

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

Present: Hon'ble Mr. Justice U.C.Dhyani
----- Chairman

Hon'ble Mr. Rajeev Gupta
-----Vice Chairman (A)

CLAIM PETITION NO. 56/DB/2020

Gorakh Nath, S/o Shri Lal Singh, R/o H. No. 151 (Near Geeta Bhawan)
Chawmandi Roorkee, District Hardwar, Uttarakhand.

.....Petitioner

vs.

1. State of Uttarakhand through its Principal Secretary, Forest and Environment, Secretariat, Subhash Road, Dehradun.
2. Principal Chief Conservator of Forests (HoFF), Forest Department, Van Bhawan, 85, Rajpur Road, Dehradun, Uttarakhand.
3. Shri Sushil Kumar Lamiyan S/o Shri Tilak Ram, Deputy Director (Statistics), Evaluation, Monitoring, IVth Floor, Forest Department, Van Bhawan, 85, Rajpur Road, Dehradun, Uttarakhand.
4. Shri Anand Vardhan, Principal Secretary, Forest and Environment, Govt. of Uttarakhand, Secretariat, Subhash Road, Dehradun.

.....Respondents.

Present: Sri B.B.Naithani, Advocate, for the petitioner.
Sri V.P.Devrani, A.P.O., for Respondents No.1, 2 & 4
Sri J.P.Kansal, Advocate for the Respondent No. 3

JUDGMENT

DATED: MARCH 31, 2021

**Justice U.C.Dhyani, Chairman
Rajeev Gupta, Vice Chairman (A)**

This petition has been filed by the petitioner for seeking the following reliefs:

“(a) To quash the said impugned order/seniority list dated 22.06.2020 (Annexure No. A-1) to the extent that the name of the petitioner be removed from S. No. 10 in the impugned seniority list and to direct respondent No. 1 to place the name of

the petitioner above the name of Sh. Sushil Kumar Lamiyan at Sl. No. 1 in the impugned seniority list.

(b) To direct the respondent No. 1 to grant all consequential benefits like consideration for promotion on the post of Deputy Director (Statistics) on which a junior to the petitioner had already been promoted.

(c) To order proper proceeding against respondent No. 4 for his indulgence in unjust and capricious defiance of the constitutional principles, Laws, Rules and judgment and order dated 03.01.2020 passed by this Hon'ble Tribunal.

(d) To pass any order or direction which it deems fit and proper under the circumstances of the case.

(e) To award a suitable cost of the petition."

2. The facts of the case, as stated in the claim petition, are briefly as follows:

The petitioner and respondent No. 3 were initially appointed on the post of Investigator-cum-Computer respectively on 31.03.1989 and in July, 1990 in the Forest Department in the erstwhile State of U.P. A seniority list for the post of Investigator-cum-Computer was issued on 31.12.1992 in which the petitioner was shown at Sl. No. 64 while the respondent No. 3 was shown at sl. No. 108 indicating clearly that respondent No. 3 has been much junior to the petitioner. The said respondent No. 3 i.e., Shri Lamiyan was appointed on the entry post of Investigator-cum-Computer by virtue of his being member of Scheduled Caste while petitioner was appointed on the similar entry post as a candidate in General category.

The respondent No. 3 got accelerated promotion on the post of Statistical Officer in Scheduled Caste quota on 20.12.2005 whereas, petitioner got promoted to the post of Statistical Officer on 19.11.2013 in the General categories of candidates.

The name of the respondent No. 3, Shri Lamiyan was immediately entered in the seniority list of Statistical Officer and further in quite haste, he was further given promotion quite illegally on the post of Deputy Director (Statistics) *vide* order dated 11.01.2019 because he belonged to reserved category of employees. In spite of several requests and

representations made by the petitioner through proper channel to include and to show his name in the seniority list of Statistical Officer, his name was not entered in the seniority list of Statistical Officer (Level II post) for 6 years nor the seniority list of Statistical Officers was updated after the promotion of the petitioner on the post of Statistical Officer. The respondent No. 1 in most arbitrary manner rejected the representation of the petitioner *vide* his order No. 298/X-1-2018-04(08)/2011 dated 03.12.2018. This order dated 03.12.2018 has been quashed *vide* this Tribunal's order dated 03.01.2020 in Claim Petition No. 83/DB/2018 filed earlier by the claim petitioner. *Vide* this order, the Tribunal ordered the State respondents to prepare fresh seniority list of the officers of the Statistical Officers rank in the department of Forest including all the persons working in the cadre upto 2018 (before the promotional exercise on the post of Deputy Director) in accordance with law. After finalizing the seniority list, the respondents were directed to consider the claim of the petitioner for promotion to the post of Deputy Director in accordance with law.

The petitioner has also referred to para Nos. 26 and 28 of the above judgment and order dated 03.01.2020 regarding fixing of seniority. They are quoted as below:

"26. We hold that per Rule 8 of the Seniority Rules of 2002, the seniority of the persons appointed by promotion and direct recruitment are to be fixed. As per sub rule (2) of Rule 8, the inter se seniority of the persons appointed on the result of any one selection by promotion, shall be as determined in accordance with principles laid down in rule 6 & 7 as the case may be.

28. We hold that in this case Rule 8 and thereafter Rule 6 along with its explanation of the seniority Rules of 2002 will apply...."

Petitioner has levelled allegations against the Principal Secretary, Forest Department (Respondent No. 1) and also made him respondent by name as Respondent No.4. Respondent No. 1 *vide* impugned order dated 22.06.2020 (Annexure: 1) again issued the final seniority list of Statistical Officers working in the Forest Department after disposing of the objections received against the interim seniority list including the objections of the

petitioner. Against the tentative seniority list dated 26.12.2019, the petitioner had filed his representation *vide* his letter dated 10.01.2020 but the same was not considered in the proper perspective by the respondent No. 1 and the respondent No. 1 acted on some advice given by the law department over and above the judicial announcement/judgment and order dated 03.01.2020 of this Tribunal and did not accept the objection of the petitioner.

Respondent No. 1 ignored the established principle of service jurisprudence that a candidate who is appointed by virtue of provision of reservation, has to comply with other provisions of rules to which such appointments are made as for example the accelerated promotion granted to an employee of reserved category does not carry with him the accelerated seniority and a senior General Category candidate (like the petitioner) who is promoted later to the reserved category candidate shall regain his seniority as it was in the initial cadre from which promotions are made. The same has been prescribed in G.O. dated 20.03.1974 (Annexure: A7) and Rule 6 of the Seniority Rules of 2002.

The petitioner has further stated that a candidate appointed as reserve category candidate has to remain in that category throughout his service and when he has been given accelerated promotion on the basis of roster point, he cannot be given promotion against a vacancy caused for General category candidate on the roster point. There cannot be any reservation in any service/cadre where the total number of post (in the cadre/service) is less than 5(five). Here in this cadre the sanctioned number of posts of Deputy Director (Statistics) is only two and as such there cannot be any reservation for SC/ST candidate for the promotion on the post of Deputy Director (Statistics). The cause of action arose between the petitioner and respondent No. 3 (Sh. Lamiyan) only because Sh. Lamiyan was given accelerated promotion on the post of Statistical Officer but subject to re-fixation of his seniority after his immediate senior in initial/feeding cadre is promoted later on. No other employee is concerned in such re-fixation of seniority except the petitioner and Sh. Lamiyan. The

name of the petitioner has to be placed in the seniority list of Statistical Officers just above the name of Sh. Lamiyan who was given accelerated promotion on the post of Statistical Officer on the basis of roster point under reservation policy. The respondent No. 1 had promoted respondent No. 3 (Sh. Lamiyan) illegally on the post of Deputy Director (Statistics) although he has been very much junior to the petitioner and he was given the said promotion on the basis of seniority list which was not updated after the petitioner had been promoted on the post of Statistical Officer. This Tribunal itself *vide* para No. 21 of the judgment and order dated 03.01.2020 has held as following:

“The court is of the view that by doing such exercise, respondent No. 1 was not justified rather they have violated their own guidelines mentioned in Karmik Anubhag-2 G.O. No. 1801-Karmik-2/2002 dated 23.06.2003 where the procedure to be adopted to fill up different posts under government is prescribed.....”

