

**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. 47/NB/DB/2019**

Tara Singh Bora, aged about 65 years, s/o Late Sri Teeka Singh Bora, Retired Factory Manager/Divisional Manager (Mining), Kumaon Mandal Vikas Nigam Limited, r/o Maatri Sadan, near Anurjun Hospital, Pilikothi, Haldwani, District Nainital (Uttarakhand)-263139.

.....Petitioner

**vs.**

1. State of Uttarakhand through its Principal Secretary-Tourism, Government of Uttarakhand, Secretariat, Dehradun (Uttarakhand)-248001.
2. Kumaon Mandal Vikas Nigam Limited through its Managing Director, Oak Park, Mallital, Nainital, District Nainital (Uttarakhand)-263001.
3. Sri Devendra Prasad Arya, Retired Assistant Engineer, KMVN, Nainital, r/o Village ChhadailNayabad Chandra Nagar, P.O, Haripur Naik (Kusumkhera) via Haldwani, District Nainital (Uttarakhand) 263139.
4. Sri Shyam Sunder Singh Karki, Retd. Operation Manager (Ropeway), KMVN, Nainital, r/o village Jawahar Nagar Dairy Farm, Nagalaa, P.O. Pant Nagar, District Udham Singh Nagar (Uttarakhand) 263145.

.....Respondents

Present: Sri L.K.Verma, Advocate for the Petitioner

Sri Kishore Kumar, A.P.O., for the Respondent no. 1

Sri Sandeep Kothari & Akram Parvez, Advocates for Respondent no. 2

**JUDGMENT**

**DATED: AUGUST 25, 2022**

**Justice U.C.Dhyani, Chairman**

**Mr. Rajeev Gupta, Vice Charman (A)**

**PRAYERS**

By means of the present claim petition, the petitioner seeks the following reliefs:

*“1) Issue an appropriate order or direction in the nature of commanding the respondents to settle the matter of the Financial upgradation & stepping up of Grade Pay & Salary in accordance with the G.O. No. 313 dated 30.10.2012 read with the G.O. No. 2225 dated 30.11.2011 & G.O. no. 872 dated 8.03.2011 aforesaid issued by the Government of Uttarakhand regarding applicability of ACP Scheme, on a par with his juniors Sri Devendra Prasad Arya & Sri Shyam Sunder Singh Karki, in the cadre of Class-II officers of KMVN as shown in the seniority list dated 28.02.2002 (Annexure A7 read with Annexure-A9 & A10 to the claim petition) inclusive of all the other consequential benefits, being discriminatory and against the Article 14 and 39(d) of the Constitution of India.*

*2) Issue necessary & time bound directions to the respondents to pay the amount of arrears to the petitioner after financial upgradation in salary along with appropriate interest where such arrears is calculated from the date on which the grade pay of his juniors were stepped up under the ACP Scheme aforesaid and they were granted with higher Grade Pay & salary than the petitioner w.e.f. 01.09.2008 & 01.09.2008 and 05.11.2011 respectively on settlement of the benefits of ACP accordingly.*

*3) Issue necessary & time bound directions to enhance the pensionary benefits of the petitioner along with its arrears and applicable interest thereof since the date of his superannuation w.e.f. 01.05.2014 with all consequential benefits.*

*4) Issue any other order or direction, which this Tribunal may deem fit and proper under the facts and circumstances of the case.*

*5) Award the cost of the petition in favour of the petitioner/claimant.”*

### **PETITIONER'S VERSION**

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

2.1 The instant claim petition has been filed against the inaction of the authorities concerned i.e. the Official Respondents no. 1 & 2 who have not responded properly against the representation dated 14.04.2015 followed by its reminders dated 02.12.2015, 30.03.2016, 14.09.2016, 07.02.2017, 02.06.2017, 20.01.2018 and 22.02.2018, by which the petitioner has requested the respondent no. 2 to grant him the benefits of upgradation at par with his juniors Sri Devendra Prasad Arya since 01.09.2008 and Sri Shyam Sunder Singh Karki since 01.09.2008 and 05.11.2011 respectively in compliance of the G.O. no. 313 dated 30.10.2012 read with G.O. no. 872 dated 8.03.2011 and G.O. no. 2225 dated 30.10.2011 against his qualifying service rendered by him as Factory Manager and later on as Divisional

Manager (Mining) in the department of Kumaon Mandal Vikas Nigam Limited, Nainital (in short 'KMVN') till his superannuation dated 30.04.2014.

2.2 The petitioner also tried to collect relevant informations from the authorities concerned regarding non-extension of the benefits of financial upgradation of the G.O. no. 313 dated 30.10.2012 in his favour through RTI request dated 19.03.2018, which was responded half heartedly by the PIO concerned of the KMVN on 16.04.2018. Thereafter, he had filed his First Appeal before the Departmental Appellate Authority on 29.04.2018 and after not getting the required outcome from them vide decision dated 28.05.2018, he was compelled to file his Second Appeal against this decision before the Commissioner of RTI Commission of Uttarakhand at Dehradun dated 12.06.2018, which was disposed *vide* order dated 16.11.2018.

2.3 Thereafter, again the petitioner requested the respondent no. 2 to consider his genuine grievance of upgradation & stepping of his salary at par with his juniors in compliance of the G.O. dated 30.10.2012 vide his representation dated 12.02.2019 and also informed that after waiting for a reasonable period, he will be forced to approach the Hon'ble High Court. The petitioner filed writ petition no. 368 of 2019 (S/B) before the Hon'ble High Court on the issue, which was listed for hearing on 20.08.2019, but due to some technical problems raised by the Hon'ble Court, it was withdrawn with the permission of the Hon'ble High Court with liberty to file a fresh petition. Subsequently, the writ petition no. 427 of 2019 (S/B) was filed before the Hon'ble Court which was listed for hearing on 12.09.2019, wherein the Hon'ble Court was pleased to relegate the petitioner to approach the Public Services Tribunal. The KMVN had issued its seniority list dated 28.02.2002 for the employees of its officers category, vide office memo no 7037/2-Sen. List dated 30.03.2002 wherein the name of the petitioner finds its place at sl. No. 5 amongst the officers enjoying the pay scale of Rs. 2200-4000 (time scale 2900-4375) since 01.05.1987

having placed the name of the juniors Sri Devendra Prasad Arya at sl. No. 6 and Sri Shyam Sunder Singh Karki at sl. No. 11 of the list in question in the pay scale of Rs. 2200-4000 (Time scale 2900-4375) since 01.04.1992 & 26.01.1993 respectively.

2.4 Sri Devendra Prasad Arya & Shri Shyam Sunder Singh Karki were junior to the petitioner admittedly as shown in the seniority list aforesaid dated 28.02.2022 having been placed at sl. No. 6 & 11 below the name of the petitioner whose name has been placed at sl. No. 5 in the seniority list getting the pay scale of Rs. 2200-4000 on their promotions, which was revised as Rs. 8000-13500 according to 5<sup>th</sup> Pay Commission since 01.01.19996 and got further revised as pay scale of Rs. 15600-39100 thereafter since 01.01.2006 according to 6<sup>th</sup> Pay Commission with the Grade Pay of Rs. 5400. Mr. Arya & Mr. Karki, after commencement & implementation of the Assured Career Progression (ACP)Scheme in the department were granted with the benefits of 2<sup>nd</sup> ACP with grade pay of Rs. 6600 w.e.f. 01.09.2008 and Shri Karki was further given the benefit of 3<sup>rd</sup> ACP with grade pay of Rs. 7600 since 5.11.2011. But being senior to the aforesaid junior fellows, the petitioner was given the grade pay of Rs. 5400 only till his superannuation dated 30.04.2014 and the same anomaly has not been rectified by the respondents as yet.

