

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. 05/DB/2013

Mahabir Singh Bisht S/o Shri B.S.Bisht, R/o Vivekanand Enclave Jogiwala, Dehradun, presently posted as Finance Controller, Uttarakhand Forest Department, 85 Rajpur Road, Dehradun.

.....Petitioner

VERSUS

1. State of Uttarakhand through Principal Secretary, Finance, Secretariat, Dehradun.
2. Shri Aruvendra Singh Chauhan, Additional Director, Directorate of Treasury, 22 Laxmi Road, Dalanwala, Dehradun,
3. Mr. Godhan Ram Arya, Finance Controller, Office of Director of Employment and Training, Rampur Road, Haldwani, District Nainital,
4. Mrs. Pramita Painuly, Joint Secretary, Finance & Audit Cell, Govt. of Uttarakhand, Secretariat, Uttarakhand,
5. Sh. Mohan Chandra Joshi, Finance Controller, Govt. Medical College, Srinagar, Pauri Garhwal.
6. Sh. Jeewan Chandra Joshi, Finance Controller, Uttarakhand Krishi Utpadan Vipanana Parishad, Mandi Bhawan Collectorate Prishar, District Udham Singh Nagar.

.....Respondents.

Present: Sri T.R.Joshi, Ld. Counsel
for the petitioner.
Sri Umesh Dhaundiyal, Ld. P.O.
for the respondents.

JUDGMENT

DATED: JANUARY 15, 2014.

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

1. This claim petition has been filed by the petitioner for seeking the following relief:-

“In view of the above facts, the petitioner prays for the following relief:-

- (i) That the impugned order dated 19.9.2012 be quashed and the respondents may please be directed to consider the promotion of the petitioner in the selection pay scale of Rs. 37400-67000/- Grade pay Rs. 8700/- from the date of promotion granted to the batch mates of the petitioner and of course juniors too, with consequential benefits.
 - (ii) That any other relief deemed fit in the circumstances may kindly be awarded in favour of the petitioner.
 - (iii) The cost of the petition may kindly be also awarded.”
2. The admitted facts of the case are that the petitioner had appeared in the Combined State Services/Upper Subordinate Service Examination 1990 conducted by the U.P. Public Services Commission, Allahabad. The name of the petitioner was not included in the selection list published by the U.P. Public Service Commission, Allahabad in the year 1992. Pursuant to the said selection list, the selection process of the selected candidates started in the Government after recommendation of the Public Service Commission. Meanwhile, a writ petition was filed before the Hon’ble Allahabad High Court and the Hon’ble High Court held that the allocation of the posts to the selected candidates had not been correctly made by the U.P. Public Service Commission and further the State was directed to reallocate the candidates according to direction of the Court. Pursuant to the said direction the petitioner was appointed in financial and accounts services in the year 1999. The other batch mates of the petitioner joined the services of the State Government on the basis of 1990 batch in the year 1994. The judgment of the Hon’ble High Court was challenged before the Hon’ble Supreme Court in Civil Appeal No.4794 of 1998. The Hon’ble Apex Court in the aforesaid judgment directed the State Government to carry out the exercise of reallocation within a period of three months and it was further directed that the affected officers would be given a reasonable opportunity of being heard and to the extent possible the State shall give accommodation to such officers. The State Government pursuant to the said judgment, sought the representations from the different officers who were affected by the reallocation of the posts and after the final decision of the Government, the petitioner as well as Ms. Amita Sati (now Mrs. Amita Joshi) were selected and appointed by the State government in the year 1998. The Secretary Finance issued the seniority list of the Finance and

Accounts service officers on 21.9.2001. In this seniority list the name of the petitioner was placed at Sl. No. 19 after the name of Smt. Anita Joshi and the said seniority list was also followed in the subsequent seniority list dated 6.1.2011, where the name of the petitioner figured at Sl. No. 20. In the year 2009, the officers of the 1990 batch of Accounts Services were likely to be promoted to selection pay scale of Rs.14300-400-18300(revised scale Rs.37400-67000/- Grade Pay Rs.8700/-).

