the special rules, question of the latter rules becoming ineffective or inoperative would not arise. In order to be effective, an express mention is required rather than an imaginary repeal. It is now a well-settled principle of law for which no dilation is further required that law courts are rather loath to repeal by implication. The General Rules framed under Article 309 have been for all State Government officials on and since 1994.”

“37. Police force, admittedly, has a special significance in the administration of the State and the intent of the framers of our Constitution to empower the State Government to make rules therefor has its due significance rather than being governed under a general omnibus rule framed under the provisions under Article 309. When there is a specific provision unless there is a specific repeal of the existing law, question of an implied repeal would not arise.”

“13. From the aforesaid, it is clear that the Supreme Court has categorically held that the Police Act, the rules and the regulations framed therein would apply and that the Rules of 1994 will not apply with regard to the promotion from one cadre to another in the police

force. The Rules of 1994 issued by the State Government of Uttar Pradesh is pari-materia to the Rules of 2004 framed by the State of Uttaranchal (now Uttarakhand). Consequently, the principle of law and the issue decided by the Supreme Court in the matter of Chandra Prakash Tiwari (supra) is clearly applicable to the issue involved in the present case”

14.....”

“15. The learned counsel for the petitioner Shri Shobhit Saharia submitted that even assuming that the Police Act was applicable, the executive instructions issued by the ADGP dated 14.11.2007 cannot be sustained since such rules relating to promotion could only be made by the State Government under Section 2 read with Section 46(2)(c) of the Police Act. The submission of the learned counsel for the petitioner is patently misconceived. The State Government in their review application had filed a Government Order dated 19.05.1998 as well as the circular dated 22.03.1999 issued by the U.P. Police Board which laid down the guidelines for the selection on the post of Sub-Inspector from departmental candidates in P.A.C. A perusal of this Government Order clearly indicates that it was issued by the State Government under Section 2 read with Section 46(2)(c) of the Police Act. In the light of the judgment of the Supreme Court in Chandra Prakash Tiwari (supra) the same principle would apply and since the Government Order was issued under the Police Act, which is a special Act and which covers the field, the general rule issued under Article 309 would not be applicable.”

“16.....”

“17. This Court further finds that the executive instructions issued by the A.D.G.P. dated 14.11.2007 is in consonance with the Government Order dated 19.05.1998 and, consequently, the said executive instructions are in conformity with the Government Order dated 19.05.1998 and the Circular dated 22.03.1999. These executive instructions only clarifies the Government Order dated 19.05.1998. Consequently, the submission of the learned counsel for the writ petitioner that the instructions issued by the ADGP dated 14.11.2007 are contradictory to the guidelines issued by the Government Order dated 19.05.1998 and circular dated 22.03.1999 is patently erroneous.”

17. Hon’ble High Court at Nainital has further held in the above judgment:-

“18. There is another aspect, which requires consideration i.e. Rule 2 of the Rules of 2004. For facility, the said Rule is extracted below:-

“2.Overriding effect – These rules shall have effect notwithstanding anything to the contrary contained in any other Service rules made by the Governor under the proviso to Article 309 of the Constitution or Orders for the time being in force.”

“19. It has been contended in view of Rule 2, the provisions of the Rules 2004 would have an overriding effect over the Police Act, the rules and the regulations framed therein. The submission of the learned counsel for the opposite parties, though attractive in the first flush, is patently misconceived and cannot be accepted. A perusal of the said rule would indicate that the Rules

of 2004 will override other service rules made by the Governor under the proviso to Article 309 of the Constitution or orders. In the present case, we find that the Government Order had been issued by the State Government under Section 2 read with Section 46(2) of the Police Act. The said Government Order has not been issued under the proviso to Article 309 of the Constitution. In view of the aforesaid, Rule 2 of the Rules of 2004 has no application whatsoever.”

