

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
BENCH AT NAINITAL**

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

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

CLAIM PETITION NO. 32/NB/DB/2018

1. Smt. Tulsi Arya, w/o Sri Himmat Ram Arya, presently serving as Supervisor/Mukhya Sevika, o/o Child Development Project Officer, Rudrapur City, District Udham Singh Nagar.
2. Smt. Vinita Verma, w/o Late Sri Pankaj Verma, presently serving as Supervisor/Mukhya Sevika, o/o Child Development Project Officer, Hawalbagh, District Almora.
3. Smt. Anita Chaudhary, w/o Sri Naveen Chandra Chaudhary, presently serving as Supervisor/Mukhya Sevika, o/o Child Development Project Officer, Almora, District Almora.
4. Smt. Janki Bhatt w/o Sri Jagdish Chandra Bhatt, presently serving as Supervisor/Mukhya Sevika, o/o Child Development Project Officer, Bhasiyachhana, District Almora.
5. Smt. Asha Joshi, w/o Sri Kanchan Kishore Joshi, presently serving as Supervisor/Mukhya Sevika, o/o Child Development Project Officer, Rudrapur City, district Udham Singh Nagar.
6. Smt. Prabha Arya, w/o Sri Naval Kishore Arya, presently serving as Supervisor/Mukhya Sevika, o/o Child Development Project Officer, Salt, District Almora.
7. Smt. Leela Parihar, w/o Sri Alok Parihar, presently serving as Supervisor/Mukhya Sevika, o/o Child Development Project Officer, Rudrapur City, District Udham Singh Nagar.
8. Smt. Neema Sah, w/o Sri Deepak Sah, presently serving as Supervisor/Mukhya Sevika, o/o Child Development Project Officer, Takula, District Almora.
9. Smt. Neelam Nath, w/o Sri Devendra Nath, presently serving as Supervisor/Mukhya Sevika, o/o Child Development Project Officer, Rudrapur Rural, District Udham Singh Nagar.

10. Ms. Sunita Pant d/o Late Sri G.D.Pant, presently serving as Supervisor/Mukhya Sevika, o/o Child Development Project Officer, Rudrapur Rural, District Udham Singh Nagar.
11. Smt. Sunita Shahi w/o Sri Gopal Shahi, presently serving as Supervisor/Mukhya Sevika, o/o Child Development Project Officer, Jaspur Rural, District Udham Singh Nagar.
12. Smt. Meena Arya, w/o Late Sri D. Arya, presently serving as Supervisor/Mukhya Sevika, o/o Child Development Project Officer, Haldwani Rural, District Nainital.
13. Smt. Sudha Tripathi, w/o Sri Praveen Tripathi, presently serving as Supervisor/Mukhya Sevika, o/o Child Development Project Officer, Rudraprayag District Rudraprayag.
14. Smt. Janki Kashyap w/o Sri Lalit Mohan Kashyap, presently serving as Supervisor/Mukhya Sevika, o/o Child Development Project Officer, Kashipur, District Udham Singh Nagar.
15. Smt. Gaytri Arya, w/o Sri D.R. Arya, presently serving as Supervisor/Mukhya Sevika, o/o Child Development Project Officer, Rudrapur City, District Udham Singh Nagar.
16. Smt. Vidyawati Patel w/o Dr. Dev Prakash Sharma, presently serving as Supervisor/Mukhya Sevika, o/o Child Development Project Officer, Bahadarabad-I, District Haridwar.

.....Petitioners

vs.

1. State of Uttarakhand through Secretary, Department of Women Empowerment and Child Development, Govt. of Uttarakhand, Dehradun.
 2. Director, ICDS (Women Empowerment and Child Development Department), Uttarakhand, Sudhowala, near Nanda Ki Chauki, Chakrata Road, Dehradun.
 3. Uttarakhand Public Service Commission, Gurukul Kangari, Haridwar, through its Secretary.
 4. State of Uttar Pradesh through Secretary, Women Empowerment and Child Development Department, Govt. of U.P., Lucknow.
 5. Director, Child Development Services and Nutrition Directorate, 3rd Floor, Indira Bhawan, Lucknow.
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|------------------------|--------------------------|-----------------------|
| 6. Smt. Poonam Rautela | 7. Ms. Shashi Bisht | 8. Ms. Vimal Barakoti |
| 9. Ms. Rashmi Rajput | 10. Smt. Khashti Goswami | 11. Ms. Anju Badola |
| 12. Smt. Asha Joshi | 13. Ms. Manjeshwari | 14. Smt. Anju Dabral |

			Rawat		
15.	Ms. Renu Jadli	16.	Smt. Roshni Sati	17.	Ms. Chandrakanta Kala
18.	Ms. Sangeeta Goyal	19.	Ms. Kiran Jain Gupta	20.	Ms. Yashoda Bisht
21.	Km. Roopwala Verma	22.	Ms. Asha Negi	23.	Smt. Savitri Dobhal
24.	Smt. Parvati Koranga	25.	Smt. Beena Aswal	26.	Smt. Asha Negi
27.	Smt. Beena Raturi	28.	Smt. Sobha Janoti	29.	Ms. Sobha Singh
30.	Smt. Mohini Bisht	31.	Smt. Neelam Ramola	32.	Smt. Deveshwari Kunwar
33.	Ms. Daya Belwal	34.	Ms. Neelam Jaiswal	35.	Smt. Neeta Dixit
36.	Ms. Shakuntala Rawat	37.	Smt. Savita Kala	38.	Ms. Anubala Nautiyal
39.	Ms. Beena Bhandari	40.	Smt. Neeru Pandey	41.	Smt. Asha Bhatt
42.	Smt. Mamta Lekhak	43.	Smt. Tulsi Bora	44.	Smt. Sarojani Bhatt
45.	Mr. Anju Chamoli	46.	Smt. Hema Kandpal	47.	Ms. Geeta Bhandari
48.	Smt. Sangeeta Tomar	49.	Smt. Anita Saxena	50.	Smt. Hemwanti Rawat
51.	Ms. Yadu Semwal	52.	Smt. Indira Bargali	53.	Smt. Sudha Rani Murani
54.	Smt. Vinita Saxena	55.	Ms. Sushma Rawat	56.	Smt. Janki Upadhyay
57.	Smt. Kiran Lata Joshi	58.	Smt. Renu Lamba	59.	Ms. Sushma Kothari
60.	Smt. Vinital Sajwan	61.	Ms. Geeta Sharma	62.	Smt. Sangeeta Parihar
63.	Ms. Vinita Purwal	64.	Ms. Savitri Panwar	65.	Ms. Geeta Dimri
66.	Smt. Disha Sharma	67.	Smt. Anita Gupta	68.	Ms. Sadhana Sharma
69.	Smt. Meera Kunwar Bora	70.	Smt. Asha Bhainsora	71.	Ms. Kavita Jakhad
72.	Smt. Anita Tamta	73.	Smt. Sushila Gwal	74.	Smt. Seema Yadav
75.	Smt. Sudha Arya	76.	Ms. Najma Mansoori	77.	Smt. Premlata Gunjyal
78.	Smt. Kiran Verma	79.	Smt. Urmila Singh	80.	Ms. Hemu Rawat
81.	Smt. Pushpa Hayanki	82.	Smt. Lalita Bampal	83.	Smt. Ila Arya
84.	Smt. Reeta Chhawan	85.	Smt. Mithilesh Pal	86.	Smt. Rajkumari
87.	Km. Geeta Arya	88.	Smt. Sumitra Bijalwan	89.	Smt. Tara Arya
90.	Smt. Kamla Martoliya	91.	Smt. Indra Sah	92.	Smt. Shashikala Tamta
93.	Smt. Anju Tamta	94.	Smt. Anita Verma	95.	Smt. Laxmi Arya
96.	Smt. Chitra Kohli	97.	Ms. Kusum Kohli	98.	Ms. Gangotri Bhandari
99.	Ms. Roshani Bharti	100.	Ms. Rekha Paliwal	101.	Smt. Hemlata Kohli
102.	Smt. Pushpa Devi	103.	Smt. Karuna Tamta	104.	Smt. Sarla Devi
105.	Ms. Rajwati	106.	Ms. Geeta Verma	107.	Ms. Damyanti Dharamshaktu