3. The petitioner also allowed submitted in the claim petition that he submitted a representation to the Principal Secretary, Finance for consideration of his name for promotion to selection pay scale along with his batch mates of the year 1990. The State Government ignored the request of the petitioner and issued the promotion order dated 1.12.2010 promoting several officers, who are Respondent Nos. 2 to 6 in the claim petition and who were junior to the petitioner in the seniority list as well as they belong to junior batches of 1991 & 1994. The Respondent No.1 gave the promotional pay scale to Smt. Amita Joshi, who was an officer of the petitioner's batch and was also appointed after the reallocation of the post pursuant to the decision of the Hon'ble High Court. It was revealed from the Government Order that Smt. Amita Joshi was promoted whereas the petitioner was not promoted. Thereafter, the petitioner made a representation to the Respondent No. 1. The Respondent No.1 again promoted Respondent No. 6 of the claim petition Sri Jeevan Chandra Joshi, officer of 1994 batch on 7.9.2011. The name of the petitioner has been shown senior to the private respondents of this claim petition in the seniority list. Representation of the petitioner, which was pending before the Government, was decided on 19.12.2012 in which it was indicated that the petitioner did not fulfill the requisite period of service, so he is not entitled to get the promotion and his representation was rejected. Service rules which are applicable in the case of the petitioner clearly provides that in appropriate cases, the appropriate authority may relax the required period of service for being qualified to be appointed to the higher promotional post. In the case of the petitioner, the petitioner was selected by the Public Service Commission and thereafter he was appointed at about seven years after his recruitment of no fault of the petitioner. The Uttarakhand Government Servant Relaxation in Promotion Rules 2010

(hereinafter referred to as General Relaxation Rules, 2010). Rule 2 & 4 clearly provides as under:

“2. यह नियमावली संविधान के अनुच्छेद 309 के परन्तुक के अधीन राज्यपाल द्वारा बनायी गयी किसी अन्य सेवा नियमावली या तत्समय प्रवृत्त आदेशों में दी गयी किसी प्रतिकूल बात के होते हुए भी प्रभावी होगी।

4. यदि कोई पदोन्नति द्वारा भरा जाता है और ऐसी पदोन्नति के लिए , यथास्थिति निरन्तर पद या पदों पर कोई निश्चित न्यूनतम सेवा अवधि विहित हो और पत्रता के क्षेत्र में अपेक्षित संख्या में पात्र व्यक्ति उपलब्ध न हो तो सरकार के प्रशासनिक विभाग , सरकार के कार्मिक विभाग के परामर्श से यथास्थिति उक्त निम्नतर पद या पदों पर यथा निर्धारित परीक्षा अवधि को छोड़कर, ऐसी विहित न्यूनतम सेवा अवधि में पचास प्रतिशत तक यथोचित रूप से शिथिलीकरण कर सकते हैं,”

4. The respondents have filed the W.S./C.A. in which it has been alleged that the petitioner was appointed vide order dated 24.12.1998 and pursuant to the said appointment order, he joined the services in the respondent department on 10.2.1999 as Accounts Service Officer as a direct recruit. The petitioner has been given the benefits of all the promotions in accordance with law. The petitioner was promoted as Class-I officer in the said department and at the time of promotion, he did not have the minimum required period of the service of 10 years which is required under the Uttarakhand Financial Services Rules, 2002 (hereinafter referred to as Service Rules, 2002) and a relaxation was given to him and the said relaxation was given in accordance with aforesaid rules. It is also admitted to the respondents that there was a litigation pending between the candidates of 1990 batch of Finance Accounts Services and the matter came up before the Hon'ble High Court and the Hon'ble High Court allowed the writ petition and directed to reallocate the allocation of the posts in accordance with the directions of the Hon'ble Court. Thereafter, one of the candidate filed a Civil Appeal before the Hon'ble Supreme Court titled as Anurag Patel Vs. U.P. Public Service Commission , Civil No. 4794 of 1998 in which the Hon'ble Supreme Court affirmed the judgment of Hon'ble High Court of Allahabad in the year 2004. It was further alleged by the respondents that the petitioner had not completed the requisite qualification as provided under the Service Rules, 2002. The petitioner had not completed the total period of 15 years of service and hence the petitioner was not promoted. It was further alleged in the W.S. that the State Govt. has framed the rules under Article 309 titled as Govt.