The petitioner has further stated that Respondent No. 4 in his personal capacity never complied with the judgment and order dated 03.01.2020 passed by this Tribunal with regard to fixation of seniority of the petitioner with respect to Respondent No. 3. He did not file any review petition nor writ petition against this order of the Tribunal but has defied this order. He never complied with rule No. 23(3) of U.P. Forest Statistical Service Rules, 1982 which describe the procedure of fixing seniority as following:-

“23(3) Padonnati Dwara Niyukt Kiye Gaye Vyaktiyon Ki Paraspar Jyeshthta Vahi Hogi Jo Us Samvarg Mein Rahi Hai Jisase Unki Padonnati Ki Gayi Hai”

He did not comply with the direction given *vide* G.O. No. 15/5/1973 dated 20.03.1974 (Annexure no. A7) which *vide* its para 2 directs as following:

“.....Chune Hue Abhyarthiyon Ke Naam Unke Mool Pad Par Parasparik Jyeshthta Inter-se-seniority Ke Anusar Vyavasthit Kiye Jayenge. ”

He failed to see and consider the opinion already given regarding same matter by Secretary, Forest, Dr. S.S.Sandhu *vide* Office Memorandum

No. 1995/X-1-2011-4(8) 2011 dated 05.01.2012 (Annexure No. A-10) in following words:-

“.....Uttaranchal Sarkari Sewak Jyeshthta Niyamawali 2002 Ke Niyam 6,7 Evam 8 Ki Vyavasthanusar Poshak Samvarg Mein Usase Jyeshth Koi Vyakti Bhale Hi Uski Padonnati Poshak Samvarg Mein Kanishth Vyakti Ke Pashchat Ki Gai Ho Us Samvarg Mein Jismein Uski Padonnati Ki Jaye Vah Apani Vahi Jyeshthta Punah Prapt Kar Lega Jo Poshak Samvarg Mein Thi.....”and the principle of catch up seniority was applied in fixing the seniority as it is evident from the seniority list attached with the said Office Memorandum dated 05.01.2012 ((Annexure No. 10). The same seniority list dated 05.01.2012 has already been held as valid by this Tribunal in claim Petition No. 23/DB/2013, Sushil Lamiyan vs. State of Uttarakhand and others.

The petitioner had further filed a representation *vide* his letter dated 17.07.2019 through proper channel to the respondent No.1 with a request to reconsider the matter of fixation of seniority *vis-à-vis* respondent No. 3. The instant petition has been filed after filing statutory representation against the impugned order. Some case law has also been cited in the claim petition.

3. Counter Affidavit on behalf of respondents No. 1 and 4 has been filed by the Joint Secretary, Forest Department, Government of Uttarakhand *inter-alia* stating that the impugned order dated 22.06.2020 has been passed in compliance of order dated 03.01.2020 passed by this Tribunal in Claim Petition No. 83/DB/2018 and is completely legal and valid and deserves to be upheld. In furtherance of the letter dated 18.08.2018 and 09.08.2019 sent by Principal Chief Conservator of Forest (HoFF) to the Forest and Environment Department and in view of the opinion expressed by the Law Department, interim seniority list of Statistical Officer working in Forest Department as on 01.07.2019 was prepared and issued *vide* office order dated 26.12.2019. The petitioner filed his objections against the interim seniority list. After duly disposing of the objections of the petitioner, the respondent No. 1 has duly issued the final seniority list of Statistical Officer working in Forest Department as on 01.07.2019 *vide* office order dated 22.06.2020. The Tribunal has categorically held in paragraph No. 29

of its judgment dated 03.01.2020 that the Tribunal is not deciding the issue of seniority and, therefore, directed the Government to decide the issue of seniority after preparing fresh seniority list of Statistical Officer in accordance with law. In compliance of the said judgment and order, the final seniority list dated 22.06.2020 has been prepared in accordance with law. Before the petitioner was promoted to the post of Statistical Officers in the year 2013, 08 Statistical Officers were appointed through direct recruitment *vide* order dated 13.04.2011 and seniority list of Statistical Officer dated 05.01.2012 was prepared in which name of the petitioner did not appear as he was promoted in the year 2013. It is further stated that the impugned seniority list has rightly been issued on the basis of the relevant seniority rule i.e. Rule 8, which is applicable in the matter at hand. The Law Department has also rightly expressed its opinion that the rule relevant in the matter is Rule 8 and the applicability of the said rule is not in contravention with the judgment and order dated 03.01.2020 passed by this Tribunal, as the Tribunal had left it for the government to take the appropriate decision in the said order.

4. It is further stated in the Counter Affidavit that the petitioner and respondent No. 3 were initially appointed on the post of Investigator-cum-Computer. Later both were promoted on the post of Additional Statistical Officer (though in different years). The next post of promotion is Statistical Officer. Firstly, it is imperative to state that post of Additional Statistical Officer is filled only by way of promotion for which the feeding cadre is Investigator-cum-Computer whereas, the further post of promotion i.e. Statistical Officer is filled both by way of promotion and direct recruitment. Secondly, post of Investigator-cum-Computer and Additional Statistical Officer belong to same cadre whereas, post of Statistical Officer forms a different cadre. Thus, with the given background, the rule of regaining of seniority/catch-up rule will apply as per rule 6 of the Seniority Rules 2002 when promotion are made to the post of Additional Statistical Officer from Investigator-cum-Computer because the said post is filled only by way of promotion and promotion is taking place in same cadre. The said catch up

rule will not apply in case of promotion being made to the post of Statistical Officer firstly, because the said post is filled by both ways and secondly, it leads to the change of cadre. Further, after applicability of Rule 8 of Seniority Rules of 2002, the catch up rule as per Rule 8(2) (b) shall also not apply in the present case because the selection year of the petitioner and that of the respondent no. 3 is not same hence, do not fall under the category of one selection and secondly 08 Statistical Officers have been appointed before the petitioner i.e. in the year 2011 by way of direct recruitment. Hence, for all the reasons stated above the petitioner is not entitled to regain his seniority with the respondent No. 3 after being promoted on the post of Statistical Officer. In the seniority list issued *vide* order dated 22.06.2020, the petitioner is placed junior to the respondent No. 3 which proves that it was respondent No. 3 who had a rightful claim of being promoted to the post of Deputy Director, Statistics. No benefit of case laws cited by the petitioner can be given to the petitioner because the said case laws are silent w.r.t. specific situation of change in cadre and filling up the promotional post by way of both promotion and direct recruitment. The said case laws only talk about the catch up rule but do not clarify as to when the said catch up rule shall apply. In the instant case, the principle of catch up rule shall not apply.

5. In the Rejoinder reply to the above Counter Affidavit, the petitioner has stated that neither learned A.P.O. nor the Joint Secretary can represent the respondent No. 4, Shri Anand Vardhan who is a party in individual capacity by name and Shri Anand Vardhan cannot be represented by any Govt. Servant nor the State of Uttarakhand or its Secretary nor Shri Anand Vardhan can authorize any Government servant/employee to represent himself who has been impleaded in individual capacity by name in the above claim petition. Further proceeding against Shri Anand Vardhan who is respondent No. 4 may kindly be treated as ex-parte proceeding. The petitioner is treating the said reply to have been made only by the Respondent No. 1.

6. It is further stated in the rejoinder affidavit that the respondent No. 3 was promoted in haste and illegally on the post of Deputy Director (Statistics) because the respondent No. 3 was granted accelerated promotion on the post of Statistical Officer as he belongs to reserved category and he could not be further promoted on the post of Deputy Director as a candidate of General Category nor as a candidate of reserved category because there could be no reservation @ 19% on two sanctioned posts of Deputy Directors (Statistics). The petitioner was also promoted on the post of Statistical Officer in the year 2013 but his name was not entered in the said seniority list of 2012 nor the said Seniority list 2012 was revised nor got updated for 6 years continuously so that the answering respondent No.1 could malafidely promote the respondent No. 3 on the post of Deputy Director (Statistics), illegally pretending that the name of the petitioner was not there in the seniority list (2012) of Statistical Officers. This Tribunal has already declared *vide* para 20 of the judgment and order dated 03.01.2020 that 'the promotion of the respondent No. 3 on the post of Deputy Director (Statistics) was not made as per updated seniority list and the promotional exercise was clearly violative of Article 14, 16 and 309 of the Constitution of India, rules of Government as well as established norms of the service Rules.'

