

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

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

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

CLAIM PETITION NO.102/DB/2021

Kalpana Tripathi, w/o Shri Jai Prakash Tripathi, aged about 44 years, presently posted as Assistant Commissioner, Internal Review, Haridwar.

..... **Petitioner**

vs.

1. State of Uttarakhand, through Principal Secretary (Finance), Uttarakhand, Dehradun.
2. Secretary, Department of Finance, Government of Uttarakhand, Dehradun.
3. Commissioner (State Tax), Uttarakhand, Dehradun.
4. Yogesh Rawat, Asst. Commissioner State Tax, c/o Commissioner (State Tax), Uttarakhand, Dehradun.
5. Dr. Shashikant Dubey, Asst. Commissioner State Tax, c/o Commissioner (State Tax), Uttarakhand, Dehradun.
6. Gourav Pant, Asst. Commissioner State Tax, c/o Commissioner (State Tax), Uttarakhand, Dehradun.
7. Dharendra Kumar, Asst. Commissioner State Tax, c/o Commissioner (State Tax), Uttarakhand, Dehradun.
8. Anant Rajneesh, Asst. Commissioner State Tax, c/o Commissioner (State Tax), Uttarakhand, Dehradun.
9. Shivani Tripathi, Asst Commissioner State Tax, c/o Commissioner (State Tax), Uttarakhand, Dehradun.
10. Vandana, Asst Commissioner State Tax, c/o Commissioner (State Tax), Uttarakhand, Dehradun.
11. Suchi Tiwari, Asst. Commissioner State Tax, c/o Commissioner (State Tax), Uttarakhand, Dehradun.
12. Poonam, Asst Commissioner State Tax, c/o Commissioner (State Tax), Uttarakhand, Dehradun.
13. Manmohan Aswal, Asst Commissioner State Tax, c/o Commissioner (State Tax), Uttarakhand, Dehradun.
14. Seema Arya, Asst. Commissioner State Tax, c/o Commissioner (State Tax), Uttarakhand, Dehradun.

15. Pushpendra Chaudhary, Asst. Commissioner State Tax, c/o Commissioner (State Tax), Uttarakhand, Dehradun.
16. Krishn Kumar, Asst. Commissioner State Tax, c/o Commissioner (State Tax), Uttarakhand, Dehradun.
17. Shyam Dutt Sharma, Asst. Commissioner State Tax, c/o Commissioner (State Tax), Uttarakhand, Dehradun.
18. Neha Mishra, Asst Commissioner State Tax, c/o Commissioner (State Tax), Uttarakhand, Dehradun.
19. Deepak Kumar, Asst. Commissioner State Tax, c/o Commissioner (State Tax), Uttarakhand, Dehradun.
20. Kamal Kishore Joshi, Asst Commissioner State Tax, c/o Commissioner (State Tax), Uttarakhand, Dehradun.
21. Priyanka, Asst Commissioner State Tax, c/o Commissioner (State Tax), Uttarakhand, Dehradun.
22. Deepa Singh, Asst. Commissioner State Tax, c/o Commissioner (State Tax), Uttarakhand, Dehradun.

.....Respondents

Present: Sri Shashank Pandey, Advocate, for the Petitioner

Sri V.P.Devrani, A.P.O., for the Respondents no. 1, 2 & 3

Sri Abhijay Negi, Advocate, for the private respondents no.

6,8,11,12,14 to 17 & 19 to 22

Sri Alok Mehra, Advocate, for the private respondent no. 13.

And

CLAIM PETITION NO. 128/DB/ 2021

Anjani Kumar Singh (male) s/o Shri Balbir Singh aged about 42 years presently posted as Assistant Commissioner, State Tax, Block 1, Rishikesh, Dehradun.

..... Petitioner

Vs.

1. State of Uttarakhand, through Principal Secretary (Finance), Uttarakhand, Dehradun.
2. Secretary, Department of Finance, Government of Uttarakhand, Dehradun.
3. Commissioner (State Tax), Uttarakhand, Dehradun.
4. Yogesh Rawat, Asst Commissioner State Tax, c/o Commissioner (State Tax), Uttarakhand, Dehradun.
5. Shashikant Dubey, Asst Commissioner State Tax, c/o Commissioner (State Tax), Uttarakhand, Dehradun.
6. Gourav Pant, Asst Commissioner State Tax, c/o Commissioner (State Tax), Uttarakhand, Dehradun.
7. Anant Rajneesh, Asst Commissioner State Tax, c/o Commissioner (State Tax), Uttarakhand, Dehradun.

8. Shivani Tripathi, Asst Commissioner State Tax, c/o Commissioner (State Tax), Uttarakhand, Dehradun.
9. Vandana, Asst Commissioner State Tax, c/o Commissioner (State Tax), Uttarakhand, Dehradun.
10. Suchi Tiwari, Asst Commissioner State Tax, c/o Commissioner (State Tax), Uttarakhand, Dehradun.
11. Poonam, Asst Commissioner State Tax, c/o Commissioner (State Tax), Uttarakhand, Dehradun.
12. Manmohan Aswal, Asst Commissioner State Tax, c/o Commissioner (State Tax), Uttarakhand, Dehradun.
13. Sheema Arya, Asst Commissioner State Tax, c/o Commissioner (State Tax), Uttarakhand, Dehradun.
14. Pushpendra Chaudhary, Asst Commissioner State Tax, c/o Commissioner (State Tax), Uttarakhand, Dehradun.
15. Krishn Kumar, Asst Commissioner State Tax, c/o Commissioner (State Tax), Uttarakhand, Dehradun.
16. Shyam Dutt Sharma, Asst Commissioner State Tax, c/o Commissioner (State Tax), Uttarakhand, Dehradun.
17. Neha Mishra, Asst Commissioner State Tax, c/o Commissioner (State Tax), Uttarakhand, Dehradun.
18. Deepak Kumar, Asst Commissioner State Tax, c/o Commissioner (State Tax), Uttarakhand, Dehradun.
19. Kamal Kishore Joshi, Asst Commissioner State Tax, c/o Commissioner (State Tax), Uttarakhand, Dehradun.
20. Priyanka, Asst Commissioner State Tax, c/o Commissioner (State Tax), Uttarakhand, Dehradun.
21. Deepa Singh, Asst Commissioner State Tax, c/o Commissioner (State Tax), Uttarakhand, Dehradun.

.....**Respondents**

Present: Dr N.K.Pant, Advocate, for the Petitioner

Sri V.P.Devrani, A.P.O., for the Respondents no. 1, 2 & 3

Sri Abhijay Negi, Advocate, for the private respondents

Sri Alok Mehra, Advocate

for private respondent no. 12 (Sri Manmohan Aswal)

JUDGMENT

DATED: SEPTEMBER 21, 2022

Per: Sri Rajeev Gupta, Vice Chairman (A)

In claim petition no. 102/DB/2021, the petitioner has sought the following reliefs:

“a. To issue any order(s)/direction(s) to call for records and quash the seniority list dated 09.08.2021 (Annexure 1) declaring that inter se seniority of persons determined under Rule 8(1) of the Uttarakhand Government Servant Seniority Rules, 2002 is subject to provisions of Rule (2) and Rule (3) therein; and consequently, command the Respondents to issue a revised tentative seniority list dated 13.11.2020 keeping the seniority of the Petitioner above the direct recruits of the selection year 2014-15 i.e. above Respondent no. 4.

b. To grant such relief as the Hon’ble Court may deem fit in the facts and circumstances of the case.

c. To give any other relief that this Hon’ble Court deems fit and proper in the circumstances of the case.

d. To give cost to the petitioner.”

2. The petitioner in claim petition no. 128/DB/2021 has sought the following reliefs:

“a. To issue any order(s)/direction(s) to call for records and quash the seniority list dated 09.08.2021 (Annexure 1) declaring that inter se seniority of persons determined under Rule 8(1) of the Uttarakhand Government Servant Seniority Rules, 2002 is subject to provisions of Rule (2) and Rule (3) therein; and consequently, direct the Respondents to issue a revised tentative seniority list dated 13.11.2020 keeping the seniority of the Petitioner above the direct recruits of the selection year 2014-15 i.e. at serial no. 123.

b. To grant such relief as the Hon’ble Tribunal may deem fit in the facts and circumstances of the present case.

c. To award any other relief that this Hon’ble Tribunal deems fit and proper in the circumstances of the case.

d. To award cost to the petitioner.”

3. The facts in brief, according to the claim petitions are as follows:

3.1 The petitioners of both these claim petitions were initially appointed as Sales Tax Officers and were subsequently promoted to the post of Assistant Commissioner, Trade Tax on 30.06.2015. While the

petitioner (Smt. Kalpana Tripathi) in Claim Petition no. 102/DB/2021 has claimed to have been given the selection year 2013-14, the Petitioner (Sri Anjani Kumar Singh) in Claim Petition No. 128/DB/2021 was given the selection year 2014-15. In the selection/recruitment year of 2014-15, the private respondents of these claim petitions were recruited as Assistant Commissioners, Trade Tax, who joined the posts earlier than the petitioners *i.e. on* 07.01.2015. The impugned seniority list dated 09.08.2021 shows the petitioners as junior to the private respondents while the *inter se* seniority of the persons, determined under sub rule (1) of Rule 8 of the Uttarakhand Government Servant Seniority Rules, 2002 (hereinafter referred to as 'the Rules of 2002'), is subject to the provisions of sub rules (2) and (3) of Rule 8 of the Rules of 2002 and consequently, the seniority of the petitioners needs to be revised. The petitioner, Kalpana Tripathi has further claimed that she was given appointment by promotion in the selection year 2013-14. According to Rule 8(1) of the Rules of 2002 which provides that where appointment order specifies a particular back date w.e.f. which the petitioner is subsequently appointed, that date will be deemed to be the date of order of substantive appointment; in other cases, it will be the date of order and according to the second proviso to Rule 8(3), she shall get seniority of the year in which the appointment is made. Hence, her name should be placed at the top followed by names in cyclic order of the other appointees.

3.2 The appointment orders of the petitioners could only be issued on 30.06.2015 as the process of holding DPC was delayed because of pending litigation. The tentative seniority list dated 13.11.2020 was circulated in which the petitioners were placed junior to the direct recruits of the recruitment year 2014-15. Against this tentative seniority list, the petitioners and others made many identical representations, but the respondent no. 1 issued the final seniority list rejecting the representations of the petitioners.

3.3. The services of the petitioners are governed by the U.P. Sales Tax Service Rules, 1983 (hereinafter referred to as 'the Rules of 1983'). As per Rule 17(2) of the aforementioned rules, the promotion on the post of Assistant Commissioner is made on the basis of *seniority subject to rejection of unfit*. Rule 18 of the Rules of 1983 provides for combined selection list. If in any year of recruitment appointments are made both by direct recruitment and by promotion, a combined select list shall be prepared by taking the names of candidates from the relevant lists, in such manner that the prescribed percentage is maintained, the first name in the list being of the person appointed by promotion. However, no such list was ever prepared as per the knowledge of the petitioners.

3.4 The main ground taken by Smt. Kalpana Tripathi in her claim petition is that she was promoted in the selection year 2013-14 while private respondents were appointed in the selection year 2014-15.