2.5 The petitioner was engaged as Supervisor in the consolidated salary of Rs. 300 per month in the Parvat Wire & Trans Cables Limited *vide* appointment order dated 24.10.1977 of the KMVN on the basis of his Diploma in Mechanical Engineering. He was given the additional responsibilities of Quality Controller in the Parvat Tumblers and the Trans Cables Factories of the KMVN. On the basis of this efficient and dedicated working, consolidated amount of Rs. 300/- per month was enhanced to Rs. 350/- per month immediately after 3 months of his joining. Based on his efficient and expertise working, his service was regularized in the department since 22.11.1978 in the post of Supervisor in the pay scale of Rs. 175-3-205 E.B. 4-235-E.B.-5-250 along with 2 additional increments

with the basic pay of Rs. 181/- along with other financial benefits applicable in the department, vide order no. 5167/2-2 dated 22.11.1978, wherein he had worked satisfactorily till his superannuation dated 30.04.2014. The petitioner was again appointed through an open selection process on the post of Plastic Inspector in the pay scale of Rs. 230-380 vide order no. 7125/2-2 dated 07.03.1980.

2.6 The petitioner was promoted by the Corporation to the post of Plastic Inspector & In-charge Tool Room in the pay scale of Rs. 280-460 since 01.02.1981 vide letter no. 6955/2-2 dated 3.2.1981. Thereafter, he was placed as Incharge of the D.G. Set of Parvat Plastics Limited, Kathgodam vide letter no. 8687 dated 11.03.1981. The petitioner was transferred to the Headquarters of the KMVN since 17.08.1981 vide order no. 3968/2-2 dated 17.08.1981 for the operation & maintenance of Ropeway and thereafter on getting his satisfactory & efficient service record, the petitioner was further promoted in the pay scale of Rs. 300-500 as Senior Supervisor since 06.10.1981 vide order no. 5461/2-4. The petitioner was again promoted in the pay scale of Rs. 350-700 vide order no. 8250/2-4 dated 3 Jan. 1983 and transferred to Parvat Wires Unit Kathgodam as Factory Foreman. The petitioner was deputed on higher responsibilities as Factory Manager of the Parvat Wires in addition to his general duties and KMVN was pleased to grant a further promotion to the petitioner by regularizing him in the post of Factory Manager in the pay scale of Rs. 900-1770 vide letter no. 770/2-5 dated 23.04.1987 w.e.f. 01.05.1987, a non-gazetted category 'B' (Class-II) post in KMVN.

2.7 During working in Parvat Plastics Unit, petitioner was given the additional charge of Bolder and Sand Unit of the KMVN and both the Units earned appreciable profits under his supervision and control. Thereafter, for better utilization of his administrative skills, he was given the additional charge of 'Gas Division' of KMVN along with aforesaid two charges vide order no. 8841/2-3 dated 11.03.1993 and the Gas Division also earned appreciable profit due to his sincere efforts under his close and efficient

administrative supervision & control and the Management of the KMVN was pleased grant him the time scale benefits since 01.05.1994 in the pay scale of Rs. 2900-100-3500-125-4375 *vide* order no. 2731/2-4 dated 27.06.1994 being Factory Manager in accordance with the recommendations of the 2<sup>nd</sup> Pay Commission. His benefits of time scale were withdrawn *vide* orders no. 6955 dated 18.01.2007 which was against granted in his favour *vide* orders no. 3847 dated 6.12.2010.

2.8 The ACP scheme was issued by the Government of Uttarakhand *vide* G.O. No. 872/XXVII(7) dated 8.3.2011 which was specially framed & extended in favour of the employees of the Government departments, wherein *vide* para 2(v) of the G.O., it has been made clear that if the salary of the senior personnel becomes less than his junior fellow after up-gradation of junior one, the salary of the senior personnel will be made equal at par with junior personnel. The Government of Uttarakhand issued another G.O. No. 2225/VII-1/60-Industry/2011 Public Sector Enterprises Bureau-1 Dehradun dated 30.11.2011 *vide* which benefits of ACP Scheme were extended in favour of the employees working in the State owned Corporations/Public Sector Enterprises. The State Government issued further G.O. No. 313/XXVIII(7)/2012 Dehradun dated 30.10.2012, *vide* para (4) of which, it had been clarified that if after promotion of a senior employee, the applicable grade pay becomes less than the grade pay of a junior employee after grant of benefits under ACP Scheme, in such a situation, for ensuring its proper solution, the senior one will also be granted with grade pay at par with the grade pay of his junior employee.

2.9 The juniors Sri D.P. Arya & Sri Shyam Sunder Singh Karki were granted their 1<sup>st</sup> promotion in the pay scale of Rs. 2200-4000 since 1.4.1992 & 26.01.1993 respectively and thereafter they were not given further promotions till implementation of the recommendations of the 6<sup>th</sup> Pay Commission, hence after commencement & implementation of the ACP Scheme, they stood eligible to get the benefits of 2<sup>nd</sup> and 3<sup>rd</sup> ACP, which later on have been granted in their favour since 01.09.2008 and

05.11.2011 respectively whereas, the petitioner was deprived of the same without any satisfactory grounds/reasons, and thus after commencement of the ACP Scheme and its implementation thereof, it created anomaly in the salary & emoluments payable ultimately to his juniors aforesaid and the case of the petitioner fall under the provisions of para 4 of the G.O. dated 30.10.2012 aforesaid.

2.10 The source of appointment, conditions of service and work responsibilities of the petitioner were similar in the department of KMVN as regards to his juniors Sri Devendra Prasad Arya & Sri Shyam Sunder Singh Karki aforesaid, but there seems inequality of pay with an appreciable difference in context of the constitutional principles of 'equal pay for equal work' enacted through Article 39(d) of the Constitution of India. The officers in the Seniority list aforesaid mentioned at sl. No. 1 to 4 were senior to the petitioner & 6 to 12 were junior to him and most of them have been superannuated as on date. Out of them, only aforesaid two juniors at sl. No. 6 & 11 have been granted with the benefits of ACP and after getting their upgradations since 01.09.2008 & 5.11.2011, their grade pay & salary was enhanced and they were drawing more salary than the petitioner since then, as per the best RTI information available to the petitioner, so that parity has been claimed with them only and they have been made party as private respondents no. 3 & 4 in the claim petition.

2.11 The petitioner has tried his best by all possible means to get the financial upgradation at par with Sri Devendra Prasad Arya & Sri Shyam Sunder Singh Karki, junior ones to the petitioner but his request is lying pending as yet, in spite of several representations.

Hence, present claim petition.

