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. 14/DB/2020

Shailendra Kumar Basliyal.

.....Petitioner.

vs.

1. State of Uttarakhand through Secretary, Irrigation Department, Uttarakhand Secretariat, Subhash Road, Dehradun.
2. Engineer-in-Chief, Irrigation Department, Uttarakhand, Dehradun.
3. The Principal Secretary, Irrigation Department, U.P., Secretariat, Lucknow.
4. Engineer-in-Chief, Irrigation Department, U.P., Canal Road, Lucknow.

.....Respondents.

Present: Dr. N.K.Pant, Advocate, for the Petitioner.
Sri V.P.Devrani,. A.P.O., for Respondents No.1 & 2.
Sri V.P.Sharma, Advocate, for Respondents No.3 & 4

JUDGMENT

DATED: APRIL 15, 2021

Justice U.C.Dhyani (Oral)

RELIEFS SOUGHT:

By means of present claim petition, the petitioner, *inter-alia,* seeks to quash the impugned rejection letter dated 30.11.2019 and issue a direction to the respondents no. 2 & 3 for regularization of the petitioner from the date of his initial appointment. The petitioner also seeks a direction to promote him on the post of Assistant Engineer from the date his junior (Sri Prakash Chandra Melkani) was promoted.

PETITIONER'S VERSION:

2. Petitioner is presently working as Executive Engineer in Irrigation Department of Uttarakhand. On 09.10.1979, Government of U.P. issued a G.O. for providing preference, in the employment, to those who were residing in the affected area of Tehri Dam for the last 5 years. The petitioner had been living with his family in the affected area of Tehri Dam for the last 5 years of issuance of the G.O. Hence, he approached the respondents (in U.P.) for his appointment. On 16.05.1989, he was issued an appointment letter and accordingly, he joined the Irrigation Department, as Junior Engineer, on 30.05.1989.

The Govt. of U.P. issued a Notification on 07.08.1989 amending the provisions of the U.P. Regularization of Ad hoc Appointments (on Posts within the purview of Public Service Commission) Rules, 1979, and extended the applicability of these Rules to those employees also who were directly appointed on *ad hoc* basis on or before 01.10.1986. According to the petitioner, such cut-off date is arbitrary and illegal inasmuch as whenever benefit is extended, it would cover all those employees who have already been appointed up to the date of issue of Notification amending the Rules and revising cut-off date. Such question came up for consideration before Hon'ble High Court in writ petition no. 2619 of 1993 (S/S), Arvind Kumar Yadav vs. State of Uttar Pradesh & others, 1994(12)LCD 446.

The petitioner has not been considered for regularization in accordance with the provisions of aforesaid Rules of 1979. The appointment of the petitioner was initially made for a year, but was continued subsequently *vide* G.O. dated 10.08.1990.

In the year 1992, the petitioner applied for his absorption in U.P. Hill-sub-Cadre, but the petitioner was not included in such sub-cadre, though he was appointed to serve in the hills exclusively.

Petitioner also passed AMIE examination in 1996 and thus became qualified in summers for promotion to the post of Assistant Engineer

against 8.33% quota reserved for those Junior Engineers who had obtained degree in engineering, which includes AMIE.

On 13.10.1997, Chief Engineer, Uttarakhand sent information to Engineer-in-Chief and requested for regularization of the petitioner on the post of Junior Engineer, but to no avail. On 10.03.1998, State Govt. issued promotion order of certain Junior Engineers (Civil) to the post of Assistant Engineer (Civil), whereby four Engineers were promoted against 8.33% quota of degree holders of Junior Engineers. The name of one Shri Prakash Chandra Melkani was indicated at Sl. No. 31, although he became eligible only in winters of 1996, when he passed AMIE. The petitioner became qualified for promotion against 8.33% quota in summers of 1996, making it clear that he became eligible for promotion before Sri Melkani.

On 17.07.1998, Chief Engineer, Uttarakhand again wrote a letter to the Engineer-in-Chief and forwarded the names of Junior Engineers, who were found eligible for promotion against the recruitment year 1997-98. The name of the petitioner was not included in this list.

The petitioner has rendered more than 10 years of service in the department and such a long service can only be said to be of a regular nature, as has been held by Hon'ble Apex Court in the decision of Narendra Chanda vs. Union of India, AIR 1986 SC, 638. According to the petitioner, such decision has been relied by Hon'ble Apex Court in the case of N.S.K. Nair and other vs. Union of India & others, 1991 IV SLR 158. As per petitioner, since he had completed three years' of service on the post of Junior Engineer on *adhoc* basis, he deserves to be treated as substantively appointed Junior Engineer and is thus entitled to be considered for promotion to the post of Assistant Engineer against 8.33% quota. Under Rule 5 of the U.P. Service of Engineers Irrigation Department (Group-B) Service Rules, 1993, minimum three years of service is required by the Junior Engineer to enable him to become eligible for promotion to the post of Assistant Engineer against 8.33% quota.

Petitioner's services were, however, regularized as a special case *w.e.f.* 14.06.2001, while his services ought to have been regularized, as per U.P. Regularization on Ad hoc Appointment (on Posts within the Purview of Public Service Commission) Rules, 1979 from the date of initial appointment *i.e.* 30.05.1989. If the services of the petitioner are regularized from 30.05.1989, then the petitioner is entitled for promotion on the post of Assistant Engineer from the date his Junior, Shri Melkani was promoted. It is settled law that senior cannot be given lesser pay than his junior. The Rules of 1979 are applicable to the State of Uttarakhand under the U.P. Reorganization Act, 2000.

The petitioner filed a claim petition No. 1904 of 1998 before the State Public Services Tribunal, Lucknow for a direction to the respondents (State of U.P.) to regularize the petitioner under the 1979 Rules and promote him to the post of Assistant Engineer against 8.33% quota. The Tribunal passed an order for considering his case for regularization and promotion with consequential benefits. According to the Petitioner, he regularly filed representations to the respondents for his regularization/promotion, but they (respondents) did not decide the same. Finally, the petitioner got a legal notice served upon the respondents, who rejected the petitioner's representation on 30.11.2019. Hence, present claim petition.

CONDITIONAL ADMISSION OF CLAIM PETITION:

3. When the claim petition was taken up for admission, on 11.02.2020, learned A.P.O. raised objections that the matter pertains to the State of U.P. and the same has not been arrayed as party respondent in the claim petition. The petitioner was accordingly, directed to implead the State of U.P. as party respondent in the claim petition.