108. Ms.Nandi Devi	109. Smt. Pushpa Waldiya	110. Ms. Dimple Verma
111. Ms. Pushpa Devi	112. Smt. Seema Arya	113. Ms. Sanju Singh
114. Smt. Sarita Sawai	115. Smt. Pushpa vishwakarma	116. Km. Pratibha Goswami
117. Smt. Yashodhara Sharma	118. Ms. Poonam Goswami	119. Ms. Beena Giri
120. Ms.Bindu Maurya	121. Smt. Prabha Rani	122. Km. Nirmala
123. Smt. Sunita Verma	124. Ms. Gauri Kaushik	125. Smt. Vashuda Gunjyal
126. Smt. Kusumlata Tolia	127. Smt.Meena Garkhal	

Respondents No. 6 to 127 are Supervisors/Mukhya Sevikas

.....Respondents.

Present: Sri Bhagwat Mehra, Advocate, for the Petitioners
Sri Kishor Kumar, A.P.O., for the Respondents No. 1, 2, 4 & 5
Sri Ashish Joshi, Advocate for the Respondent No. 3
Ms. Menka Tripathi, Advocate
for the Private respondents No. 24, 26, 28, 29, 30, 31, 33, 35, 37, 39, 40,
43, 45, 48, 49, 50 & 52.

JUDGMENT

DATED: OCTOBER 29, 2021

Per: Sri Rajeev Gupta, Vice Chairman (A)

By means of the present claim petition, the impugned final seniority list issued on 03.12.2015 by the Respondent no. 2 has been challenged.

2. Brief facts, according to the claim petition are, as below:

The service conditions of various posts under the Respondent No. 5 *inter-alia* the post of Mukhya Sevika (also known as Supervisor) were governed by the Uttar Pradesh Child Development and Nutrition (Subordinate) Service Rules, 1992 (hereinafter called as the 'Rules of 1992') notified on 16.11.1992. Rule 5(4) dealing with Mukhya Sevika provides that 50% posts of the Mukhya Sevika shall be filled by direct recruitment through the selection committee on the basis of competitive examination and interview. It is further provided that only women candidates shall be eligible

for appointment to the post of Mukhya Sevika. For the purpose of controversy in hand, Rule 15(3) which is relevant, is extracted below:-

“The Departmental Selection Committee shall prepare a proficiency list of candidates in order of merit as disclosed by the marks obtained in the interview. If two or more candidates obtain equal marks, the selection committee shall arrange their names in order of merit on the basis of their general suitability for the post. The number of names in the list shall be larger (but not larger by more than 25 percent) than the number of vacancies, the departmental selection committee shall forward the list to the appointing authority.”

An advertisement was issued by the Respondent no. 5. As such, the selection was held under Rule 15(3) of the aforesaid Rules as referred above, and the petitioners who were fully eligible for the said appointment, also responded to the same and ultimately in pursuance of the Govt. Order No. 722/60-Cell-95 dated 28.03.1995 as well as G.O.No. 754/60-2-95(Cell) dated 31.03.1995, all the petitioners as well as private respondents were appointed by separate orders issued on 25.05.1995. The petitioners were higher in merit, to the private respondents, on the basis of marks in the interview, as per the mandate of Rule 15(3) of the aforesaid Rules. U.P. Child Development and Nutrition (Group A and B) Service Rules were notified on 04.07.1996. Rule 5(E) of the same provides that 50% posts of Child Development Project Officer shall be filled by way of promotion of Additional Child Development Project Officer, and in case of their non-availability, the same will be filled up from promotion of Supervisors. *Vide* two Notifications No. 290 and 291 dated 07.11.2002, the Govt. of Uttarakhand adopted the aforesaid Rules of 1992 as well as rules of 1996 with certain modifications. However, the Rule 15 of the 1992 Rules was never altered/modified, and the same remained intact till date.

Since their appointment, in 1995, the petitioners were placed above the private respondents in the seniority list/gradation list so prepared from time to time. Thereafter, vide letter No. C-1045 dated 02.04.2003, the Respondent No. 2 circulated a Seniority List, although shown as tentative. In the said list, all the petitioners were shown senior to the private respondents. Although the objections were invited from all the concerned employees including the private respondents, however, the private

respondents never made any objection to their placement in the seniority list below the petitioners. On the basis of the aforesaid seniority list, a meeting of the Departmental Promotion Committee was convened on 04.12.2003 for filling up various vacant posts of Child Development Project Officer (CDPO) under the promotion quota of 50%. Consequently, as many as 11 employees were promoted to the post of CDPO. However, surprisingly enough, the respondent No. 2 vide letter dated 30.07.2010 issued a tentative seniority list in the matter in which the petitioners were shown junior to the private respondents. As such, the detailed objections were filed against the said tentative seniority list. Thereafter, on 27.08.2011, an application under RTI Act was submitted by the petitioner No. 1 to the Respondent no. 2 seeking certain relevant information/documents in the matter. Vide reply dated 06.09.2011 under RTI Act since no satisfactory answer was given as such the petitioners submitted another application to the Respondent No 2 on 29.09.2011. In reply to the said application dated 29.09.2011, the Respondent no. 2 replied vide letter dated 15.10.2011. When no decision was taken in the matter by the Respondent No. 2 despite repeated requests, the petitioner No.1 submitted a representation to the Respondent no. 1 on 04.07.2012. The said representation of the petitioner No. 1 was thereafter forwarded by the Respondent no. 1 vide letter dated 31.07.2012. Again on 22.05.2013, the petitioner No. 1 submitted a representation in the matter to the respondent no. 2.