3.5 The main grounds taken by Sri Anjani Kumar Singh in his claim petition are that seniority of the direct recruits and promotes shall be determined according to the rotation of the vacancies between direct recruits and promotes which shall be based on the quota of vacancies reserved for direct recruits and promotes respectively in the recruitment rules and Rule 18 of the Rules of 1983 clearly provides that a joint select list shall be prepared and the first name shall be that of promotee. Petitioner of claim petition no.128/SB/2021 also states that in the matter of Jagdish Chand and others vs. State of Uttarakhand & others, the Division Bench of Hon'ble High Court has observed the following in para 3 of its judgment dated 16.05.2013:

"3. Under the Rules, in order to be promoted to the post of Executive Engineer, an Assistant Engineer is in the feeding cadre and he is required to serve as such Assistant Engineer for seven years. As aforesaid, petitioners and the private respondents were promoted to the posts of Assistant Engineer on 7th November, 2000. Therefore, as on 7th July, 2008, they all had served for seven years as Assistant Engineers. Each of them was, accordingly, eligible for being considered for promotion. While the petitioners were not considered for promotion, private respondents were considered for promotion only on the ground that in view of the

Circular dated 22nd February, 2008, private respondents were treated to be senior to the petitioners in the posts of Assistant Engineers, when, in fact, the Rules say otherwise, i.e. that for seniority in the promotional post, i.e. the post of Assistant Engineer, the seniority in the feeding cadre, i.e. the post of Junior Engineer, shall be taken into account and there appears to be no dispute that in the posts of Junior Engineer, petitioners were senior to the private respondents. Consideration of the private respondents for promotion to the posts of Executive Engineer and non-consideration of the petitioners for the said promotion on 7th July, 2008 was mala fide, illegal and unsustainable. The said promotions are, accordingly, set aside. Respondents are directed to prepare fresh seniority list in accordance with the Rules discussed above."

The petitioner having been appointed as Sales Tax Officer on 28.04.2009, which is the feeding cadre of the Assistant Commissioner, Trade Tax, the seniority of the petitioner should be determined from the date of his feeding cadre.

4. Counter Affidavits have been filed on behalf of the official respondents and by Sri Abhijay Negi, Advocate on behalf of certain private respondents and Sri Alok Mehra, Advocate on behalf of private respondent, Sri Manmohan Aswal. Dr. N.K. Pant, learned Counsel for petitioner has also filed R.A. in Claim Petition No. 128/DB/2021.

5. Since the issue involved in these claim petitions is similar, they have been heard together and opportunity was also given to learned Counsel for the parties to file written arguments. Written arguments have been filed by Sri Shashank Pandey and Dr. N.K. Pant, on behalf of the claim petitioners respectively. Sri Abhijay Negi and Sri Alok Mehra, Advocates have also filed written arguments on behalf of private respondents being represented by them.

6. Written arguments submitted by Sri Shashank Pandey, learned Counsel for the petitioner in claim petition no. 102/DB/2021 are as under:

The petitioner filed the present claim petition against the wrongful fixation of seniority of the applicant in seniority list dated 09.08.2021 wherein the petitioner was kept junior to the Private Respondents (Annexure A1).

The petitioner was promoted vide order dated 30.06.2015, wherein the petitioner was awarded 'Selection Year' 2013-14. Some other candidates who were promoted by the same order were awarded "Selection Year" 2014-15 (Annexure A2).

The Private respondents came to service vide direct appointment; order dated 07.01.2015.

The department in spite of awarding the petitioner "Selection Year " 2013-14, have kept the petitioner junior to the Private Respondents on the basis of date of the order of appointment.

The claim of the petitioner is that the petitioner cannot be treated junior to the Private Respondents as the petitioner has been allowed "Selection Year" 2013-14 and thus consequentially be considered senior to Private Respondents.

The Private Respondents however have defended the seniority list on the ground that the "Selection Year" so mentioned in the promotion order of the petitioner is actually "Year of Vacancy" and date of order is the only criterion for determination of Seniority.

The Private Respondents have further relied upon *Uttaranchal Forest Rangers Association vs. State of Uttar Pradesh [(2006) 10 SCC 346]* which holds that no *interse* seniority can be granted in favour of promotes, simply because their corresponding vacancy existed prior to direct recruits taking birth in the cadre. The judgment further states that the seniority can only occur from the date of substantive appointment. Further, the judgment further holds that no retrospective promotion can be given. **This judgement could be quoted, had the respondents challenged the promotion of the petitioner from the previous Selection Year. However, the Respondents have not done so. The Judgment does not say not to grant seniority to the persons who have been promoted from a previous year and the promotion has remained unchallenged.**

The Respondent State has also opposed the petition and has relied upon the case, *State of Uttaranchal Vs. Dinesh Kumar Sharma Appeal (civil) 5573 of 2006*. The case is not applicable in present facts as in that case the petitioner was asking for promotion from the date of Vacancy, **however in this case there is no such prayer of the petitioner, having been promoted as far back as in 2015 for the "Selection Year" 2013-14.**

Though the "Selection Year" has not been defined in either the Uttarakhand Government Servant Seniority Rules, 2002 or the Uttar Pradesh Sales Tax Service Rules, 1983 however it is clear that "Selection Year" is different from "Year of Vacancy" or "Year of Recruitment". **The term "Selection Year" is akin to the "Year of Allotment" as is used in All India Services.** It is further clarified from Rule 8 and Rule 13 of the Uttaranchal Promotion in Consultation with Public Service Commission (Procedure) Rules, 2003.

The Respondents have tried to convince this Hon'ble Court that the "Selection Year" mentioned in the Order of Promotion is in fact "Year of Vacancy" however the GOLDEN RULE OF INTERPRETATION IS ITS LITERAL CONSTRUCTION. When the order itself says "Selection Year" it cannot be interpreted to mean "Year of Vacancy" (*Union of India Vs. Sankalchand Himatlal Sheth [(1977) 4 SCC 193]*). Further in the same case it has been held that *"it must be borne in mind that a provision is not ambiguous merely because it contains a word which, in different contexts, is capable of different meanings..... a provision is ambiguous only if it contains a word or phrase which, in that particular context, is capable of having more than one meaning"*. **In the present case the word "Selection Year" cannot have more than one meaning and by no stretch of imagination can the world be said to mean "Year of Vacancy" as the respondents are trying to interpret it.**

Further the petitioner has enclosed Annexure 8, an order of Public Works Department of Uttarakhand, which are governed by the same seniority rules as the Petitioner and Private Respondents. As per the Annexure, two persons, namely Shri Naveen Dhyani and Shri Rajendra Kumar promoted on 24.07.2017 for the "Selection Year" 2010-11 (page 58 of the Claim Petition) were kept in seniority list as per their promotion order, i.e. with promotion of 2010-11. Further, similar situation arose in the Commercial Tax department in State of Uttar Pradesh, wherein the petitioner, in that case, was promoted from a previous "Selection Year". The Hon'ble High Court of Uttar Pradesh Lucknow Bench, in *Anurag Meharotra vs State Of U.P. Thru Addl. Chief Secretary* (enclosed) has held that since no particular back date is given, it would be assumed as the last date of the recruitment year i.e. 30th June. **Thus in the case in hand, the "Selection Year" 2013-14 has been specified in the order of promotion that can only mean 30th June 2014**, thereby attracting proviso to Rule 8 of the Seniority Rules, 2002 which holds that *"provided that if the appointment order specifies a particular back date, with effect from which a person is substantively appointed, that date will be deemed to be the date of the order of substantive appointment and in other cases, it will mean the date of issuance of order"*.

The Respondents have tried to confuse this Hon'ble Court by saying that they were appointed against vacancies of 2007, 2008 and so on, thus they should also be getting seniority of those years. Their contentions are not in consonance with the Orders of Hon'ble Apex Court that they themselves have produced before this Hon'ble Court. They have tried to confuse this Hon'ble Court by insinuating that the "Selection Year" as mentioned in promotion order is actually "Year of Vacancy". If such was the case the authority would have written it as "Year of Vacancy" instead of "Selection Year".

The petitioners were given selection year of 2013-14 as far back as in 2015. However, the respondents have never challenged this award of previous selection year (which is similar to 'year of allotment' in All India Services).

The Respondents have also argued that only the date of order of Substantive Appointment is the relevant criterion for determination of Seniority. The argument itself is flawed as assuming that was the case, then we do not need "Seniority Rules" at all, having no other criterion. The rules themselves lay down so many different criteria for determination of seniority and the petitioner has been given seniority from a previous date which is one of the criteria for seniority.

The Respondents have failed to follow Rule 18 of the U.P. Sales Tax Service Rules, 1983 which are mandatory in nature and could not have been avoided. **The petitioner had no way to know that the Rule has not been followed prior to issuance of this seniority list and hence could not have challenged the same at any prior date.**

The respondents have hilariously tried to claim before this Hon'ble Tribunal that the promotion of the petitioner is *de hors* the rules. This plea cannot be raised in this petition as this petition is about seniority which is a consequence of promotion. As long as promotion remains, the seniority would remain. Further having the knowledge of promotion being *de hors* the rules, it was a solemn duty of the respondents to challenge the promotion of the petitioner, which they have not done.

7. Written arguments submitted by Dr. N.K.Pant, learned Counsel for the petitioner in claim petition no. 128/DB/2021 are as under:

“1. That, the present Petition is filed against the final seniority list of Assistant Commissioner (State Tax) dated 09.08.2021 issued by the office of Respondent No. 2. The Petitioner is placed at serial no. 140. In the seniority list the petitioner has been placed below the direct appointees of Selection Year 2014-15 in spite of the fact that the petitioner was also given appointment by promotion for the selection year 2014-15. The petitioner has raised a seniority dispute before the Hon’ble High Court Uttarakhand vide his writ petition No. (S/B)/ 351 of 2021 but the Hon’ble High Court Uttarakhand dismissed the same on the ground of alternative remedy with liberty to the petitioner to approach the Uttarakhand Public Service Tribunal. A true copy of the impugned seniority list of Assistant Commissioner dated 09.08.2021 and the judgment dated 01-09-2021 are annexed as **Annexure No. WA1 and WA2** with this Written Argument.

2. That, the Petitioner is working as Assistant Commissioner in State Tax Department of Uttarakhand. The Petitioner was promoted to the post of Assistant Commissioner (State Tax) *vide* Promotion Order dated 30.06.2015. In the promotion order it is evident that the promotion of the Petitioner was done for the selection year 2014-15 though the process of holding DPC was delayed by the Respondents, because of a pending litigation and the promotion order could only be issued on 30.06.2015. A true copy of the Promotion Order dated 30.06.2015 is annexed as **Annexure No. WA3** with this Written Argument.

3. That, the direct recruits had joined the post of Assistant Commissioner in the same recruitment year i.e., 2014-15 but earlier than the Petitioners i.e., on 07.01.2015.

4. That, till now the prevalent practice in all the Government departments was that the direct recruit as well as promotees who join the department in the same recruitment year and allotted particular selection year were place in the cyclic order in order of the rotation, the first being the promotee. This was keeping in line with the old practice established before the notification of Uttar Pradesh Government Servant Seniority Rules, 1991 and subsequently, the Uttarakhand Government Servant Seniority Rules of 2002. The term “any one selection” is Rule 8 of the said rules was treated as to mean “selection in any one year”. For the kind perusal of the Hon’ble Tribunal some seniority lists of various departments are collectively being annexed as **Annexure No. WA4** with this Written Argument.

5. That, as per sub-rule (1) of Rule 8 of the Uttarakhand Government Servant Seniority Rules, 2002 “*where the appointment order specifies a particular back date, with effect from which a person is substantively appointed, that date will be deemed to be the date of order of substantive appointment and, in other cases, it will mean date of the order.*” In the present case, clearly the order of promotion specifies that the petitioner has been promoted for selection year 2014-15, the petitioner should get seniority as per second proviso to Rule 8(3) which says that “*where appointments from any source fall short off the prescribed quota and the appointment against such unfilled vacancies are made in subsequent year or years, the person so*

appointed shall not get seniority of any earlier year but shall get the seniority of the year in which their appointments are made, so however, that their names be placed at the top followed by the names, in cyclic order of the other appointees". Thus the petitioner should instead of being below the private respondents should have been above all the private respondents in the seniority list, he having been promoted for the selection year 2014-15. A true copy of the Uttarakhand Government Servant Seniority Rules, 2002 is annexed as **Annexure No. WA5** with this Written Argument.

6. That, a tentative seniority list dated 13.11.2020 was circulated, in this tentative seniority list the Petitioner was placed junior to the direct appointees of the recruitment year 2014-2015. A true copy of the tentative seniority list dated 13.11.2020 is annexed as **Annexure No. WA6** with this Written Argument.