4. Learned A.P.O. had also raised objections that the matter has been brought before the Tribunal after a long delay, which fact was contested by the petitioner at the admission stage and, therefore, the Tribunal *vide* order dated 11.02.2020, left open the question of delay, to be decided at the time of final hearing.

COUNTER AFFIDAVITS:

5. Counter Affidavit has been filed by Sri Nalin Vardhman, Executive Engineer, Irrigation Department, on behalf of Respondents No. 3 & 4 (State of U.P.). The legal pleas which have been taken in such Counter Affidavit shall be adverted to by this Tribunal, as and when required, during the course of the discussion. Counter Affidavit has been filed by Sri Chandra Kishore, Executive Engineer, Kalsi, Dehradun, on behalf of the Respondents No. 1 and 2. In the said Counter Affidavit also, legal pleas have been taken to contest the claim petition and, therefore, the same shall also be dealt with by this Tribunal, if any when so required, during the course of discussion.

ORDER BY LUCKNOW TRIBUNAL:

6. We shall start with the order passed by the State Public Services Tribunal, Lucknow, on 26.05.1999, in Claim Petition No. 1904/1998, Shailendra Kumar Basliyal vs. State of U.P. and other. The operative portion of the order of the Tribunal is being reproduced herein below for convenience:

> *"The claim petition is allowed with the costs. The opposite parties are directed to consider the case of the petitioner for his:*
>
> *(i) Regularization on the post of Junior Engineer in accordance with the Uttar Pradesh Regulation of Adhoc Appointment (on posts within the purview of Public Service Commission) Rules, 1979, as amended upto date and Arvind Kumar Yadav's case .*
>
> *(ii) Promotion after regularization on the post of Assistant Engineer against 8.33% quota as provided in Class-III of Engineers (Irrigation Department) (Group-B) Service Rules, 1993.*
>
> *The decision on the regularization and promotion shall be taken one after the other within a period of 3 months each computed from the date of this order. The date of regularization or promotion shall be one on which any junior to the petitioner might have been regularized or promoted. In the else, they shall be determined under rules as applicable. The consequential benefits in pay and other advantages shall abide by orders of such regularization and/or promotion."*
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> *[Emphasis supplied]*

TIME-GAP BETWEEN 26.05.1999-10.02.2020 & REPLY:

7. The respondent No. 2 (Engineer-in-Chief) was served with a legal notice dated 05.10.2019 (Annexure: A1 Colly) by learned Counsel for the petitioner. Respondent No. 2 gave a reply (Annexure: A1) on 30.11.2019 to learned Counsel for the petitioner that the order of State Public Services Tribunal, Lucknow could be complied with (only) by the Engineer-in-Chief, Irrigation Department, Lucknow, which has not been done (para 3 of Annexure:A1). In the last paragraph of Annexure: A1, it has been indicated that since the matter pertains to the erstwhile State of U.P., therefore, it not possible for the Irrigation Department, Dehradun to comply with the orders of the Tribunal. It has also been indicated in Annexure: A1 that all the benefits, which could be given, as per G.O., by the Govt. of Uttarakhand, have been given to the petitioner (after creation of State of Uttarakhand).

RESPONDENTS' PLEAS:
***RES-JUDICATA*, LIMITATION & JURISDICTION**

8. Let us now turn to the affidavit of Sri Nalin Vardhan, Executive Engineer on behalf of Respondents No. 3 & 4 (State of U.P.). According to such Counter Affidavit, the claim petition is not maintainable on the principle of *'res-judicata'*. Learned A.P.O., as also Sri V.P. Sharma, learned Counsel for the respondents No. 3 & 4, submitted that the matter which has been adjudicated by the competent Court may not be reopened. The cause of action should not be re-litigated once it has been decided on merits. According to Sri V.P.Sharma, learned Counsel for the Respondents No. 3 & 4, the State Public Services Tribunal, Lucknow has decided the *lis* between the same parties, regarding same reliefs *vide* judgment dated 26.05.1999 and, therefore, the principle of *res-judicata* will apply in the instant case.

9. It is also argued on behalf of the State of U.P. (Respondents No. 3 & 4) that since the cause of action arose in the State of U.P., therefore, this Tribunal has no jurisdiction to issue any direction to the State of

U.P., in terms of the judgment of Hon'ble Apex Court in State of Uttarakhand vs. Umakant Joshi, 2012(1) UD 583 and the decision rendered by Hon'ble Uttarakhand High Court in WPSB No. 71/2013, State of U.P. & others vs. Dr. Vinod Bahuguna.

10. Thus, according to Respondents No. 3 & 4 (State of U.P.), the claim petition is barred by principle of *res-judicata* and at the same time, this Tribunal has no jurisdiction to decide the claim petition.

11. Respondents No. 1 & 2 in their Counter Affidavits have contested the claim petition, not only on merits, but also on legal issues like lack of jurisdiction, principle of *res-judicata* etc. This Tribunal shall however, withhold the discussion on merits of the claim petition, for the relief was already granted to the petitioner by State Public Services Tribunal, Lucknow while deciding Claim Petition no. 26.05.1999.

APPLICABILITY OF PRINCIPLE OF *RES-JUDICATA*:

12. **Firstly, the discussion on the principle of *res-judicata***:

13. *Proviso* to sub-section (1)(a) of Section 5 of the U.P. Public Services Tribunal Act, 1976 (for short 'the Act') reads as below:

> *"Provided that where, in respect of the subject-matter of a reference, a competent court has already passed a decree or order or issued a writ or direction, and such decree, order, writ or direction has become final, the principle of res-judicata shall apply."*
>
> *[Emphasis supplied]*

Proviso to sub-section (1)(a) of Section 5 of the Act indicates that if a competent court has already passed an order and such order has become final, the principle of *res-judicata* shall apply in respect of the subject matter of a reference.