Without finalizing the aforesaid tentative seniority list dated 30.07.2010, the respondent no. 2 issued another tentative seniority list vide letter dated 02.05.2014 showing the private respondents senior to the petitioners. On the same day, the respondent No. 2 issued another tentative seniority list regarding the clerical staff vide letter no. C-321, dated 02.05.2014. In the said seniority list, the respondent no. 2 arranged the names in order of seniority on the basis of date of substantive appointment. However, in the matter of petitioners, a just reversed stand was/has been taken. Again the petitioners submitted objection to the aforesaid seniority

list dated 02.05.2014 issued in respect of the petitioners as well as private respondents. However, the respondent No. 2 without considering the objections so raised by the petitioners and without considering the relevant Rules of 1992 governing the field as well as settled legal position, vide impugned order dated 03.12.2015, issued final seniority list reversing the already settled long standing inter-se seniority position of the petitioners as well as private respondents. When the said fact about the impugned order came to the notice of petitioners in the year 2017, they immediately represented the matter to the State Govt./Respondent no.1 on various occasions and they also represented through the Employees Union namely Supervisors Union and consequently the Employees Union vide representations dated 30.10.2017, represented the matter before the State Govt. Till date no decision whatsoever on the aforesaid representations dated 30.10.2017 has been taken by the Official Respondents. On personal meetings with the official respondents/authorized representative, they assured the petitioners as well as their Employees Union that they are considering the matter objectively and necessary order/decision shall be taken in the matter at the earliest. The petitioners were under a bonafide belief that the respondent no. 1 will look into the matter positively and as such the petitioners kept waiting. However, on the one hand, till date no decision has been taken in the matter by the respondent no. 1, but on the other hand, the official respondents initiated promotion exercise for filling available vacancies on the post of CDPO, on the basis of the impugned seniority list dated 03.12.2015.

The action of the Respondent no. 2 in reversing the already settled long standing inter-se seniority position between the petitioners as well as the private respondents, is totally arbitrary, unreasonable and illegal and is also against the law propounded by the Hon'ble Supreme Court time and again that the long standing seniority position between the employees cannot be disturbed at all. The sole reason being assigned by the respondent no. 2 for justifying its otherwise illegal action i.e. alleged marks in the said examination of 1995, is also totally illegal and arbitrary and in fact

is in violation of Rule 15(3) of the 1992 Rules. Rule 15(3), in unequivocal terms provides that the merit list of the competitive examination shall be prepared on the basis of the marks of the interview only, scored by the candidates.

In view of the above, the petitioners could not approach this Hon'ble Tribunal earlier against the impugned order. As such it is prayed that the delay occasioned in challenging the impugned seniority list dated 03.12.2015, is totally beyond the control of the petitioners, and as such the said delay deserved to be condoned and the claim petitioner deserves to be entertained on merit.

The petition was further amended adding that Respondent No. 2 passed promotion order on 30.01.2019 whereby as many as 37 persons have been promoted to the next higher post of CDPO. In the said promotion order, the persons named from Sl. No. 1 to 19 are admittedly appointees of 1985 to 1988, as such, they are admittedly much senior to the petitioners as well as private respondents. However, the persons named from Sl. No. 20 (Smt. Poonam Rautela) to Sl. No. 37 (Smt. Preeti Arora) are much junior to petitioners. However, the petitioners were not promoted to the said post. As such, the said promotion order deserves to be cancelled in so far as it relates to the private respondents.

The following reliefs are sought in the claim petition:

- A. To set aside the impugned seniority list dated 03.12.2015 issued by the Respondent No. 2.
- B. To direct the Respondent no. 2 to prepare the seniority list of the personnel serving on the post of Supervisor/Mukhya Sevika, afresh strictly in accordance with the Rule 15(3) of the 1992 Rules.
- C. To direct the Respondents No. 1, 2 and 3 to consider and promote the petitioners to the post of Child Development Project Officer under 50% promotion quota, from due date i.e. when the persons junior to them were/are promoted to the said post, and also to grant all consequential benefits.

C-1. To set aside the impugned promotion order dated 30.01.2019 passed by the Respondent No. 2 (Annexure no. 20 to the Claim Petition) in so far as it relates to private respondents.

D. To issue any other order or direction, which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

E. Award the cost of the Claim Petition in favour of the petitioners.

3. Counter Affidavit filed on behalf of the Respondents No. 1 & 2 mainly states the following:

3.1 The services of the petitioners as well as private respondents 6 to 127 are governed by the rules namely Uttar Pradesh Child Development Nutrition (Subordinate) Services Rules 1992. Rule 5 sub rule 4(1) provides that the 50% posts of Supervisor (Mukhya Sevika) shall be filled by direct recruitment through the selection committee on the basis of competitive written exam and interview. Further, it is provided that the post shall only be filled by the women candidates. The petitioners as well as the private respondents no. 6 to 127 are appointed under rule 5(4)(1) in the year 1995 and accordingly the merit list of marks obtained by them in written exam and interview both was prepared by the selection committee. Petitioners were lower in merit than the private respondents No. 6 to 127 in the merit list which was prepared on the basis of marks obtained by them in written examination and interview both. Rule 15(3) is only applicable for preparing merit list of the Aaganwadi Workers who have been appointed in pursuance of rule 5 sub rule 4(2). While the merit list of directly appointed supervisor (Mukhya Sevika) is prepared in pursuance of rule 15(Ka) (4). The seniority list dated 03.12.2015 has been rightly prepared by the respondent in view of Rule 5 of the Uttaranchal Government Servant Seniority Rules, 2002. Earlier the tentative seniority list in the present State of Uttarakhand in the cadre of petitioners as well as private respondents No. 6 to 127 was issued on 04.02.2003 and thereafter the tentative list was also issued in the year 2010 and again on 02.05.2014 by the ICDS Directorate Uttarakhand,

Dehradun which was ultimately finalized on 03.12.2015 which is under challenge in this claim petition.