Servant (Qualification in Promotion) Promotion Rules, 2010 (General Relaxation Rules, 2010) and overrule all the services rules to that extent made under different service rules. In Rule-4, it has been provided that a relaxation for the required length of service on a feeding post can be given only at one time of the whole service tenure. The respondents have further alleged that in view of the above said Finance Service Rules, 2002 rules, Rule- 19 of the Service Rules, 2002 had already been overridden by these Rules of 2010. The petitioner has already availed the said benefit at the time of the first promotion, so he is not entitled to get the second relaxation in his promotion. It was further alleged that the respondents who had been promoted even by relaxation, such relaxation has been awarded as one time relaxation to them, thus there is a uniformity in promoting the respondents. The respondents have further pleaded that the claim petition of the petitioner is liable to be dismissed.

5. We have heard learned counsel for the parties and perused the record.
6. Learned counsel Sri T.R. Joshi appearing for the petitioner contended that the petitioner appeared in the competitive examination of U.P. Public Service Commission in the year of 1990; other batch mates of the petitioner of 1990 batch joined the services in the year 1994 because the appointment letters were sent to them; but due to the fault of the U.P. Public Service Commission, which did not correctly calculate the allocation of the posts at the time of selection itself, the petitioner was deprived from his appointment letter in the year of 1994. When the directions were given by the Hon'ble High Court, the petitioner was appointed approximately 5 years after his batch mates in the year 1999 without his fault. He further contended that the matter came up before the Hon'ble Supreme Court and in the year 2004, the Hon'ble Supreme Court decided the petition of Anurag Patel (Appellant) (Supra) and maintained the judgment of the Hon'ble Allahabad High Court. Pursuant to the said decision, the State of U.P. issued an Office Memorandum dated 17.2.2005 seeking their reply from the Finance and Accounts Service Officers who were affected by the reallocation of the posts. Out of 12 officers mentioned in the abovementioned O.M., 02 officers namely, petitioner and Miss Amita Sati (now Amita Joshi) had been allocated to the State of Uttarakhand. He further contended that he also submitted his reply to the Government,

which is Annexed as Annexure R-1 to the R.A. Thereafter, the Govt. order of Govt. of U.P. was issued on 11.7.2006 in which it has been provided that the benefit of promotion and time scale should be granted to all the effected officers at par with other officers, who were also selected on the basis of the said examination. It was also provided in the G.O. that the affected officers who had joined the services along with other officers, would get all the benefits of their services from the period they got the initial services. The benefit was given to Amita Joshi as she was promoted giving her the back seniority and length of service on the post of Home guard department joined pursuant to the selection of 1990 batch, but the said benefit was refused to the petitioner in spite of the representation made by him.

7. Learned A.P.O. refuted the contention and contended that the Govt. Order, which has been issued by the Govt. of U.P. on 11.7.2006 is not applicable in the case of the petitioner. He further contended that Amita Joshi had already served as an officer in the Home guard department pursuant to the selection of the 1990 Public Service Commission batch so her services were counted towards her promotion, so her promotion was well within the four corners of the rules.
8. Now we have to analyze that the Govt. Order dated 11.7.2006 is applicable in the State of Uttarakhand or not? It is evident from the perusal of the record that complying the directions of the Hon'ble Supreme Court in the case of Anurag Patel (Supra), the State of U.P. issued the G.O. dated 11.7.2006 after inviting the objections from the effected officers including the petitioner. The State of Uttarakhand was carved out from the State of U.P. in the year 2000. Since the matter was pending prior to creation of State of Uttarakhand so this fact has to be seen in the light of the above scenario. Para 12 of W.S./C.A. of the respondents, clearly indicates as under:

.....श्रीमती जोशी को उ०प्र० शासन के शासनादेश दिनांक 11.07.2006 के कम में उत्तराखण्ड शासन के आदेश दिनांक 10.11.2010 के द्वारा उन्हें मूल रूप से आवंटित पद पर कार्यभार ग्रहण करने की तिथि से समस्त परिणामी लाभ अनुमन्य कराये गये। यह भी उल्लेखनीय है कि याची का पुनरावंटन आदेश ही याची का प्रथम नियुक्ति आदेश है। याची की नियुक्ति पूर्वगामी तिथि से परिकल्पित किया जाना सम्भव नहीं है। अतः याची को परिकल्पित तिथि (पूर्वगामी तिथि) से कोई लाभ दिया जाना सम्भव नहीं है।

It is apparent from the W.S./C.A. that State of Uttarakhand is also taking note of the Notification dated 11.7.2006. Apart from that, the State Govt. has filed Annexure-R-9 with the C.A. in which a office note regarding promotion of the petitioner from Class-II to Class-I officer, it is very clearly indicated that the Government may adopt the Notification dated 11.7.2006. Thereafter, it was referred to the Personnel Department by the Finance Ministry and ultimately, the Finance Minister also cleared to said proposal and the Chief Minister also approved the proposal on 12.7.2006 and as such it is apparent from the perusal of the Note sheet in different places, the different departments have indicated the said Notification issued by the U.P. Government be accepted, which has been accepted by the Chief Minister also. It is apparent that the said G.O. is applicable in the State of Uttarakhand also.

9. Now we have to consider the contents of the said Notification, whether it gives any benefits to the petitioner or not. It is not in dispute that when the a candidate is selected by the Public Service Commission, the seniority of the concerned officers had to be fixed according to the order of merit determined by the Public Service Commission. Thus the petitioner is of the batch of 1990. It is not in dispute that he had not been given any seniority according to the select list of 1990. The U.P. Govt. Order of 2006 has been filed by the petitioner in which it is provided that those officers who had been appointed on the higher posts, such officers would be given the benefit pursuance to their joining from the date when they had initially joined the services and they would be entitled to get all perks and promotion according to their initial date of joining in the services. The relevant portion of the Notification is as under:

(1) समसंख्यक शासनादेश दिनांक 12 जुलाई, 2005 के द्वारा संसूचित निर्णय के अनुसार संबंधित अधिकारियों की ज्येष्ठता, लोक सेवा आयोग द्वारा निर्धारित श्रेष्ठताक्रम के अनुसार अवधारित की जाय।

(2) जिन अधिकारियों को उच्च वरीयता के पद प्रदान किये गये हैं को पूर्व तिथि से ही कार्यभार ग्रहण किया जाना परिकल्पित मानकर तदानुसार परिणामी वित्तीय लाभ (पूर्व में प्रदान की गयी परिलब्धियों का समायोजन करतु हुए) प्रदान किये जाय।

(3) जिन अधिकारियों को उच्च वरीयता के पद प्रदान किये गये हैं, के प्रश्नगत परीक्षा के आधार पर पूर्व में संस्तुत अभ्यर्थियों के सापेक्ष प्रोन्नति एवं समयमान वेतनमान आदि प्रदान कर दिये जायं।

(4) मूल पदावंटन के आधार पर संबंधित अधिकारी द्वारा जिस पद पर कार्यभार ग्रहण किया गया था, पुनरावंटन में प्रदान किये गये पद पर पूर्व तिथि से ही कार्यभार ग्रहण किया जाना परिकल्पित मानते हुए समस्त परिणामी लाभ प्रदान किये जाय।