### **RESPONDENTS' VERSION**

3. Counter Affidavit has been filed on behalf of respondent no. 2, which has also been adopted by respondent no.1, mainly stating the following:

3.1 The petitioner is claiming financial upgradation and stepping up of the grade pay and salary w.e.f. dates which are approximately 11 years and 8 years prior to the date of filing the present claim petition, while Section 5(i)(b) of the U.P. Public Services Tribunal Act, 1976 as applicable to the State of Uttarakhand clearly provides that the period of limitation of submitting the reference before the Public Services Tribunal is one year. None of the representations preferred by the petitioner in between can be said to be a representation in accordance with the rules and benefit of exclusion of the period during which representations have been preferred and the time taken to decide the same cannot be granted to the claim petitioner and the claim petition is liable to be dismissed on the ground of being barred by limitation alone. The Hon'ble High Court has dismissed the writ petition filed by the claim petitioner on the ground of availability of alternative remedy and has nowhere directed the Uttarakhand Public Services Tribunal to admit the claim petition contrary to the provisions contained in U.P. Public Services Tribunal, 1976.

3.2 The dates of appointment/promotions and pay scale of the petitioner, Sri S.S. Karki and Sri D.P. Arya have been given in tabular form below:

<b>Sri Tara Singh Bora, Retired Factory Manger</b>		
<b>Date of Appointment</b>	<b>Name of Post</b>	<b>Pay scale/Grade Pay (Rs)</b>
22.11.1976	Supervisor (first appointment)	175-250
02.01.1981	Supervisor (Promotion)	280-460
06.10.1981	Supervisor promoted in the pay scale of Junior Engineer	300-500
01.01.1983	Foreman	350-700
01.05.1987	Manager	900-1770
27.06.1994	Time scale	2900-4375
<b>Sri S.S.Karki, Retired Operation Manager</b>		
22.10.1984	Deputy Operational Manager (first appointment)	530-1020
26.01.1993	Operational Manager (Promotion)	2200-4000
01.09.2008	2 <sup>nd</sup> ACP	6600
05.11.2011	3 <sup>rd</sup> ACP	7600
<b>Sri D.P. Arya, Retired Assistant Engineer</b>		
18.02.1981	Junior Engineer ( First Appointment)	280-460
17.03.1992	Time scale	2060-2900
30.03.1992	Promoted as Assistant Engineer	2200-4000
	3 <sup>rd</sup> ACP	6600



The above shows that the present claim petitioner was appointed in the Industry section on the post of Supervisor, Shri D.P. Arya was appointed in the construction wing of the answering respondent corporation while Sri S.S.S. Karki was appointed as Deputy Operational Manager (Ropeway) tourism section of the answering respondent corporation. It is absolutely clear that the claim petitioner and the other two employees who are also arrayed as respondents no. 3 & 4 in the claim petition have been appointed through different sources in different wings of the answering respondent corporation and it cannot be said that their service conditions were identical and hence they are liable to be granted identical pay scales.

3.3 *Vide* Govt. Order no. 313 dated 30.10.2012, a provision was made in Section 2, sub clause (4) wherein, it has been mentioned that if any junior person in accordance with ACP Scheme, has been granted a higher pay scale or a grade pay then the aforesaid anomaly shall be removed by stepping up the grade pay of the senior employee. The primary ingredient for the grant of a higher grade pay vis-à-vis the juniors of persons, claiming the said stepping up of grade pay and salary is that the said employee must be eligible to be granted the benefit of ACP. Needless to mention herein that the claimant was initially appointed in the year 1978 and till the year 1987 he has been granted four promotions and similarly in the year 1994 he was also granted the benefit of time scale. In Govt. Order no. 872 in paragraph 2(v), it is specifically provided that if an employee has already obtained three promotions during his service tenure then he is not liable to be granted ACP. Hence, the claim petitioner does not possess the eligibility criteria to be granted the ACP.

3.4 Since the sources of recruitment of the petitioner as well as the private respondents are not the same, neither they were having identical duties to discharge and hence, it cannot be said that the petitioner can claim any right on the basis of the pay scale or the ACP granted to private respondents. It is also relevant to mention here that in another set of

litigation preferred by Sh. Devendra Prasad Arya, the Hon'ble High Court has been pleased to direct the answering respondent to consider his representation preferred with respect to certain post retiral dues. The issue of respondent no. 3 has also been considered and an order has been passed on 28.02.2020 in which the respondent no. 3 was also not found entitled to the ACP as per the Govt. Order no. 313 dated 30.10.2012. Comparing his services with the services of Shri S.S.S.Karki was not found proper inasmuch as, neither the source of recruitment was common nor the service conditions were identical and hence the aforesaid benefit was not found entitled for the private respondent no. 3 also.

#### **REJOINDER AFFIDAVIT**

4. Rejoinder Affidavit has been filed by the petitioner reiterating some averments of the claim petition and further stating that he superannuated on 30.04.2014 and the benefit of upgradation given to his junior co-workers since 01.09.2008 and later dates came to his knowledge from the RTI responses dated 16.04.2018 and 14.11.2018 respectively. Only then he tried to get the same benefits and after due efforts filed writ petitions before the Hon'ble High Court and in compliance of the directions of the Hon'ble High Court, the claimant-petitioner has filed this claim petition within time without any intentional or inordinate delay on the part of the claimant which has also been considered by the Hon'ble Bench at the time of admission. So, there is no force in the contention that the claim petition is time barred.

4.1 Rejoinder Affidavit further states that there was/is no criterion of categorization in the respondent corporation and there were no cadre-wise seniority lists. The one and only seniority list of the officers cadre employees has been annexed as Annexure no. A7 to the claim petition. There was no provision for 'wing-wise' appointment and the source of appointment for all the Technical Officers was the same and after their appointments, there was no hard and fast rule to remain in the cadre of their appointments because their postings were changed from time to time

as per needs of the Corporation and they were bound to serve as per directions of superior authorities. The claim of the petitioner is based on the grounds that his juniors have been granted the benefits of upgradation since 01.09.2008, then his remunerations will be maintained to atleast equal levels to his junior employees, which has to be done in favour of the claimant also for which he legally stands eligible and cannot be denied by the answering respondents. Denial to grant the benefit of 3<sup>rd</sup>ACP to respondent no. 3 as mentioned in the Counter Affidavit does not affect the legal rights of the petitioner as it has already been granted in favour of the respondent no. 4 who was also junior to the claimant-petitioner.

#### **DISCUSSION ON LIMITATION**

5. The petitioner has made many representations which have been filed as Annexures A1 and A2 to the claim petition. The first such representation is dated 14.04.2015 in which it is stated that according to G.O. dated 30.10.2012, the employees of the Corporation have been given the benefit of ACP. According to the seniority list of the Corporation in the officers cadre, Sri Shyam Singh Karki retired Operational Manager Ropeway (Nainital) has been given the benefit of grade pay of Rs. 7600 but the petitioner who was much senior to Sri Karki in the officer cadre, has not received the benefit of ACP while the G.O. clearly states that in the event of the pay of the senior functionary being less than any junior functionary benefitted by ACP Scheme, the pay of the senior functionary shall be made equal to the pay of the junior functionary and the request has been made to provide the benefit of this arrangement to the petitioner from the due date. However, the petitioner says in the R.A. that he came to know about the benefit of upgradation given to junior co-workers from RTI response dated 16.04.2018 and 14.11.2018 respectively and then only he has tried to get the same benefits as already granted to his juniors. It is clear that the petitioner knew very well at the time of making his first representation on 14.04.2015 itself, that his junior has been provided higher grade pay

and there is no justification for the delay by stating that it came to his knowledge after the reply received under RTI in 2018.