3.2 The petitioners submitted their objections against the tentative seniority list dated 02.05.2014 which were found against the existing seniority rules and therefore petitioners have been rightly placed in seniority list dated 03.12.2015 in view of the rule 5 of the Uttaranchal Government Servant Seniority Rules, 2002 and U.P. Child Development Nutrition (Subordinate) Service Rules, 1992. The present claim petition is hopelessly time barred as the petitioners have challenged the seniority list dated 03.12.2015 after the lapse of 3 years before this Hon'ble Tribunal without explaining the day by day delay as caused by them in filing the present petition. Hence, claim petition is liable to be dismissed at very onset on the ground of delay and laches without going on its merit, with an exemplary cost.

3.3 In view of Rule 15(Ka)(3), the marks obtained by the petitioners as well as private respondents No 6 to 127 in interview & written examination were to be added for the purpose of preparing a merit list by the erstwhile State of U.P. in year 1995 in view of provision laid down in Rule 15(Ka) (4) of the Rules of 1992.

3.4 Rule 15(3) is only applicable for preparing the merit list of Aaganwadi workers appointed through the selection committee on the basis of marks obtained by them in interview. The said provisions have no application in the present matter of the petitioners as well as private respondents no. 6 to 127 for preparing the merit list. The selection committee for appointment of the petitioners as well as private respondents no. 6 to 127 was held under Rule 15(1). Thereafter selection list was prepared under Rule 15(Ka)(3) and 15(ka)(4) on the basis of marks obtained by them in competitive exam written and interview. Hence, the seniority list has rightly been prepared on the basis of merit. The petitioners were lower in the marks than the private respondents No. 6 to 127 which is clear by the merit list/selection list of appointment obtained from erstwhile

State of U.P. The final seniority list has been only issued on 03.12.2015 first time on the basis of merit list (of appointment) of the petitioners as well as private respondents received from the Directorate of I.C.D.S., State of U.P. The seniority list in the ministerial cadre of I.C.D.S. is issued on the basis of prevalent rules of ministerial staff which have no relevancy in the cadre of the petitioners as well as private respondents No. 6 to 127. The criteria of determination of seniority in clerical cadre is quite different.

3.5 The representation dated 30.10.2017 was addressed to the Minister of Govt. and same was not preferred to the department by the petitioners as per the Rules. Moreover, there is no provision of furnishing the representation against the final seniority list. It is clear that after finalizing the objections in the year 2015 final seniority list has been issued, thus no representation can be made against the final seniority list as per Rules and Law.

3.6 The final seniority list dated 03.12.2015 in the cadre of the petitioners was the first to be issued. Before year 2015, no final seniority list has been issued by the department in this cadre. Hence no question arises to disturb a settled and long standing seniority in the present matter of the petitioners as well as private respondents.

4. Replying to the above C.A./W.S., Rejoinder Affidavit has been filed mainly stating that the respondents have misinterpreted the Rules of 1992 just to cover up the illegalities committed by them in preparing the impugned seniority list. A perusal of the documents annexed with the Counter Affidavit as Annexure No. CA-2, would reveal that the selection in question was held in 1995 for as many as three zones i.e. (1) East Zone (2) West Zone and (3) North Zone. It further reveals that the candidates who applied for East Zone, the Roll Numbers to them were allotted in "E Series" like "E001 onwards". Similarly for West Zone, the roll numbers were allotted in "A Series", while for North Zone, the roll numbers were allotted in "C Series". A bare perusal of impugned seniority list dated 03.12.2015 would reveal that various persons have been included who participated

from different Zones. Admittedly, the petitioners and private respondents inter-se merit list/seniority list is to be prepared only on the basis of marks obtained in the interview as has been clearly provided in Rule 15(3) of the 1992 Rules and the same has not been modified/alterd till date.

In the seniority list dated 04.02.2003, the petitioners were senior to the private respondents. Although the same was described as tentative one however, the department treated the same as final one and on the basis of the same, the promotions were made to the next higher post of CDPO vide DPC dated 04.12.2003. The averment of the respondents in the Counter Affidavit that the petitioners were lower in marks than the private respondents, is totally incorrect and baseless and in fact the petitioners are higher in merit in accordance with Rule 15(3) of the Rules of 1992, to the private respondents.

As per the settled legal position, the long standing seniority position cannot be disturbed, even if the same is not strictly in accordance with the rules. With the Rejoinder Affidavit, judgment dated 17.05.2019 passed by the Hon'ble High Court of Uttarakhand in the case of Pan Singh Bangari and other vs. State of Uttarakhand and others has also been filed in support of this contention. It is made clear that in the present case, the 2003 seniority list was perfectly justified as per Rules of 1992 and on the basis of which as many as 11 persons were promoted to the post of CDPO. During pendency of the present claim petition, some of the private respondents have been promoted to the next higher post of CDPO who are in fact junior to the petitioners as per seniority list of 2003 and also as per Rule 15(3) of the Rules of 1992.

5. C.A./W.S. has also been filed on behalf of respondent no. 3 making it clear that answering respondent is proforma respondent in the claim petition.

6. As there were differences in the texts of the Rules of 1992 filed by the petitioners and respondents, this Tribunal directed both the sides to file the text of the original Rules of 1992 prior to the amendment of 1996

and the advertisement in response to which the petitioners had submitted applications for employment. Ld. A.P.O. with his application dated 13.01.2020 filed copy of Rules of 1992, copy of advertisement dated 25.12.1994, format of application and copy of result as supplied by State of U.P. as Annexures No. 1, 2, 3 and 4 respectively. This Tribunal in its order dated 18.02.2020 observed that according to Annexure No.1, selection for 'Mukhya Sevika' can be made on the basis of interview only whereas, Annexure No.2, which is the advertisement for appointment, mentioned that there is also a provision of written test. Learned A.P.O. has referred to the Annexure No. 4 wherein, marks of written test and interview were also counted for preparing the merit list. The respondents themselves are taking different stand on this point whether selection was to be made only on the basis of marks of interview or on the basis of marks of written and interview both as per the Rules. This rule position has to be clarified on the part of the respondents.