(5) मूल पदावंटन के आधार पर यदि किसी अभ्यर्थी द्वारा कार्यभार ग्रहण नहीं किया गया है तथा पुनरावंटन में उपलब्ध कराये गये पद पर वह कार्यभार ग्रहण करने का इच्छुक है तो उसे कार्यभार ग्रहण कराये जाने पर विचार किया जाय।

Thus, the petitioner had been serving in the Bank who was not in the Govt. services. It is apparent that the benefits have been given to the persons who were in the services pursuant to the 1990 batch. The G.O. is silent about the cases like of the petitioner.

10. Learned counsel for the respondents further contended that the Uttarakhand Financial Services Rules have also been amended vide order dated 8.11.2010 (Annexure R-2) in which it has been provided under Rule 16(Ga) of the said amended Rules that for Rule 5-B(1)(2)(3)(4) and (5) may be relaxed by the Govt. regarding relaxation of length of service of the incumbent. Immediately thereafter on 23.11.2010, His Excellency the Governor framed the General Relaxation Rules 2010 under Article 309 regarding relaxation of length of service of the Govt. servants on feeding post in case of promotion. Under Rule-4, it has been clearly provided that if any person, is to be promoted and there is a required length of service in the feeding post for being eligible to the promotion; the Govt. may relax the period of such eligibility criteria and this relaxation can be availed once during the whole service tenure. The petitioner has already taken the benefit of the first relaxation at the first promotion from Class-II to Class-I posts. At that stage the petitioner was not eligible to be promoted on account of the fact that he had not completed the period of service which was required to be promoted from Class-II to Class-I. It is the admitted case of both the parties that the petitioner had been promoted from Class-II to Class-I seeking the relaxation under rules and now he had not completed the minimum period 15 years of service at the time of promotion his case was not considered. Rule-2 of the General Rules 2010 has the overriding effect over all service rules. Thus General Relaxation Rules, 2010 will prevail over all the service rules of the State Govt. In view of the above the petitioner is not entitled to get the promotion.

11. We would like to mention that the General Relaxation Rules 2010 had been framed by a general provision of law overriding the provisions of the

services rules of every service. At the time of framing of the General Relaxation Rules 2010, each and every service rule and the officers' individual circumstances had not been considered. There may be hardship in the implementation or enforcement of the General Relaxation Rules 2010. Individual rule takes care of all situations and circumstances. The Government servant cannot put any straightjacket formula for all the situations. To meet this situation, the Financial Service Rules 2002 takes care of it. Rule 32 also provides as under:

“रूल-32: जहाँ सरकार का यह समाधान हो जाय कि सेवा में नियुक्त व्यक्तियों की सेवा की शर्तों को विनियमित करने वाले किसी नियम के प्रवर्तन से किसी विशिष्ट मामले में अनुचित कठिनाई होती है, तो वह आयोग के परामर्श से, उस मामले में लागू नियमों में किसी बात के होते हुए भी, आदेश द्वारा उस नियम की अपेक्षाओं को उस सीमा तक और ऐसी शर्तों के अधीन रहते हुए, जिन्हें वह मामले में न्यायसंगत और साम्युक्त रीति से कार्यवाही करने के लिए आवश्यक समझे, अभिलुप्त या शिथिल कर सकती है।”