6. There is inordinate delay in filing the present claim petition. At the most, the claim petitioner should have filed the claim petition within one year of his first representation. The various representations made by the claim petitioner are not statutory in nature and delay cannot be justified on the grounds of pendency of such representations. The petitioner approached the Hon'ble High Court by filing writ petitions in the year 2019. There is no plausible explanation of the delay beyond 14.04.2015 upto filing of the writ petitions. The considerations of limitation in writ petitions before Hon'ble High Court are different from the consideration of limitation in filing a claim petition before this Tribunal. It is also notable that the Hon'ble High Court while leaving it open to the petitioner to avail the remedy of approaching the Public Services Tribunal has not condoned the delay in filing of the claim petition before this Tribunal:

7. This Tribunal has held, in various recent decisions, that the petition filed by the petitioner before this Tribunal is neither a writ petition, nor appeal, nor application. It is just like a suit, as is evident from a bare reading of Section 5(1)(b) of the U.P. Public Services (Tribunal) Act, 1976 (for short, the Act). The words used in Section 5(1)(b) of the Act are- ".....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 Act (*Limitation Act, 1963*), the period of limitation for such reference shall be one year;"

8. Clause (b) to 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]

9. 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.

10. 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]

11. It is apparent that Section 5 of the Limitation Act applies to appeals or applications. 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 provision.

12. 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.

13. 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 *parimateria* 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]*

14. Section 5(1)(b) provides that (although) the provisions of the Limitation Act, 1963, *mutatis mutandis* apply to reference under Section 4 as a reference were a suit filed in civil court, but continues to say, in the same vein, that notwithstanding the period of limitation prescribed in the Schedule to the said Act, the period of limitation for such reference shall be one year. Section 5(1)(b) is therefore, specific in the context of limitation before this Tribunal.

15. Sub-section (1) of Section 4 of the Act 1976 has used the language “.....a person who is or has been a public servant and is aggrieved by an order pertaining to a service matter within the jurisdiction of the Tribunal, may make a reference of claim to the Tribunal for the redressal of his grievance.

15.1 Statement of Objects and Reasons (SOR) reads as below:

“.....Section 4 of the said Act provides that a person who is or has been a public servant and is aggrieved by an order pertaining to a service matter within the jurisdiction of the Tribunal may make reference of claim to the Tribunal for redressal of his grievance.....”

15.2 Section 4-A of the Act has also used the words “references of claims” and “reference of claim” in Sub-section (1) and Clauses (a) & (b) to Sub-section (5) of such Section.

15.3 Clause (b) to Sub-section (1) of Section 5 of the Act has used the word “reference” in such clause. Sub-section (2) of Section 5 of the Act has also used the word “reference”. Sub Section (5-A) to Section 5 of the Act has also used the word ‘reference’ in its text.

15.4 Section 7 of the Act provides for power to make Rules. Clause (c) to Sub-section (2) of Section 7 of the Act provides for “the form in which a reference of claim may be made.”

15.5 Furthermore, the Schedule appended to the Act has also used the words “reference of claim” or “references of claims”. Rule 4 of the Uttar Pradesh Public Services Tribunal (Procedure) Rules, 1992, provides for the following “(1) Every reference under Section 4 shall be addressed to the Tribunal and shall be made through a ‘petition’ presented in the Form-I by the petitioner.....(2) The petition under sub-rule (1) shall be presented.....”

15.6 The heading of Rule 5 is Presentation and scrutiny of petition.

15.7 Rules 4, 5, 6, 8, 16 etc. use the word ‘petition’, which, in fact, is a “reference”. The petition is only a medium of presentation. The Rules are

always subordinate to the Act. The Rules are always supplementary. They are always read with the provisions of the Act. In a nutshell, a petition which is filed before this Tribunal is, in fact, a “reference of claim”.

15.8 ‘Petition’ According to New International Webster’s Comprehensive Dictionary, means “(1) a request, supplication, or prayer; a solemn or formal supplication (2) A formal request, written or printed, addressed to a person in authority and asking for some grant or benefit, the redress of a grievance, etc. (3) *Law* a formal application in writing made to a court, requesting judicial action concerning some matter thereinset forth (4) that which is requested or supplicated.”

16. According to Section 9 of the Limitation Act, 1963, “where once time has begun to run, no subsequent disability or inability to institute a suit or make an application stops it.” Section 9 of the Limitation Act, therefore, runs contrary to the interest of the petitioner.

17. 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.

18. To recapitulate, 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 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 may be 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 such sufficient cause, therefore, this Tribunal cannot condone the delay in filing a claim petition, howsoever reasonable one's plight may appear to be.

19. 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 were (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.

20. Philosophy underlying the Law of Limitation may, briefly, be stated thus:

- (i) One of the considerations on which the doctrine of limitation and prescription is based upon is that there is a presumption that a right not exercised for a long time is non-existent [Salmond's Jurisprudence, eighth edition, pages 468,469].
- (ii) The object of the law of limitation is to prevent disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by party's own inaction, negligence or laches [AIR 1973 SC 2537(2542)].
- (iii) The object of law of limitation is in accordance with the maxim, *interest reipublicae ut sit finis litium*-which means that the interest of the state requires that there should be an end to litigation.
- (iv) Statutes of limitation and prescription are statutes of peace and repose.
- (v) Rule of vigilance, which is foundation of statute of limitation, rests on principles of public policy.
- (vi) The purpose of Rules of Limitation is to induce the claimants to be prompt in claiming relief.
- (vii) Parties who seek to uphold their legal rights should be vigilant and should consult their legal experts as quickly as possible. They cannot sleep over the matter and at a later stage seek to enforce their rights, which is likely to cause prejudice to other parties. This is precisely the reason why periods of limitation are prescribed in many statutes.
- (viii) The Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy within a time fixed by the legislature [AIR 1958 Allahabad 149(153)].
- (ix) Law of limitation is procedural. It would apply to proceedings *i.e.* law in force on the date of institution of proceedings irrespective of date of action- Object of statute of limitation is not to create a right but to prescribe periods within which proceedings can be instituted.
- (x) The limitation for institution of a legal action is a limitation on the availability of a legal remedy during a certain period of time. Different periods are prescribed for various remedies. The idea is that every legal action must be kept alive for a legislatively fixed period of time. The object of legal remedy is to repair a damage caused by reason of a legal injury suffered by the suitor. A legal remedy, therefore, can never come into existence before a legal injury occurs. It is the legal injury that calls legal remedy to life and action. Limitation fixes the life span of a legal remedy for the redressal of a legal injury. It is not considerable that the legislature would fix the limitation to run from a point earlier than the occurrence of a legal injury, after which only a legal remedy can come into existence. Jurisprudentially, therefore, a period of

limitation can only start running after an injury has occurred. Then an appropriate legal remedy springs into action.

(xi) When the language of statute is clear, the court is bound to give effect to its plain meaning uninfluenced by extraneous considerations but where the language of the enactment is not itself precise or is ambiguous or of doubtful import, recourse may be had to extraneous consideration. No exception can be recognized in these rules of construction in the case of Limitation Act [AIR 1941 PC 6 (9)].

(xii) The Rules of Limitation are, *prima facie*, rules of procedure [AIR 1953 Allahabad 747 (748) (FB)].

(xiii) When the Act prescribes a period of limitation for the institution of a particular suit, it does not create any right in favour of person or define or create cause of action, but simply prescribes that the remedy can be exercised only within a limitation period and not subsequently.

(xiv) Section 3 of the Limitation Act puts an embargo on the Court to entertain a suit, if it is found to be barred by limitation.