7. Supplementary C.A. has been filed by learned A.P.O. on 23.02.2021 enclosing the letter dated 20.07.2020 written by Director, ICDS, Uttarakhand to Director ICDS, U.P. and the reply dated 27.07.2020 received from Director ICDS, U.P. giving the following answers:

- (i) According to the Rules of 1992, the appointment to the post of Mukhya Sevika was on the basis of direct recruitment through departmental selection committee of women candidates on the basis of interview. In the year 1995, the Rules of 1992 were prevailing.
- (ii) In continuation of these Rules, the Women and Child Development Department of U.P. through advertisement dated 25.12.1994 invited applications in five zones and the Selection Committee selected Mukhya Sevikas on the basis of written examination and interview.
- (iii) The first amendment Rules, 1996 provided for 75% posts of Mukhya Sevika to be filled by direct recruitment of women candidates on the basis of competitive examination and interview by selection committee and 25% posts to be filled by promotion of Aganwadi workers, who are High School or equivalent examination passed and put in 10 years of

continuous service and have not exceeded the age of 45 years on the first day of the selection year, through selection committee on the basis of interview.

This affidavit further states that pursuant to the letter no. 2962 dated 10.06.2010 issued by the Director, Child Development, Uttar Pradesh, the seniority list was prepared by the answering respondents. The result of selection of Mukhya Sevikas in 1995 was sent with this letter according to which, Smt. Tulsi Arya got 239 marks in written test and 12 marks in interview, total 251 marks and on the basis of her total marks her seniority was fixed in final seniority list. It is also relevant to mention here that the petitioners have not challenged their appointment orders and accepted the marks at the time of induction of service, thus the petitioners are estopped by the law of estoppel.

In the notification no. 632(5)/1243/92/13-89/94 dated 25.12.1994 issued for submission of the application form for appointment on the post of Supervisor (Mukhya Sevika), it was mentioned that the selection will be based on written test and interview and merit list will be prepared on the basis of the marks obtained in interview and written test. The petitioners and other similarly situated persons have not objected to the said condition at that time and accepted the condition and participated in the selection process and also accepted the merit list position. In State of U.P., the seniority of the Supervisor (Mukhya Sevika) has been prepared on the basis of the marks obtained by them in the selection process (marks of interview + marks of written test). The petitioners want to change the terms and conditions of the selection process of 1994 in which selection was made on the basis of the marks of the written test and interview and they have accepted the same which is not permissible in the eyes of law.

8. Counter Affidavit has been filed on behalf of the private respondents No. 24, 26,28,29,30,31,33,35,37,39,40, 43, 45, 48, 49, 50 & 52 on 03.09.2021 mainly stating that the claim of the petitioners is highly time barred as they did not approach the Hon'ble Tribunal within the limitation period. This C.A. further states the following:

The petitioners are confused regarding the application of rule in respect of their appointment as Mukhya Sevika as Rule 15(3) deals with the Departmental Selection Committee, here is the case of providing seniority in respect of the direct recruitee through the examination as prescribed. The petitioners were never higher on merit, which is a misconception with the petitioners as the petitioners have only annexed a list based upon the joining of the candidates, which cannot be said to be a seniority list and as a result subsequently when the lists were issued on the basis of merit, right from the year 2010, the petitioners did not choose to challenge them and thus, now the seniority, which prevailed according to the applicable rules, cannot be allowed to be changed at a highly belated stage.

The petitioners have never been senior to the answering respondents as the respondents according to their aggregate of the written examination and the interview held through the advertisement for recruitment for Mukhya Sevika were much ahead on merit vis-à-vis the petitioners and therefore in the year 2010 when the seniority list was published the answering respondents were shown senior to the petitioners on the basis of the marks obtained by them at the time of their recruitment. All the 11 persons/employees who were promoted from the list of 2003, were of the recruitment years prior to 1992, i.e. from the recruitment year 1983-1987. For any competitive examination, which involves written examination and interview, it is the aggregate of both the written examination and interview, which would count for the seniority list to be prepared on the basis of merit arrived at by adding the marks of the written examination and interview and that is how the seniority list for the year 2010 was also prepared.

The petitioners are unnecessarily seeking parity with the clerical staff, whose mode of recruitment is altogether different, the entire cadre is different and the advertisement issued for their recruitment is also different. Thus, there cannot be a parity that can be drawn between the clerical cadre and that of the Mukhya Sevika. On 09.12.2020 also a final seniority list has been issued by the department, which also the petitioners

have not challenged. Representation dated 30.10.2017 appears to be a fabricated document as the answering respondents did not put their signatures on the said representation and thus, the petitioners should be put to strict proof about the authentication of the said document.

9. Replying to the above Counter Affidavit of the private respondents, Rejoinder Affidavit has been filed on behalf of the petitioners on 12.09.2021 mainly stating that the private respondents have misinterpreted the Rules of 1992, just to cover up the illegalities committed by the official respondents in preparing the impugned seniority list. The petitioners and private respondents' inter-se merit list/seniority list is to be prepared only on the basis of marks obtained in the interview as has been clearly provided in Rule 15(3) of the Rules of 1992 and the same has not been modified/alterd till date. The correct position of law/rules is that the seniority/merit list of the petitioners vis-à-vis private respondents, who all are directly appointed by open selection, is to be prepared strictly as per Rule 15(3) of the said rules and the contentions of the respondents against the same is without any basis. In the seniority list dated 04.02.2003, the petitioners were senior to the private respondents. Although the same was described as tentative one however, the department treated the same as final one and on the basis of the same, the promotions were made to the next higher post of CDPO vide DPC dated 04.12.2003.

The reliance placed by the private respondents on the document annexed as Annexure No. CA-1 with their Counter Affidavit, is totally misplaced and in fact the same is an incorrect version Rules of 1992, as being projected by the private respondents, as the same is an amended one after incorporating the Amendment Rules of 1996 and 1998. This Hon'ble Tribunal after hearing the matter in great detail on 18.02.2020 directed the official respondents to produce the original notified Rules of 1992. Ultimately, the original Rules of 1992 were produced before this Hon'ble Court by the official respondents by way of Application dated 13.01.2020 as well as Supplementary Counter Affidavit dated 23.02.2021. A perusal of the said original Rules, would reveal that in 1992, there was no quota of

appointment/promotion on the post of Mukhya Sevika/Aaganbari Supervisor from the post of Aaganbari Karyakartri and 25% quota was introduced for them only in the year 1996 by way of Amendment Rules, 1996 and the said quota of 25% was thereafter, increased by way of Amendment Rules, 1998. Since the petitioners vis-à-vis private respondents were appointed on a common selection by way of direct recruitment held by the departmental selection committee and not by the Commission at all, the inter-se seniority between the petitioners vis-à-vis private respondents is to be determined only on the basis of the statutory Rules prevalent in the year 1995 and there is no effect of the Amendment Rules, 1996 and Amendment Rules, 1998 at all on the issue at hand.