Section 11 of the Code of Civil Procedure, 1908, which deals with *Res-judicata*, is being reproduced herein below for convenience:

> *"No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court."*
>
> *[Emphasis supplied]*

Explanation VII to Section 11 CPC (introduced *w.e.f.* 1977), reads as below:

> *"The provisions of this section shall apply to a proceeding for the execution of a decree and references in this section to any suit, issue or former suit shall be construed as references, respectively, to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree."*
>
> *[Emphasis supplied]*

14. This fact is under no dispute that State Public Services Tribunal, Lucknow had passed an order on 26.05.1999 in Claim Petition No. 1904/1999, Shailendra Kumar Basliyal vs. State of U.P. & others, in respect of the following reliefs, as prayed for in the claim petition:

> *"(i) Regularization of petitioner's ad-hoc appointment on the post of Junior Engineer on 16 May 1989 in accordance with the Uttar Pradesh Regularisation of Adhoc Appointment (on Posts within the purview of the Public Service Commission) Rules, 1979 as amended upto date (the Rules 1979) and*
>
> *(ii)Promotion on the post of Assistant Engineer against 8.33% quota as provided in Engineer's (Irrigation Department)(Group-B) Service Rules, 1993."*
>
> *[Emphasis supplied]*

15. In the instant case also, the same reliefs (although in different language) have been prayed for by the petitioner. *Prima-facie*, it appears that the principle of *res-judicata* shall apply in respect of the subject matter of this reference and hence, claim petition should be dismissed, as not fit for adjudication or trial. The reference should have been summarily rejected under sub-section (3) of Section 4 of the Act, but,

since it has been admitted conditionally, therefore, this issue requires further probe.

16. Learned Counsel for the petitioner has vehemently argued that, firstly the principle of *res-judicata* is not applicable to this Tribunal and secondly, the order passed by the State Public Services Tribunal, Lucknow has not become final.

17. On a bare reading of *Proviso to* Section 5(1)(a) of the Act, it is very much clear that the principle of *Res-judicata* shall applicable to references before this Tribunal. It does not lie in the mouth of the petitioner to say that the principle of *Res-judicata* has no application in this Tribunal. It is true that this Tribunal is not a Court, but the Act itself provides that the principle of *Res-judicata shall* apply in respect of references filed before this Tribunal. It will, therefore, be a futile exercise to dwell upon this argument any further.

18. Much emphasis has been laid down by learned Counsel for the petitioner on the decision rendered in the case of CMPN 8627, Chintapalli Venkataratnam vs. Merla Seshamma, decided on 19.11.1951(*extract supplied by the petitioner*). Relevant portion of the judgment reads as under:

> *"It is not open to a Court of construction in interpreting a statute either to add or to subtract from the language of the statute. As far as possible an attempt should be made to reconcile and interpret the provision of a statute in a manner so as to make none of the provisions ineffective or nugatory. If possible the provisions of the Act must be so construed so as to give effect to all the provisions. A provision can be rejected as unnecessary only if a Court is driven to such a situation and not otherwise. Bearing these principles in mind it is clear that Clause (ii) applies to pending proceedings, that is, proceedings which were instituted before the commencement of the Act but which did not become final before such commencement. This is made clear by the clause "in which the decree or order passed has not become final." It implies therefore that if the decree or order passed in a suit or proceeding becomes final before the commencement of the Act the provisions of the Act cannot be applied to such a suit or proceeding. But in Clause (iii) the words "in which 'the decree or order passed has not become final" do not occur. It is quite general and applied to all suits and proceedings in which the*

> *decree or order passed has not been executed or satisfied in full before the commencement of this Act so that it seems to apply to decrees or orders even if they had become final before the commencement of this Act provided the decree or order has not been executed or fully satisfied."*
>
> *[Emphasis supplied]*

19. Venkataratnam's decision (*supra*) pertains to finality of decree or order before the Commencement of some Act. Here, the order passed by the Lucknow Tribunal has become 'final' under the Act. It has nothing to do with commencement of any Act. If petitioner did not file the execution application, he himself is to be blamed for it. Petitioner, therefore, cannot be given benefit of Venkataratnam's decision.

20. Reliance has also been placed upon the decision of CMP No. 7184/2001, Ramachandra Dagdu Sonavane (dead) by LRs. vs. Vithu Hira Mahar (dead) by LRs & others, decided on 09.10.2009 (*extract supplied by the petitioner*). In para 29 of said decision, the following was observed:

> *"29. We have seen the scheme of the Act. Section 3 of the Act authorizes the Collector to decide any question as to whether any land is watan land; whether any person is a Watandar; and whether any person is an unauthorized holder. The order passed by the Collector can be subject matter of appeal before the State Government. The order passed by the Collector, if in case no appeal is filed, and in case appeal is filed then the order passed by the State Government in the appeal, is final. Section 5 of the Act speaks of regrant of watanlands to the holders of watan subject to fulfillment of certain conditions provided in the Section itself. It has come on record, that the appellants after the Act was notified had filed an application for regrant of watanlands, since they were holders of watan pursuant to an order passed by Deputy District Collector dated 18.6.1941 and the District Collector after necessary inquiry had passed an order of regrant dated 03.6.1963 of the suit lands in favour of the appellants under Section 5(1) of the Watans Abolition Act, 1958, and that order has become final, since nobody had questioned the same before any forum. The Act does not provide for the review of the regrant order nor it provides denovo enquiry to decide whether any person is a Watandar. Therefore, we agree with the submission of the learned counsel for the appellants that the Sub-Divisional Officer could not have entertained the application filed by the respondents in the year 1979 for regrant of watanlands,*

since the Act does not provide for review of any earlier order passed under Section 5(1) of the Act."

[Emphasis supplied]

21. This Tribunal is unable to understand, as to how the aforesaid decision is applicable to the facts of the instant claim petition. Judgment/order passed by Lucknow Tribunal has also become final because the same was not challenged before Hon'ble High Court.

22. *In Gulabchand Chhotala Parikh vs. State of Bombay (now Gujarat), 1965 AIR 1153* (*a ruling referred to by Ld. Counsel for the petitioner*), it was held that the decision of Hon'ble High Court in a writ petition under Article 226 of the Constitution, after full contest, on merits, will operate as *res-judicata* in a subsequent regular suit between the same parties with respect to the same matter. Gulabchand's decision too does not help the claim-petitioner in any way.

23. In the instant case, the petitioner did not file the execution application to enforce the order passed by the State Public Services Tribunal, Lucknow. The order was not challenged before Hon'ble High Court. The *lis* between the parties has been 'finally decided' by the Tribunal at Lucknow. It therefore, does not lie on the mouth of the petitioner to say that the matter has not been finally decided by the State Public Services Tribunal, Lucknow. Explanation VII to Sec. 11 CPC, which was inserted by the *Act 104 of 1976*, *w.e.f*. 01.02.1977, order 2 rule 2 CPC and Explanation V to Section 11 run contrary to the claim of the petitioner.