(xv) The Court cannot grant any exemption from limitation on equitable considerations or on grounds of hardships [AIR 1935 PC 85].

(xvi) Section 5 of Limitation Act does not apply to the suit, as the word 'suit' is omitted by the legislature in the language of the said section and therefore delay in filing suit cannot be condoned while invoking Section 5 [2010 (168) DLT 723].

(xvii) Section 5 deals only with the admission of appeals and applications after time [1952 All LJ (Rev.) 110 112 (DB)].

(xviii) Courts have no power to extend the period of limitation on equitable ground and equity cannot be the basis for extending the period of limitation.

(xix) Provisions of Section 5 of Limitation Act will be applicable not only to an appeal but will also apply to an application.

(xx) The practical effect of Section 21 of the Administrative Tribunals Act, 1985 is the same as that under Section 5 of the Limitation Act 1962, which also enables a person to apply to the Court even after the period specified for making the application is over, leaving the discretion in the Court to condone or not to condone the delay.

(xxi) Section 5 is not applicable to proceedings under the Contempt of Courts Act [1988 All LJ 1279].

(xxii) In cases covered by statutory period of limitation, the limitation sets in by automatic operation of law.

(xxiii) If suit for specific performance of contract has not been filed within prescribed period of limitation, then the same cannot be entertained and the delay cannot be condoned by taking recourse to Section 5, since said provision is for extension of time

prescribed in law only in matter of appeals and applications and not in matter of delay in filing of suit resulting in legal bar [AIR 2008 (NOC) Page 2085 (Patna)].

(xxiv) Where an application under Section 9 of the Administrative Tribunals Act was filed after about 4 years from the limitation, the fact that the employee's representation against impugned order of dismissal was pending or that he was making repeated representation would not save the limitation and said delay could not be condoned on that ground.

21. Original Section 5(1)(b), as it stood substituted by U.P. Act No. 13 of 1985 (*w.e.f.* 28.01.1985), was as follows:

"5(1)(b): The provisions of the Limitation Act, 1963, shall apply to all references under Section 4, as if a reference were a suit or application filed in the Civil Court:

Provided that where any court subordinate to the High Court has before the appointed date passed a decree in respect of any matter mentioned in Section 4, or passed an order dismissing a suit or appeal for non-prosecution and that decree or order has not become final, any public servant or his employer aggrieved by the decision of such court may make a reference to the Tribunal within 60 days from the appointed date, and the Tribunal may affirm, modify or set aside such decree (but may not remand the case to any such court), and such decision of the Tribunal shall be final."

22. Earlier, the words 'suit or application' were existing before the amendment. After the amendment, the word 'application' was omitted. The period of limitation of one year was introduced. Further, the mode of computation of period of limitation was also prescribed.

23. The intention of the legislature by substituting Section 5(1)(b) is clear. Earlier, the provisions of the Limitation Act, 1963, were applicable to all references under Section 4, as if the reference were a 'suit' or 'application' filed in the Civil Court. After amendment, the provisions of the Limitation Act, 1963, are applicable to reference under Section 4, as if a reference were a 'suit' filed in Civil Court. The word 'application' was omitted. The period of limitation for reference has been prescribed as one year. How the period of limitation shall be computed, has been prescribed in Section 5(1)(b)(ii) of the Act.

24. It may be noted here that such amendment in the U.P. Public Services (Tribunal) Act, 1976, was introduced in the year 1985, the year in which the Administrative Tribunals Act, 1985, was enacted by the central

legislature. Although the word 'application' has been used in Section 21 of the Administrative Tribunals Act, 1985, still, the limitation for admitting such application is one year from the date on which final order has been made. As per sub section (3) of Section 21 of the Administrative Tribunals Act, 1985, an application may be admitted after the period of one year, if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period.

25. The delay in filing application before the Tribunal (created under the Administrative Tribunals Act, 1985) can, therefore, be condoned under Section 5 of the Limitation Act, 1963, which is not the case in respect of a reference (a suit) filed before the Tribunal created under U.P. Public Services (Tribunal) Act, 1976.

26. The petitioner was required to press for his claim within a reasonable time, as per the principle enunciated by the Hon'ble Apex Court in *GulamRasul Lone vs. State of J & K and others*, (2009) 15 SCC 321, which has not been done.

27. It may be pointed out, at the cost of repetition, that non-statutory representation shall not extend the period of limitation. Otherwise also, the claim petition may be dismissed on the ground of delay and laches.

28. The view taken by this Tribunal is fortified by the decision of Hon'ble High Court of Allahabad in Civil Misc. WPSB No. 24044 of 2017, *Kaushal Kishore Shukla (C.P. No. 464) vs. State of U.P. and others* [2017 6 AWC 6452] on 03.11.2017, the relevant paragraphs of which are excerpted herein below for convenience:

“10.By order dated 30.08.2017, State Public Services Tribunal had dismissed the Claim Petition No.1884 of 2015, which reads as under :-

"Petitioner has challenged order dated 24.02.2000 and 27.10.2000, since petition is barred by limitation in view of Section 5 (1) (b) of U. P. Public Services (Tribunal) Act 1976. Learned counsel for the petitioner argued that condonation of delay is possible on the basis of rule laid down in Hon'ble Apex Court judgment December 17, 2014 in Writ Petition (Civil) No.562/2012, "Assam SanmilitaMahasangha&Ors. Vs. Union of India &Ors.", and Writ Petition (Civil) No.876/2014 "All

Assam Ahom Association &Ors. Vs. Union of India &Ors.". He further submitted that violation of fundamental rights granted in part III of constitution of India cannot be subjected to statutory limitations.

Learned P. O. objected on the ground of bar created by Section 5 (1) (b) of Act and submitted that Tribunal has no power to condone the delay as proceedings are original in nature. He placed before us Allahabad High Court's Judgment given in the case of Karan Kumar Yadav Vs. U. P. State Public Services Tribunal and others 2008 (2) AWC 1987 (LB).

In view of the above, we dismiss the claim petition on the ground of limitation.

Learned counsel for petitioner is free to approach appropriate court/forum in accordance with law."

11. Learned counsel for the petitioner while challenging the impugned order dated 30.08.2017 passed by the Tribunal submits that the sole case of the petitioner before the Tribunal was that his source of livelihood has been taken away without following the procedure established by law guaranteed under Article 21 of the Constitution, as right to livelihood is also included under right to life in view of various decisions of Honble Supreme Court, as such, his claim petition cannot be dismissed on the ground of delay and laches in view of law laid down by Hon'ble the Apex Court in the case of Assam SanmilitaMahasangha&Ors. vs. Union of India &Ors. AIR 2015 SC 783 wherein it has been held as under :-

"Given the contentions raised specifically with regard to pleas under Articles 21 and 29, of a whole class of people, namely, the tribal and non-tribal citizens of Assam and given the fact that agitations on this core are ongoing, we do not feel that petitions of this kind can be dismissed at the threshold on the ground of delay/laches. Indeed, if we were to do so, we would be guilty of shirking our Constitutional duty to protect the lives of our own citizens and their culture. In fact, the time has come to have a relook at the doctrine of laches altogether when it comes to violations of Articles 21 and 29.