The selection in question whereby, 100% posts of Mukhya Sevika were being filled up by direct recruitment from open market through Departmental Selection Committee (not through the Commission), was challenged by one Smt. Munni Pathak before Hon'ble Allahabad High Court by way of Writ Petition No. 7102 of 1995 claiming that since she is working as Aaganbari Karyakartri, she should be also considered in the said selection after giving the Aaganbari Karyakartries certain quota. The said writ petition remain pending upto 1999 and during the said period, the original Rules of 1992 in which there was no quota at all for the Aaganbari Karyakartri for appointment to the post of Mukhya Sevika /Aaganbari Supervisor, were amended in 1996 and 1998 and as such at the time of final hearing, it was contended by the said petitioner i.e. Smt. Munni Pathak that since by way of Amendment Rules, 1996 and Amendment Rules, 1998, now the quota has been prescribed for the Aaganbari Karyakartries, as such she should be given the benefit of the same in the selection in question of 1994-95. However, the Hon'ble Allahabad High Court vide judgment dated 19.04.1999 dismissed the said writ petition holding that in the original Rules of 1992 which were prevalent at the time of selection in question i.e. in the year 1994-95, there was no quota at all and whatever quota was introduced was only in the year 1996 with

prospective effect only and the said quota was increased in 1998 by way of Amendment Rules, 1998.

10. We have heard the arguments of learned Counsel for the parties, who were also provided the opportunity to file written arguments.

11. Learned Counsel for the private respondents No. 24, 26,28,29, 30,31, 33,35, 37, 39,40, 43, 45, 48, 49, 50 & 52, in addition to her earlier pleadings, mentioned the following in the written arguments:

2. The petitioners and the respondents applied through the same advertisement No. 632-5/1234/92/13-89/94 dated 25th December, 1994, which clearly mentioned that there will be a written competitive examination for the post of Mukhya Sevika for which there would be following question papers.....:

3. The meaning of the word 'Competitive' according to Oxford dictionary means involving a situation in which people or organizations compete against each other. It can be understood that where a person competing with another person is eager to be more successful than the other. Therefore, competitive word is used only when there is a contest among a group of people applying for a post and the person is contesting to be more successful than others. Thus, the aforesaid advertisement where the word used is "Pratiyogita Pariksha" denotes that it was a competitive written examination wherein the appointment was not purely based on the interview as the advertisement speaks more of the written examination than the interview.

4. It was the aggregate of the marks after adding the marks of written examination and the interview that the merit list of the selected candidates was made, which alongwith the list of selected candidates was circulated, which can be perused from page 29 onwards of the Supplementary Affidavit of the Respondent No. 1 (The State Govt.) and their Counter Affidavit. A perusal of the same would reveal that if interview would have been the only criteria then most of the petitioners would have not even qualified.

6..... Moreover if the selection as per petitioners was to be done purely on interview basis then a benchmark should have been provided in the advertisement itself, otherwise even if a candidate is getting 5-7 marks would also qualify, so there was reason in taking the aggregate of the marks obtained in the written examination as well as interview and once the selection process had started on the basis of the advertisement, it was for the petitioners to have challenged the same at that stage and now after taking the written examination and after being selected through the procedure prescribed in the advertisement now they cannot take a 'U' turn to plead otherwise. The petitioners are now estopped from taking the plea of selection through interview only.

10. It is made clear that all the 11 persons/ employees who were promoted from the list of 2003, were of the recruitment years prior to 1992, i.e. from the recruitment year 1983-1987 and were not from the batch of 1995.

12. The petitioners in their claim petition are unnecessarily seeking parity with the clerical staff, whose mode of recruitment is altogether different, the entire cadre is different and the advertisement issued for their recruitment is also different. Thus, there cannot be a parity that can be drawn between the clerical cadre and that of the Mukhya Sevika.

14. Annexure No. 18, annexed with the claim petition, i.e., representation dated 30.10.2017 appears to be a fabricated document as the answering respondents did not put their signatures on the said representation and thus, the petitioners should be put to strict proof about the authentication of the said documents.

12. Learned Counsel for the petitioners in his written arguments dated 30.09.2021 has made the following new assertion:

.....18. The alleged marks list allegedly prepared by the State of U.P. is not even being followed by the State of U.P. itself and the seniority position as was existing on the date of reorganization of

the State i.e. 08.11.2000, is still maintained in the State of U.P.. The State of U.P. issued the tentative seniority list, vide letter dated 24.10.2007 for the petitioners' counterparts in U.P. who were appointed in the year 1995. The same was finalized vide letter dated 26.03.2010. The similar list was issued on 24.01.2019 mentioning the details of earlier final seniority list. The said list is a bulky one and runs into about 100 pages as names of 4141 persons are mentioned in the said list. For kind perusal of this Hon'ble Court, the petitioner craves leave to bring on record, relevant extracts of seniority list of the petitioners' counterparts presently serving in State of U.P., which clearly shows that the same has been prepared as was existing in 2000 and the names starts from Sl. No. 314 to 1416. Surprisingly enough, one Smt. Vimla Tamta whose name is mentioned at Sl. No. 480 of the said list and whose Home District is 'Nainital', and who is presently serving in State of Uttarakhand, has also been included in the list of State of U.P., maintaining the same seniority position as was in the year 2000. In this connection true copy of few such relevant extracts of the said seniority list dated 24.01.2019 issued by State of U.P., which has been prepared not on the basis of any alleged marks in the said list, as is being done by the respondents in the present case, is enclosed as Annexure No. 3 to this written submission.

19. That it is submitted that it is not the case of the official respondents/State of Uttarakhand that the State of U.P. who has allegedly provided the marks of the said selection, (although the same are de-hors the Rules position), has also complied/followed the same by amending/altering/revising the seniority position as was existing at the time of reorganization of the State. As per the definite information and belief, it is submitted that in State of U.P., all the promotions were/are being made to the next higher post of Child Development Project Officer, solely on the basis of the seniority position as was existing on or before 08.11.2000. As such it is submitted that if the State of U.P. itself is not following the alleged marks by treating them to be against the statutory

provisions/Rules of 1992, in that case, the official Respondents herein/State of Uttarakhand cannot be permitted to take shelter of the same, which is clearly against the statutory provisions. It goes without saying that *Proviso* to Section-73 of the U.P. Reorganization Act, 2000 gives a guarantee to the employees that their service condition shall not be altered for their disadvantage, without prior approval of the Central Government.