24. Explanation V to Section 11 CPC and order 2 rule 2 CPC are also being reproduced herein below for convenience:

"***Explanation V***.- *Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused.*

O. 2. r. 2 ***Relinquishment of part of claim****. Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished."*

25. This Tribunal, is therefore, of the opinion that the claim petition is barred by principle of *res-judicata* and therefore, the same should be dismissed, as not maintainable, on this ground alone.

26. **Secondly, we come to the issue of limitation**:

27. The prayer in the claim petition is for regularization of the petitioner from the date of his initial appointment and promotion on the post of Assistant Engineer from the date his junior, Sri Prakash Chandra Melkani was promoted.

28. Clause (b) of sub-section (1) of Section 5 of the Act reads as under:

> *"(b) The provisions of the Limitation Act, 1963 (Act 36 of 1963) shall mutatis mutandis apply to reference under Section 4 as if a reference where a* ***suit filed in civil court*** *so, however that—*
> *(i)* ***Notwithstanding the period of limitation prescribed in the Schedule to the said Act, the period of limitation for such reference shall be one year****.*
> *(ii) In computing the period of limitation the period beginning with the date on which the public servant makes a representation or prefers an appeal, revision or any other petition (not being a memorial to the Governor), in accordance with the rules or orders regulating his conditions of service, and ending with the date on which such public servant has knowledge of the final order passed on such representation, appeal, revision or petition, as the case may be, shall be excluded:*
> *Provided that any reference for which the period of limitation prescribed by the Limitation Act, 1963 is more than one year, a reference under Section 4 may be made within the period prescribed by that Act, or within one year after the commencement of the Uttar Pradesh Public Services (Tribunal) (Amendment) Act, 1985 whichever period expires earlier:*
>
> *……."*
> *[Emphasis supplied]*

29. The period of limitation, therefore, in such references is one year. In computing such period, the period beginning with the date on which the public servant makes a statutory representation or prefers an appeal, revision or any other petition and ending with the date on which such public servant has knowledge of the final order passed on such

representation, appeal, revision or petition, as the case may be, shall be excluded.

30. It will be useful to quote Section 5 of the Limitation Act, 1963, as below:

> *"**Extension of prescribed period in certain cases**.—Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.*
>
> *Explanation.—The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.*

31. It is apparent that Section 5 of Limitation Act applies to appeals or applications. Petitioners file claim petitions, pertaining to service matter, before this Tribunal. Claim petition is neither an appeal nor an application. It is, therefore, open to question whether Section 5 Limitation Act, 1963, has any application to the provisions of the Act of 1976. The Judges manning this Tribunal are not exercising writ jurisdiction under Article 226 of the Constitution of India. In writ jurisdiction, the practice of dealing with the issue of limitation is different. Also, there is no provision like Section 151 C.P.C. or Section 482 Cr.P.C. (inherent powers of the Court) in this enactment, except Rule 24 of the U.P. Public Services (Tribunal (Procedure) Rules, 1992, which is only for giving effect to its orders or to prevent abuse of its process or to secure the ends of justice.

32. The Tribunal is, therefore, strictly required to adhere to the provisions of Section 5 of the Act of 1976.

33. In *City and Industrial Development Corporation vs. Dosu Aardeshir Bhiwandiwala and others, (2009) 1 SCC 168*, Hon'ble Supreme Court has observed, as below:

> *"It is well settled and needs no restatement at our hands that under Article 226 of the Constitution, the jurisdiction of a High Court to issue appropriate writs particularly a writ of Mandamus is highly discretionary. The relief cannot be claimed as of right. One of the grounds for refusing relief is that the person approaching the High Court is guilty of unexplained delay and the laches. Inordinate delay in moving the court for a Writ is an adequate ground for refusing a Writ. The principle is that courts exercising public law jurisdiction do not encourage agitation of stale claims and exhuming matters where the rights of third parties may have accrued in the interregnum."*

34. In S*hiba Shankar Mohapatra and others vs. State of Orissa and others,(2010) 12 SCC 471,* Hon'ble Supreme Court has ruled, as below:

> *"It was not that there was any period of limitation for the Courts to exercise their powers under Article 226 nor was it that there could never be a case where the Courts cannot interfere in a matter after certain length of time. It would be a sound and wise exercise of jurisdiction for the Courts to refuse to exercise their extra ordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who standby and allow things to happen and then approach the Court to put forward stale claim and try to unsettle settled matters. It is further observed by the Hon'ble Apex Court that, no party can claim the relief as a matter of right as one of the grounds for refusing relief is that the person approaching the court is guilty of delay and laches. The Court exercising public law jurisdiction does not encourage agitation of stale claim where the right of third parties crystallizes in the interregnum.*
>
> *In R.S. Makashi v. I.M. Menon & Ors. AIR 1982 SC 101, this Court considered all aspects of limitation, delay and laches in filing the writ petition in respect of inter se seniority of the employees.*
>
> *The Court referred to its earlier judgment in State of Madhya Pradesh & Anr. v. Bhailal Bhai etc. etc., AIR 1964 SC 1006, wherein it has been observed that the maximum period fixed by the Legislature as the time within which the relief by a suit in a Civil Court must be brought, may ordinarily be taken to be a reasonable standard by which delay in seeking the remedy under Article 226 of the Constitution can be measured."*
>
> *[Emphasis supplied]*

This Tribunal is not even exercising the jurisdiction under Article 226 of the Constitution. The Act of 1976 is self contained Code and

Section 5 of such Act deals with the issue of limitation. There is no applicability of any other Act while interpreting Section 5 of the Act of 1976.

35. It may be noted here, only for academic purposes, that the language used in Section 21 of the Administrative Tribunals Act, 1985 (a Central Act) is different from Section 5 of the U.P. Public Services (Tribunal) Act, 1976 (a State Act). It is not a *pari meteria* provision. Relevant distinguishing feature of the Central Act is being reproduced herein below for convenience:

> "**21. Limitation**- (1) A Tribunal shall not admit an application–
>
> (a).....within one year from the date on which such final order has been made.
>
> .....
>
> (3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application maybe admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period."