By virtue of Rule 2 of the General Relaxation Rules, 2010 has amended the Rule-16, 17, 18 and 19 of the Financial Service Rules of 2002, but rule 32 of the Financial Service Rules takes care of the fact that if any rule is made and there is any difficulty in the enforcement of the Rules, the State Govt. may relax the rules in case of any incumbent or individual. Still the State Govt. has power to relax the said rules. Now we have to analyze in the light of the above rule-32 of the Financial Service Rules of 2002, as to whether the case of the petitioner deserves to be considered by the State Govt. or not under Rule-32 of the Financial Service Rules, 2002. It is no doubt that the petitioner was entitled for selection along with other persons who had joined the service in the year 1998. Due to the fault of the Government, he could not get selection or appointment along with other batch mates. When the fault was found by way of the directions of the Hon'ble High Court, he was given appointment in the Finance Services in the year 1999. It is also well settled principle of law that the persons who had been selected by the Public Service Commission, their seniority would reckon according to the merit prepared by the Public Service Commission. The seniority is one of the ornament of a Government Servant to fulfill the path of his legitimate expectation. It is admitted to the parties that the petitioner had not been superseded on account of bad character roll entries,

thus it is apparent that he is a good officer and this is the second ornament. It was not the fault of the petitioner to join the services in the year 1994 along with the other batch mates of the petitioner. We are aware of that the selection and promotion on the post is not the vested rights of the incumbent who seeks the appointment or the promotion unless his juniors have been selected or promoted. It is also admitted that much juniors to the petitioner had been promoted. The petitioner had not been considered for promotion. The petitioner has a **legitimate expectation** to be promoted in the service according to the select list prepared by the Public Service Commission: A person may have a 'legitimate expectation' of being treated in a certain way by an administrative authority even though he has no legal right in private law to receive such treatment. The expectation may arise either from a representation or promise made by the authority, including an implied representation, or from consistent past practice. The doctrine of legitimate expectation has an important place in the developing law of judicial review. It is, however, not necessary to explore the doctrine in this case, it is enough merely to note that a legitimate expectation can provide a sufficient interest to enable one who cannot point to the existence of a substantive right to obtain the leave of the court to apply for judicial review. It is generally agreed that legitimate expectation gives the applicant sufficient locus standi for judicial review and that the doctrine of legitimate expectation to be confined mostly to right of a fair hearing before a decision which results in negating a promise or withdrawing an undertaking is taken. The protection of such legitimate expectation does not require the fulfillment of the expectation where an overriding **public interest** requires otherwise. In other words where a person's legitimate expectation is not fulfilled by taking a particular decision then decision-maker should justify the denial of such expectation by showing some overriding public interest.

Now we have to consider what is the meaning of Public Interest. The expression "public interest" cannot be put in a straitjacket. "public interest" takes into its fold several factors. There cannot be any hard and fast rule to determine what is public interest. The circumstances in each case would determine whether government action was taken in public interest. The role model for governance and decision taken thereof should

manifest equity, fair play and justice. The cardinal principle of governance in a civilized society based on rule of law not only has to base on transparency but also must create an impression that the decision making was motivated on the consideration of probity of governance. The Government has to rise above the nexus of vested interests and nepotism and eschew window-dressing. The act of governance has to withstand the test of judiciousness and impartiality and avoid arbitrary or capricious actions. Therefore, the principle of governance has to be tested on the touchstone of justice, equity and fair play and if the decision is not based on justice, equity and fair play, though on the face of it, the decision may look legitimate but as based on values but to achieve popular accolade, that decision cannot be allowed to operate.

12. As we have pointed out that the act of the governance has to be tested on touchstone of justice, equity and fair play. If seniority has been given to the petitioner; there was no fault of the petitioner to join the services after 5 years and having other things also in favour of the petitioner; if the petitioner could not get the promotion along with his other batch mates such seniority is of no avail to the petitioner. In the peculiar facts and circumstances of the case, the petitioner's case deserves to be considered for promotion after giving relaxation to the petitioner under Rule-31 of the Financial Services Rules. The non-promotion to the petitioner is a case of hardship to him. The State Govt. vide Notification dated 11.7.2006 has also taken care of all the officers who joined earlier and had been allocated wrongly by the Government, such cases were treated as a special case and relaxation has been given to them at large. In the case of Amita Joshi, the previous services joined in the Home Guard department pursuant to 1994 batch, have been taken into account for promotion to the next higher scale.
13. Rule-32 is an independent service rule and it deals with difficulty in enforcing any of the provisions of any rules made therein. The General Relaxation Rule of 23.11.2010 had no overriding effect on rule 32 because section- 2 of the said rule only deals with overriding of all the service rules provision, but it does not deal with overriding effect over the difficulty clause while enforcing the Rule. Thus, under Rule-32, the State Govt. can

consider the case of the petitioner inspite of existence of Rule-2 of General Relaxation Rules of 2010.