7. That, the Petitioner did submit a representation dated 24.11.2020 against the tentative seniority list. Many identical representations were made. But the respondent no.1 issued the final seniority list rejecting the representation of the petitioner. A true copy of the representation dated 24.11.2020 sent by another colleague, which is identical to representation submitted by the petitioner is annexed as **Annexure No. WA7** with this Written Argument.

8. That, it is pertinent to mention here that the services of the petitioner are governed by UP Sales Tax Service Rules 1983. As per Rule 17(2) of the aforementioned rules, the promotion on the post of Assistant Commissioner is made on the basis of *seniority subject to rejection of unfit*. A copy of the UP Sales Tax Service Rules 1983 is annexed as **Annexure No. WA8** with this Written Argument.

9. That, Rule 18 of the said rule promulgates *Combined select list. If in any year of recruitment appointments are made both by direct recruitment and by promotion, a combined select list shall be prepared by taking the names of candidates from the relevant lists, in such manner that the prescribed percentage is maintained, the first name in the list being of the person appointed by promotion.*

Since the petitioner was for a similar year of recruitment, the name of the petitioner could not have found place in the combined select list, if such a list was prepared. However no such list was ever prepared as per the knowledge of the petitioner.

10. That, the promotion is made according to *Uttaranchal Promotion by Selection in Consultation with Public Service Commission (Procedure) Rules, 2003*. Rule 4(f) defines "*Year of Recruitment*" as *the period of twelve months beginning from the first day of July of the calendar year.*

Rule 8 of said rules lays down as under:

The appointing authority shall prepare these lists to be called the eligibility lists, of the senior most eligible candidates from each of the category namely, General, Scheduled castes and Scheduled Tribes, separately, in the light of vacancies available for each of vacancies available for each of the said categories containing names as far as possible three times the number of vacancies subject to the minimum of eight:

Provided that if recruitment is to be made for vacancies occurring during more than one year of recruitment, separate eligibility lists will be prepared in

respect of each such year and in such a case while preparing the eligibility list for second and subsequent years of recruitment, the number of candidates to be included in the eligibility list shall be as follows:--

(a) for the second year- the number according to the said proportion plus the number of vacancies in the first year.

(b) for the third year the number according to the said proportion plus the number of vacancies in the first and second year, and so on:

Provided further that the candidates who are not considered suitable, prima facie, for promotion shall not be taken into account in calculating the said proportion, and a note to the effect that they are not so considered shall be added against their names.

That, Rules 13 of the 2003 rules clarifies further

The Selection Committee shall prepare two lists in order of merit, namely select list, containing names of candidates recommended for substantive appointment against the permanent vacancies intimated to the Commission under rule 9:

Provided that if recruitment is made for vacancies occurring during more than one year of recruitment, the selection in respect of each such year shall be made from the eligibility list prepared for that year. In such a case, the names of candidates selected against vacancies of one year will be excluded from the eligibility list or lists of subsequent year or years, as the case may be, before making the selection from eligibility lists of the second and subsequent years.

11. That, Rule 13 makes it abundantly clear that if selection is made for two or more selection years, the select list for both the years will be different. This leads to the conclusion that the selection though made in one sitting is in fact different selections and cannot be called as promotions having been made in single selection year. A copy of the Uttaranchal Promotion by Selection in Consultation with the Public Service Commission (Procedure) Rules, 2003 is annexed as **Annexure No. WA9** with this Written Argument.

12. That the respondent has raised a question about Dinesh Kumar case. With due regard it is submitted that the Rule 8(1) of the Uttarakhand Servant Seniority Rule, 2002 clearly provided that *“Provided that if the appointment order specifies a particular back date, with effect from which a person is substantively appointed, that date will be deemed to the date of order substantive appointment and, in other cases, it will mean the date of order.”* As per this Rule specifies particular back date will be deemed to be the date of substantive appointment. Whereas the promotion order dated 30-06-2015 specifies the particular back date as 2013-14 hence the date of 2013-14 will be to be deemed the date of substantive appointment and date of appointment of the direct recruits is 02-01-2015 hence the promotes ACT is a senior than direct recruite. It is pertinent to mention here that the matter of the Uttaranchal State and others versus Dinesh Kumar Sharma Civil Appeal no. 5573/2006 is not related to the present case.

13. That, the petitioner is bringing on record one similar episode of Engineering Department wherein certain persons, were promoted to the post of Assistant Engineers on 30.11.2010. In the same cadre, two more persons were promoted as Assistant Engineer on 24.07.2017, however they were allocated selection year of 2010-11. Thus in the seniority list of Assistant

Engineer, the persons promoted in the year 2017 were kept with persons promoted in the year 2010-11. In addition to it is submitted that the Government has issued a seniority list of the Finance Officers vide OM dated 05.06.2015. In this seniority list the cyclic order is also maintained by the Finance Department. It is pertinent to mention here that in Sr. No. 8 of the page no. 106 of the petition is likely to be read with this connection. A copy of the seniority list of the Finance Department with Service Rule are annexed collectively as **Annexure No. WA10** with this Written Argument.

14. That, the Hon'ble High court in its judgment and order dated 21-07-2020 in writ petition no. 297 of 2017 (S/B) (Sunita Pandey versus State of Uttarakhand & Ors.), from Para nos 60 to 68 discussed Rules 8 of the Uttarakhand Government Servant Seniority Rules, 2002. The discussion was specifically focused on the phrase 'any one selection' provided in the Seniority Rules, 2002. The Hon'ble High Court relying upon the earlier judgment of this Hon'ble Court in Rakesh Nautiyal vs State of Uttarakhand (WPSB 22 of 2010 dated 07-10-2010) concluded that the phrase 'any one selection' would mean that the selection committee would take a common exam and make a common recommendation. A copy of the judgment and order dated 21-07-2020 is annexed as **Annexure No. WA11** with this Written Argument.

15. That, the Clause (b) of Sub Rule (2) of Rule 8 of the Seniority Rule 2002 provided that *"By promotion, shall be as determined in accordance with the principals laid down in Rule 6 or Rule 7, as the case may be, according as the promotion are to be made from a single feeding cadre or several feeding cadre."* It is crystal clear that the seniority shall be determined from the date of substantive appointment in the feeding cadre.

16. That, in the matter of Jagdish Chandra Pandey and ors. Versus State of Uttarakhand and ors. the Hon'ble High Court division bench has observed in para 3 of the judgment on dated 16-05-2013 that *"Under the Rules, in order to be promoted to the post of Executive Engineer an Assistant Engineer is in the feeding cadre and he is required to serve as such Assistant Engineer for 07 years. As aforesaid, petitioners and the private respondent were promoted to the post of Assistant Engineer on 07th November 2000. Therefore, as on the 07th July 2008, they all had served for 07 years as Assistant Engineers. Each of them was, accordingly, eligible for being considered for promotion. While the petitioners were not considered for promotion, private respondent were considered for promotion only on ground that in view of circular dated 22-02-2008, private respondent were treated to be senior to the petitioners in the posts of Assistant Engineer, when, in fact, the Rules say otherwise, i.e. that for seniority in the promotional post, i.e. the post of Assistant Engineer, the seniority in the feeding cadre i.e. the post of junior engineer, shall be taken into account and their appears to be no dispute that in the post of junior engineer, petitioners were senior to the private respondent. Consideration of the private respondents for promotion to the posts of Executive Engineer and non consideration of the petitioner for the said promotion on dated 07-07-2008 was malafide, illegal and unsustainable. The said promotions are, accordingly, set aside. Respondents are directed to prepare fresh seniority list in accordance with the Rules discussed above."* Whereas the petitioner has been appointed as a Sales Tax Officer on dated 28-04-2009 by the Uttarakhand Public Service Commission through the Uttarakhand State Joint Service Examination 2004, who is the feeding cadre of the Assistant Commissioner State Tax, hence the seniority of the petitioner should be determined from the date of his feeding cadre. A copy of the judgment and order dated 16-05-2013 and the copy of the appointment letter

dated 28-04-2009 are annexed as **Annexure No. WA12 & WA13** with this Written Argument.

17. That, even if seniority is not given from the feeding cadre, the Government of India, Department of Personnel and Training office memorandum dated 03-07-1986 has provisioned that where the recruitment rules provide 50 % of the vacancies of a grade to be filled by promotion and the remaining 50 % by direct recruitment and assuming there are 10 vacancies in the grade arising in each of the year 1986 and 87 and that two vacancies intended for direct recruitment remain unfilled during 1986 and they could be filled during 1987, the seniority position of the promotees and direct recruits of these two years will be as under:-

1986	1987
1. P1	9. P1
2. D1	10. D1
3. P2	11. P2
4. D2	12. D2
5. P3	13. P3
6. D3	14. D3
7. P4	15. P4
8. P5	16. D4
	17. P5
	18. D5
	19. D6
	20. D7

18. In this way the relative seniority of the direct recruits and promotees shall be determined according to the rotation of vacancies between direct recruits and promotees which shall be based on quota of vacancies reserved for direct recruitment and promotion respectively in the recruitment rules. The copy of the office memorandum dated 03-07-1986 is annexed as **Annexure No. WA14** with this Written Argument.

19. That completing the required compulsory qualification of 07 years for the promotion to the post of Assistant Commissioner is not in question. The respondents have unnecessarily stated about the aforesaid qualifying service and misled the Hon'ble Tribunal by his statement. The factual position is also clarified in the para no. 12.

It is further submitted that the petitioner's matter is covered with the matter of L P Badoni and others versus State of Uttarakhand (SB Writ Petition no. 190/2016). The Hon'ble High Court has observed that ----- *We cannot read a Casus Omissus and say that the omission is something which the court must apply. So we may take Rule 22(4) as it is, and we cannot presume that the Rule maker intended that Rule 22(4) will apply only if there is one single selection and again observed in para 52 of this matter that the Rule 22(4) provides for a different yardstick to determine seniority in the case where appointment are made in a year from both direct recruits and promotees the principle of inter-se seniority is clearly declared with reference to the percentage declared under*

Rule 5 and also the cyclic order in the combined list to be prepared in accordance with Rule 17. It is also pertinent to mention here that the Rule 18 of the Service Rule of the Service Tax department is equivalent with the Rule of 17 of the above cited case Service Rule. The copy of the judgment of the L P Badoni and others is annexed as **Annexure No. WA15** with this Written Argument.

20. That the matter of the State of Uttarakhand and others versus Navindar Singh Bora and others and Dr. Sunita Pandey Versus State of Uttarakhand and others are not concerned with the petitioner's matter. It is not possible in practice that the promotion and by recruitment or even in cases where different requisitions are sent, the Public Service Commission undertakes the selection process simultaneously, for selecting candidates both on promotion and by direct recruitments. In the matter of the Uttarakhand State, the government has issued two different forms 1st is for direct recruitment and 2nd is for promotion. It is also pertinent to mention here that the government of Uttarakhand has issued a GO in the year of 2007 and provided that the department follows the said schedule by time bound procedure for promotion and direct recruitment and both are made in the one selection year. The copy of the concerning forms for direct recruitment and promotion and the copy of the said GO dated 04-07-2007 are annexed as **Annexure No. WA16 & WA17** with this Written Argument.

21. That it is pertinent to mention here that the promotion order has been issued by the respondent on dated 30-06-2015, which are falls in the selection year 2014-2015 and the direct recruits were also appointed in the selection year of 2014-2015, hence the seniority of the direct recruits and promotes should be determined as per seniority rules by cyclic order. For the delayed appointment of the respondents, the petitioner is not responsible. Therefore the promotion order dated 30-06-2015 falls within the purview of the selection year 2014-2015 and helps the claimant under the service rule as well as seniority rules. It is also pertinent to mention here that in the Section 5 of the General Clauses Act, 1897 is clearly provided that where any Act is not expressed to come into operation on a particular date, than it shall come into operation on the day on which it receives the assent. Hence the promotion order has been issued on dated 30-06-2015 shall be deemed from the date of 30-06-2015. The copy of the General Clauses Act, 1897 is annexed as **Annexure No. WA18** with this Written Argument.