36. **It, therefore, follows that the extent of applicability of limitation law is self contained in Section 5 of the Uttar Pradesh Public Services (Tribunal) Act, 1976. Section 5 of the Act of 1976 is the sole repository of the law on limitation in the context of claim petitions before this Tribunal**.

37. The above view of the Tribunal is fortified by the decision rendered by Hon'ble Supreme Court in State of Uttaranchal and another vs. Sri Shiv Charan Singh Bhandari and others, 2013 (2) U.D., 407, relevant paragraphs of which are quoted herein below for convenience:

> "13. ..... In C. Jacob v. Director of Geology and Mining and another,[(2008) 10 SCC 115], a two-Judge Bench was dealing with the concept of representations and the directions issued by the court or tribunal to consider the representations and the challenge to the said rejection thereafter. In that context, the court has expressed thus: -

"Every representation to the Government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the Department, the reply may be only to inform that the matter did not concern the Department or to inform the appropriate Department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim."

14. In Union of India and others v. M.K. Sarkar [(2010) 2 SCC 59], this Court, after referring to C. Jacob (supra) has ruled that when a belated representation in regard to a "stale" or "dead" issue/dispute is considered and decided, in compliance with a direction by the court/tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the "dead" issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.

15. From the aforesaid authorities it is clear as crystal that even if the court or tribunal directs for consideration of representations relating to a stale claim or dead grievance it does not give rise to a fresh cause of action.The dead cause of action cannot rise like a phoenix. Similarly, a mere submission of representation to the competent authority does not arrest time. In Karnataka Power Corpn. Ltd. through its Chairman & Managing Director v. K. Thangappan and another [(2006) 4 SCC 322], the Court took note of the factual position and laid down that when nearly for two decades the respondent-workmen therein had remained silent mere making of representations could not justify a belated approach.

16. In State of Orissa v. Pyarimohan Samantaray [(1977) 3 SCC 396] it has been opined that making of repeated representations is not a satisfactory explanation of delay. The said principle was reiterated in State of Orissa v. Arun Kumar Patnaik[5].

17. In Bharat Sanchar Nigam Limited v. Ghanshyam Dass (2) and others [(2011) 4 SCC 374], a three-Judge Bench of this Court reiterated the principle stated in Jagdish Lal v. State of Haryana[7] and proceeded to observe that as the respondents therein preferred to sleep over their rights and approached the tribunal in 1997, they would not get the benefit of the order dated 7.7.1992.

18. In State of T.N. v. Seshachalam [(2007) 10 SCC 137], this Court, testing the equality clause on the bedrock of delay and laches pertaining to grant of service benefit, has ruled thus: -

"....filing of representations alone would not save the period of limitation. Delay or laches is a relevant factor for a court of law to

determine the question as to whether the claim made by an applicant deserves consideration. Delay and/or laches on the part of a government servant may deprive him of the benefit which had been given to others. Article 14 of the Constitution of India would not, in a situation of that nature, be attracted as it is well known that law leans in favour of those who are alert and vigilant."

19. There can be no cavil over the fact that the claim of promotion is based on the concept of equality and equitability, but the said relief has to be claimed within a reasonable time. The said principle has been stated in Ghulam Rasool Lone v. State of Jammu and Kashmir and another.

20. In New Delhi Municipal Council v. Pan Singh and others [(2007) 9 SCC278], the Court has opined that though there is no period of limitation provided for filing a writ petition under Article 226 of the Constitution of India, yet ordinarily a writ petition should be filed within a reasonable time. In the said case the respondents had filed the writ petition after seventeen years and the court, as stated earlier, took note of the delay and laches as relevant factors and set aside the order passed by the High Court which had exercised the discretionary jurisdiction.

21. Presently, sitting in a time machine, we may refer to a two-Judge Bench decision in P.S. Sadasivasway v. State of Tamil Nadu [(1975) 1 SCC 152], wherein it has been laid down that a person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time, but it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters.

22. We are absolutely conscious that in the case at hand the seniority has not been disturbed in the promotional cadre and no promotions may be unsettled. There may not be unsettlement of the settled position but, a pregnant one, the respondents chose to sleep like Rip Van Winkle and got up from their slumber at their own leisure, for some reason which is fathomable to them only. But such fathoming of reasons by oneself is not countenanced in law. Any one who sleeps over his right is bound to suffer. As we perceive neither the tribunal nor the High Court has appreciated these aspects in proper perspective and proceeded on the base that a junior was promoted and, therefore, the seniors cannot be denied the promotion. Remaining oblivious to the factum of delay and laches and granting relief is contrary to all settled principles and even would not remotely attract the concept of discretion. We may hasten to add that the same may not be applicable in all circumstances where certain categories of fundamental rights are infringed. But, a stale claim of getting promotional benefits definitely should not have been entertained by the tribunal and

> accepted by the High Court. True it is, notional promotional benefits have been granted but the same is likely to affect the State exchequer regard being had to the fixation of pay and the pension. These aspects have not been taken into consideration. What is urged before us by the learned counsel for the respondents is that they should have been equally treated with Madhav Singh Tadagi. But equality has to be claimed at the right juncture and not after expiry of two decades. Not for nothing, it has been said that everything may stop but not the time, for all are in a way slaves of time. There may not be any provision providing for limitation but a grievance relating to promotion cannot be given a new lease of life at any point of time.
>
> *[Emphasis supplied]*

38. The law is, therefore, clear that when a belated representation in regard to a stale claim is considered and decided, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving dead issue or time barred dispute. The issue of limitation would be considered with reference to original cause of action and not when a reply is given in response to a non-statutory representation. It is crystal clear that even if there is Court's or Tribunal's direction for consideration of representation relating to a stale claim or dead grievance, it does not give rise to a fresh cause of action. There can be no cavil over the fact that the claim of seniority is based on the concept of equality, but the said relief has to be claimed within a reasonable time. Although there is no period of limitation for filing a claim under Article 226 of Constitution of India, but this Tribunal is neither a Constitutional Court, nor is exercising jurisdiction under Article 226 of the Constitution of India. It is a statutory Tribunal, constituted under the U.P. Public Services (Tribunal) Act No. XVII of 1976. It should exercise jurisdiction only as per Act No. XVII of 1976 and not beyond that. The period for filing a reference in this Tribunal is one year [Section- 5(1)(b)(i)]. The representation, if any, should be in accordance with the Rules or Orders regulating petitioner's conditions of service [Section-5 (1)(b)(ii)]. Even memorial to the Governor has specifically been excluded [Section-5(1)(b)(ii)].