7. It is further stated that the petitioner had filed objections against Interim Seniority list dated 26.12.2019 vide his letters/representation dated 07.01.2020 (Annexure No. A-7A) and representation dated 23.05.2020 (Annexure No. A-11) before finalization of Final seniority list dated 22.06.2020. But the above said representations were never considered as per Rules and Law of catch up seniority and they were simply disposed by keeping in view the opinion expressed by said Law Department although illegally and against the spirit of order dated 03.01.2020 passed by this Tribunal. It is emphatically denied and not admitted that the impugned seniority dated 22.06.2020 has been made after duly considering the reported letter dated 09.08.2019 (CA No. 1) and letters dated 18.08.2018 (CA No. 1) of the Principal Chief Conservator of Forests. In fact the

respondent no. 1 and respondent no. 4 have totally ignored the recommendation made by Respondent no. 2 who was holding the charge of Principal Chief Conservator of Forest (H.O.F.F.). The answering respondent no. 1 has categorically admitted that respondent no. 3 Shri Lamiyan was granted accelerated promotion on the post of Statistical Officer as per provision of said G.O. dated 20.03.1974 (Annexure No. A- 7) but has knowingly not implemented the other part of the said G.O. dated 20.03.2014 which states as: “.....*Abhyarthiyon Ke Naam Unke Mool Pad Par Parasparik Jyeshthta (Inter Se Seniority) Ke Anusar Punha Vyavasthit Kar Liye Jayenge. Aur Rikhtiyon Ke Virudh Padonnatiyan Usi Kram Mein Ki Jayengi.*” It is crystal clear that impugned seniority list dated 22.06.2020 has not been constituted as per provision of the said G.O. dated 20.03.1974 and the same is liable to be set aside. The respondent No. 3 is much junior to the petitioner in the feeding cadre of investigator-cum-computer as the petitioner has been placed at Sl.No. 64 and the respondent No. 3 has been placed at S. No. 108 in the seniority list of the Investigator-cum- computer. It is emphatically denied that the post of statistical officer belongs to a different cadre. There is only one cadre in the service. Promotion of the respondent no. 3 (Shri Lamiyan) has been granted in the form of accelerated promotion on the post of statistical officer as per provision of the above said G.O. dated 20.03.1974 and this fact has been admitted by the respondent no. 1 *vide* para no. 12 of the said reply Affidavit itself as such the seniority on the post of statistical officer has to be determined as per provision of the said G.O. dated 20. 03.1974 but the respondent no. 1 has not knowingly complied with provision of said G.O. 20. 03.1974 while he constituted the said impugned seniority list dated 22.06.2020. It is not admitted that said Rule 8(2)(b) is not applicable in the instant case. The answering respondent had raised the same plea *vide* its order dated 03.12.2018 but the same plea was rejected and the said order dated 03.12.2018 had been quashed *vide* order dated 03.01.2020 passed this Hon’ble Tribunal in claim petition No. 83/DB/2018. So the plea that Rule 8(2)(b) as stated in the reply Affidavit suffers from the principle of *res-judicata* and the same is liable to be rejected again. It is also denied that the

seniority under Rule 8(2)(b) of Govt. Seniority Rules 2002 are based on "Selection Year". In fact Rule 8(2)(b) is applied when promotions are made from the single cadre or several cadres and Rule 6 is applied when the promotion are made from single feeding cadre and Rule 7 is applied when the promotions are made from several feeding cadres. In the instant case, the promotion of the petitioner and respondent No. 3 on the post of Statistical Officer has been made from single feeding cadre and as such provision of Rule 6 with its explanation should have been applied also as per observation of this Tribunal made *vide* para 28 of the judgment and order dated 03.01.2020 (Annexure No. A2) but the respondent No. 1 has failed to comply with the same and has illegally denied the provision of catch up Rule of seniority in fixing the seniority of the petitioner in the cadre of Statistical Officers.

8. Regarding the legal aspects of the matter, the Rejoinder affidavit states that this Tribunal has considered the same matter in Claim Petition No. 42/DB/2018, K.C. Peinuly vs State of Uttarakhand through more than six judgments and orders passed by Hon'ble Supreme Court of India and reached to the conclusion that under reservation policy concept of catch up seniority is applicable in accelerated promotion and instant claim petition is fully covered by the judgment and order dated 28.07.2020 passed in the above claim petition No. 42/DB/2018.

9. Counter Affidavit of the Principal Chief Conservator of Forest, Respondent No. 2 has been filed which states that in pursuance of the order dated 03.01.2020 passed by this Tribunal, the respondent No. 2 has prepared a fresh seniority list dated 10.01.2020 and submitted to respondent No. 1. For other issues raised in the claim petition, he has stated that they are either matter of record or do not pertain to him and that the compliance of the order dated 03.01.2020 of this Tribunal is to be carried out by the respondent No. 1. No R.A. has been filed against this affidavit.

10. Counter Affidavit has been filed by the Respondent No. 3 *inter-alia* stating that the promotion to the post of Statistical Officer is based on merit. The seniority of the respondent No. 3 on the post of Statistical Officer

was duly finalized and issued in accordance with rules and orders. Thereafter, the respondent No. 3 was promoted to the post of Deputy Director (Statistics) *vide* order dated 11.01.2019. All eligible Statistical Officers including the respondent No. 3 were considered for promotion to the post of Deputy Director (Statistics). It is clear from para No. 29 of the judgment dated 03.01.2020 that this Tribunal has not decided the *inter-se* seniority of the petitioner and the respondent No. 3. By direct recruitment, 8 persons were appointed to the post of Statistical Officer on 13.04.2011. In accordance with law, rules and orders, the petitioner was granted promotions and his seniority has been legally and correctly determined in accordance with the Uttarakhand Government Servants Seniority Rules, 2002. The impugned seniority list is in accordance with law, rules and orders. The Tribunal had ordered and directed to prepare fresh seniority list in accordance with law. The impugned seniority list has been drawn in accordance with the prevalent rules. According to U.P. Forest Statistics Service Rules, 1982 as amended in the year 1985 and adopted by Uttarakhand Adoption and Modification Order, 2002, the appointment to the post of Statistics Officer is required to be made by direct recruitment and promotion in the ratio of 50:50. On promotion of the respondent No. 3 to the post of Statistical Officer, his seniority needs to be determined in accordance with Rule 8 of the above Seniority Rules, 2002 based on the date of his substantive appointment. Counter Affidavit of the respondent No. 3 further states that all eligible Statistical Officers irrespective of general or reserved categories are required to be considered for promotion to the post of Deputy Director (Statistics) in general category. The promotion of the respondent No. 3 to the post of Statistical Officer was not with the condition of refixation of his seniority after promotion of his immediate senior in the initial/feeding cadre. It is also submitted that the promotion to the post of Statistical Officer are not based on seniority alone. It is also wrong that refixation of seniority of the respondent No. 3 is concerned only with the petitioner. The petitioner is not entitled to have his seniority above the respondent No. 3. In his claim petition No. 83/DB/2018, the petitioner had not sought relief for cancellation of promotion of the respondent No. 3

rather he had sought for direction to respondent No. 1 and 2 to promote the petitioner on the post of Deputy Director (Statistics) as per his right. So the petitioner has no right to challenge the promotion of the respondent No. 3 and this contention of the petitioner is barred by principles of *res-judicata*.

11. In the Counter Affidavit of Respondent No. 3, it is also submitted that the petitioner is placed in the impugned seniority list at Sl. No. 10 and he has claimed his seniority in the cadre of Statistical Officer above the Respondent No. 3 (Sl.No.1). Thus, Statistical Officers placed at Sl. No. 2 to 9 are necessary and proper party in the present claim petition and the present claim petition is bad for non-joinder of necessary and proper party and is liable to be dismissed on this ground alone.

12. In the Rejoinder Reply to this Counter Affidavit of Respondent No. 3, the petitioner has *inter-alia* stated that in the promotion order of Respondent No. 3 dated 20.12.2005, it is clearly mentioned that he was promoted on the post of Statistical Officer as an employee belonging to Schedule Caste class. It is not admitted and denied that he was promoted on the basis of merit because as per rule 18 of U.P. Forest Statistical Service 1982 Rules, a list of eligibles is prepared according to seniority of all eligible but the answering respondent having been placed at Sl. No. 108 of concerned seniority list could not be considered earlier than the petitioner who stands at seniority No. 64 in the same seniority list. In fact, the deponent could not legally be promoted on the post of Statistical Officer because he was not holding any post of Assistant Statistical Officer. On this post, he was given promotion as provisional gap arrangement as the person who as holding post of Assistant Statistical Officer had gone on deputation. This gap arrangement was never regularized by passing any fresh order. The promotion of the answering respondent on the post of Deputy Director was made *de-hors* the rules as this Tribunal itself has held *vide* para No. 20 to 24 of its earlier judgment and order dated 03.01.2020 in the same matter. This Tribunal *vide* para 29 of the judgment and order dated 03.01.2020 has held as following:

“In our view, respondent No. 1 has violated all such rules and procedure while doing the promotional exercise of the respondent No. 3 to the post of Deputy Director (Statistics)”

13. This R.A. further states that Principal Conservator of Forest/Head of the Department, Uttarakhand *vide* his letter No. 413/1-12(8) dated 18.08.2018 had informed the Additional Secretary, Forest and Environment, Uttarakhand Stated that a matter of demotion of Shri Sunil Kumar Lamiyan from the post of Statistical Officer has been referred to the Government in view of the judgment dated 27.04.2012 passed by Hon’ble Supreme Court of India in U.P. Power Corporation vs. Rajesh Kumar & others (2012) 2 SCC L&S 289. Yet instead of his demotion, the respondent No. 3, Sh. Lamiyan was most arbitrarily and illegally promoted on the post of Deputy Director Statistics *vide* order no. X-1-2019-04(02)/2011 TC dated 11.01.2019 i.e. in derogation of the above said judgment dated 27.04.2012 passed by Hon’ble Supreme Court of India.

14. Regarding non-joinder of necessary and proper parties as stated in the Counter Affidavit of Respondent No. 3, this R.A. states that the petitioner has to be placed above respondent No. 3 only and no other employees is concerned with the said promotion of the respondent No. 3 under reservation policy except the petitioner who has a statutory right to regain his seniority as it was in the feeding cadre and this has to be done according to the statutory provisions, concerned service Rules, 1982 along with Seniority Rules, 2002 and as per law propounded by Hon’ble Supreme Court *vide* its judgment and orders.