It is therefore, most respectfully prayed that this Hon'ble Tribunal may very graciously be pleased to take the present written arguments on record and allow the captioned claim petition."

8. Written submissions filed in Claim Petition No. 102/DB/2021 by Sri Abhijay Negi, learned Counsel for the private respondents being represented by him, are as under:

A) CLAIM PETITIONERS BARRED BY LIMITATION, SEVEN YEARS TOO LATE TO CHALLENGE THE SENIORITY

1. That brief facts, before venturing into a para-wise response of the contents of the claim petition, it merits to be noted that a false perception is being sought to be created, as if the petitioner who comes from a supposed selection year/2013-14, by virtue of coming from that year, gains some kind of

seniority over the present set of respondents, who have been substantively appointed, directly to the post of Assistant Commissioner on 02.01.2015. The correct fact that merits attention of this Honorable Court, is that the present set of respondents are persons who are from the 2010 PCS batch. Their entire recruitment process has taken several years right from their pre-examinations to their mains examinations and finally interview. Their final result was declared on 24.08.2014 and subsequent to that they were issued appointment orders on 02.01.2015.

2. That furthermore, it also merits consideration that the vacancies against which the present set of respondents have occupied the post of Assistant Commissioners, are all vacancies that have existed from the selection year of 2007-08 onwards right up till 2010-11. For each of these different sessions/years, different vacancies were coming to the fore and they were cumulatively then filled up by the direct recruits in January 2015. It is interesting and important to note that just as the petitioner claims to be from a supposed selection year 2013-14, by that logic, even the present set of respondents can claim to be from the chayan-varsh/selection year 2007-08, 2009-10, 2010-11 onwards, since the said expression has been used for the vacancies that existed qua the direct recruits.
3. That furthermore, what merits attention of this Honorable Court is that ultimately, as per the settled principles of inter se seniority that are envisaged in the Uttarakhand Government Servant Seniority Rules 2002 as well as the clear pronouncement of the Honorable Apex Court in the **Uttaranchal Forest Rangers Association v. State of Uttar Pradesh** case 2006 10 SCC 346, no inter se seniority can be granted in favour of the promotes, simply because their corresponding vacancy existed prior to the direct recruits taking birth in the cadre. It has been made very clear by the Honorable Apex Court as well as by Rule 8 of the Seniority Rules of 2002 that seniority would accrue only from the date of substantive appointment to the said post. In the present matter, it is no one's case, not even that of the present claimant that the claimant had the date of substantive appointment prior to the present set of respondents. In fact, in an admission made in para 4(b) on Page Six of the claim petition, it is clear that the claimant acknowledges the fact that the direct recruits joined the post earlier than the petitioner. Once the admission is made in para 4(b) of the claim petition, no case for any relief, interim or final arises in favour of the claimant.

B) POSITION OF LAW AS WELL AS APPLICABLE SERVICE RULES FAVOUR THE RESPONDENTS

- (I) Shanti Shekhar Singh v. State of Uttar Pradesh through Principal Secretary,
dealing with an identical issue, the Honorable Allahabad High Court held that:

“30. From the above, the legal position with regard to determination of seniority in service can be summarized as follows :

(i) The effective date of selection has to be understood in the context of the service rules under which the appointment is made. It may mean the date on which the process of selection starts with the issuance of advertisement or the factum of preparation of the select list, as the case may be.

(ii) *Inter se seniority in a particular service has to be determined as per the service rules. The date of entry in a particular service or the date of substantive appointment is the safest criterion for fixing seniority inter se between one officer or the other or between one group of officers and the other recruited from the different sources. Any departure therefrom in the statutory rules, executive instructions or otherwise must be consistent with the requirements of Articles 14 and 16 of the Constitution.*

(iii) *Ordinarily, notional seniority may not be granted from the back date and if it is done, it must be based on objective considerations and on a valid classification and must be traceable to the statutory rules.*

(iv) *The seniority cannot be reckoned from the date of occurrence of the vacancy and cannot be given retrospectively unless it is so expressly provided by the relevant service rules. It is so because seniority cannot be given on retrospective basis when an employee has not even been in the cadre and by doing so it may adversely affect the employees who have been appointed validly in the mean time.*

31. *In light of the legal position summed up above and rule 8 of the 1991 Rules, it is plain that 1991 appointees who were selected and appointed in accordance with the service rules cannot be made junior to 1994 appointees even if it is assumed that the selection and appointment of 1994 appointees was for earlier vacancies. The 1991 appointees having been appointed substantively much prior in point of time, they are entitled to rank senior to 1994 appointees. As already noticed above, rule 5 of the 1991 Rules has no application for determination of inter se seniority of the Deputy Jailors appointed by direct recruitment in 1991 and 1994. The consideration of the matter by the High Court is apparently flawed and cannot be sustained. In the present fact situation, it must be held that 1994 appointees cannot legitimately claim their seniority over 1991 appointees.*

6. *Taking care of the Seniority Rules, 1991, and the law laid down by the Hon'ble Apex Court the respondents have followed following standards for determination of the seniority:-*

i. *Seniority from the date of substantive appointment of incumbent either from direct recruitment or from promotee quota.*

ii. *Respective seniority of Assistant Commissioner of promotee quota in terms of their seniority in feeding cadre.*

iii. *Inter-se seniority of direct recruits in order of their names appearing the list published by Public Service Commission.*

iv. *Where the date of substantive appointment of a promotee or direct recruit was same then ratio is 1:1 keeping promotee as first.*

7. *It has further been submitted in the counter affidavit that one of the fundamental principle of service jurisprudence is that officers will gain their seniority from the date of their substantive appointment and the respondents have taken care of this principle taking into account all the provisions of service rules and the Seniority Rules.*

8. *Before dealing with the matter, it would be appropriate to take into account the relevant provisions as contained in U.P. Government Servant*

Seniority Rules, 1991. In pursuance of the provisions of Clause (3) of Article 348 of the Constitution and in exercise of the powers conferred by the proviso to Article 309 of the Constitution the rules for determination of seniority of persons appointed to the service under the State Government were framed which shall apply to all government servants in respect of whose recruitment and conditions of service, rules may be or have been made by the Governor under the proviso to Article 309 of the Constitution.

9. 1991 Seniority Rules framed under the proviso to Art. 309 of the Constitution of India have overriding effect (Rule 3) and deals with the matter with regard to determination of seniority. According to Sub Rule (h) of Rule 4, substantive appointment has been defined as appointment, not being an ad hoc appointment, on a post in the cadre of the Service, made after selection in accordance with the service rules of the respective services.

10. Rule 5 deals with determination of seniority where appointment is done by direct recruitment only and Rule 6 deals with the situation where seniority is liable to be determined in a situation where appointment is done only by promotion from a single feeding cadre. Rule 7 deals with a situation where appointment by promotion is done from several feeding cadres. However, Rule 8 deals with a situation where appointments are done by promotion and direct recruitment. Rule 8 is relevant for the purpose of determination of present controversy. For convenience, Rule 8 is reproduced as under :

8. Seniority where appointments by promotion and direct recruitment.--(1) Where according to the service rules appointments are made both by promotion and by direct recruitment, the seniority of persons appointed shall, subject to the provisions of the following sub- rules, be determined from the date of the order of their substantive appointments, and if two or more persons are appointed together, in the order in which their names are arranged in the appointment order :

Provided that if the appointment order specifies a particular back date, with effect from which a person is substantively appointed, that date will be deemed to be the date of order of substantive appointment and, in other cases, it will mean the date of issuance of the order:

Provided further that a candidate recruited directly may lose his seniority if he fails to join without valid reasons, when vacancy is offered to him the decision of the appointing authority as to the validity of reasons, shall be final.

(2) The seniority inter se of persons appointed on the result of any one selection,--

(a) through direct recruitment, shall be the same as it is shown in the merit list prepared by the Commission or by the Committee, as the case may be;

(b) by promotion, shall be as determined in accordance with the principles laid down in Rule 6 or Rule 7, as the case may be, according as the promotion are to be made from a single feeding cadre or several feeding cadres.

(3) Where appointments are made both by promotion and direct recruitment on the result of any one selection the seniority of promotees vis-`-vis direct recruits shall be determined in a cyclic order (the first being a promotee) so far as may be, in accordance with the quota prescribed for the two sources.

Illustrations.--(1) Where the quota of promotees and direct recruits is in the proportion of 1 : 1 the seniority shall be in the following order :

First Promotee

Second Direct Recruits and so on

(2) Where the said quota is in the proportion of 1 : 3 the seniority shall be in the following order :

First Promotee

Second to fourth Direct Recruits

Fifth Promotee

Sixth of eight Direct recruits and so on

Provided that :

(i) where appointment from any source are made in excess of the prescribed quota, the persons appointed in excess of quota shall be pushed down, for seniority, to subsequent year or years in which there are vacancies in accordance with the quota;

(ii) where appointment from any source fall short of the prescribed quota and appointment against such unfilled vacancies are made in subsequent year or years, the persons so appointed shall not get seniority of any earlier year but shall get the seniority of the year in which their appointments are made, so however, that their names shall be placed at the top followed by the names, in the cyclic order of the other appointees;

(iii) where, in accordance with the service rules the unfilled vacancies from any source could, in the circumstances mentioned in the relevant service rules be filled from the other source and appointment in excess of quota are so made, the persons so appointed shall get the seniority of that very year as if they are appointed against the vacancies of their quota."

11. Thus, under Sub Rule (1) of Rule 8, seniority is to be determined from the date of the order of substantive appointment. The proviso of Sub Rule (1) provides that if the appointment order specifies a particular back date, with effect from which a person is substantively appointed, that date will be deemed to be the date of order of substantive appointment but in other cases it will mean the date of issuance of the order. In the event of direct recruitment, the direct recruit shall lose seniority if he fails to join without valid reasons, when vacancy is offered to him. Under Sub Rule (2) of Rule 8, inter se seniority of persons appointed on the result of any one selection shall be the same as shown in the merit list prepared by the Commission.

12. However, under Sub Rule (3), where appointments are made both by promotion and direct recruitment on the result of any one selection, the seniority of promotees vis-a-vis direct recruits should be determined in a cyclic order (the first being a promotee) in accordance with the quota prescribed for the two sources. Where the quota of promotees and direct recruits is in the proportion of 1:1, the first shall be promotee and second shall be direct recruit but where the quota is in the proportion of 1:3, the seniority list shall give first place to promotee, second to fourth to direct recruits, fifth to promotee and sixth of eight to direct recruits. However, this shall be subject to certain conditions provided under the proviso to Rule 8 (supra).