39. The limitation cannot be created on issuance of legal notice, as has been done in the instant case, by sending a legal notice on 05.10.2019 in respect of an event which occurred in the erstwhile State

of U.P. Hon'ble Apex Court has clearly laid down that the limitation cannot be extended on mere filing of non-statutory representation.

40. Much Emphasis has been laid by learned Counsel for the petitioner on the decision rendered by the Hon'ble High Court of Uttarakhand on 19.09.2018 in WPSB No. 239/2016, Hari Dutt Deotala & others vs. State of Uttarakhand & others. In Deotala's decision, the writ petition was allowed and the impugned order dated 18.05.2016 passed by this Tribunal was set aside. The matter was remitted to the Tribunal to decide the *lis* without being influenced by the delay and laches.

41. It may be noted here that Deotala's decision was given by this Tribunal on inordinate delay and laches in filing the claim petition. Petitioners had challenged the seniority list dated 27.04.2009. The adjudicatory body decided the matter on 17.04.2012. Claim petition was filed in the year 2013, being claim petition No. 13/DB/2013. The Hon'ble High Court, therefore, decided that the claim petition does not suffer from delay and laches. Here, the facts are entirely different. A Claim petition was filed by the petitioner before the State Public Services Tribunal, Lucknow. The same was decided by the selfsame Tribunal on 26.05.1999. Now a fresh claim petition has been filed before this Tribunal on 10.02.2020, after serving a legal notice upon the respondents. There is no parallel between the facts of Deotala's decision and the present claim petition, the facts of which, in the context of limitation are squarely covered by the decision rendered by Hon'le Apex Court in Civil Appeals No. 7328-7329/2013, State of Uttarakhand & others vs. Shiv Charan Singh Bhandari, decided on 23.08.2013. Hon'ble Apex Court has observed, in no uncertain terms, that on belated representation in regard to stale or dead issue, even in compliance with a direction by the Court/Tribunal to do so, the date of such decision cannot be considered as a fresh cause of action. The issue of limitation and delay/laches should be considered with reference to the original cause of action and not with reference to the date on which an order was passed in compliance with the Court's direction. Neither the court

direction to consider the representation without examining the merits nor a decision given in compliance with such direction will extend limitation. Here, Tribunal had not even given direction or order for considering the representation of the petitioner. It appears that in order to bring the claim petition within limitation, a legal notice was served upon the respondents, which is against the spirit of Bhandari's decision (*supra*).

42. The petitioner was required to be alert and vigilant. He was required to press for his claim within a reasonable time, as per the principle enuciated by the Hon'ble Apex Court in Gulam Rasul Lone vs. State of J & K and others, (2009) 15 SCC 321.

43. The claim petition is therefore, clearly barred by limitation.

44. **Thirdly, we come to the legal issue of jurisdiction**:

45. Hon'ble Apex Court, in the decision of Umakant Joshi (*supra*), has observed as below:

> *"1.* Whether the Uttarakhand High Court could ordain promotion of respondent No.1 – Umakant Joshi to the post of General Manager with effect from 16.11.1989, i.e., prior to formation of the State of Uttaranchal (now known as the State of Uttarakhand) with the direction that he shall be considered for promotion to the higher posts with effect from the dates persons junior to him were promoted is the question which arises for consideration in these appeals, one of which has been filed by the State of Uttarakhand and the Director of Industries, Dehradun and the other two have been filed by Sudhir Chandra Nautiyal (hereinafter described as, 'Appellant No.1') and Surendra Singh Rawat (hereinafter described as, 'Appellant No.2') respectively against order dated 4.6.2010 passed by the Division Bench of that High Court in Writ Petition No.324 of 2008.
>
> *9.* S/Shri J.L. Gupta and Subodh Markandeya, learned senior counsel appearing for appellant Nos. 1 and 2 and Ms. Rachana Srivastava, learned counsel appearing for the State of Uttarakhand argued that the impugned order is liable to be set aside because while granting relief to respondent No.1, the High Court completely ignored that he was guilty of laches and that the persons who were going to be adversely affected by retrospective promotion of respondent No.1 had not been impleaded as party respondents. Learned counsel further argued that the Uttarakhand High Court did not have the jurisdiction to direct promotion of respondent No.1 to Class-I post with effect from a date prior to formation of the new State and even the Allahabad High Court could not have issued a mandamus for promotion of respondent No.1 de hors his service record. Learned counsel emphasized that in exercise of power

under Article 226 of the Constitution, the High Court cannot, except in exceptional circumstances, issue direction for promotion of an officer/official and the case of respondent No.1 did not fall in that category. Ms. Srivastava pointed out that even though Shri R.K. Khare was junior to respondent No.1 in the seniority list of Class-II officers, his promotion to Class-I post with effect from 16.11.1989 did not give a cause to respondent No.1 to seek intervention of the Uttarakhand High Court for promotion with effect from that date because till then, he continued to be an employee of the State of Uttar Pradesh.

11. We have considered the respective submissions. It is not in dispute that at the time of promotion of Class-II officers including Shri R.K. Khare to Class-I posts with effect from 16.11.1989 by the Government of Uttar Pradesh, the case of respondent No.1 was not considered because of the adverse remarks recorded in his Annual Confidential Report and the punishment imposed vide order dated 23.1.1999. Once the order of punishment was set aside, respondent No.1 became entitled to be considered for promotion to Class-I post ***with effect from 16.11.1989. That exercise could have been undertaken only by the Government of Uttar Pradesh and not by the State of Uttaranchal (now the State of Uttarakhand), which was formed on 9.11.2000. Therefore, the High Court of Uttarakhand, which too came into existence with effect from 9.11.2000 did not have the jurisdiction to entertain the writ petition filed by respondent No.1 for issue of a mandamus to the State Government to promote him to Class-I post with effect from 16.11.1989, more so because the issues raised in the writ petition involved examination of the legality of the decision taken by the Government of Uttar Pradesh to promote Shri R.K. Khare with effect from 16.11.1989 and other officers****, who were promoted to Class-I post vide order dated 22.1.2001 with retrospective effect. It appears to us that the counsel, who appeared on behalf of the State of Uttarakhand and the Director of Industries did not draw the attention of the High Court that it was not competent to issue direction for promotion of respondent No.1 with effect from a date prior to formation of the new State, and that too, without hearing the State of Uttar Pradesh and this is the reason why the High Court did not examine the issue of its jurisdiction to entertain the prayer made by respondent No.1.*