18. In the case at hand, the law laid down by the Apex Court and the Hon’ble High Court at Nainital is fully applicable. The issue raised in the present case regarding Rules of 2004 is squarely covered by the above judgments. The executive instructions issued by the circular dated 24.12.2008 (Annexure: 1) and the circular issued by the Inspector General of Police, Police Headquarters dated 20.12.2008 are in consonance with the Government Orders dated 27.02.1999 and 23.5.1998. Letter dated 20.12.2008 prescribes in detail the selection procedure and conduct of examination for departmental promotion to the post of Sub-inspector which is based on the Government Order dated 27.2.1999 (Annexure: 2 to the written statement). The G.O. Dated 27.2.1999 also refers to the G.O. dated 19.05.1998 which also pertains to the promotion to the post of sub-inspector. The executive instructions issued on 24.12.2008 and 20.12.2008 only clarify the GOs dated 27.2.1999 and 19.05.1998. The GOs dated 27.2.1999 and 19.05.1998 were issued by the State Government under Section 2 read with Section 46(2) (c) of the Police Act which is a Special Act and which covers the field and therefore, general Rules of 2004 would not be applicable.

19. In view of discussion in paragraphs 10 to 18 above, we hold that the circular dated 24.12.2008 (Annexure: 1) and

20.12.2008 are valid and the Rules of 2004 are not applicable in the case at hand.

20. The second issue which the petitioners have raised in their claim petition is that there is no distinction among the regular promoted sub-inspector and sub-inspector (special category) in respect of work and duties and other service benefits including dress code and specifically clause 6 of the G.O. dated 16.05.2005 (Annexure: 3 reproduced in para 3 of this order) has been challenged as illegal and against the Police Act and Regulations.

21. The main grounds which have been stated in the claim petition are that vide G.O. dated 16.05.2005, the posts of sub-inspector (special category) were created in the sub-inspector cadre; some of the petitioners are assigned to officiate the charge of Police Chowki (Annexure: 5); I.G. Police, HQ (respondent No. 3) also recommended to the State Government to allow to the sub-inspector (special category) for the investigation for offences which are cognizable and where warrants can be issued (Annexure: 7); vide notification dated 15.09.1997 and 18.09.1997 (Annexure: 8 colly), the Head Constables who have completed 24 years of continuous service were also assigned to investigate certain offences; as per the cadre structure of the Police Department, there is no mention of the post of sub-inspector (special category) as shown in Annexure: 18 to the petition and therefore, the status of the petitioners is of sub-inspector and not of sub-inspector (special category).

22. The petitioners have also claimed that they are entitled to display 2 stars as permissible to a sub-inspector and have also challenged the order dated 20.10.2008(Annexure: 19) regarding dress code by which the petitioners were directed to wear the same dress which has been prescribed in respect of constables and head constables which is against the Dress Regulations and also against

the order of the Tribunal passed on 31.3.2009 in claim petition No. 134/2007.

23. Learned A.P.O. has contended that the post of sub-inspector (special category) cannot be equated with the post of sub-inspector. There are only two sources for recruitment of sub-inspector--50 per cent by direct recruitment and 50 per cent by promotion. The petitioners are neither recruited directly nor they were promoted to the post of sub-inspector. Since the petitioners were not eligible for promotion to the post of sub-inspectors, vide order dated 16.5.2005, the posts of sub-inspector (special category) were created. The G.O. dated 16.5.2005 deals with all the service conditions related to sub-inspector (special category). Separate GOs have also been issued for them for displaying the number of stars and in respect of dress code which have been upheld by the Tribunal as well as the Hon'ble High Court at Nainital. There is a clear distinction between regularly promoted sub-inspector and sub-inspector (special category) and therefore, sub-inspectors (special category) are not entitled to do the same duties or to enjoy the same benefits including star/dress which regularly promoted sub-inspectors are entitled.

24. After perusing the record carefully, we find that the claim of the petitioners regarding displaying of two stars (which a sub-inspector is entitled to display) has already been dismissed by the Tribunal on 31.3.2009 (Claim Petition Nos. 134/07 and 10/2008). The Tribunal upheld the G.O. dated 27.12.2007(Annexure: 16) which entitles to sub-inspector (special category) to display only one star. The judgment of the Tribunal was challenged before the Hon'ble High Court at Nainital by way of writ petition (No. 59 of 2009 (S/B)). The Hon'ble High Court (Hon'ble Prafulla C. Pant, J. and Hon'ble V.K.Bist, J.) by its judgment dated 22.12.2009