15. Respondent No. 3 has further filed Supplementary Affidavit *inter-alia* stating that Rule 18 of U.P. Forest Statistical Service Rules, 1982 is not applicable in the case of promotion to the post of Statistical Officer. In case of promotion to the post of Statistical Officer, Rule 16 is applicable, which *provides* that the promotion shall be based on merit. The deponent was eligible and accordingly he was considered and based on merit was promoted to the post of Statistical Officer *vide* order dated 20.12.2005. The allegations that the deponent was given promotion to the post of Assistant Statistical Officer as provisional gap arrangement are wrong and denied.

The promotion of the deponent to the post of Assistant Statistical Officer is in accordance with law, rules and orders. It is further stated that final seniority list of Statistical Officers was drawn and *vide* letter dated 21.12.2010 forwarded to the Secretary to the Government of Uttarakhand, Forest and Environment for holding meeting of the DPC for promotion to the post of Deputy Director (Statistics). Except the deponent none was eligible for consideration for promotion. Promotion of the deponent to the post of Statistical Officer was/is legal and he has been promoted to the post of Deputy Director (Statistics) in accordance with law, rules and orders. The petitioner has no right to sail in two boats. The allegations that the promotion of the deponent to the post of Deputy Director (Statistics) is in derogation of the judgment dated 27.04.2012 of Hon'ble Supreme Court are absolutely wrong and denied. The issue of non-joinder of necessary parties has again been reiterated in this Supplementary Affidavit.

16. Petitioner has further filed Rejoinder reply to this Supplementary Affidavit *inter-alia* reiterating that respondent No. 3 was promoted on the post of Assistant Statistical Officer in stop-gap arrangement and this arrangement was never regularized nor the answering respondent No. 3 has filed any copy of the order by which his services on the post of Assistant Statistical Officer were regularized as per rules. He was illegally promoted on the post of Statistical Officer because in the lower post of Assistant Statistical Officer from which promotion is made on the post of Statistical Officer, he was never granted regular promotion but he was serving on the post of Assistant Statistical Officer in a stop-gap arrangement. The seniority list dated 21.12.2010 is not under consideration in the instant petition. It has already been made clear that the respondent No. 3 had never been fit to be promoted on the post of Statistical Officer from the post of Assistant Statistical Officer nor for the promotion on the post of Deputy Director, Statistics. The correct information regarding status of the respondent No. 3 on the post of Assistant Statistical Officer were not given to the Uttarakhand Public Service Commission by Respondent No. 1. There is no specific denial by the answering respondent to the specific fact that the matter pertaining

to the demotion of the answering respondent from the post of Statistical Officer was referred to the State Govt.

17. We have perused the record and heard the arguments of both sides.

18. Written arguments on behalf of respondent No. 3 have been submitted in which it is stated that in Claim Petition No. 83/DB/2018 filed earlier by the petitioner before this Tribunal and decided *vide* judgment dated 03.01.2020, while setting aside the seniority list dated 03.12.2018, the Tribunal had not decided the issue of seniority of the petitioner *vis-à-vis* respondent No. 3. The impugned seniority list in the present petition has been drawn and finalized by the Respondent no. 1 in compliance of this judgment and order of the Tribunal. Rule 3 of the Seniority Rules of 2002 provides that these Rules shall have effect notwithstanding anything to the contrary contained in any other service rules made herein above. These Rules came into force on 13.08.2002. Thus, the seniority Rules of 2002 would prevail notwithstanding anything contrary thereto contained in any other Service Rules or orders. Consequently G.O. dated 20.03.1974 (Annexure: A7) relied upon by the petitioner or any other rules or orders contrary to the Service Rules, 2002 ceased to have any effect since the date of application of Seniority Rules, 2002. In this context reference is made to para 18 of the judgment of Hon'ble Apex Court in Civil Appeal No. 9906 of 2003, Pawan Pratap Singh & others vs. Reevan Singh & others, wherein it has been held that Rule 3 of U.P. Government Seniority Rules, 1991 (which is similar to the Seniority Rules, 2002) gives overriding effect notwithstanding anything to the contrary contained in earlier service rules. Relying on this judgment of Hon'ble Apex Court, Hon'ble High Court of Uttarakhand in para 37 of its judgment dated 21.07.2020 in writ petition (S/B) No. 297 of 2017 Dr. Sunita Pandey vs. State of Uttarakhand & others has held that Seniority Rules of 2002 would prevail notwithstanding anything contained in any other Service Rules.

19. The Hon'ble Apex Court in Civil Appeal No. 9906 of 2003, Pawan Pratap Singh vs. Reevan Singh & others, has held that Rule 6 has no application as it provides for determination of seniority where appointments are made by promotion only. Replying on this judgment, the Hon'ble High Court of Uttarakhand in its judgment in Writ Petition (S/B) No. 297 of 2017 Dr. Sunita Pandey vs. State of Uttarakhand & others has held that Rule 8(1) is applicable and not Rule 6 of the Seniority Rules, 2002. In view of this seniority of the petitioner, respondent No. 3 and 8 direct recruits is required to be determined under Rule 8(1) of the Seniority Rules, 2002. Still it is further submitted that Rule 8(2)(b) provides that the seniority *inter-se* of persons appointed on the result of 'any one selection' by promotion, shall be as determined in accordance with the principles laid down in Rule 6 or Rule 7, as the case may be, according as the promotions are to be made from a single feeding cadre or several feeding cadres. Consequently Rule 8(2)(b) would apply only in determining *inter-se* seniority of the persons appointed on the result of 'any one selection'. The words 'any single selection' are not defined in the Seniority Rules, 2002. However, Hon'ble High Court of Uttarakhand in para 67 of the above judgment has held that 'any one selection' can be said to take place where State Govt. sends one intimation for selection of candidates for appointment to a post both by promotion and by direct appointment or even in cases where different requisitions are sent, the Public Service Commission undertakes the selection process simultaneously for selecting candidates both by promotion and by direct recruitment. It is only then 'one selection' can be said to have taken place, in which event alone Rule 8(2) (a) and (b) be attracted and not otherwise (para 68 of the judgment). The petitioner and respondent No. 3 were promoted to the post of Statistical Officer by different selections made with a gap of approximately 8 years i.e. respondent No. 3 was promoted on 20.12.2005 and the petitioner got promotion on 19.11.2013. Thus, the Rule 8(2)(b) of the Seniority Rules, 2002 is not applicable to the petitioner. Cyclic order prescribed in Rule 8(3) of the Seniority Rules, 2002 would apply only where appointments are made both by promotion and by direct recruitment on the result of 'any one selection'.

Since the direct recruits placed at Sl. No. 2 to 9 in the impugned seniority list were appointed on 13.04.2011 and the petitioner was promoted on 19.11.2013, Rule 8(3) is also not applicable. The *inter-se* seniority of the petitioner, respondent No. 3 and 8 direct recruits in the cadre of Statistical Officer is to be determined from the date of substantive appointment as per Rule 8(1) of the Seniority Rules, 2002. Thus, the impugned seniority list (Annexure: 1) based on the date of substantive appointment is in accordance with law and rules. It is well settled that seniority is determined based on length of service in the Grade. 8 persons were appointed in direct recruitment to the post of Statistical Officer on 13.04.2011 and the petitioner was promoted to the post of Statistical Officer on 19.11.2013. These direct recruits are placed in the impugned seniority list (Annexure-A1) at sl. No. 2 to 9 and the petitioner is placed at Sl. No. 10 of the impugned seniority list. The petitioner is claiming his seniority at sl. No. 1. In Public Service Commission Uttaranchal vs. Mamta Bisht & others reported at para 29 SCLJ 2010 (paras 7 and 8), Hon'ble Apex Court has held that if a person who is likely to suffer from the order of the Court and has not been impleaded as a party then non-joinder of necessary party is fatal. In another case reported 2006 Lab. I.C.-Indu Shekhar Singh & ors. vs. State of U.P. & ors. at para 2237, the Hon'ble Apex Court has held that if affected person has not been impleaded as a party, the question of *inter-se* seniority cannot be determined.