13. We sought certain clarifications from learned Counsel for the parties, which are discussed in the ongoing paras.

14. It appears from the file that no affidavit on behalf of the respondents No. 4 and 5 (State of U.P. through Secretary, Women Empowerment and Child Development Department and Director, Child Development Services and Nutrition Directorate, Lucknow) has been filed. Learned A.P.O. clarified that he had been authorized by the Director, Child Development Services and Nutrition to oppose the claim petition, who had also sent a parawise comments and brief history along with his letter dated 16.10.2019. Learned A.P.O. subsequently has filed an application dated 13.01.2020 along with 4 annexures as mentioned earlier in para 6 of this order. Affidavit could not be filed at that time due to non-availability of the concerned officer of U.P. This narrative with the covering letter of the Director, Child Development Services and Nutrition of U.P. Govt. has been produced on 21.10.2021. According to this narrative also, after reorganization of the State of Uttarakhand, the Director, ICDS, Uttarakhand has issued the seniority list as per the Rules on the basis of the marks of the written examination and interview. The narrative also states that the matter is not related to ICDS, U.P.

15. We sought clarifications from learned Counsel for the parties on the criteria for preparing tentative seniority list of 2003 and of earlier years in the State of U.P. As per the claim petition, these earlier lists were prepared on the basis of the marks of interview alone. While as per the respondents, these were on the basis of the dates of joining of the

petitioners and private respondents. We find that Annexure-9 to the claim petition is a letter dated 10.08.2010 of the petitioner no. 1 to the Director, ICDS, Uttarakhand representing against the interim seniority list issued in 2010. In this letter, she has stated that Mukhya Sevikas appointed by direct recruitment before the year 2002 have been promoted to the post of Child Development Project Officer (CDPO) according to the seniority list based on the first joining. Petitioner no. 1 has again sent a letter on 08.09.2014 to the Director, ICDS Uttarakhand (Copy at Annexure No. 17 to the claim petition), in which she has again written that in February, 2003, the interim seniority list of Mukhya Sevika has been issued on the basis of the date of joining and she has objected to the change of criterion on the basis of marks in the interim seniority list issued again in May, 2014.

16. We asked the learned Counsel for the parties to arrange the names of the petitioners and private respondents in order of the marks obtained by them in interview alone. Learned Counsel for the petitioners has completed this exercise and in such list sent by him, respondent No. 66 figures at the top with 45 marks, followed by respondent No.79 with 43 marks, further followed by petitioner No. 16 with 40 marks and so on. This clearly shows that interim seniority list of 2003 which was prepared on the basis of earlier lists of U.P. was not on the basis of marks of interview as stated in the claim petition because in these earlier lists, all the petitioners were senior to the private respondents.

17. A perusal of the tentative seniority list of 2003 which is filed as Annexure-7 to the claim petition shows that in the tentative seniority list, petitioner No. 1 was at sl. No. 82 with her date of joining as 23.06.1995 and all subsequent entries of the appointees of 1995 in this list are in chronological order as per the date of joining. This shows that this list and earlier lists were not prepared on the basis of Rule 15(3) of the Rules of 1992 which stipulates that the departmental selection committee shall prepare a proficiency list of candidates in order of merit as disclosed by marks obtained in the interview.

18. It has been clarified earlier in this judgment that the Rules of 1992 provided for appointment to the post of Mukhya Sevika through direct recruitment on the basis of interview alone by the Departmental Selection Committee. There was no provision of written examination for appointment to the post of Mukhya Sevika in these Rules and consequently Rule 15(3) of these rules provided for proficiency list of candidates in order of merit according to the marks obtained in the interview. However, advertisement for the posts issued in 1994 provided for both written examination and interview. It is not clear why the written examination was also added in this advertisement, which could have been on the basis of some other orders of the State Govt. which have not been produced before us. The petitioners and private respondents both went through this process of written examination and interview without raising any objection. Though this advertisement does not clarify that marks of written examination and interview shall be added to prepare the merit list but it is the common understanding and practice that when both written examination and interview are prescribed, the marks of both are added to prepare the merit list, unless written examination is of a screening nature. A perusal of Rules of 1992 shows that for certain other posts mentioned in these Rules, where written examination and interview are prescribed, marks of both are to be added for preparing the merit list. We also observe that Rule 23 of these Rules of 1992 is about seniority which states that seniority of substantively appointed persons shall be determined according to U.P. Government Servants Seniority Rules, 1991 as amended from time to time. Rule 5 of these Seniority Rules of 1991 reads as under:

“5. Seniority where appointments by direct recruitment only. - *Where according to the service rules appointments are to be made only by the direct recruitment the seniority inter se of the persons appointed on the result of any one selection, shall be the same as it is shown in the merit list prepared by the Commission or the Committee, as the case may be :*

.....”

19. In the case of selection of the petitioner and private respondents in 1995, the Departmental Selection Committee prepared a

merit list after adding the marks of both written examination and interview and according to the above Seniority Rules of 1991, the same should be followed for deciding the inter-se seniority of the persons selected. Therefore, as far as *inter-se* seniority of the petitioners and private respondents is concerned, according to Rule 23 of the Rules of 1992, it shall be according to the merit list prepared by the Departmental Selection Committee. This criterion has been adopted by the respondents no. 1 & 2 in finalizing the seniority list of 2015 by fixing the seniority according to the total marks given by the Departmental Selection Committee at the time of recruitment.

20. As observed above, in finalizing the seniority list of 2015 (Annexure: A1), a just and proper criterion has been followed by the respondents No. 1 & 2 by fixing the seniority according to the marks obtained in the written examination and interview, which is in accordance with the Rule 23 of the Rules of 1992 and the U.P. Govt. Servants Seniority Rules, 1991. As far as violation of Rule 15(3) of the Rules of 1991 is concerned, it is notable that the merit list was stipulated in this Rule 15(3) to be prepared on the basis of marks of interview as the Rule 5(4) of the Rules of 1991 stipulated recruitment on the post of Mukhya Sevika through interview only. If a written examination was also conducted with the interview on the basis of some other orders, the normal presumption is that marks of both written examination and interview shall be added to prepare the merit list unless it is expressly stated that the written examination is only of screening nature. Moreover, the interim list of 2003 and earlier years were not based on the marks obtained in the interview and had been arbitrarily prepared according to the date of joining. Therefore, here is not a question of unsettling of earlier settled seniority position but settling the seniority for the first time on the basis of an objective criterion as provided in the U.P. Govt. Servant Seniority Rules, 1991 and Rules of 1992.