14. Thus, the services of Amita Joshi has been counted only on account of the Govt. order issued by the State of U.P. on 11.7.2006. The hardship as pointed out in the instant case that the Government has taken care of those employees who were on service pursuant to the 1999 batch and the benefit has been given to them as in the case of Amita Joshi, but the Government has left undecided the issue that if the appointee was not appointed along with the other batch mates though he was entitled to be appointed on the said date, but he was appointed on a later date due to the fault of the State as in the case of the petitioner; then such hardship would cause a permanent stigma on the appointee with no fault of the appointee. The Government time to time has considered individual cases when it comes before the Government for consideration. There was also an anomaly, if any person is selected by the Government in the State Educational Institutions or any person is appointed in accordance with the rules in the State Govt., Owned Corporations or undertakings and later on he is appointed in Provincial Civil Services as to whether he will get the benefits of the service spent in the Govt. Education services like the Government servants as provided under the Fundamental Rules of the State Govt. The Government has settled the controversy vide Notification dated 12.6.1998 in favour of the employees which was shown to us by the learned counsel for the State.

15. The State Government is not only an employer; the preamble of the Constitution of India clearly enshrine the principle of social justice is the recognition of greater good to a large number without deprivation or accrual of legal right of anybody. If such a thing can be done then social justice must prevail over any technical rule. The principle of social justice enshrined under the Constitution also takes care that as between two parties if a deal is made with one party without serious detriment to the other, then the court would lean in favour of the weaker sections of the society. The Constitutional concerned or social justice, as an elastic, continues process as to accord justice to all of sections of the society by providing facilities and opportunities to remove handicaps and disabilities with which weaker etc. are languishing and secure dignity of their persons. Social Justice is

the comprehensive form to remove social imbalance by law harmonizing the rival claims or the interest of different groups and or sections in the social structure or individuals by means of which alone it would be possible to build up a welfare State. According to the principle of social justice as recognized in preamble of the Constitution & in the Constitution itself enjoins the State to act positive measures for the protection of the each class and the constitutional measures should be upheld in this light. The consent to the social welfare of the public is a motto of the Constitution.

16. The petitioner being an employee of the State Government and the above noted hardships are in favour of the petitioner by Rule-2 and 4 of the General Relaxation Rules, 2010 enacted by the State of Uttarakhand on 23.11.2010 are made applicable in the case of the petitioner. The enforcement of such rule would definitely create hardship and would not allow to enjoy the fruits of his selection in the year 1990 and he would never be entitled to get his proper promotion according to his seniority. If the rule-32 is invoked in favour of the petitioner, he is entitled to be considered for promotion by the D.P.C. from the date when the juniors have been promoted. It is admitted that there are promotional vacancies available in the department.
17. In view of the above, we conclude that there is a difficulty while enforcing the General Rules, 2010 against the petitioner.
18. In view of the above observation, the State Govt. would consider the case of the petitioner afresh by invoking the Rule- 32 within a period of three months from the date of presentation of the copy of this order by the petitioner to the competent authority. The State Govt. is directed to consider the case of the petitioner in the light of the observation made in the body of the judgment under rule-32 of the Financial Services Rules within a period of three months.
19. The petition is disposed of accordingly. No order as to costs.

Sd/-

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

Sd/-

(JUSTICE J.C.S.RAWAT)
CHAIRMAN

DATE: JANUARY 15, 2014
DEHRADUN
KNP