20. Written counter arguments against the above written argument of Respondent No. 3 has been submitted on behalf of the petitioner in which, *inter-alia*, it is stated that the matter involved pertains only to a question whether a senior employee like petitioner having seniority No. 64, who is promoted later than his junior like respondent No. 3 having seniority no. 108 who is granted accelerated promotion under roster system of reservation because he belongs to Scheduled Caste category of employees, shall regain his seniority as it is in the entry point of the service/cadre. It is also to be noted that the petitioner & respondent No. 3 both have been promoted on the next higher post of Statistical Officer on different dates

but no simultaneous direct recruitment along with their promotions was ever made along with the promotion of both petitioner and respondent No. 3. It is also to be emphasized that the seniority Rules of 2002 are of general nature and do not deal specifically with the matter of reservation and determination of seniority when accelerated promotions are granted as per policy of reservation. As such, Rule 23 of service rules is not controlled by the provision of Seniority Rules 1991 or by Seniority Rules, 2002. These Seniority Rules may not override all the provisions of any other service Rules. These Seniority Rules, 2002 can have overriding effect only on those aspects of Service Rules which are also dealt with by these Seniority Rules, 1991 or 2002. These two seniority Rules contain no provision of granting of Seniority when accelerated promotion is granted to a junior employee under roster scheme of reservation and a senior employee in the same cadre is promoted later as a general candidate. So the controversy involved has not to be resolved under the G.O. of 1974 and Service Rules of 1982. The length of service in the cadre loses importance when promotion is granted under Reservation Policy.

Hon'ble Supreme Court of India, in U.P. Power Corporation Ltd. vs. Rajesh Kumar 2012 SCC (L&S) 289 *vide* its judgment and order dated 27.04.2012 has held the following:

"87. In ultimate analysis we conclude and hold that Section 3(7) of 1994 Act and Rule 8-A of 2002 Rules are ultra-vires as they run counter to dictum of M. Nagraj. Any promotion that has been given on the dictum of Indra Sawhney and without aid or assistance of Section 3(7) & Rule 8-A shall remain undisturbed."

Keeping in view of the above said dictum of Hon'ble Supreme Court, concerned authorities have reverted the class III employees in the Forest Department to the post from which they were promoted as already informed by respondent no. 2 to respondent No. 1 *vide* his letter no. 413/1-12(8) dated 18.08.2018 (Annexure CA-1) filed with Counter Affidavit filed on behalf of Respondents No. 1 & 4. But Respondent No. 3, Sushil Kumar Lamiyan has not yet been reverted as it is evident from a letter No. *Ka* 1057/1-12(9) dated 16.11.2015 addressed to Principal

Secretary, Forest and Environment by Principal Conservator of Forests, Uttarakhand, Dehradun. The controversy in the instant petition is fully covered by the judgment and order dated 28.07.2020 passed by this Tribunal in Claim Petition No. 42/DB/2018, K.C.Peinuly vs. State of Uttarakhand & others. The respondent No. 3 could not be promoted substantively and legally on the post of Statistical Officer because he was not holding post of Statistical Assistant from which only promotion to the post of Statistical Officer are made. This fact is evident from the contents of Annexure No. CA-R-2 filed by respondent No. 3 himself with the Counter Affidavit that he was promoted in a stop-gap arrangement (at sl. No. 5) when vacancy arose because some of Statistical Assistants had gone on deputation but they have not given up their lien on the said parental post and could rejoin the same post. No evidence has been filed by which it could be held that said Shri Virendra Kumar Ravi has ever forgiven his promotion on any post. There is no mention of any request/letter written by Sh.Virendra Kumar by which it could be ascertained on which post he was promoted which he had forgiven. This vague noting is nothing but to camouflage the illegal promotion granted to Respondent No. 3 because petitioner has claimed his seniority under principle of catch up/rejoining of seniority above the respondent No. 3. The grievance of the petitioner is related only with Respondent No. 3 who had been given promotion (although illegally) under roster system of reservation policy. No other promotee or direct recruit has challenged the so called accelerated promotion of respondent No. 3. Consequently, no objection/dispute can be raised by any other direct recruit with the petitioner. This controversy has been dealt with by Hon'ble Supreme Court of India in Ajit Singh & others vs. State of Punjab & others *vide* its para No. 86 in the judgment and order dated 16.09.1999, (1999)7 Sec. 209. This Tribunal besides in above case of K.C. Peinuly has considered this judgment dated 16.09.1999 in claim petition no. 23/DB/2014 also.

21. These written arguments of the petitioner further state that the respondent No. 3 could not be promoted on the post of Deputy Director neither in General Category nor in the reserved category because the seniority list on the basis of which promotions are made was not got up to date as the name of the petitioner has not been included, in the seniority list of Statistical Officers nor the name of others were got included as the same has been observed by this Tribunal *vide* para No. 22 & 24 of the judgment dated 03.01.2020, in claim petition No. 83/DB/2018, Gorakh Nath vs. State of Uttarakhand & others. It is abundantly clear that with malafide intention, the authorities have knowingly and intentionally not included the name of the petitioner in the seniority list so that the respondent No. 3 could be given promotion illegally on the post of Deputy Director. Had the authorities included the name of the petitioner in the seniority list of Statistical Officers according to said Rule 23 of Service Rules 1982 and according to the provisions of G.O. of 1974, the petitioner could be placed above the name of the respondent no. 3 and the petitioner had a right to be considered for the purpose of promotion on the post of Deputy Director but authorities capriciously and with oblique motive did not include the name of the petitioner in the seniority list of Statistical Officer for six years without any reasons or justification. The petitioner has retired on 28.02.2021 at the age of superannuation but even after retirement he is eligible for the notional promotion on the post of Deputy Director.

22. Regarding the judgments filed by the Respondent no. 3, it is quoted in the petitioner's arguments that none of the judgments cited by the respondent No. 3 deal with the principles of catch up seniority/regaining of seniority which is central point of controversy involved in the instant petition. In Pawan Pratap Singh & others vs. Reevan Singh & others, the Hon'ble Supreme Court itself *vide* para no. 1 of this Judgment has explained the subject matter involved in this case as following:

"In this group of their appeals, by special leave the question presented for consideration before this Court relates to determination of seniority between two groups of direct recruits to the post of Deputy Jailor (Group 'C' post)....."

Keeping in view the above said statement, this judgment is not related with the instant petition in which the central controversy of determination of seniority on account of accelerated promotion under roster system of reservation granted to the scheduled caste employee who is junior in the cadre and a senior employee is promoted later.

Dr.Sunita Pandey vs. State of Uttarakhand & other: Under this judgment, the controversy has been dealt with under U.P. Sales Tax Service Rules, 2002 and under different facts regarding Direct Recruitment and promotions. While in the instant petition, the controversy is between two promotees from one and the same feeding cadre. In this case also controversy was not involved regarding accelerated promotion under Roster system of reservation policy and regarding the seniority of the senior who was promoted later. Thus, the above said judgment is of no help to decide the controversy involved in the instant petition.

State of Bihar and Ors etc. vs. Akhoure Sachwindra Nath and others: This judgment is also based on different facts. No controversy regarding catch up rule of seniority was involved nor the same was dealt with in this case. The only controversy regarding seniority in this case was between direct recruits and promotees under 25 % quota for the year 1958 and who were given promotion retrospectively. This judgment is also of no help to the respondent No.3.

Public Service Commission Uttarakhkand vs. Mamta Bist: This judgment pertains to impleadment of necessary party. In the instant petition, the claim of the petitioner has been made regarding seniority according to catch up Rule/regarding of seniority against respondent No. 3 only and no relief has been sought against any other party. So keeping in view the facts of reported case the same is of no help to the respondent No.3.

Indu Shekhar Singh & Ors vs. State of U.P. & Ors: The controversy involved in this case is also different from the controversy involved in the instant petition. In this case, the controversy is regarding counting of past

services of deputationists on their absorption in the loanee department. No such controversy is involved in the instant petition. The controversy in the instant petition pertains to the fixation of seniority of the petitioner on the basis of principle of catch up/gaining seniority with respect to respondent No. 3 who has been properly impleaded and no relief with respect to any other party has been claimed by the petitioner. So the question of impleading any other party does not arise. As such this judgment is also of no help to the respondent No. 3.

The instant petition is fully covered by the following judgments delivered by Hon'ble Supreme Court of India and the same have already been considered by this Tribunal vide its judgment and order dated 28.07.2020, passed in Claim Petition no. 42/DB/2018, K.C.Peinuly vs. State of Uttarakhand & others:

- (a) Paneer Selvam & Ors vs. Govt. of Tamil Naidu & Ors, (2015) 10 SCC 292
- (b) Union of India & Ors vs. Veer Pal Singh Chauhan & ors, (1995) 6 SCC
- (c) Ajit Singh & Ors vs. State of Punjab & Ors, (1999) 7 SCC 209.

23. We have discussed rival contentions to enable the parties to understand what is in their favour and what is against them. We have given our anxious consideration to the submissions and counter submissions of learned Counsel for the parties and perused the record.

24. Petitioner retired on 28.02.2021, but if the petition is decided in his favour, he is eligible for notional promotion on the post of Deputy Director along with related benefits even after attaining the age of superannuation. If it is decided that he has no case, then he will get nothing. Respondent No. 3, in any case, will remain Deputy Director (Statistics).

25. Admittedly, respondent No. 3 is junior to the petitioner in the feeding cadre. Respondent No. 3 got accelerated promotion. Short controversy involved in the present claim petition is, whether the petitioner, who was senior to respondent No. 3 in the feeding cadre, would regain seniority over him on the basis of catch up rule or not.