TilokchandMotichand is a judgment involving property rights of individuals. RamchandraDeodhar's case, also of a Constitution Bench of five judges has held that the fundamental right under Article 16 cannot be wished away solely on the 'jejune' ground of delay. Since TilokchandMotichand's case was decided, there have been important strides made in the law. Property Rights have been removed from part III of the Constitution altogether by the Constitution 44th Amendment Act. The same amendment made it clear that even during an emergency, the fundamental right under Article 21 can never be suspended, and amended Article 359 (1) to give effect to this. In Maneka Gandhi v. Union of India, (1978) 1 SCC 248 decided nine years after TilokchandMotichand, Article 21 has been given its new dimension, and pursuant to the new dimension a huge number of rights have come under the umbrella of Article 21 (for an enumeration of these rights, see KapilaHingorani v. State of Bihar, (2003) 6 SCC 1 at para 57). Further, in Olga Tellis&Ors. v. Bombay Municipal Corporation, (1985) 3 SCC 545, it has now been conclusively held that all fundamental rights cannot be waived (at para 29). Given these important developments in the law, the time has come for this Court to say that at least when it comes to violations of the fundamental right to life and personal liberty, delay or laches by itself without more would not be sufficient to shut the doors of the court on any petitioner."

12. Learned counsel for the petitioner has also placed reliance on the judgment given by Hon'ble the Apex Court in the case of S. S. Rathore vs. State of Madhya Pradesh (1989) 4 SCC 582 wherein it has been held as under :-

" We are of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made,

though the remedy has been availed of, a six months' period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen. We, however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsuccessful representations not provided by law are not governed by this principle.

It is appropriate to notice the provision regarding limitation under s. 21 of the Administrative Tribunals Act. Sub-section (1) has prescribed a period of one year for making of the application and power of condonation of delay of a total period of six months has been vested under subsection (3). The Civil Court's jurisdiction has been taken away by the Act and, therefore, as far as Government servants are concerned, Article 58 may not be invocable in view of the special limitation. Yet, suits outside the purview of the Administrative Tribunals Act shall continue to be governed by Article 58.

It is proper that the position in such cases should be uniform. Therefore, in every such case only when the appeal or representation provided by law is disposed of, cause of action shall first accrue and where such order is not made, on the expiry of six months from the date when the appeal was filed or representation was made, the right to sue shall first accrue. Submission of just a memorial or representation to the Head of the establishment shall not be taken into consideration in the matter of fixing limitation."

13. Accordingly, Shri R. C. Saxena, learned counsel for the petitioner submits that the impugned order passed by the State Public Services Tribunal thereby dismissing the claim petition on the ground of delay and laches is liable to be set aside keeping in view the law laid down by Hon'ble the Apex Court as stated above as well as Article 21 of the Constitution of India.

14. We have heard learned counsel for the parties and gone through the records.

15. Period of limitation for filing the claim petition is provided under Section 5 (1) (b) of the U. P. Public Services (Tribunal) Act, 1976, which reads as under :-

"(1) (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 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.

16. A Division Bench of this Court in the case of Karan Kumar Yadav vs. U. P. State Public Services Tribunal and Ors., 2008 2 AWC 1987 All while interpreting the Section 5 (1) (b) of U. P. Public Services (Tribunal) Act, 1976 held as under :-

**"Section 5(1)(b) aforesaid lays down the applicability of Limitation Act and confines it to the reference under Section 4 of the Act, 1976 as if a reference was a suit filed in the civil court. This leaves no doubt that a claim petition is just like a suit filed in the civil court and in the suit the period of limitation cannot be extended by applying the provisions of Section 5 of the Limitation Act. Sub-clause (i) of Section 5 of the Tribunal's Act, specifically provide limitation for filing the claim petition, i.e., one year and in Sub-clause (ii) the manner in which the period of limitation is to be computed has also been provided.**

Section 5 of the Limitation Act, reads as under:

Extension of prescribed period in certain case.--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 case 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.

**Its applicability is limited only to application/appeals and revision. It hardly requires any argument that Section 5 does not apply to original suit, consequently it would not apply in the claim petition. Had the Legislature intended to provide any extended period of limitation in filing the claim petition, it would not have described the claim petition as a suit, filed in the civil court in Section 5(1)(b) and/or it would have made a provision in the Act giving power to the Tribunal, to condone delay, with respect to the claim petition also.**

**In view of the aforesaid provision of the Act and the legal provision in respect to the applicability of Section 5 of the Act, it can safely be held that the application for condonation of delay in filing a claim petition would not be maintainable nor entertainable. The Tribunal will cease to have any jurisdiction to entertain any claim petition which is barred by limitation which limitation is to be computed in accordance with the provisions of the Tribunal's Act itself and the rules framed thereunder."**

**17. Thus, as per law laid down by a Division Bench of this Court in the case of Karan Kumar Yadav (Supra), the period of limitation for filing the claim petition before the State Public Services Tribunal is of one year.**

18. In the instant matter, petitioner has challenged the impugned order dated 24.02.2000 passed by opposite party no.4/Senior Superintendent of Police, Kanpur as well as appellate order dated 27.10.2000 passed by opposite party no.3/Dy. Inspector General of Police, Kanpur Region, Kanpur before the State Public Services Tribunal, Lucknow by filing the claim petition after passing a decade, as such, the same is barred by limitation. Hence, the Tribunal had rightly dismissed the claim petition filed by the claimant after placing the reliance on the judgment given by a Division Bench of this Court in the case of Karan Kumar Yadav (Supra).

19. Hon'ble the Apex Court in the case of Rajasthan Public Service Commission and anr. vs. Harish Kumar Purohit and ors. (2003) 5 SCC 480 held that a bench must follow the decision of a coordinate bench and take the same view as has been taken earlier. The earlier decision of the coordinate bench is binding upon any latter coordinate bench deciding the same or similar issues.

20. Hon'ble the Apex Court in the case of SantLal Gupta and ors. vs. Modern Co-operative Group Housing Society Ltd. and ors. (2010) 13 SCC 336 held that a coordinate bench cannot comment upon the discretion exercised or judgment rendered by another coordinate bench of the same court. The rule of precedent is binding for the reason that there is a desire to secure uniformity and certainty in law. Thus, in judicial administration precedents which enunciate rules of law form the foundation of the administration of justice under our system. Therefore, it has always been insisted that the decision of a coordinate bench must be followed. (Vide TribhovandasPurshottamdas Thakkar v. RatilalMotilal Patel and ors. AIR 1968 SC 372).

21. So far as the reliance placed by the petitioner in the case of Assam SanmilitaMahasangha&Ors.(Supra) as well as S. S. Rathore are concerned, the said case are entirely different from the facts which is involved in the present case. As in the present case Act itself has prescribed for a period of limitation for challenging the order before the State Public Services Tribunal, Lucknow and the said situation does not exist in the said case, so the petitioner cannot



derive any benefit from the aforesaid judgment. Moreover, the Tribunal has given a liberty to the petitioner to approach court/forum in accordance with law.

**22. For the foregoing reasons, we do not find any illegality or infirmity on the part of the Tribunal thereby dismissing the claim petition filed by the petitioner/claimant as being barred by limitation.**

23. In the result, writ petition lacks merit and is dismissed.”

*[Emphasis supplied].*

29. It was observed by Hon’ble Supreme Court in the case of Basavraj and another vs. Special Land Acquisition Officer, reported in (2013) 14 SCC, 81, that the Court has no power to extend the period of limitation on equitable grounds. ‘A result flowing from a statutory provision is not an evil’. The statutory provision may cause hardship or inconvenience to a particular party but the Court has no choice but to enforce it giving full effect to the same. ‘The law is hard but it is the law’. ‘Inconvenience is not a decisive factor to be considered while interpreting a statute.’