13. *It is argued that ordinarily, it is not possible to make selection through direct recruitment and promote persons in a single selection process.*

14. *In District Mining officer vs. Tata Iron and Steel co. (2001) 7 SCC 358, Hon'ble Supreme court has held that function of the court is only to expound the law and not to legislate. A statute has to be construed according to the intent of them and make it the duty of the court to act upon true intention of the legislature. If a statutory provision is open to more than one interpretation, the court has to choose the interpretation which represents the true intention of the legislature.*

15. *In Krishna vs. state of Maharashtra (2001)2 SCC 441: Hon'ble Supreme court has held that, in absence of clear words indicating legislature intent, it is open to the court ,when interpreting any provision , to read with other provision of the same statute.*

16. *In [Essen Deinki vs. Rajiv Kumar](#) (2002)8 SCC 409, it has been observed that it is the duty of the court to give broad interpretation keeping in view the purpose of such legislation of preventing arbitrary action however statutory requirement can not be ignored.*

17. *In Grasim industries ltd. vs. Collector of Custom (2002) 4 SCC297, it has been held that while interpreting any word of a statute every word and provision should be looked at generally and in the context in which it is used and not in isolation.*

18. *In Bhatia international vs. Bulk trading S.A. (2002)4 SCC 105, it has been held that where statutory provision can be interpreted in more than one way , court must identify the interpretation which represents the true intention of legislature. While deciding which is the true meaning and intention of the legislature, court must consider the consequences that would result from the various alternative constructions. Court must reject the construction which leads to hardship, serious inconvenience, injustice, anomaly or uncertainty and friction in the very system that the statute concerned is suppose to regulate.*

19. *In [S.Samuel M.D. Harresons Malayalam vs. UOI](#) (2004)1 SCC 256, it has been held that when a word is not defined in the statute a common parallence meaning out of several meanings provided in the dictionaries can be selected having regard to the context in which the appeared in the statute.*

20. *In [M. Subba Reddy vs. A.P. SRTC](#) (2004) 6 SCC 729, it has been held that although hardships can not be a ground for striking down the legislation, but where ever possible statute to be interpreted to avoid hardships.*

21. *In Delhi Financial Corpn. Vs. Rajiv Anand (2004)11 SCC 625, it has been held that legislature is presumed to have made no mistake and that it intended to say what it said. Assuming there is a defect or an omission in the words used by the legislature , the court can not correct or make up the deficiency , especially where a literal reading there of produces an intelligible result .the court is not authorized to alter words or provide a casus omissus.*

22. *In Deepal Girish bhai soni vs. United India insurance ltd. (2004) 5 SCC 385, it has been held that statute to be read in entirety and purport and object of Act to be given its full effect by applying principle of purposive construction.*

23. *In Pratap Singh vs. State of Jharkhand* (2005) 3 SCC 551, it has been held that interpretation of a statute depends upon the text and context thereof and object with which the same was made. It must be construed having regard to its scheme and the ordinary state of affairs and consequences flowing therefrom - must be construed in such a manner so as to be effective and operative on the principle of "ut res magis valeat quam pereat". When there is no meaning of a word and one making the statute absolutely vague, and meaningless and other leading to certainty and a meaningful interpretation are given, in such an event the later should be followed.

24. *In Bharat Petroleum Corporation Ltd. vs. Maddula Ratnavali* (2007) 6 SCC 81, it has been observed that Court should construe a statute justly. An unjust law is no law at all. Maxim "Lex in justa non est."

25. *Deewan Singh vs. Rajendra Prasad Ardevi* (2007) 10 SCC 528, it has been held that while interpreting a statute the entire statute must be first read as a whole then section by section, clause by clause, phrase by phrase and word by word. The relevant provision of statute must thus read harmoniously.

26. *In Japanisahoo vs. Chandra Shekharmohanty* (2007) 7 SCC 394, it has been held that a court would so interpret a provision as would help sustaining the validity of law by applying the doctrine of reasonable construction rather than making it vulnerable and unconditional by adopting rule of literal legis.

27. *In 2010 (9) SCC 280, Zakiya Begum Vs. Shanaz Ali*, it has been held that an Explanation to a section should normally be read to harmonise with and clear up any ambiguity in the main section and normally not to widen its ambit.

28. *In 2010 (7) SCC 129, Bondu Ramaswamy Vs. Bangalore Development Authority*, it has been observed that an interpretation that would avoid absurd results should be adopted - When the object or policy of a statute can be ascertained, imprecision in its language not to be allowed in the way of adopting a reasonable construction which avoids absurdities and incongruities and carries out the object or policy.

29. Accordingly, the provisions contained in Sub Rule (3) of Rule 8 should be construed harmoniously to make it effective after taking into account the other rules as well as the purpose and object of the rule.

30. Under Sub Rule (3) of Rule 19, it has been provided that if the appointments are made in respect of any one selection, names shall be arranged in accordance with the cyclic order referred to in Rule 18. It means a roster shall be provided in terms of rule 18 in the cadre of Assistant Consolidation Officer containing direct recruits and promotees. Since 1991 Seniority Rules have got overriding effect, so far as seniority is concerned, roster shall be in accordance with Sub Rule (3) of Rule 8 (supra). In case the number of candidates are not available to apply roster for each and every person selected through direct recruitment and promotion, then remaining may be placed in block at appropriate place in the seniority list.

31. *In the State of Uttaranchal and another versus Dinesh Kumar Sharma* (2007) 1 SCC 683, Hon. Supreme Court ruled that the seniority should be reckoned from the date of substantive appointment and not from the date of occurrence of vacancy. The provisions contained in the Rules cannot be ignored. While dealing with the matter with regard to Service Rules of U.P.

Agriculture Group B, their Lordships further held that there can be no automatic appointment /promotion on mere recommendation of PSC unless Government sanctions such appointment/promotion.

32. While submitting rejoinder affidavit to the counter affidavit filed by opposite parties 1 to 3, it has been submitted by learned counsel for the petitioners that the principle of date of appointment is not applicable to the facts and circumstances of the present case, on the proposition that date of substantive appointment for considering the criteria for fixation of the seniority is to be understood in the light of the definition of substantive appointment as given in the U.P. Government Servant Seniority Rules, 1991. The seniority rules define substantive appointment to be an appointment not being an ad-hoc appointment, on a post in the cadre of service made after selection in accordance with service rules relating to that service.

33. Respondent no.5 has submitted that answering respondents were initially appointed on 28.09.1997 on the post of Commercial Tax Officer on the basis of recommendation of U.P. Public Service Commission and were promoted on the post of Assistant Commissioner, Commercial Tax on 28.07.2010 and placed in the seniority list which has been prepared inconsonance with U.P. Sales Tax Service Rules, 1983 as well as the Seniority Rules, 1991. Rule 8(1) of the Seniority Rules envisages the procedure for determination of the seniority where appointments are made by two sources, by way of direct recruitment or by way of promotion, as contained in Rule 5(a) (i) and (ii) of 1983 Rules. Rule 8(1) of the Seniority Rules, 1991, provides that where according to the service rules appointments are made both by promotion and by direct recruitment, the seniority of persons appointed shall, subject to the provisions of the following sub-rules, be determined from the date of the order of their substantive appointments and if two or more persons are appointed together, in the order in which their names are arranged in the appointment order. The officers whose date of substantive appointment on the post of Assistant Commissioner, Commercial Tax is earlier have been placed over and above the persons whose date of substantive appointment is later.

34. Learned counsel for the petitioners has submitted that the seniority list prepared by the respondents should be in cyclic order as provided in Rule 18 of the Service Rules but this is applicable only in the case where the appointment of both the cadres is made as a result of single selection. The provision "result of anyone selection' as contained in Rule 8(3), signifies that the requisition for both direct recruitment and for promotion must have been sent to the Public Service Commission in the same recruitment year and selection on the basis of such requisition should also be made and completed in the same year of recruitment. Where the process of recruitment/appointment was not as a result of single selection, it would be very difficult to apply Rule 18 of the Service Rules.

35. If we consider Rule 18 then it is contained in Part V of the Service Rules which provides the procedure for recruitment. This Chapter is meant for determination of vacancies and procedure for direct recruitment or procedure for recruitment by promotion and preparation of combined select list. Chapter VI deals with the appointment, probation, confirmation, selection grade and seniority. Reading of the heading of the Chapter makes it clear that Chapter V is applicable for calculation of vacancies and procedure for recruitment as well. Chapter VI starts from the provision of appointment as contained in Rule 19. Rule 22 provides mode of determination of seniority. Further Rule 18 does not govern the determination of seniority.

In the State of U.P. the rule applicable for determination of seniority in all services is contained in the Seniority Rules, 1991. If reliance is place on Rule 18 to construe it as a rule governing the determination of seniority then such reliance would be misinterpretation because Rule 18 expressly overruled by Rule 3 of 1991 rules and further officers of both the cadres, not having been appointed as a result of one selection, there cannot be any requirement in law to arrange their names in cyclic order in the seniority list.

36. It is settled proposition of law that seniority cannot relate back that too a period when the incumbent was not even borne in service cadre. The seniority cannot be reckoned or determined from the date of occurrence of vacancy or given retrospectively and for determination of inter-se seniority, the date of entry in a particular service or the date of substantive appointment is the safest criteria for fixing the seniority in respect of the officers recruited and selected from different sources.

37. During the course of argument and with the consensus of learned counsel for the parties certain questions were framed and given to the learned counsel for the parties to reply so that the discussion and the controversy may be easily settled.

38. In the supplementary counter affidavit filed by opposite parties 1 to 3, it has been narrated that the method of selection through direct recruitment and selection through promotion are quite distinct and separate from each other. The selection of direct recruitment starts from the calculation of the vacancies in accordance with the provisions contained in Rule 14 of 1983 rules and it is sent to the Commission for making advertisement for inviting application from eligible candidates. It is based on holding a preliminary examination, main written examination and thereafter an interview. Further the Public Service Commission advertises the post a combined State level examination for number of posts which includes:-

Deputy Collector in U.P. Civil Services, Deputy Superintendent of Police in Police Services, Treasury Officer/Account Officer in U.P. Finance and Accounts Services, District Commandant Home Guards in Home Department, District Basic Education Officer and ADIOS in Education Department, District Cane Officer in Sugar Industries Department, Deputy Secretary in Housing, Urban Planning Department, Work Officer in Panchayat Raj Department, Assistant Account Officer in Treasury Department, Sub Registration in Registration Department, Trade Tax Officer in Trade Tax Department, District Minority Welfare Officer in Minority Welfare and Waqf Department, District Probation Officer in Women and Child Development Department, Assistant Prosecution Officer (Transport) in Transport Department, District Food Marketing Officer, Food & Civil Supplies Department, District Backward Class Welfare Officer in Backward Welfare Department, Nayab Tehsildar in Board of Revenue, Area Rationing Officer in Food & Civil Supplies Department, and Assistant Commissioner, Trade Tax Inst. Fin., Tax & Regn. Department.

In this way, the candidate who fill up the application is given an option regarding choice of the post in accordance to his preference while the procedure for promotion starts after the list of eligible candidates from the Department is sent to the Departmental Promotion Committee to examine the merit of the candidates. Since the matter of promotion is an intradepartmental proceeding is less time consuming. It has further been submitted that even after the select list is published by the Public Service Commission, the

incumbent does not acquire any right of appointment unless he is found medically fit and his personal antecedents are verified by the police or intelligence agencies. The select list prepared by the Public Service Commission dated 03.12.2010 was sent by the Department of Personnel to the Department of Commercial Tax on 11.02.2011 and after completing necessary formalities, letters to different District Magistrates were issued to verify the antecedents and character of the candidates and names were sent to the Medical Board for examination and issue of medical fitness. The questions which were framed by the Court and were given for answer are reproduced along with their answers as under:-

Question No.1- As to whether from the date of application of this rule any list of appointment has been prepared or issued in accordance with rule 18.

Answer - The service rules were notified in the year 1983. It is stated that from the date of notification of service rules, no list of appointment has ever been prepared or issued in line or in accordance with the scheme of Rule 18.

Question No.2- As to whether date of appointment can be shifted from any other date resulting as no appointment of the date of the issue of the order and the consequence thereof regarding pay, salary and work done during the period.

Question No.3 - As to whether any subsequent order of appointment can be issued, nullifying the previous appointment.

Answer to question nos. 2 & 3 - It is respectfully submitted that so far as cases of direct recruitments are concerned, it is now well settled that date of appointment cannot be shifted/alterd. Likewise in the matter of promotees, sometimes the anterior date of promotion is assigned/specified but in no case the date of appointment has ever been shifted or it can be shifted so as to assign any subsequent date of promotion/appointment. Even in the case of direct recruitment also subsequent date of appointment cannot be assigned. This has a plausible and prudent reason as also in as much as it will have adverse consequence on pay, salary, increments, period of working as also on all other ancillary matters, like seniority. This will create an anomaly also for the reason that if this exercise is done in respect of direct recruitments, their services will have more adverse impact, in as much as their birth date in cadre will be shifted and the period of working prior to such date will be completely washed away and in the matter of promotees also though they will be treated to have been working on feeding post from which they were promoted but this will lead to an anomaly that the promotees despite working on the higher post cannot legally claim any benefit from such working for the reason that their date of appointment has been shifted to a subsequent date. This being the reason, the date of appointment, it can be safely summed up, cannot be altered to the detriment for the personnel.

Question No.4 -Where it becomes impossible to adhere to the existing quota rule and the quota rule has not been followed continuously for a number of years because it was impossible to do so and inference may be drawn that the rule 18 had broken down.