26. Catch-up rule/regaining of seniority is the central point of controversy involved in the instant petition. The decision of Dr. Sunita Pandey (*Supra*), which has been referred to by learned Counsel for respondent No. 3 relates to U.P. Sales Tax Service Rules, 2002 and under different facts regarding direct recruitment and promotion. In the instant case, the controversy is between the promotees from one and the same feeding cadre. In Dr. Sunita Pandey's case, the controversy was not as regards the accelerated promotion under roster system of reservation policy and regarding the seniority of the senior, who was promoted later.

27. In decision of Akhoure Sachwindra Nath and others (*Supra*), there was no controversy regarding catch-up rule and seniority. The only controversy regarding seniority in that case was between direct recruits and promotees under 33% quota for the year 1958 and who were given promotion retrospectively.

28. In Indu Shekhar's decision (*supra*), the controversy was as regards counting of past service of deputationists on their absorption in the loanee department. No such controversy is involved in the present claim petition, where the dispute relates to fixation of seniority of the petitioner on the basis of catch-up rule *vis-à-vis* respondent No. 3.

29. No relief with respect to any other parties has been claimed by the petitioner. The question of impleading any other parties, therefore, does not arise, in view of the law laid down by Hon'ble Apex Court and Hon'ble High Courts in (1) Kasturi vs. Uyyamperumal & others, (2005)6 SCC 733 (2) Razia Begum vs. Anwar Begum, AIR 1958 SC 886 (3) Mahadeva Rice & Oil Mills vs. Chennimalai Gounder, AIR 1968 Mad. 287 (4) Antony Devaraj vs. Aralvaimozhi (Kurusadi) Devasahayam Mount Oor and Thuya Viagula, Annai Church rep by the Trustee, 2004 (2) CTC 183 (5) Mumbai International Airport vs. Regency Convention Centre, AIR 2010 SC 3109. It is well settled principle of law that basically it is for the petitioner in a claim petition to identify the parties against whom he has any grievance and to implead them as respondents in the claim petition filed for the necessary relief.

Dominus litis is the person to whom a suit (petition) belongs. It is this person who will be affected by the decision in a case. This person derives benefits if the judgment is in his favour, or suffers the consequences of an adverse decision. If, during the hearing of the petition, the Court feels that some others should also be heard, on the ground that they are necessary or proper parties, the Court can direct them to be impleaded as party respondents. Here, the Tribunal finds that the petition is not bad for non-joinder of necessary parties.

30. So far as impleadment of Sri Anand Vardhan, Respondent No. 4, by name is concerned, this Tribunal does not find substance in the submissions of the petitioner that such respondent No. 4, was in any way, personally involved in promotion of respondent No. 3 to the detriment of petitioner. A Counter Affidavit has been filed on behalf of Shri Anand Vardhan. Even if it be conceded for the sake of arguments that the Counter Affidavit filed on his behalf should not be admitted on record and proceedings of the claim petition should be treated ex-parte against respondent No. 4, it would not change the fate of the claim petition. In other words, impleadment of Shri Ananad Vardhan, as respondent No. 4, and not filing the Counter Affidavit in his personal capacity, is not going to affect the merits of the case.

31. **According to learned Counsel for the petitioner, Rule 6 of the Seniority Rules of 2002 will be applicable in the instant case. Learned A.P.O., on the other hand, submitted that it is Rule 8(1) of such Rules, which will be applicable in the present case. Instead of dealing with the rule position, we are of the view that this Tribunal should discuss the constitutional scheme in such scenario, as has been discussed by us in the judgment dated 28.07.2020, rendered in Claim Petition No. 42/DB/2018, K.C.Peinuly vs. State of Uttarakhand & others. The law laid down by Hon'ble Apex Court on the basis of the same shall override all other statutory interpretations.**

32. **Mandate of Hon'ble Apex Court:**
(through precedents)

The following are the landmark judgments of Hon'ble Apex Court on the subject:

- (1) S. Panneerselvam and others vs. Government of Tamilnadu and others, (2015) 10 SCC 292
- (2) M. Nagraj and others vs. Union of India and others, (2006) 8 SCC 212.
- (3) Union of India and others vs. Veerpal Singh Chauhan and others, (1995) 6 SCC 684
- (4) Ajit Singh Juneja and others vs. State of Punjab and others, (1996) 2 SCC 715
- (5) R.K.Sabharwal and others vs. State of Punjab and others, (1995) 2 SCC 745
- (6) Ajit Singh and others (ii)vs. State of Punjab and others, (1999) 7 SCC 209.

33. Let us turn to the decision of Hon'ble Supreme Court in *S. Panneerselvam and others vs. Government of Tamilnadu and others, (2015) 10 SCC 292*, which appears to have settled the controversy, like the one which this Tribunal is seized with at present:

Common issues involved in the bunch of SLPs/ Appeals, before Hon'ble Apex Court were:

“(i) In the absence of policy decision taken by the State/rules framed pursuant to the enabling provision of [Article 16 \(4A\)](#) of the Constitution of India whether a reserved category candidate promoted on the basis of reservation earlier than his senior general category candidate in the feeder category can claim consequential seniority in the promotional post; (ii) In the absence of policy decision taken by the State with regard to Tamil Nadu Highways Engineering Service Rules, whether Division Bench was right in holding that [Article 16\(4A\)](#) of the Constitution of India by itself would give consequential seniority in addition to accelerated promotion to the roster-point promotees”.

In para 3 of the said decision, background facts were mentioned. On the concept of '*catch- up rule*' and '*consequential seniority*', in para 9, the Hon'ble Apex Court observed thus:

“9.The concept of '*catch-up rule*' and '*consequential seniority*' is judicially evolved concepts to control the extent of reservation. The question of reservation and the associated promotion and the consequential seniority have been the matter of discussion in various

decisions of this Court. The matter regarding reservation in promotions was considered by a nine Judge Bench of this Court in [Indra Sawhney And Ors. vs. Union of India And Ors.](#), (1992) Supp. 3 SCC 217 and this Court held that the reservation under [Article 16\(4\)](#) of the Constitution of India is confined only to initial appointment and cannot extend to reservation in the matter of promotion. In order to nullify the effect of the aforesaid dicta, there was an amendment to [Article 16](#) by Constitution (Seventy-seventh Amendment) Act with effect from 17.06.1995. Vide this Amendment, after Clause (4), Clause (4A) was inserted in [Article 16](#) of the Constitution.”

Hon’ble Apex Court reproduced Article 16(4) and (4A) of the Constitution and commented upon the same as below:

“10. Clause (4) and Clause (4A) of [Article 16](#) of the Constitution of India read as under:-

“Clause 4. Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

Clause 4A. Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.”

11. [Article 16 \(4\)](#) of the Constitution of India enables the State to make a provision for reservation for appointments or posts in favour of any backward class of citizens which in its opinion is not adequately represented in the services under the State. The constitutional position on the insertion of Clause (4A) in [Article 16](#) is that the State is now empowered to make provision for reservation in the matter of promotions as well, in favour of SCs and STs wherever the State is of the opinion that the SCs and STs are not adequately represented in the service under the State. Clause (4A) of [Article 16](#) of the Constitution is only an enabling provision which empowers the State to make any provision for reservation for SC and ST candidates in the matter of promotion as well.”

Hon’ble Apex Court took us to the principles enunciated in a catena of decisions thus:

“12. [In Union of India And Ors. vs. Virpal Singh Chauhan And Ors.](#), (1995) 6 SCC 684, a question had arisen as to whether a person in SC or ST category who gets accelerated promotion because of reservation would also get consequential seniority in the higher post if he gets that promotion earlier than his senior in general category and this Court held that such an employee belonging to SC/ST category on promotion would not get consequential seniority and his seniority will be governed by the panel position. It was held as under:-

“24. ...In short, it is open to the State, if it is so advised, to say that while the rule of reservation shall be applied and the roster followed in the matter of promotions to or within a particular service, class or category, the candidate promoted earlier by virtue of rule of reservation/roster shall not be

entitled to seniority over his senior in the feeder category and that as and when a general candidate who was senior to him in the feeder category is promoted, such general candidate will regain his seniority over the reserved candidate notwithstanding that he is promoted subsequent to the reserved candidate. There is no unconstitutionality involved in this. It is permissible for the State to so provide...”

13. The decision in Virpal Singh Chauhan case led to another Constitution Amendment and the Parliament enacted Constitution (Eighty-fifth [Amendment](#)) Act 2001 whereby Clause (4A) of [Article 16](#) was further amended enabling the State to make a provision for reservation in matters of promotion with consequential seniority. Amended Clause (4A) reads as under:-

“4A. Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion with consequential seniority to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.” Eighty-fifth Amendment was made effective retrospectively from 17.06.1995, that is, the date of coming into force the original Clause (4A) of [Article 16](#) of the Constitution of India.