12. In view of the above, ***we hold that the writ petition filed by respondent No.1 in 2008 in the Uttarakhand High Court claiming retrospective promotion to Class-I post with effect from 16.11.1989 was misconceived and the High Court committed jurisdictional error by issuing direction for his promotion to the post of General Manager with effect from 16.11.1989 and for consideration of his case for promotion to the higher posts with effect from the date of promotion of his so called juniors****.*

14. However, it is made clear that this Court has not expressed any opinion on the merits of the entitlement of respondent No.1 to claim promotion to Class-I post with retrospective effect and, if so advised, he may avail appropriate remedy by filing a petition in the Allahabad High Court. It is also made clear that we have not expressed any opinion on the legality or otherwise of order dated 17.1.2005 issued by the Government of Uttarakhand regarding the order of punishment passed against respondent No.1 and the writ petition, if any, pending before the Uttarakhand High Court against that order shall be decided without being influenced by the proceedings of these appeals.*"*

[Emphasis supplied]

46. In **Writ Petition No. (S/B) No. 102 of 2017, Dr. Kamaljeet Singh and another versus State of Uttarakhand and others,** decided by the Hon'ble High Court at Nainital on 08.03.2018, the order of the State of Uttarakhand to absorb a Homeopathic Doctor (who was respondent No. 3 in the Writ Petition) *w.e.f.* 28.10.1992 was challenged. Relevant paragraphs No. 11,12,18, 19 and 20 of the judgment are quoted herein below for convenience:-

> *"11. From the aforesaid statements of law contained in paragraph nos. 11 and 12 of the judgment of the Hon'ble Apex Court (Umakant Joshi case),* ***we can deduce two principles, as laid down by the Hon'ble Apex Court****. Firstly, in respect to any rights that the persons, who are allocated or working after the creation of the State of Uttarakhand is concerned, which relates to the period anterior to the date of the creation of the State of Uttarakhand, the proper and competent authority would be the State of Uttar Pradesh. The State of Uttarakhand could not have the authority to deal with such a matter.* ***Secondly, in relation to any such complaint, the proper forum to ventilate the grievance would be the High Court of Allahabad or the Tribunal created under the law passed by the State of Uttar Pradesh****.*
>
> *12. Noticing this as the state of the law and applying it to the facts of this case, without going into any other aspect, which is projected by Mr. Rajendra Dobhal, learned senior counsel for the petitioners, we would think that the impugned order cannot be sustained. By the impugned order, the State of Uttarakhand has purported to give the benefit of absorption to the third respondent with reference to a date, which is clearly anterior to the date of the creation of the State of Uttarakhand. If at all this could have been done, it could have been done only by the State of Uttar Pradesh. On this short ground, the writ petition is only to be allowed.*
>
> *18. Therefore, we find no merit in the contentions of Mr. B.N. Molakhi, learned counsel for the third respondent or of Mr. Pradeep Joshi, learned Standing Counsel for the State/respondent nos. 1 and 2. Accordingly, the conclusion is inevitable that sans authority, the impugned order has been passed by the State of Uttarakhand. On this short ground only, we interfere with the impugned order.*
>
> *19. Accordingly, the writ petition is allowed. The impugned order dated 20.01.2017 giving benefit of absorption to the third respondent and that too with financial benefits cannot be sustained and the same will stand quashed. There will be no order as to cost.*
>
> *20. We, however, make it clear that we have not gone into various other contentions, which have been raised by the parties."*

47. Since the cause of action arose in the erstwhile State of U.P. and this Tribunal has no jurisdiction to issue any direction to the State of U.P. in respect of that cause of action, therefore, we have no hesitation in coming to the conclusion that this Tribunal has no jurisdiction to

entertain and decide present claim petition. This Tribunal has no inclination to go into the merits of the claim petition, for the same has already been decided by the Lucknow Tribunal on 26.05.1999.

48. Learned Counsel for the petitioner has placed reliance upon the decision rendered by Hon'ble Apex Court in Nawal Kishore Sharma vs. Union of India and others, (2014) 9 SCC 329. Paragraphs No. 9,16,18 and 19 of this decision, as highlighted by Ld. Counsel for the petitioner are being eproduced herein below for convenience:

> *"9. The interpretation given by this Court in the aforesaid decisions resulted in undue hardship and inconvenience to the citizens to invoke writ jurisdiction. As a result, Clause 1(A) was inserted in Article 226 by the Constitution (15th) Amendment Act, 1963 and subsequently renumbered as Clause (2) by the Constitution (42nd) Amendment Act, 1976. The amended Clause (2) now reads as under:-*
>
> *'226. Power of the High Courts to issue certain writs-*
>
> *(1) Notwithstanding anything in article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.*
>
> *(2) The power conferred by Clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.*
>
> *(3)-(4) * * **
>
> *<u>On a plain reading of the amended provisions in Clause (2), it is clear that now High Court can issue a writ when the person or the authority against whom the writ is issued is located outside its territorial jurisdiction, if the cause of action wholly or partially arises within the court's territorial jurisdiction. Cause of action for the purpose of Article 226 (2) of the Constitution, for all intent and purpose must be assigned the same meaning as envisaged under Section 20(c) of the Code of Civil Procedure. The expression 'cause of action' has not been defined either in the Code of Civil Procedure or the Constitution</u>. Cause of action is bundle of facts which is necessary for the plaintiff to prove in the suit before he can succeed. The term 'cause of action' as appearing in Clause (2) came for consideration time and again before this Court."*