Question No.7- Where rule 18 has broken down and the appointments are made after following the procedure prescribed by the rules for appointment, the appointees should not be pushed down below the appointees from the other source inducted in service at a later date.

Question No.9-As to whether presumption should be raised that there is a deviation from rule and are in practice since long.

Question No.10- As to whether appointment can be made in accordance with the recommendation made under rule 16 or 17 or 18 (from any of the list available to the appointing authority or only from the list which is prepared under rule 18).

Answer to Question nos.4, 7, 9 & 10-The four questions are inter connected with each other. It is now well settled that the Rules cannot be read and interpreted in the manner to lead to an absurdity and the only way of interpretation of Rules can be their workable and executable implementation not violating Article 14 and 16 of the Constitution of India. As already submitted, it was practically unreasonable and therefore impossible to follow the Rule 18, as if Rule 18 is followed as per the answer given to the question, a very anomalous situation would create and therefore, if Rule 18 and 19 are pressed into service in the manner as suggested by the petitioners it will lead to a chaos. If the process of selection through direct recruitment and promotion starts on the same day, it does not mean that it will also end on the same day or for that matter in the same year. Most of time in the matter of direct recruitment, the Commission consumes too much time, some times five years or more. In this situation where the promotees in respect of which selection process starts along with the aforesaid direct recruits cannot be legally permitted to wait or be permitted to officiate on promoted post for long period of time. Therefore, the appointees cannot be pushed down below the appointees of other source inducted in services at a later date. The safe and reasonable criteria is that even after notifying the vacancies as per quota, since the procedure of recruitment from 2 methods is quite distinct and separate from each other, it is respective date of induction in services that the appointees can claim in the matter of direct recruitment and it is date of promotion in the matter of promotees which they can claim. It can further be submitted that it is not the case of deviation from Rules rather it is a case of practicable and prudent applicability of rules.

Question No.5 - If the rule has been prescribed by an executive instruction, and is not followed continuously for a number of years, the inference is that the executive instructions have ceased to remain operative.

Answer - It may be submitted that it is the rules which governs the field and not the executive instructions.

Question No.6 - As to whether procedure of appointment is one thing and determination of seniority is another thing and the seniority should be determined with reference to the date of their induction in service.

Answer - True it is that procedure of selection and procedure for appointment post selection and determination of seniority are three distinct phenomena and it is the reasonableness which qualifies the test of Articles 14 and 16 of the Constitution of India based on which the seniority has been determined with reference to the date of appointment/promotion.

Question No.8 - As to whether the year of vacancy is for calculation of vacancy in the cadre and the matter of determination of the seniority is to be determined in accordance with date of appointment and the date of induction in service.

Answer - It is submitted that the year of vacancy for calculation of vacancies in the cadre has nothing to do with the matter of determination of seniority. Suppose a direct recruit is appointed in 2017 against the vacancies of 2013 then determining further appointment will be the date of appointment and not the year of vacancies for the reason that person is borne in the cadre in the year 2017 itself. In the matter of promotees also unless in given case the appointment after promotion specifies a back date, year of vacancy has no role to play in the matter of determination of seniority. Thus, the year of vacancy is confined exclusively for calculation of vacancy in the cadre and it has nothing to do with the matter of determination of seniority. It is thus the date for appointment and date of induction in service which is the factor determining the seniority.

Question No.11 - What is the relevancy of principle that continuous length of service should be the criteria for inter-se seniority between two sources of appointments provided they possess the required qualification as contained in the rules and the appointment had been made under rule 16 or 17 after due consultation and approval of the competent authority.

Answer - In respect of this pertinent query, the submission is that it is length of service a particular post which emanates from the date of appointment/promotion is criteria for determining seniority or inter se seniority between the appointees coming from two sources.

Question No.12 - As to whether appointments made under Rule 16 or 17 can be held to be alien to the cadre.

Answer - The appointments made under Rule 16 or 17 are within the cadre being made on vacancies available in the cadre and not on any ex-cadre post and therefore appointments cannot be said to be alien to the cadre.

39. Learned counsel for the petitioners has submitted that during the preparation of previous seniority list Rule 18 was taken into account and the list was prepared in a cyclic order as per the provisions of Rule 18 but the respondents specifically the State of Uttar Pradesh and the Department have replied that since after the notification of the U.P. Sales Tax Service Rules, 1983, no combined select list of the candidates has ever been prepared or issued.

40. The rules called Uttar Pradesh Promotion by Selection in consultation with Public Service Commission (Procedure) Rules, 1970, are applicable to all services and posts in connection with the affairs of the Uttar Pradesh to which recruitment by promotion is required to be made by selection in consultation with the U.P. Public Service Commission, otherwise than on the results of a competitive examination. Rule 5 of the aforesaid rules provides criteria for promotion based on either strict merit or primarily on merit or strictly on merit or seniority counting where merits are equal. There is a provision of preparation of eligibility list in accordance to rule 8 and this list is sent to the Commission in accordance to rule 9 and the Commission examines the eligibility list and after the decision of the Selection Committee, the select list is prepared and after consideration of the Commission and approval letter of appointment is issued in accordance to rule 17.

41. Learned counsel for the petitioners has submitted that Rule 22 which governs the seniority refers to appointment in accordance to rules and seniority of the officers appointed to the service shall be determined in

accordance with the order of their appointment and that too in accordance with the provisions as contained in Rule 18 i.e. in the cyclic order while learned counsel for the State has submitted that the system as contained in Rule 18 makes it abundantly clear that Rule 18 is a procedure for recruitment of the suitable candidates and it is meant for recruitment to the service from various sources. It has further been submitted that if the seniority is to be determined in accordance to Rule 18 then Rules 21 and 22 will become redundant. The plain language of Rule 22 speaks regarding determination of seniority of members of the service in accordance with the order of their appointment and not as per the roster points enumerated in Rule 18. The expression in accordance with the order of their appointment to the service refers to the point of time when the officers are appointed and not its slot allotted to them under Rule 18. Meaning thereby the candidates appointed earlier in point of time will rank senior to others who are appointed subsequently. Reliance has been placed on (2006) 6 SCC 673 - Arvinder Singh Bains vs. State of Punjab and others.”

(II) Sunita Pandey v. State of Uttarakhand

“(vi) *RULE 8(1) OF THE 2002 RULES: ITS SCOPE:*

48. It is evident that, as he was not promoted as an Assistant Commissioner from a back date, the first proviso to Rule 8(1) has no application to the case of the fifth respondent-claim petitioner. As a result, in terms of Rule 8(1) of the 2002 Rules, seniority is required to be determined, in cases where appointments are made both by promotion and direct recruitment, from the date of order of their substantive appointment. Let us, at this stage, take note of the judgments relied upon by learned counsel on either side in this regard.

49. In Akhouri Sachindra Nath¹⁰, the Supreme Court held that the promotee respondent Nos. 6 to 23 were not born in the cadre of Assistant Engineers in the Bihar Engineering Service, Class II at the time when respondent Nos. 1 to 5 were directly recruited to the post of Assistant Engineers; as such they could not be given seniority, in the service of Assistant Engineers, over respondent Nos. 1 to 5; seniority, inter-se amongst Assistant Engineers in the Bihar Engineering Service, Class II, is considered on the length of service rendered as Assistant Engineers; and respondent Nos. 6 to 23 cannot be made senior to respondent Nos. 1 to 5, by the impugned Government orders, as they entered the said Service by promotion, after respondent Nos. 1 to 5 were directly recruited in the quota of direct recruits.

50. In The Direct Recruit Class-II Engineering Officers' Association and Ors.¹⁷, the Supreme Court held that, once the incumbent is appointed to a post according to rules, his seniority should be counted from the date of his appointment, and not the date of his confirmation; the corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules, and is made as a stop-gap arrangement, officiation in such a post cannot be taken into account for considering seniority.

51. In Dinesh Kumar Sharma², the question which fell for consideration was whether the respondent had the right to claim promotion and seniority from 1995-96 when the vacancy arose, or whether seniority should be reckoned from the date of substantive appointment which was 1999. After holding that an employee will be considered a member of a cadre, from the date of his/her substantive appointment in the cadre after selection, the Supreme Court held that it was clear, from the above, that a person appointed on promotion shall

not get seniority of any earlier year, but shall get the seniority of the year in which his/her appointment is made; in the present fact situation, the respondent cannot claim promotion from the date of occurrence of the vacancy which is 1995-96, but can only get promotion and seniority from the time he has been substantively appointed i.e. from 1999; and, likewise, the seniority also will be counted, against promotion/appointment in the cadre, from the date of issuance of the order of substantive appointment in the said cadre, i.e. from 19.11.1999.

52. In Ashok Kumar Srivastava³, Rule 21 of the Uttar Pradesh Ayurvedic Aur Unani Mahavidyalaya Aadhyapako Ki Seva Niyamawali, 1990 (the "1990 Rules" for short), by which the 1st respondent was governed, read thus:

21. Seniority - (1) Except as hereinafter provided, the seniority of persons in any category of posts shall be determined from the date of the order of substantive appointment and if two or more persons are appointed together by the order in which their names are arranged in the appointment order:

Provided that if the appointment order specifies a particular back date with effect from which a person is substantively appointed, that date will be deemed to be the date of order of substantive appointment and in other cases, it will mean the date of issue of the order:

Provided further that, if more than one orders of appointment are issued in respect of any one selection, the seniority shall be as mentioned in the combined order of appointment issued under Sub-rule (3) of Rule 18:

Provided also that a candidate recruited directly may lose his seniority if he fails to join without valid reasons when vacancy is offered to him, the decision of the appointing authority as to the validity of reason shall be final.

53. It is in the context of Rule 21 of the 1990 U.P. Rules, (more or less identical to Rule 8 of the 2002 Rules), that the Supreme Court, in Ashok Kumar Srivastava³, held that the seniority of candidates was required to be determined from the date of the order of substantive appointment; the proviso carved out an exception by stipulating that, if the appointment order specified a particular back date with effect from which a person is substantively appointed, that date will be deemed to be the order of substantive appointment, otherwise it would be the date of the issue of the order; the second proviso clarified how seniority should be determined when more than one order of appointment is issued in respect of any one selection; from the aforesaid, it was clear that, unless otherwise stipulated in the letter of appointment, seniority has to be computed from the date of appointment to the post; and, in the case on hand, nothing had been stipulated in the letter of appointment.

(a) SENIORITY MUST BE DETERMINED FROM THE DATE OF SUBSTANTIVE APPOINTMENT:

54. No person can be promoted with retrospective effect from a date when he was not born in the cadre, so as to adversely affect others who have been appointed in the meanwhile. Amongst members of the same grade, seniority is reckoned from the date of their initial entry into the service. (Akhouri Sachindra Nath¹⁰). Seniority cannot be given retrospectively from a date when an employee was not even born in the cadre, unless it is expressly provided by the relevant service rules. (Pawan Pratap Singh⁴; Ashok Kumar Srivastava³; Mr. Rakesh Nautiyal vs. State of Uttarakhand & others²⁶). Inter-se seniority in a particular service should be determined as per service rules. The date of entry in a particular service, or the date of substantive

appointment, is the safest criterion for fixing seniority inter-se between one officer and another, or between one group of officers and the other recruited from different sources. Any departure, therefrom, in the statutory rules must be consistent with the requirement of Articles 14 and 16 of the Constitution. (Pawan Pratap Singh⁴; Ashok Kumar Srivastava³).

55. The legal position, with regards determination of seniority in service, is as follows: (i) the effective date of selection should be understood in the context of the service rules under which the appointment is made. (ii) inter-se seniority in a particular service should be determined as per service rules. The date of entry in a particular service or the date of substantive appointment is the safest criterion for fixing seniority inter-se between one officer and the other, or between one group of officers and others recruited from different sources. Any departure therefrom, in the statutory rules, must be consistent with the requirement of Articles 14 and 16 of the Constitution;

(iii) ordinarily, notional seniority may not be granted from a back date and, if it is done, it must be based on objective considerations and on a valid classification. It must be traceable to the statutory rules; (iv) seniority cannot be reckoned from the date of occurrence of the vacancy, and cannot be given retrospectively, unless it is expressly provided by the relevant service rules. Seniority cannot be given retrospectively from a date when an employee was not even born in the cadre as it may adversely affect employees who were validly appointed in the meantime. (Pawan Pratap Singh⁴; and Mr. Rakesh Nautiyal²⁶).