(Annexure: 1 to the reply of the Amendment Application of the petitioners) dismissed the petition and upheld the judgment of the Tribunal. The Hon'ble High Court at Nainital in para 7 and 8 of its judgment has held as under:

“7. Apart from the above, the petitioners are neither directly recruited Sub Inspectors nor regularly promoted officers as Sub Inspectors. Even the direct recruits and the regularly promoted Sub Inspectors are not entitled to sport two stars for first five years. It is pertinent to mention here the contents of the Government Order under which 198 posts of Sub Inspectors (Special category) were created. Said Government Order dated 16.05.2005 (copy Annexure-8 to the writ petition) reads as under:- (reproduced in para 3 of this order)

.....

The above mentioned Government Order clearly shows that the arrangement made for appointment to the post of Sub Inspector (Special Category) was a temporary arrangement and it was clearly provided in the Government Order that the post created may be withdrawn at any time without any prior notice. Not only this, the duties assigned to the petitioners were not that of the regular sub Inspectors but they have been allowed to discharge only some of the duties of the Sub Inspectors. It is evident from the letter dated 22nd April 2006 (copy Annexure-12 to the writ petition) [Also Annexure: 7 to this claim petition] sent by the Police Headquarters to the Government of Uttarakhand for permitting to give some more duties to the Sub Inspectors of Special Category. As such, the claim of the petitioners for sporting two stars was rightly found

untenable by the respondent no.1 (Public Service Tribunal, Dehradun)."

"8. For the reasons as discussed above, this writ petition is dismissed."

25. We have also examined the contention of the petitioners that they should be assigned the same duties which are performed by a regular sub-inspector and their plea to set aside clause 6 of the GO dated 16.5.2005. It would be appropriate to reiterate para 6 of the said GO which reads as under:

“6. विशेष श्रेणी के पद धारकों को 3 माह के प्रशिक्षण प्राप्त करने के उपरान्त उन्हें निम्न दायित्वों का निर्वहन करना होगा:—

- | | |
|----------------------------|--|
| उप निरीक्षक (विशेष श्रेणी) | <ol style="list-style-type: none"> 1. हेड कान्सटेबिल के सभी कार्य। 2. शिकायती पत्रों/प्रार्थना पत्रों की जांच का कार्य। 3. समन्वय श्रेणी के अपराधों की विवेचना का कार्य 4. मृत्यु के कारणों की जांच (इन्क्वैस्ट) |
| हेड कान्स0 (विशेष श्रेणी) | <ol style="list-style-type: none"> 1. कान्स0 के सभी कार्य 2. गार्ड/आधे सेक्सन /इकाई (6 कार्मिक या कम) के प्रभारी कार्य” |

26. It is clear that the petitioners have not been promoted as regular sub-inspector as per prescribed conditions and procedure laid down for the sub-inspector. A regular sub-inspector is promoted through a departmental examination and it is also prescribed that in order to appear in the examination, apart from other conditions, the candidate should be below 40 years of age. The method for promotion and other details are mentioned in G.O. dated 27.2.2009 and related GO dated 19.5.1998 referred to in it (Annexure: 2 to the written statement). The petitioners have not been promoted as sub-inspectors under the prescribed GOs. Since they were over-age, a special arrangement was made for them. The posts of sub-inspector (special category) were created for them vide GO dated 16.5.2005. The GO clearly prescribes the duties to be performed by the sub-

inspector (special category). The GO also prescribes eligibility, method, etc. of the promotion to the post of sub-inspector (special category). The post of sub-inspector (special category) is not comparable with the post of regularly promoted sub-inspector. The GO dated 16.5.2005 has very clearly defined the posts of sub-inspector (special category). Clearly, there is a distinction between a regularly promoted sub-inspector and a sub-inspector (special category) and it would not be proper to equate these posts with each other. The GO dated 16.5.2005 has been issued by the Government by exercising its power under Section 2 of the Police Act, 1861 and we do not find any infirmity in the said GO including its para 6 which has been specially challenged by the petitioners.