21. It is also the contention of learned Counsel for the petitioners that when the promotions on the post of CDPO were made on the basis of

interim seniority list of 2003, then revising the seniority lists from 2010 onwards was not justified. We observe that the persons promoted in 2003 were the appointees of the years 1983 to 1987 and were senior to the both petitioners and private respondents. It has not been clarified to us why the promotions were made from an interim seniority list at that time without finalizing the same before the promotional exercise, but in any case, it has no relevance to the *inter-se* seniority of the petitioners and private respondents. Moreover, the positions of the petitioners and private respondents in the earlier seniority lists were on the basis of dates of joining which was absolutely arbitrary and not according to the Seniority Rules of 1991 or Rules of 1992. The rational exercise of settling their seniority was commenced on the basis of marks obtained by them in the selection process and has concluded in the final seniority list issued in 2015 (Annexure: A1).

22. Learned Counsel for the petitioners has also argued that the State of U.P. is itself not following these marks in fixing the seniority of the counterparts of the petitioners and private respondents in U.P. and is going ahead with the seniority of the earlier lists. The respondents have denied the same. As we have observed earlier, the interim seniority list of 2003, which has been prepared on the basis of earlier interim seniority lists is only on an arbitrary basis i.e., the date of joining and not according to any marks either of interview alone or of both written examination and interview. We, therefore, do not accept the arguments of learned Counsel for the petitioners. In any case, after formation of the State of Uttarakhand, what is being done in State of U.P., is not of much relevance to the State of Uttarakhand. No question of altering the service conditions of the petitioners and private respondents to their disadvantage after the creation of new State of Uttarakhand is involved here as the earlier interim lists of U.P. were not on any rational basis and needed to be finalized on a rational basis. We reiterate that there is no question of unsettling a long settled seniority here as no seniority had been settled earlier and the interim lists were made on arbitrary basis.

23. **In the light of above, we find no merit in the claim petition and no reason to grant the reliefs as prayed by the claim petitioners.**

24. This claim petition was filed on 31.12.2018 while the impugned seniority list is of 03.12.2015. According to the delay condonation application filed with the claim petition, the petitioners came to know about the same in 2017 and representations dated 30.10.2017 were made to the State Govt. against the same. They were waiting for the official respondents to look into the matter positively and have requested the delay in filing the claim petition to be condoned. This Tribunal *vide* its order dated 07.01.2019 admitted the claim petition but kept the question of delay open to be considered and decided at the time of final disposal of the matter.

25. We find that even if the date of knowledge of the impugned office memorandum dated 03.12.2015 is assumed to be 30.10.2017, there is a clear delay of two months beyond the prescribed period of one year in which a reference to this Tribunal can be made.

26. The issue of limitation shall now be dealt with in detail, as below:

27. Clause (b) of sub-section (1) of Section 5 of the Uttar Pradesh Public Services (Tribunal) Act, 1976 provides for limitation in respect of claim petitions filed before the Tribunal, which reads as below:

“(b) The provisions of the Limitation Act, 1963 (Act 36 of 1963) shall mutatis mutandis apply to the reference under Section 4 as if a reference were 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 next after the commencement of the Uttar Pradesh Public Services (Tribunals) (Amendment) Act, 1985 whichever period expires earlier:

.....”

[Emphasis supplied]

28. The period of limitation, therefore, in such reference 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.

29. 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.”

[Emphasis supplied]

30. It is apparent that Section 5 of the Limitation Act applies to appeals or applications (but not to applications under Order 21 CPC, *i.e.*, Execution of Decrees and Orders). Petitioners file claim petitions, pertaining to service matters, before this Tribunal. Claim petition is neither an appeal nor an application. It is a ‘reference’ under Section 4 of the Act, as if it is a suit filed in Civil Court, limitation for which is one year. It is, therefore, open to question whether Section 5 Limitation Act, 1963, has any application to the provisions of the Act [of 1976]. 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.PC (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. It is settled law that inherent power cannot be exercised to nullify effect of any statutory provisions.

31. This Tribunal is not 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.

32. 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 materia* 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.”

[Emphasis supplied]

33. 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.

34. The petitioners, in the claim petition, have attributed reasons for condoning the delay in filing claim petition. We observe that their representations dated 30.10.2017 are not statutory in nature. As per the scheme of law, the Tribunal can consider the delay in filing the claim petition only within the limits of Section 5 of the Act [of 1976] and not otherwise. It may be noted here that the period of limitation, for a reference in this

Tribunal, is one year. In computing the period of limitation, period beginning with the date on which the public servant makes a statutory 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. Apart from that, this Tribunal is not empowered to condone the delay on any other ground, in filing a claim petition. It may also be noted here that delay could be condoned under Section 5 of the Limitation Act, 1963, only in respect of an appeal or an application in which the appellant or applicant is able to show sufficient cause for condoning such delay. A reference under the Act [of 1976] before this Tribunal is neither an appeal nor an application. Further, such power to condone the delay is available to a Tribunal constituted under the Administrative Tribunals Act, 1985. In such Tribunal, delay in filing application might be condoned under Section 21, "if the applicant satisfies the Tribunal that he/she had 'sufficient cause' for not making the application within such period." Since this Tribunal has not been constituted under the Administrative Tribunals Act, 1985 and has been constituted under the Uttar Pradesh Public Services (Tribunal) Act, 1976, in which there is no such provision to condone the delay on showing sufficient cause, therefore, this Tribunal is unable to condone the delay in filing present claim petition, howsoever reasonable petitioner's plight may appear to be.

35. It may be reiterated, at the cost of repetition that only a 'reference' is filed in this Tribunal, which is in the nature of a 'claim'. It is not a writ petition, for the same is filed before Constitutional Courts only. Limitation for filing a reference in the Act [of 1976] is one year, as if it is a suit. 'Suit' according to Section 2(l) of Limitation Act, 1963 does not include an application. As per Section 3 of the Limitation Act, 1963, every suit instituted, appeal preferred and application made after the prescribed period shall be dismissed. Section 5 of the Limitation Act, 1963 has no applicability to 'references' filed before this tribunal. Section 5 of the Act of

1976 is self contained code for the purposes of limitation, for a 'reference' before this Tribunal.

36. In view of the above, the claim petition is clearly barred by limitation and deserves to be dismissed on merit also, as observed earlier. The claim petition is accordingly dismissed. No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: OCTOBER 29, 2021
DEHRADUN
KNP