14. [In Ajit Singh Januja And Ors. vs. State of Punjab And Ors.](#), (1996) 2 SCC 715, by placing reliance on the principle laid down in Indra Sawhney case and also the Constitution Bench judgment in [R.K. Sabharwal And Ors. vs. State of Punjab And Ors.](#), reported in (1995) 2 SCC 745, a three Judge Bench accepted the principle of ‘catch-up rule’ as laid down in Virpal Singh Chauhan case observing that the balance must be maintained in such a manner that there was no reverse discrimination against the general category candidates and that any rule/circular or order which gives seniority to the reserved category candidates promoted at the roster-point would be violative of Articles 14 and 16 of the Constitution of India.

15. [In Jagdish Lal And Ors. vs. State of Haryana And Ors.](#), (1997) 6 SCC 538, another three Judge Bench opined that seniority granted to the Scheduled Caste and Scheduled Tribe candidates over a general category candidate due to his accelerated promotion does not in all events get wiped out on promotion of general category candidate.

16. In [Ajit Singh And Ors.\(II\) vs. State of Punjab And Ors.](#), (1999) 7 SCC 209, the Constitution Bench was concerned with the issue whether the decisions in Virpal Singh Chauhan and Ajit Singh Januja case which were earlier decided to the effect upholding the ‘catch-up rule’, that is, the seniority of general category candidates is to be confirmed or whether the later deviation made in Jagdish Lal case against the general category candidates. In Ajit Singh (II) case, inter-alia, the following points arose for consideration:-

(i). Can the roster-point promotees count their seniority in the promoted category from the date of their continuous officiation vis-à-vis general candidates, who were senior to them in the lower category and who were later promoted to the same level?

(ii) Have Virpal [(1995) 6 SCC 684] and Ajit Singh [(1996) 2 SCC 715] been correctly decided and has Jagdish Lal [(1997) 6 SCC 538] been correctly decided?

(iii) Whether the “catch-up” principles are tenable?

17. The Constitution Bench held that Articles 16(4) and (4A) did not confer any fundamental right to reservation and that they are only enabling provisions. Overruling the judgment in Jagdish Lal case and observing that rights of the reserved classes must be balanced against the interests of other segments of society in para (77), this Court held as under:-

“77. We, therefore, hold that the roster-point promotees (reserved category) cannot count their seniority in the promoted category from the date of their continuous officiation in the promoted post, — vis-à-vis the general candidates who were senior to them in the lower category and who were later promoted. On the other hand, the senior general candidate at the lower level, if he reaches the promotional level later but before the further promotion of the reserved candidate — he will have to be treated as senior, at the promotional level, to the reserved candidate even if the reserved candidate was earlier promoted to that level. We shall explain this further under Point 3. We also hold that Virpal, (1995) 6 SCC 684 and Ajit Singh, (1996) 2 SCC 715 have been correctly decided and that Jagdish Lal, (1997) 6 SCC 538 is not correctly decided. Points 1 and 2 are decided accordingly.”

18. Constitutional validity of Clauses (4A) and (4B) of [Article 16](#) of the Constitution was challenged in [M. Nagaraj And Ors. vs. Union of India And Ors.](#), (2006) 8 SCC 212. The question that came up for consideration was whether by virtue of impugned constitutional amendments, the power of Parliament was so enlarged as to obliterate any or all of the constitutional limitations and requirements upholding the validity of the said Articles with certain riders. On the concept of ‘catch-up rule’ and consequential seniority, this Court held as under:-

“79. Reading the above judgments, we are of the view that the concept of “catch-up” rule and “consequential seniority” are judicially evolved concepts to control the extent of reservation. The source of these concepts is in service jurisprudence. These concepts cannot be elevated to the status of an axiom like secularism, constitutional sovereignty, etc. It cannot be said that by insertion of the concept of “consequential seniority” the structure of [Article 16\(1\)](#) stands destroyed or abrogated. It cannot be said that “equality code” under Articles 14, 15 and 16 is violated by deletion of the “catch-up” rule. These concepts are based on practices. However, such practices cannot be elevated to the status of a constitutional principle so as to be beyond the amending power of Parliament. Principles of service jurisprudence are different from constitutional limitations. Therefore, in our view neither the “catch-up” rule nor the concept of “consequential seniority” is implicit in clauses (1) and (4) of [Article 16](#) as correctly held in Virpal Singh Chauhan, (1995) 6 SCC 684.”

19.

20. While considering the validity of Section 3(7) of Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and [Other Backward Classes](#)) Act, 1994, and Rule 8A of U.P. Government Servants Seniority Rules, 1991 which provided for consequential seniority in promotions given to SCs/STs by virtue of rule of reservation/roster and holding that [Section 3\(7\)](#) of the 1994 Act and Rule 8A of 1991 Rules are ultra vires as they run counter to the dictum in M. Nagaraj’s case in [Uttar Pradesh Power Corporation Limited vs. Rajesh Kumar And Ors.](#), (2012) 7 SCC 1, in paragraph (81), this Court summarized the principles as under: “(i) Vesting of the power by an enabling provision may be constitutionally valid and yet “exercise of power” by the State in a given case may be arbitrary, particularly, if the State fails to identify and measure the backwardness and inadequacy keeping in mind the efficiency of service as required under [Article 335](#).”

34. Hon'ble Apex Court has observed thus:

"24. [Article 16\(4A\)](#) of the Constitution is only an enabling provision which specifically provides that the concerned State may make any provision for providing reservation of appointments or posts in favour of any backward class citizens which is not adequately represented in the services under the State. Articles 16(4) and 16(4A) have to be read with [Article 335](#) of the Constitution which deal with norms of Scheduled Castes and Scheduled Tribes to services and posts and lay down that the claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State. In the absence of any policy decision taken by the State of Tamil Nadu, Eighty-fifth Amendment per se will not protect the consequential seniority granted to the respondents who were promoted to the post of Assistant Divisional Engineers following the rule of reservation.

26. The true legislative intent under [Article 16 \(4A\)](#) of the Constitution is to enable the State to make provision or frame rules giving consequential seniority for the accelerated promotion gained based on the rule of reservation. **Rule 12 evidently does not provide for the consequential seniority for reserved category promotees at any point of time. The consequential seniority for such reserved category promotees can be fixed only if there is express provision for such reserved category promotees in the State rules. In the absence of any specific provision or policy decision taken by the State Government for consequential seniority for reserved category accelerated promotees, there is no question of automatic application of [Article 16 \(4A\)](#) of the Constitution."**

27.....Rule 12 does not protect the consequential seniority to ADEs who were promoted following the rule. The appellants belonging to the general category are not questioning the accelerated promotion granted to the Junior Engineers/Assistant Engineers by following rule of reservation but are only seeking fair application of the 'catch up rule' in the fixation of seniority in the category of ADEs.

31. The respondents' submission regarding inadequacy of representation of Scheduled Castes/Scheduled Tribes in the Tamil Nadu Highways Engineering Service by itself is not sufficient to uphold the inadequacy of representation of SCs/STs in the said service. Even after Eighty-fifth Amendment, the State is duty bound to collect data so as to assess the adequacy of representation of the Scheduled Caste candidates in the service and based on the same the State should frame a policy/rules for consequential seniority. No material is placed on record that the State of Tamil Nadu has ever undertaken such exercise of collecting data of adequacy of representation of the SC/ST candidates in the Tamil Nadu Highways Engineering Service. In the absence of any rule conferring consequential seniority in the State of Tamil Nadu 'catch up rule' is

applicable even amongst Junior Engineers promoted as ADEs following rule of reservation and also for their inter-se seniority amongst AEs promoted as ADEs and JEs promoted as ADEs following rule of reservation.”

32. Respondents placed reliance on Rule 35 (aa) of Tamil Nadu State and Subordinate Service Rules (General Rules) to contend that they are entitled to consequential seniority in promotional position.....

.....Rule 35 (aa) does not specifically provide for consequential seniority to the accelerated promotees who were promoted following the rule of reservation and Rule 35 (aa) is of no assistance to the contesting respondents.

34..... Determination of seniority is a vital aspect in the service career of an employee and his future promotion is dependent on this. Therefore, determination of seniority must be based on some principles which are just and fair. In the absence of any policy decision taken or rules framed by the State of Tamil Nadu regarding Tamil Nadu Highways Engineering Service, accelerated promotion given to the respondents following rule of reservation in terms of Rule 12 will not give them consequential accelerated seniority.”

35. Appellants were appointed as Assistant Engineers directly, while the respondents were initially appointed as Junior Engineers. Hence according to the respondents, there was no common seniority between the Assistant Engineers belonging to general category and Junior Engineers belonging to reserved class and therefore promotion of JEs as ADEs applying Rule 12 is of no relevance to the appellants. This contention does not merit acceptance. Both the Assistant Engineers in the Tamil Nadu Engineering Service and the Junior Engineers in the Tamil Nadu Engineering Subordinate Service are feeder categories for filling up higher post of the Assistant Divisional Engineer in the ratio of 3:1 between them. Although, Assistant Engineers and Junior Engineers are presently two distinct categories, prior to 1993, both Assistant Engineers and Junior Engineers were in one category of service-Tamil Nadu Highways Engineering Subordinate Service. Only after G.O.Ms.No.807, Public Works (HK) Department dated 24.05.1993, the post of Assistant Engineer was raised to the level gazetted status and they were brought in to State Service/Tamil Nadu Highways Engineering Service. For promotion, even though two separate seniority lists are prepared for each category, they are actually of the same cadre and the respondents cannot contend that if Junior Engineers are promoted as ADEs following rule of reservation applying Rule 12, it does not affect the services of the Assistant Engineers.