56. In terms of Rule 8(1) of the 2002 Rules, inter se seniority, between direct recruits and promotes, is required to be determined on the basis of their substantive appointment. As a result, the petitioners and respondent nos. 12 to 26 would be required to be placed above the 5th respondent-claim petitioner in the seniority list of Assistant Commissioners, since the former were substantively appointed by direct recruitment as Assistant Commissioners on 06.07.2005 nearly two years before the 5th respondent-claim petitioner was substantively appointed by promotion as an Assistant Commissioner on 28.06.2007.

(a) WHAT DO THE WORDS "ANY ONE SELECTION" IN RULES 8(2) AND (3) OF THE 2002 RULES MEAN?

58. The question, however, is whether Rules 8(2) and (3) of the 2002 Rules are attracted? Rule 8(2)(a), as noted hereinabove, stipulates that the seniority inter-se of persons appointed on the result of "any one selection" (a) through direct recruitment shall be the same as it is shown in the merit list prepared by the Commission or by the Committee as the case may be, and (b) by promotion shall be as determined in accordance with the principles laid down in Rule 6 or Rule 7 as the case may be. It is no doubt true that, since Rule 8(2)(b) itself requires seniority inter-se of persons appointed by promotion to be determined in accordance with Rule 6 (which is a carry-forward rule similar to Rule 22(3) of the 1983 Rules), the inter-se seniority of persons so appointed shall be the same as it was in the feeding cadre. Rule 6 of the 2002 Rules and Rule 22(3) of the 1983 Rules would only apply, provided that Rule 8(2)(b) is applicable to the case on hand.

59. The significant words in Rule 8(2) is "any one selection". While it is contended, on behalf of the petitioners, that the aforesaid words can only mean 'a year of recruitment', as defined in Rule 3(o) of the 1983 Rules, Mr. C.D. Bahuguna, learned Senior Counsel, would contend to the contrary and submit that, accepting such a construction, would result in the substitution of words in Rule 8(2)(a) and (b) of the 2002 Rules which is impermissible a literal construction should be applied to Rule 8(2)(a) and (b); and, when so

applied, the words "any one selection" used in Rule 8(2)(b) must take its colour from Rule 16 of the 1983 Rules.

60. The words "any one selection" are used not only in Rules 8(2)(a) and (b), and Rule 8(3) of the 2002 Rules, but also in Rule 19(3) of the 1983 Rules. These words are, however, not defined expressions either in the 1983 Rules or in the 2002 Rules. The scope and ambit of the words "any one selection" is no longer *res integra*. A Division Bench of this High Court in *Mr. Rakesh Nautiyal*²⁶, held that sub-rule (1) of Rule 8 of the Uttar Pradesh Government Servants Seniority Rules, 1991 (the "1991 Rules" for short) dealt with seniority of persons, who had been promoted as well as persons who had been directly appointed; it provided that both the said classes of persons shall be entitled to their seniority from the date of their substantive appointment, subject to the other sub-rules contained in the said Rule; sub-rule (3) of Rule 8 said that, where appointments are made both by promotion and direct recruitment on the result of any one selection, the seniority of promotees vis-à-vis direct recruits shall be determined in a cyclic order (the first being a promotee), as far as may be, in accordance with the quota prescribed for the two sources; it then gave an illustration and thereby made it clear that the first would be a promotee, the second would be a direct recruit, and so on; the learned counsel for the petitioners had submitted that the word "one selection", used in Sub-Rule (3) of Rule 8, should be read as selection in one recruitment year; it was submitted that, in order to give true meaning to the intention contained in sub-rule (3) of Rule 8, recourse to supplying such meaning should be taken, otherwise the sub-rule would become otiose; it was not possible to conclude that, in one selection, promotion and direct recruitment cannot be considered; that being the conclusion, it would not be proper to expand the meaning of Sub-Rule (3) of Rule 8 of the 1991 Rules; in the event, the same was the intention, there was no difficulty on the part of the framers of the rule to incorporate the same in so many words; since it was not possible to definitely hold that, in one selection, promotion and direct recruitment cannot be considered, it would be beyond the competence of the Court to attempt to give further clarification to, or amplification of, Sub-Rule (3) of Rule 8 of the 1991 Rules, as it was not required for the purpose of saving the same; the conclusion, therefore, would be that, if Sub-Rule (3) of Rule 8 does not apply, the seniority, vis-à-vis the petitioners and the respondents, is required to be fixed only on the basis of the mandate contained in Sub-Rule (1) of Rule 8 of the 1991 Rules; there was no dispute that the petitioners were substantively appointed on being promoted after the respondents were substantively appointed either by direct recruitment or by promotion; and the challenge thrown by the petitioners to the final seniority list, impugned in the writ petitions, was of no substance.)"

(III) Uttaranchal Forest Rangers Association v. State of Uttar Pradesh.

Para 34

"We are also of the view that no retrospective promotion or seniority can be granted from a date when an employee has not even been borne in the cadre so as to be adversely appointed validly in the meantime, as decided by this court in the case of *K.C. Joshi & others vs. Union of India*, 1992 Suppl (1) SCC 272 held that when promotion is outside the quota, seniority would be reckoned from the date of the vacancy within the quota rendering the previous service fortuitous. The previous promotion would be regular only from the date of the vacancy within the quota and seniority shall be counted from that date and not from the date of his earlier promotion or subsequent confirmation. In order to do justice to the promotees, it would not be proper to do injustice to the direct recruits. The rule of quota being a statutory one,

it must be strictly implemented and it is impermissible for the authorities concerned to deviate from the rule due to administrative exigencies or expediency. The result of pushing down the promotees appointed in excess of the quota may work out hardship, but it is unavoidable and any construction otherwise would be illegal, nullifying the force of statutory rules and would offend Articles 14 and 16(1) of the Constitution.

This Court has consistently held that no retrospective promotion can be granted nor any seniority can be given on retrospective basis from a date when an employee has not even borne in the cadre particularly when this would adversely affect the direct recruits who have been appointed validly in the meantime. In, [State of Bihar & Ors v. Akhouri Sachidananda Nath & Ors](#), 1991 Suppl. (1) SCC 334, this court observed that, "12. In the instant case, the promotee respondents 6 to 23 were not born in the cadre of Assistant Engineer in the Bihar Engineering Service, Class II at the time when the respondents 1 to 5 were directly recruited to the post of Assistant Engineer and as such they cannot be given seniority in the service of Assistant Engineers over the respondents 1 to 5. It is well settled that no person can be promoted with retrospective effect from a date when he was not born in the cadre so as to adversely affect others. It is well settled by several decisions of this Court that amongst members of the same grade seniority is reckoned from the date of their initial entry into the service. In other words, seniority inter-se amongst the Assistant Engineers in Bihar Engineering Service, Class II will be considered from the date of the length of service rendered as Assistant Engineers. This being the position in law the respondents 6 to 23 can not be made senior to the respondents 1 to 5 by the impugned Government orders as they entered into the said Service by promotion after the respondents 1 to 5 were directly recruited in the quota of direct recruits. The judgment of the High Court quashing the impugned Government orders made in annexures, 8, 9 and 10 is unexceptionable." This court in [Vinodanand Yadav & Ors v. State of Bihar & Ors](#), 1994 Suppl. (2) SCC 44, held:

"On an issue regarding the interse seniority among the direct recruits and promotees the Court applying the ratio of [State of Bihar v. Akhouri Sachindranath](#) held that the appellants who were direct recruits shall be considered senior over the promotees not borne on the cadre when the direct recruits were appointed in service. Hence the gradation list drawn under which promotees were given seniority over direct recruits could not be sustained and was thereby set aside".

The High Court, in the impugned judgment dated 26.11.2001 has proceeded on the basis that vacancies arose in 1987-88 and, therefore, should be given retrospective effect. The said submission, in our opinion, has no force and import. In our view, the date on which vacancies arose cannot without more be made a basis of giving retrospective promotion and seniority. In [Jagdish Ch. Patnaik & Ors v. State of Orissa & Ors](#), 1998(4) SCC 456, this Court observed:

32. The next question for consideration is whether the year in which the vacancy accrues can have any relevance for the purpose of determining the seniority irrespective of the fact when the persons are recruited? Mr. Banerjee's contention on this score is that since the appellant was recruited to the cadre of Assistant Engineer in respect of the vacancies that arose in the year 1978 though in fact the letter of appointment was issued only in March 1980, he should be treated to be a recruit of the year 1978 and as such would be senior to the promotees of the years 1979 and 1980 and would be junior

to the promotees of the year 1978. According to the learned Counsel since the process of recruitment takes a fairly long period as the Public Service Commission invites application, interviews and finally selects them whereupon the Government takes the final decision, it would be illogical to ignore the year in which the vacancy arose and against which the recruitment has been made. There is no dispute that there will be some time lag between the year when the vacancy accrues and the year when the final recruitment is made for complying with the procedure prescribed but that would not give a handle to the Court to include something which is not there in the Rules of Seniority under Rule 26. Under Rule 26 the year in which vacancy arose and against which vacancy the recruitment has been made is not at all to be looked into for determination of the inter se seniority between direct recruits and the promotees. It merely states that during the calendar year direct recruits to the cadre of Assistant Engineer would be junior to the promotee recruits to the said cadre. It is not possible for the Court to import something which is not there in Rule 26 and thereby legislate a new Rule of Seniority. We are, therefore, not in a position to agree with the submission of Mr. Banerjee, the learned senior counsel appearing for the appellants on this score.

In the instant case, the High Court has relied upon the letter of the Public Service Commission dated 06.07.1991 to come to the conclusion that the PSC recommended the appointments to be given to the promotees from the date on which the vacancy arose. Even apart from the fact that it has now been conclusively established that the vacancy position indicated to the PSC was not correct, there is nothing in the said letter of the PSC which would lead to the conclusion that it had recommended that appointment should date back to the date of vacancies. All that the letter indicates is that the Commission had considered the fitness and suitability of the candidates year by year taking into consideration the vacancies that had allegedly arisen in the concerned year. This is only an exercise for the purpose of arriving at the name of the employees to be recommended which had nothing to do with the date on which the appointment was to be given. The reliance placed by the High Court on the U.P. promotion by selection in consultation with the Public Service Commission (Procedure) Rules, 1970 and, in particular, Rules 13 and 21 also does not mandate that the appointment has to be made on the date on which the vacancy arose. It confirms that while selecting the persons the Government has to send requisition year-wise and the PSC to make its recommendation year-wise. Again this does not lead to a conclusion as to the date on which appointment should take effect.

An alternative argument was made by Mr. Gupta to the effect that even if the High Court was of the opinion that the seniority and promotion should be re-worked the same should have referred back to the PSC to ascertain who would be the relevant persons entitled to promotion. The High Court did not accept that PSC's recommendation in its entirety since in its view vacancies only arose in 1987-88 and not in 1979-80 as indicated by the PSC.