30. It was observed by Hon’ble Supreme Court in the case of Balwant Singh vs. Jagdish Singh & others, reported in (2010) 8 SCC 685, that the law of limitation is a specific law and has definite consequences on the right and obligation of a party to arise. Liberal construction cannot be equated with doing injustice to the other party.

31. In M/S Shanti Conductors (P) Ltd. vs. Assam State Electricity Board and others, (2020) 2 SCC 677, it was observed by Hon’ble Apex Court that, in the event, a suit is instituted after the prescribed period, it shall be dismissed although limitation has not been set up as a defence. The Court, by mandate of law, is obliged to dismiss the suit, which is filed beyond limitation even though no pleading or arguments are raised to that effect.

32. It will be appropriate to quote the following observations of Hon’ble Apex Court in State of Uttarakhand & another vs. Shiv Charan Singh Bhandari & others, (2013) 12 SCC 179, as below:

“Not for nothing, it has been said that everything may stop but not the time, for all are in a way slaves of time.”

33. In view of the above, the claim petition is liable to be dismissed being barred by limitation alone.

## **DISCUSSION ON MERITS**

34. The following rulings have been placed by learned Counsel for the petitioner in support of his case:

(i) Gurcharan Singh Grewal and another vs. Punjab State Electricity Board and others, (2009)2 SCC 94

(ii) Commissioner and Secretary to Government of Haryana and others vs. Ram Sarup Ganda and others, (2011) 15 SCC 772.

35. In Gurcharan Singh Grewal (*supra*), the Hon'ble Apex Court has observed the following:

“15. Mr. Chhabra also attempted to justify the disparity in the pay of Shri Shori and the appellant No.1 by urging that the appellant No. 1 had been granted the promotional scale with effect from 1st January, 1996, where the benefits of increment in the scale were lower. On the other hand, Shri Shori who joined the services of the Board in 1974, was granted the promotional scale on 17th May, 2006, with effect from 1st September, 2001, when the increments and the pay-scales were higher. Mr. Chhabra submitted that it is the disparity in the incremental benefits that led to the anomaly of the appellant No.1 getting a lower salary in the promotional scale.

16. Having regard to the submissions made on behalf of the respective parties, we have little hesitation in accepting Mr. Gupta's submissions that since the writ petition had been jointly filed on behalf of the appellants, whose interest was common, the prayer therein should not have been confined to the appellant No.2 alone and that the High Court should have granted relief to the appellant No.1 also by directing that his pay also be stepped up to that of his junior, Shri R.P. Shori. Although, this question does not appear to have been gone into by the High Court for the simple reason that the writ petition was disposed of only on the averments contained in paragraph 7 of the written statement filed on behalf of respondents that the grievance of the appellant No.2 duly addressed, there ought to have been at least some discussion in the judgment of the High Court regarding the claim of the appellant No.1. Unfortunately, the case of the appellant No.1 was not considered at all by the High Court.

17. Something may be said with regard to Mr. Chhabra's submissions about the difference in increment in the scales which the appellant No.1 and Shri Shori are placed, but the same is still contrary to the settled principle of law that a senior cannot be paid lesser salary than his junior. In such circumstances, even if, there was a difference in the incremental benefits in the scale given to the appellant No.1 and the scale given to Shri Shori, such anomaly should not have been allowed to continue and ought to have been rectified so that the pay of the appellant No.1 was also stepped up to that of Shri Shori, as appears to have been done in the case of the appellant No.2.

18. We are unable to accept the reasoning of the High Court in this regard or the submissions made in support thereof by Mr. Chhabra, since the very object to be achieved is to bring the pay scale of the appellant No.1 at par with that of his junior. We are clearly of the opinion that the reasoning of the High Court was erroneous and the appellant No.1 was also entitled to the same benefits of pay parity with Shri Shori as has been granted to the appellant No.2.

19. We, accordingly, allow the appeals and set aside the judgment of the High Court. Consequently, the writ petition is also allowed and the respondents are directed to extend the benefits of pay parity with Shri Shori to the appellant No.1, as was done in the case of the appellant No.2.

[Emphasis supplied]

36. In Commissioner and Secretary to Government of Haryana and others (*Supra*), the following was observed by the Hon'ble Supreme Court:

3.Special Leave Petitions were filed by the State of Haryana and others against the decision in "Suraj Bhan's case (*supra*) and other similar writ petitions. Some of the Special Leave Petitions were dismissed at the admission stage itself on the ground of delay, but in some petitions notices were issued. That is how, these matters have come up before us.

5. Initially, in the year 1991, the State of Haryana framed a scheme to grant additional increments to the government employees, based on their length of service, viz., one additional increment on completion of 10 years service and the next increment for those who completed 20 years service. Thereafter, in the year 1994, the State introduced another scheme known as the Higher Standard Scale Scheme for Group 'C' and Group 'D' employees on completion of 10 years or more and 20 years or more regular and satisfactory service. This scheme worked for about two years.

6. While so, a scheme was introduced by the Central Government where the employees were assured career progression. This scheme came into existence with effect from 01.01.1996. The scheme was for grant of Assured Career Progression Pay-Scales (ACP). The scheme was later adopted as Rules under Article 309 of the Constitution with effect from 01.01.1996.

8. From the scheme it is clear that the benefit of ACP scale was intended to be given to the Government employees to avoid stagnation and to confer them atleast two promotions/upgradations. Rule 5 quoted above specifically provides that these ACP scales may not be granted to Government employees who have already got atleast two financial upgradations within 20 years of service. This also mentions that the starting point for giving such ACP scales shall be the initial entry into the service.

14. Learned counsel for the State pointed out that under the scheme itself Rule 9 provides that there shall not be "stepping up" of the pay to rectify this mistake and, therefore, the High Court was not justified in giving stepping up to those employees who were seniors but received lesser pay scale. For this argument reliance was placed on Rule 9.

16. Rule 9 quoted above only says that the senior Government servants, who are direct recruits, are not entitled to get any stepping up in case any anomaly arises regarding the receipt of lesser pay by them. However, the same is not applicable to the respondents herein who joined the service as Group "D" employees and later got promotion to Group "C" post by selection.

17. If there is any anomaly to the effect that the senior Government servants are receiving lesser pay than their juniors, who entered the service from a different source of recruitment, certainly such senior Government servants are entitled to stepping up of their pay in order to bring them on par with the salary which is being received by their juniors. There is no clause in the scheme which prohibits such stepping up of salary which is a common practice applicable to all Government employees in case there is anomaly in the pay structure of the employees.

18. By the impugned judgment, the High Court has held that the respondents are entitled to get the ACP scales that are applicable to Group "C" post, but the Rules, as such, do not provide for that. The Rules say that if there are already two upgradations, then the concerned employees are not entitled to the benefit of ACP scales. Nevertheless, if ACP scales are higher, they are certainly entitled to the ACP scales at the starting point. The date of giving such ACP scales is the date of entry into the service and though these respondents are entitled to get ACP scales and get fixation of the ACP scales as applicable to Group D employees and in case there are anomalies to the effect that they receive lesser pay than their juniors working in the same cadre/post, such senior government servants are entitled to step up of their salary to get it on a par with the salary which is being received by their juniors.