36. **In the absence of any provision for consequential seniority in the rules, the ‘catch up rule’ will be applicable and the roster-point reserved category promotees cannot count their seniority in the promoted category from the date of their promotion and the senior general candidates if later reach the promotional level, general candidates will regain their seniority. The Division Bench appears to have proceeded on an erroneous footing that [Article 16 \(4A\)](#) of the Constitution of India automatically gives the consequential seniority in addition to accelerated promotion to the roster-point promotees and the judgment of the Division Bench cannot be sustained.”**

(Emphasis supplied)

35. In the last paragraph (para 37) of the aforesaid decision, Hon’ble Apex Court set aside the impugned judgment and allowed the appeals.

State Government (Respondents No. 1 & 2) were directed to revise the seniority list of Assistant Divisional Engineers, applying the 'catch-up rule', within 4 months. Hon'ble Supreme Court also directed that pursuant to the impugned judgment [*V.Vivekanandan vs. S. Panneerselvam, (2011)SCC online Mad. 2241*] of the Division Bench of Hon'ble Madras High Court, if any further promotion had been granted to the ADEs, promoted from the rank of Junior Engineers, following the rule of reservation with consequential seniority, the same shall be revised. It was also directed that further promotion of ADEs shall be as per the revised seniority list.

36. A reference of *Virpal Singh Chauhan's* decision, already finds place in the judgment rendered by Hon'ble Apex Court in its judgment in *Panneerselvam decision (supra)*. In *Virpal Singh Chauhan's* decision, Hon'ble Apex Court held that while the reserved category candidates were entitled to accelerated promotion, they would not be entitled to consequential seniority. Seniority between the general and reserved candidate in promoted category would continue to be the same as was at the time of initial appointment, provided both belong to the same grade. Once total number of reserved posts in a cadre are filled up, roster would become inoperative. Percentage of reservation would be worked out in relation to number of posts which form the cadre strength and not in relation to number of vacancies. Such principle would be directed to be operative from the date of judgment of *R.K.Sabharwal, i.e., 10.02.1995*.

37. Constitutional amendment to Article 16 (4A) came into force *w.e.f.* 17.06.1995. It was meant to provide for consequential seniority in the case of promotion by virtue of Rule of Reservation. It was given retrospective effect, although it received assent of Hon'ble President on 04.01.2002. It will be useful to reproduce the Bill, as below:

"An act to further amend the Constitution of India

Be it enacted by Parliament in the Fifty- second Year of the Republic of India as follows:-

1. Short title and commencement.- (1) This Act may be called the Constitution (Eighty-fifth Amendment) Act, 2001.

(2) It shall be deemed to have come into force on the 17th day of June 1995.

2. Amendment of [Article 16](#).- In [Article 16](#) of the Constitution, in clause (4A), for the words "in matters of promotion to any class", the words "in matters of promotion, with consequential seniority, to any class" shall be substituted."

Hon'ble Apex Court has quoted the amended provision of the Constitution in Para 90 of the decision rendered in *M.Nagraja vs. Union of India and others*, (2006) 8 SCC 212, at page 264 thus:

90. Reading the Constitution (Seventy-Seventh Amendment) Act, 1995 with the Constitution (Eighty-Fifth Amendment) Act, 2001, clause (4A) of [Article 16](#) now reads as follows:

"(4A) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion, **with consequential seniority**, to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which in the opinion of the State are not adequately represented in the services under the State."

38. It will also be worthwhile to note that in *Ajit Singh Juneja and others vs. State of Punjab and others*, (1996) 2 SCC 715, Hon'ble Apex Court observed that if member of SC/ST/BC getting accelerated promotion to reserved posts on account of reservation and observation of the roster are considered against posts meant for general category candidates in the still higher grade of service, on the assumption that they have become senior on the basis of accelerated promotion, then that exercise shall amount to circumventing the judgment of the Constitution Bench of the Hon'ble Supreme Court in Sabharwal Case [R.K.Sabharwal and others vs. State of Punjab and others, (1995) 2 SCC 745], because for all practical purposes, the promotions of such candidates are being continued like a running account, although the percentage of reservation provided for them has been written and achieved. Once such reserved percentage is achieved and even the observation of reservation is stopped then it will not be permissible to consider such candidates for being promoted against general category post on the basis of their accelerated promotion, which has been achieved by reservation and roster. The accelerated promotions are to be made only against the posts reserved or as per roster prescribed. There is no question of that benefit being available when a member of Scheduled Caste/Backward Class claims promotion against general

category posts and in the higher grade. This is so because such candidates who are members of Scheduled Caste/Backward Class and have got promotion on the basis of reservation and application of roster before their seniors in the lower grade belonging to general category, in this process have not superseded them because there was no *inter se* comparison on merit between them. As such, such seniors who belong to general category, are promoted later, it cannot be said that they have been superseded by such members of Scheduled Caste/Backward Class who have been promoted earlier. While considering them for further promotion for general category posts, if the only fact that they have been promoted earlier being members of Scheduled Caste/Backward Class is taken into consideration, then it shall violate the equality clause and be against the view expressed not only in the case of *R.K. Sabharwal* but the Constitution Bench, but also by the nine Judges Bench in the case of *Indra Sawhney, 1992 (Supp.) (3)SCC 217*, where it has been held that in any cadre, reservation should not exceed beyond 50%. 50% posts already being reserved against which promotions have been made then any promotion against general category post taking into consideration that they are member of Scheduled Caste/Backward Class, shall amount to exceed the limit fixed in the case of *Indra Sawhney*. In *R.K.Sabharwal's* case, it has been said in respect of members of Scheduled Castes that if they are appointed/ promoted on their own merit, then such candidate shall not be counted towards the percentage of reservation fixed for them. On the basis of the same logic, whenever members of Scheduled Castes are to be considered for promotion for posts which are not reserved for them then they have to be selected on merit only. Right to equality enshrined in the Constitution is to be preserved by preventing reverse discrimination as well. Guarantee of equality requires maintenance of original or panel *inter se* seniority between the general category candidates and the earlier promoted reserved category candidates under the reservation policy, for promotion to the higher general vacancy.

39. This Tribunal would like to reiterate the following observations of Hon'ble Apex Court in the landmark decision of *S.Panneerselvam's* case that in the absence of any provision for consequential seniority in the Rules, 'catch-up rule' will be applicable and the roster point reserved category promotees cannot count their seniority in the promoted category from the date of their promotion and the senior general candidates, if later reach the promotional level, general candidates will regain their seniority. The Hon'ble Apex Court next says that the Division Bench appears to have proceeded on an erroneous footing that Article 16 (4-A) of the Constitution of India automatically gives the consequential seniority in addition to accelerated promotion to the roster point promotees and the judgment of Division Bench cannot be sustained.

40. It will be worthwhile to mention here that the Hon'ble Apex Court had framed two issues while deciding this case and those two issues were, (i)- in the absence of policy decision taken by States/ Rules framed pursuant to the enabling provisions of Article 16 (4-A) of the Constitution of India, whether a reserved category candidate promoted on the basis of reservation earlier, then his senior general category candidate in the feeding cadre, can claim seniority in the promotional post? And the second question was, (ii)- in the absence of policy decision taken by the State with regard to Tamilnadu Highways Engineering Service Rules, whether the Division Bench was right in holding that Article 16(4-A) of the Constitution of India would give 'consequential seniority' in addition to the accelerated promotion to the roster point promotees and the Hon'ble Apex Court, as we have noted above, have decided, in no uncertain terms, that **in the absence of any provision for 'consequential seniority' in the Rules, the 'catch-up rule' will be applicable and the roster point reserved category candidates cannot count their seniority in the promoted category from the date of their promotion and the senior general candidates, if later reach the promotional post, general candidates will regain seniority.**

41. In view of the above, we hold that the petitioner after his promotion to the post of Statistical Officer regained his seniority over

respondent No. 3 and he should have been placed above such respondent in the seniority list and accordingly, considered for promotion to the post of Deputy Director (Statistics). Petitioner has retired on 28.02.2021 and ends of justice would be met if petitioner is given notional promotion to the post of Deputy Director (Statistics) with all related service benefits from the date respondent No. 3 was promoted to this post without adversely affecting the status of respondent No. 3 as Deputy Director (Statistics) in the respondent department.

42. Order accordingly.

43. In the circumstances, no order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: MARCH 31, 2021
DEHRADUN

KNP