27. Out of the 198 posts of sub-inspector (special category) created by GO dated 16.5.2005, 16 of those posts of sub-inspector (special category) were allotted to the Provincial Armed Constabulary (PAC). The nomenclature to these posts was given as Platoon Commanders (special category) in PAC. The similar situation which is present in the case at hand arose in case of Platoon Commander (special category). Some of the Platoon Commanders (special category), Narayan Singh Negi and others approached the Tribunal and claimed the equity with the regularly promoted Platoon Commanders (Claim Petition No. 38/NB/2009). The Tribunal allowed their petition on 28.9.2011. The State Government challenged the order of the Tribunal vide writ petition No. 74 of 2012 (S/B). The Hon'ble High Court at Nainital (Barin Ghosh, C.J. and U.C.Dhyani, J.) in this W.P. quashed the order of the Tribunal by its judgment dated 3.5.2012. It would be worthwhile to reproduce the following part of the judgment of the Hon'ble High Court at Nainital:

“By an order dated 16th May, 2005 sanction was granted to create, amongst others, 198 posts of Assistant Sub

Inspector (Special Category) in permanent form, in which from the date of the order i.e. 16th May 2005, till 28th February 2006, people may be accommodated and, such accommodated people will be entitled to the benefits accorded to the said posts of Sub Inspector (Special Category) by the said order. Though it was stated that, such posts would be created in permanent form, but it was indicated that, such creation could be brought to an end at any point of time. It indicated that, the posts from which people will come to the said created post of Sub Inspectors (Special Category) will remain vacant. The said order clearly indicated that those, who would be posted in those newly created posts of Sub Inspectors (Special Category) would be those Head Constables only, who have completed minimum 24 years of service and, have reached the pay scale of ₹ 5500 – 9000, which pay scale was also applicable to the newly created posts of Sub Inspector (Special Category). It was mentioned that the criteria for posting in those newly created posts will be seniority subject to rejection of unfit. It was mentioned that the people, who would be holding those newly created posts will discharge the duties attached to the posts of Head Constable, enquire into complaints / representations, investigate into ordinary crimes and conduct inquests. After the said order dated 16th May, 2005 was issued, the respondents were accommodated in the posts of Sub Inspector (Special Category). 16 of those posts of Sub Inspector (Special Category) came to be allocated to the Provincial Armed Constabulary, where in respect of Sub Inspector, the nomenclature used is Platoon Commander. The 16 posts of Sub Inspector (Special Category), which became available to the Provincial Armed Constabulary, therefore, were denoted and came to be known as Platoon Commander (Special Category). The respondents were

accommodated in those posts of Platoon Commander (Special Category). Inspector General of Police (Personnel) on 3rd August 2006, wrote a letter to the Sr. Superintendent of Police, Nainital, where he held out, amongst others, that the posts of Sub Inspectors (Special Category) are ex-cadre posts and, that the persons holding those posts have lien on the posts of Head Constable. As aforesaid, this letter led to filing of the claim petition before the Public Services Tribunal. The learned Tribunal, although, noticed the Government Order dated 16th May 2005, but did not make any endeavour to cull out the purport of the said order. As it appears to us, the Tribunal felt that in the absence of availability of posts of Assistant Platoon Commander, the respondents were posted against the posts of Platoon Commander. This has been recorded by the Tribunal in paragraph 9 of its judgment. By doing so, the Tribunal misdirected itself. A look at the order of the Government dated 16th May 2005, would make it clear that, ex-cadre posts were created thereby. It was provided who shall be accommodated in those ex-cadre posts. It was clearly indicated that, whoever shall be accommodated in those ex-cadre posts, the posts held by them shall remain vacant. In that background, the said order dated 16th May, 2005 did not indicate any intention to give promotion to anyone, either to the post of Assistant Sub Inspector, or to the post of Platoon Commander. The fact remains that, 198 ex-cadre posts of Sub Inspector (Special Category) were created, of which 16 were allocated to the Provincial Armed Constabulary and, since Assistant Inspectors in the Provincial Armed Constabulary are designated or known as Platoon Commanders, the newly created ex-cadre posts of Sub Inspector (Special Category) available in the Provincial Armed Constabulary were nothing, but ex-cadre posts of Platoon Commander (Special Category), which,