> *16. Regard being had to the discussion made hereinabove, there cannot be any doubt that the question whether or not cause of action wholly or in part for filing a writ petition has arisen within the territorial limit of any High Court has to be decided in the light of the nature and character of the proceedings under Article 226 of the Constitution. In order to maintain a writ petition, the petitioner has to establish that a legal right claimed by him has been infringed by the respondents within the territorial limit of the Court's jurisdiction.*
>
> *18. Apart from that, from the counter affidavit of the respondents and the documents annexed therewith, it reveals that after the writ petition was filed in the Patna High Court, the same was entertained and notices were issued. Pursuant to the said notice, the respondents appeared and participated in the proceedings in the High Court. It further reveals that after hearing the counsel appearing for both the parties, the High Court passed an interim order on 18.9.2012 directing the authorities of Shipping Corporation of India to pay at least a sum of Rs.2.75 lakhs, which shall be subject to the result of the writ petition. Pursuant to the interim order, the respondent Shipping Corporation of India remitted Rs.2,67,270/- (after deduction of income tax) to the bank account of the appellant. However, when the writ petition was taken up for hearing, the High Court took the view that no cause of action, not even a fraction of cause of action, has arisen within its territorial jurisdiction.*
>
> *19. Considering the entire facts of the case narrated hereinbefore including the interim order passed by the High Court, in our considered opinion, the writ petition ought not to have been dismissed for want of territorial jurisdiction. As noticed above, at the time when the writ petition was heard for the purpose of grant of interim relief, the respondents instead of raising any objection with regard to territorial jurisdiction opposed the prayer on the ground that the writ petitioner- appellant was offered an amount of Rs.2.75 lakhs, but he refused to accept the same and challenged the order granting severance compensation by filing the writ petition. The impugned order, therefore, cannot be sustained in the peculiar facts and circumstances of this case.*
>
> *[Emphasis supplied]*

49. Nawal Kishore Sharma's decision (*Supra*) relates to writ jurisdiction under Article 226 of the Constitution. Here, the claim petition under U.P. Act No. XVII of 1976 is under adjudication before the Tribunal. Writ jurisdiction is not available to this Tribunal. The decision of Umakant Joshi (*supra*) and Dr. Kamaljeet Singh (*supra*) cannot be overlooked to mould findings in favour of the petitioner in view of Nawal Kishore Sharma's decision (*supra*), facts of which are on entirely different pedestal than the facts of present claim petition. **It, therefore, cannot be**

held that Public Services Tribunal, Dehradun, to the exclusion of State Public Services Tribunal, Lucknow, has jurisdiction to bring the claim petition to its logical conclusion.

50. To reiterate, the aforesaid decision pertains to maintainability of writ petition before Hon'ble High Court under Article 226 of the Constitution. It also deals with the concept of part cause of action. In the instant case, whole cause of action arose in the State of U.P., within the territorial jurisdiction of State Public Services Tribunal, Lucknow, who had decided the matter. The decision rendered by Hon'ble Apex Court in Umakant Joshi (*supra*) and by Hon'ble High Court in Dr. Kamaljeet Singh (*supra)*, wholly decides the controversy in hand, in so far as territorial jurisdiction of this Tribunal is concerned. We hope that these decisions of Hon'ble Apex Court and Hon'ble High Court, which are directly on the point, will quench the thirst of learned Counsel for the petitioner, who has laboured hard to (unsuccessfully) convince the Tribunal that since the petitioner is serving in State of Uttarakhand, therefore, Uttarakhand Public Services Tribunal too will have jurisdiction to decide the matter. We have not been able to persuade ourselves that this Tribunal can now entertain already decided claim petition, by the Lucknow Tribunal.

OPTION, WHICH WAS AVAILABLE TO THE PETITIONER:
(ONLY FOR ACADEMIC PURPOSES):

51. We are conscious of the fact that the Code of Civil Procedure, 1908, is not applicable to the references before this Tribunal. Even *proviso* to Section 5(1)(a) of the Act has not used the number and words, 'Section 11 CPC'. It has used the words, 'principle of *res-judicata*', which is best reflected in Section 11 CPC and, therefore, we have revolved around Section 11 and analogous provisions of CPC, to convey that the claim petition filed before this Tribunal is barred by the principle of *res-judicata.*

52. According to Section 38 of the Code of Civil Procedure 1908, a decree may be executed either by the Court which passed it, or by the Court to which it is sent for execution.

53. In the instant case, the order was passed by State Public Services Tribunal, Lucknow and, therefore, the execution was possible only by the Tribunal at Lucknow.

54. Section 37 CPC pro*vide*s the definition of the 'Court which passed a decree'. The same reads as under:

> *"37. The expression "Court which passed a decree", or words to that effect, shall, in relation to the execution of decree, unless there is anything repugnant in the subject or context, be deemed to include,-*
> *(a) where the decree to be executed has been passed in the exercise of appellate jurisdiction, the Court of first instance, and*
> *(b) where the Court of first instance has ceased to exist or to have jurisdiction to execute it, the Court which, if the suit wherein the decree was passed was instituted at the time of making the application for the execution of the decree, would have jurisdiction to try such suit.*
>
> *[Explanation.- The Court of first instance does not cease to have jurisdiction to execute a decree merely on the ground that after the institution of the suit wherein the decree was passed or after the passing of the decree, any area has been transferred from the jurisdiction of that Court to the jurisdiction of any other Court; but in every such case, such other Court shall also have jurisdiction to execute the decree, if at the time of making the application for execution of the decree it would have jurisdiction to try the said suit.]"*
>
> *[Emphasis supplied]*

55. We have discussed the aforesaid provisions of CPC only for academic purposes. We know that CPC, as such, is not applicable to references filed before this Tribunal. We are simply trying to reply to the query of Ld. Counsel for the petitioner, who has posed a question, as to where should the petitioner go? We make it clear that as on date, this claim petition is not maintainable before this Tribunal, being barred by principle of *res-judicata.* Claim petition has not been filed within a year, and therefore, it is barred by limitation. Also, it has no jurisdiction in view of the decisions of Umakant Joshi (*supra*) and Dr. Kamaljeet Singh (*supra*).

56. As per entry 136 of the Schedule, appended to the Limitation Act, 1963, normally, period of limitation for the execution of such decree (read: order) is twelve years. Time begins to run from the date when

decree or order becomes enforceable. Even this period of twelve years has expired. Petitioner is only to be blamed for the same.

ORDER:

57. The claim petition is hereby dismissed, as not maintainable before this Tribunal. In the circumstances, no order as to costs.

58. It is made clear that this Tribunal has not expressed any opinion on the merits of the claim petition, for the same has already been decided on merits by the State Public Services Tribunal, Lucknow on 26.05.1999 in Claim Petition No. 1904/1998. The respondents (State of U.P. and others) were already given a direction to consider the case of petitioner for regularization and promotion. Instead of filing execution application before the State Public Services Tribunal, Lucknow, on time, petitioner has filed present claim petition before this Tribunal, which is not maintainable.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: APRIL 15, 2021
DEHRADUN.

KNP