19. In the result, all the appeals are partly allowed. The appellants shall revise the pay scales of the respondents. In case of any anomaly, if the employees who, on fixation of ACP scales, are in receipt of lesser salary than their juniors in the same cadre/post, then their salary shall be stepped up accordingly. Revised orders shall be passed within a period of two months of the receipt of the copy of this order by the Government. However, if upon revision of the pay scales, any employees is liable to refund any amount, they Government shall not insist on refund of such amount. If any employee is entitled to get any amount by way of pay revision, the said amount shall be made available to him within a period of six months from the date of receipt of the copy of this order by the Government."

*[Emphasis supplied]*

37. Although the petitioner is claiming parity with the above noted decisions of Hon'ble Apex Court, but the factual matrix of the above noted decisions is entirely on different footing than the backdrop of the present claim petition. The aforesaid decisions are clearly distinguishable from the facts of the instant case, for the following reasons:

(i) The seniority list of 2002 filed as Annexure: A7 to the claim petition is arranged pay scale-wise. It first mentions the pay scale Rs. 3100-4500 having one person in the same, then the list of pay scale Rs. 2200-4000 (time scale Rs.

2900-4375) which has 12 persons including Factory Manager, Accounts Officer/Finance Controller, Assistant Engineer, Administrative Officer, Personnel Officer, Assistant Secretary, Audit Officer, Operational Manager Ropeway and Accounts Officer. In this list, the petitioner is at sl. No. 5, respondent no. 3 is at sl. No. 6 and respondent no. 4 is at sl. No. 11. This list cannot be said to be seniority list of officers of one cadre or one wing and has a mix of different functionaries with different jobs.

(ii) It is also observed that functionaries have been given jobs/assignments as per the will and requirement of the respondent corporation. According to the claim petition, the petitioner has been given many promotions during his service. His services were regularized since 22.11.1978 in the post of Supervisor. Thereafter, he was again appointed through open selection process on the post of 'Plastic Inspector' in the pay scale of Rs. 230-380 vide order dated 07.03.1980, according to para 4.3 of the claim petition. Even if this appointment through open selection process on the post of Plastic Inspector is deemed to be the first substantive appointment of the petitioner in the respondent corporation, he was promoted to the post of Plastic Inspector & Incharge Tool Room in the pay scale of Rs. 280-460 since 01.02.1981 and then further promoted in the pay scale of Rs. 300-500 as Senior Supervisor since 06.10.1981. He was further promoted in the pay scale of Rs. 350-700 as Factory Foreman in January 1983 and was further promoted to the post of Factory Manager in the pay scale of Rs. 900-1770 *w.e.f.* 01.05.1987. He was further given time scale benefit *vide* order dated 27.06.1994 in the pay scale of Rs. 2900-4375. Having got so many promotions and further time scale, he was not eligible to be granted any further ACP.

(iii) According to the Counter Affidavit, Sri S.S.S. Karki was first appointed as Deputy Operational Manager on 22.10.1984, then he was promoted to the post of Operational Manager on 26.01.1993 in the pay scale of Rs. 2200-4000 then subsequently given second ACP of Grade Pay Rs. 6600 and 3<sup>rd</sup> ACP of Grade Pay Rs. 7600 on 01.09.2008 and 05.11.2011 respectively. Sri Devendra Prasad Arya was first appointed as Junior Engineer on 18.02.1981, then given time scale on 17.03.1992 and then promoted as Assistant Engineer in the pay scale of Rs. 2200-4000 on 30.03.1992 and then 3<sup>rd</sup> ACP with Grade Pay of Rs. 6600 has been given to him. The grant of ACPs to these private respondents is justified in view of earlier lesser promotions given to them.

(iv) English translation of para(2)(v) of the G.O. NO. 872 dated 08.03.2011 which has been filed as page no. 120 of the paperbook is as below:

“(2)(v) After implementation of the ACP Scheme in any post of the direct recruitment after the first appointment in the cadre after first promotion only Second and Third up gradations and after second promotion only Third upgradation benefits will be applicable. After third promotion in any case the benefits of the financial up gradation will not be applicable. In this regard, it is relevant to mention here that after the date 1.1.2006, on implementation of the revised pay scale, the promotion has been made in the same cadre, and then it will also be considered as promotion under the applicability of the financial up gradation.

But as per aforesaid arrangement if the salary of the senior personnel becomes less than his junior fellow after up gradation of junior one, the salary of the senior personnel will be made equal to his junior personnel.”

English translation of Para 2(4) of the G.O. No. 313 dated 30.10.2012 which has been filed at page no. 128 of the paper book, is as below:

“2(4) It had been clarified that if after promotion of a senior employee, the applicable grade pay becomes less than the grade pay of a junior employee after grant of benefits under ACP Scheme, in such a situation, for ensuring its proper solution, the senior one will also be granted with grade pay at par with the grade pay of his junior employees and accordingly the para-1(7) of the aforesaid G.O. dated 8<sup>th</sup> March 2011 and in reference to the clarifications vide point no. 2 of the table under para 3 of the G.O. dated 7<sup>th</sup> April 2011 will be deemed amended.:-

In case, where the grade pay of a senior employee becomes less than the grade pay of his junior one after implementation of ACP Scheme and fixation of the revised grade pay on his promotion under ACP scheme, then for ensuring its proper solution, the grade pay of the senior employee will be up graded at par with his junior one, since the date, on which it was stepped up in favour of his junior employee, where the source of recruitment and the service conditions of the senior and junior employees are same and if, the senior employee would not be promoted prior to enforcement of the ACP scheme, then he would also become eligible to get the financial up gradation under the benefits of ACP scheme since the date on which his junior employee had been granted with the financial up gradation under the Assured Career Progression Scheme aforesaid.”

Para (2)(v) of the G.O. No. 872 dated 08.03.2011 clearly states that after 3<sup>rd</sup> promotion in any case, the benefit of financial upgradation will not be applicable. But if the salary of the senior personnel becomes less than his junior fellow after up gradation of junior one, the salary of the senior personnel will be made equal to his junior personnel. Para 2(4) of the G.O. no. 313 dated 30.10.2012 clearly states that where the grade pay of a senior employee becomes less than the grade pay of his junior one after implementation of ACP

Scheme and fixation of the revised grade pay on his promotion under ACP scheme, then for ensuring its proper solution, the grade pay of the senior employee will be up graded at par with his junior one, since the date, on which it was stepped up in favour of his junior employee, where the source of recruitment and the service conditions of the senior and junior employees are the same.

(v) It is clear that the sources of recruitment and the service conditions of the petitioner and private respondents are not the same. They have been working on different assignments which cannot be deemed as junior and senior posts of a common stream. As stated earlier, the seniority list of 2002 filed by the claim petitioner is a mix of different functionaries in that particular pay scale having different jobs. Therefore, the Tribunal holds that the claim petitioner is not entitled to stepping up his grade pay at par with the grade pays granted to Respondents no. 3 & 4 after implementation of the ACP Scheme.

**38. In the facts and circumstances of the present claim petition, the decisions cited by learned Counsel for the petitioner are not applicable, as the senior-junior position in the instant case is not made out. The claim petition is liable be dismissed on merits as well.**

**ORDER**

The claim petition is dismissed, as being time barred, and on merits.  
No order as to costs.

**(RAJEEV GUPTA)**  
VICE CHAIRMAN (A)

**(JUSTICE U.C.DHYANI)**  
CHAIRMAN

*DATED: AUGUST 25, 2022*  
*DEHRADUN.*

*KNP*