according to the said Government Order dated 16th May, 2005, can be brought to an end at any point of time. Since Head Constables, are in the feeding cadre of Assistant Inspectors, and since they were allowed to occupy the said posts, it cannot be contended that the posts of Assistant Inspectors were created and in those promotions were given inasmuch as upon occupying the said posts, the order dated 16th May 2005, directed that the posts occupied by them earlier will remain vacant. In that background there was no wrong on the part of the Inspector General of Police (Personnel) to communicate by the said letter dated 3rd August 2006, that the posts of Assistant Inspector (Special Category) are ex-cadre posts and, the persons occupying the said posts have lien on the posts of Head Constables. In the circumstances, there was no reason to quash the said order. By the order impugned in the petition, status of those ex-cadre posts have been equated with the in-cadre posts, but without making any attempt to ascertain whether, the incumbents of the in-cadre and the incumbents in the ex-cadre posts, were asked to discharge similar duties, whether they had similar obligations and, whether there was any obligation on the part of the Government to treat them equally. Despite that, the Tribunal has issued directions for giving perks, allowances, dress, badges, stars, status and work of Platoon Commanders to the respondents. The fact remains that, the order dated 16th May 2005, ensured that those Sub Inspectors (Special Category) will continue to discharge the duties of the Head Constables. We, accordingly, interfere with the matter and, quash the order of the Tribunal.”

28. In the light of discussion in paragraphs 20 to 26 above and the judgment of the Hon’ble High Court in paragraph 27 above, it becomes clear that in the case at hand the specially created posts of

sub-inspector (special category) cannot be equated with the regularly promoted post of sub-inspector with respect to duties to be performed and other benefits including star/dress to be enjoyed.

29. Petitioners have also challenged the order dated 20.10.2008(Annexure: 19) by which dress code has been prescribed by the Police Department for its Gazetted/Non-Gazetted officers which includes sub-inspectors (special category) also. The contention of the petitioners is that this order is contrary to the judgment of the Tribunal and against the Dress Regulations. The order dated 20.10.2008 has been issued under Uttar Pradesh Police Dress Regulations (applicable in Uttarakhand State), 1986. The contention of the petitioners that it is contrary to the judgment of the Tribunal passed on 31.3.2009 in claim petition No.134/2007 is not tenable as the Tribunal in this petition has not considered this order dated 20.10.2008. In fact, this order was not there before the Tribunal in the said claim petition. The Hon'ble High Court at Nainital in W.P. No. 74 of 2012 (S/B) has also clearly held in its judgment (paragraph 27 of this order) the status and entitlements of the sub-inspectors (special category). It would also be pertinent to note that in the writ petition (No. 59 of 2009 (S/B)) filed against the said judgment of the Tribunal dated 31.3.2009 (mentioned in para 24 of this order), the petitioners (who are the petitioners in this claim petition also) had also challenged the said order dated 20.10.2008 and the Hon'ble High Court at Nainital had not granted any relief in this respect and dismissed the W.P.. The Hon'ble High Court in first para of its judgment has given the reference of the order dated 20.10.2008 as given below:

“By means of this writ petition, the petitioners have challenged the order dated 31.03.2009, passed by the Public Service Tribunal, Dehradun, in Claim Petition No. 134 of 2007 and Claim Petition No. 10 of 2008, whereby the claim of the

petitioners for sporting two stars in their uniform has been rejected. By amending the petition, the petitioners have further challenged the order dated 20.10.2008, passed by the Police Headquarters, whereby certain amendments are made in the dress code of the police officials.”

30. In view of the above, we do not find any infirmity in the order dated 20.10.2008. The said order has been issued by the competent authority under the Dress Regulations and we do not find any merit in the contention of the petitioners that the order dated 20.12.2008 is contrary to the judgment of the Tribunal and against the Dress Regulations.

31. For the reasons stated in the preceding paragraphs of this order, the claim petition is devoid of merit and it is liable to be dismissed.

ORDER

The petition is hereby dismissed. No order as to costs.

V.K.MAHESHWARI
VICE CHAIRMAN (J)

D.K.KOTIA
VICE CHAIRMAN(A)

DATE: AUGUST 05, 2015
DEHRADUN.

KNP