Likewise, in the second impugned order dated 12.04.2004, 45 persons were directed to be promoted without taking into consideration their relative position in the list prepared by the PSC. By not referring the matter to the PSC, incorrect persons were chosen by the High Court for the purpose of promotion. This submission was, however, made by learned senior counsel without prejudice to the submission that the entire basis for directing retrospective promotion and seniority was erroneous and there were no

vacancies at all. The second impugned order dated 12.04.2004 is further vitiated for the following reasons:-

a) Forum: The seniority list under challenge in the second writ petition was the seniority list of the Uttaranchal State Government of 2002 and such challenge could not have been made before the Lucknow Bench of the Allahabad High Court.

b) Parties: None of the direct recruits who would be directly affected by order cannot were made parties to the writ petition. Therefore the High Court did not have the benefit of competing arguments in the matter. Even though, the Principal Secretary of the State of Uttaranchal was made a party, the said party was never served. The only respondent which was heard was the State of U.P. which had no stake in the matter at all since all of the writ petitioners before the Lucknow Bench of the Allahabad High Court were employees of the State of Uttaranchal on the relevant date. It is, therefore, evident that the relevant material was not placed before the Allahabad High Court for the purpose of deciding the writ petition. Accordingly, the permission had to be taken from this Court by the present appellants to prefer the SLPs. We, therefore, have no hesitation in setting aside the final judgment and order dated 12.04.2004 passed by the High Court of Judicature at Allahabad, Lucknow Bench in Writ Petition No. 366 SB of 2002 whereby the High Court allowed the writ petition filed by C.B. Chhimwal and allow the Civil Appeal No. of 2006 arising out of SLP (C) No. 7375 of 2005.

Likewise, we allow the Civil Appeal No. of 2006 arising out of SLP (C) No. 1860 of 2006 and set aside the impugned judgment and order dated 26.11.2001 passed in Writ Petition No. 610(S/B) of 1996 by the High Court of Allahabad at Lucknow Bench.

However, we are making it clear that this judgment of ours will not adversely affect the benefits of the order which have been enjoyed by any of the promotees who have retired from service. The division of seniority list, however, has serious and lasting consequences insofar as the appellants are concerned which of crucial importance as far as the promotional prospects of the appellants are concerned. We, therefore, direct the State of Uttaranchal through its Principal Secretary (Forest) Dehradun, Uttaranchal to revise the seniority list of direct recruits in line with the observations and conclusions made in this judgment by us within 2 months from the date of receipt of this judgment. No costs."

4. It is submitted that the petitioner has rightly been placed below the direct appointees as her date of substantive appointment is much after the date of substantive appointment of the present set of respondents. Therefore, there is nothing per *incurium* about the impugned seniority list dated 09.08.2021.
5. Furthermore, it is wrong to suggest that the promotion order dated 30.06.2015 carries a back date of conferring the said promotion from the year 2013-14. A mere perusal of Annexure A(2) as attached on page 26 of the claim petition would reveal that clause 2 of the said promotion order clearly stated that the said order had nothing to do with seniority. Furthermore, the said order does not confer any back dated seniority on the claimant and therefore a misplaced perception is being projected by the claimant on the basis of the said promotion order. Additionally, it is also submitted that as has been submitted in the preceding paragraphs, the same terminology of selection year has been used even qua the respondents for the years 2007-08, 2008-09, 2009-10, 2010-11 and by that kind of absurd logic that the claimant is trying to project upon the Hon'ble Court, even the respondents

would gain further seniority over the claimants. Therefore, the promotion order dated 30.06.2015 does not help the claimant in any way. A vague statement has been made by the claimant that because of a pending litigation, promotion order could only be issued on 30.06.2015. Which pending litigation is the claimant talking about, what is the bearing of the said litigation on the present case has not been specified.

6. It is a clear case of admission that the date of substantive appointment of the present set of respondents is before the claimant. Even practically, it is brought to the knowledge of this Hon'ble Court that when the respondents assumed charge of their office, they were on a post senior to that of the claimant. They were working as Assistant Commissioners whereas the claimant was working as a State Tax Officer, which is a post junior to the post of Assistant Commissioner's. The said arrangement went on for more than a period of around 6 months till the claimant finally got promotion on 30.06.2015. This practical aspect of the matter merits the attention of this Learned Tribunal, as any order passed in the favour of the claimant would completely upset the basic understanding of seniority in the State Tax Department.
7. While it is true that rule 8(1) of the Uttarakhand Government Servant Seniority Rules as has been quoted by the claimant, the said rule itself states that, "where the appointment order specifies a particular ***back date***". The reference in rule 8(1) of the Uttarakhand Government Servant Seniority Rules is on a particular specific date and not a generic year as is the entire basis of the present claim petition, flowing from the year 2013-14. It has already been submitted by the respondents that by that logic, the respondents can also claim seniority over the claimant, as they are occupying vacant seats coming from 2007-08 onwards. Furthermore, rule 8(3) as rightly quoted on page 7 of the claim petition comes to the rescue of the respondents as the date of substantive appointment is clearly in favour of the respondents and not the claimant.
8. Moreover, the tentative seniority list dated 13.11.2020 as well as the rejection of the representation on 25.11.2020 both appear to be valid in the eyes of law as the provisions of the Uttarakhand Government Servant Seniority Rules 2002 as well as the law laid down in Uttaranchal Forest Rangers Association Case have been followed in the actions of the department. The claimant before the present Learned Public Service Tribunal has not brought on record her own representation and has only claimed that the said representation was identical. She stands to strict proof for suggesting the same without any evidence.
9. A mere perusal of Annexure A-6 as attached on page 39 of the claim petition, would reveal on page 43 of the claim petition that the rule 18 that is being quoted by the claimant flows from part of the said 1983 rules whose part 5 deals only with "procedure for recruitment". Therefore, the combined select list provision as quoted in Rule 18 has no bearing on the aspect of seniority in the present matter.

The aspect of seniority in the present matter is clearly governed by part 6 on page 44 of the claim petition which deals with "*part 6- appointment, probation, confirmation, selection grade and seniority*" whose rule 22 clearly provides about seniority that is on page 45 of the claim petition. It is clearly stated in rule 22 that "*Seniority. (1) Except as hereinafter provided, the seniority of persons in any category of posts shall be determined from the*

date of the order of substantive appointment and if two or more persons are appointed together, by the order in which their names are arranged in the appointment order:" This aspect of the matter, which underlines the importance of the date of substantive appointment is deliberately being hidden by the claimant which merits close attention of this Hon'ble Court and disentitles her from any kind of relief, interim or final.

10. No rule can be interpreted in a manner, to discount the importance of the date of substantive appointment, which has already been repeatedly clarified by the Hon'ble Apex Court, finds unequivocal mention in rule 8 of the Seniority Rules of the State of 2002 as well as rule 22 of the UP Sales Tax Service Rules of 1983.
11. The claimant is trying to confuse this Learned Tribunal by somehow or the other trying to complicate what is otherwise a very simple and straightforward issue, which is clearly resolved in the eventuality of paragraph 4(b) of the claim petition itself. The date of substantive appointment is in the favour of the present set of respondents and therefore the present controversy ends at that. Even the respondents can bring on record how the present claimant, has been promoted to the post of Assistant Commissioner, in a manner *de hors* to the rule of law, in as much as the mandatory requirement of serving 7 years at the junior post of State Tax Officer was relaxed for the claimant by subsequent Government Orders which is how she could even get promotion, prior to the completion of her mandatory seven years service as State Tax Officer, which could have been possible only sometime in 2016. Had that been the case, the claimant would not have been in a position to even mislead this Learned Tribunal. Therefore, it is not the intention of the present set of respondents to mislead the Learned Tribunal as the present case is one which is clearly around the date of substantive appointment.
12. A mere seniority list of another department, without bringing on record the relevant seniority rules or principles, and without at all explaining the position of law, do not merit any judicial attention from this Learned Tribunal.
13. The long and short of the present matter is around the date of substantive appointment of both the claimant and the present set of respondents that clarifies the whole matter.

8. Written submission filed by Sri Alok Mehra, learned Counsel for the respondent no. 12 in claim petition no. 128/DB/2021, are as under:

- 2014-15 Selection year 2014-15 mentioned in the order of appointment of the petitioner is indication of the vacancies pertaining to that particular selection year. The petitioner became eligible for promotion in year 2014-15 after getting relaxation under the Uttarakhand Government Servants Relaxation in Qualifying Service for Promotion Rules, 2010 by order dated 16.04.2015, **which specifies that petitioner was not eligible for promotion before 16.04.2015.** Further the respondent has been substantively appointed directly to the post of Assistant Commissioner against the vacancies of selection years 2007-08, 2008-09, 2010-11 02.01.2015, through recruitment on examination conducted by Uttarakhand Public Service Commission.

Even the direct recruitment vacancies were advertised by UKPSC during the year 2011 and the final result of the exam was declared on 23/08/2014. The selection process of direct recruitee took almost 5-year period.

02-01-2015 Respondent is substantially appointed by Uttarakhand Government (finance section-8) by appointment order no. 21/2015/12(100)/XXVII (8) issued on 02/01/2015 and joined the service on 07/01/2015 at Uttarakhand Administrative Academy Nainital. The petitioner is substantially appointed by promotion order issue on 30/06/2015. For the 6-months period from January 2015 to jun-2015 petitioner worked as commercial tax officer, which is junior post to the post of the respondent.

Rule 8(3) of the seniority rule is applicable only where appointment from both the source is made as a result of any one selection. The phrase is '**result of any one selection**' not '**selection in a year**'. Where appointments are not as a result of any one selection, there is no requirement in law to arrange the names in the cyclic order. It is further submitted that the provision 'result of anyone selection' as contained in Rule 8(3), signifies that the requisition for both direct recruitment and for promotion must have been sent to the Public Service Commission in the same recruitment year and selection on the basis of such requisition should also be made and completed in the same year of recruitment. Where the process of recruitment/appointment was not as a result of single selection, it would be very difficult to apply Rule-18 of the Service Rules.

Rule 18 of the service rules 1983, is contained in Part V of the Service Rules which provides the procedure for recruitment. This Chapter is meant for determination of vacancies and procedure for direct recruitment or procedure for recruitment by promotion and preparation of combined select list. Under Sub Rule (3) of rule 19, It has been provided that if the appointments are made respect of any one selection, names shall be arranged in accordance with the cyclic order referred in Rule 18, Appointments of the respondent and petitioner are two different- different selections. The initiation of the selection process of the direct recruitment started in year 2011 and completed on 02/01/2015, and the initiation of the promotion process started in march 2015, and got completed on 30/06/2015, only after the substantial appointment of the respondent. Furthermore, Rule-18 cannot be read in isolation as Rule-18 to Rule 22 of the 1983 Rules, were not followed, therefore, no benefit of Rule-18 can be taken. **If reliance is place on Rule 18 to construe it as a rule governing the determination of seniority, then such reliance would be misinterpretation because Rule 18 is expressly overruled by Rule 3 of 2002 rules.** In the view of the non-obstante clause in Rule 3 of the 2002 Rules, it is 2002 Rules which will prevail in determination of the seniority.

The rule 8(1) of the Seniority Rules, 2002 provided for seniority to be determined **from the date of issuance of the order of the substantive appointment**, which is 02/01/2015 in case of respondent and 30/06/2015 in case of the petitioner. According to Sub Rule (h) of Rule 4, "substantive appointment" has been defined as appointment, not

being an ad hoc appointment, on a post in the cadre of the Service, made after selection in accordance with the service rules of the respective services. The rules which are applicable for determining the seniority of the respondent and the petitioner are **The Uttarakhand Government Servants Seniority Rules, 2002.**

In view of the above submissions, the above Claim Petition deserves to be dismissed with cost.

9. The averments made in the C.As. of the private respondents are covered in the written arguments submitted by their learned Counsel. Therefore, they are not being reproduced for the sake of brevity. The Counter Affidavit filed by learned A.P.O. on behalf of the official respondents in Claim Petition no. 102/DB/2021 briefly states the following:

9.1 The appointment of directly recruited Assistant Commissioners was based on Uttarakhand Combined State Civil/Upper Subordinate Service Examination, 2010 (against the vacancies for year 2009-10 and 2010-11), whose result was declared on 24.08.2014 and they were appointed by the Uttarakhand Government vide order no. 21, dated 02.01.2015. It is notable here that the date of substantive appointment of directly recruited Assistant Commissioners is 02.01.2015. Assistant Commissioners recruited through promotion (in which the petitioner is also included) were not even eligible for promotion as they had not even completed the qualifying service period of seven years as CTO. They became eligible only after getting relaxation in qualifying service through G.O. no. 718 dated 11.12.2014 (in which the petitioner is also included). After that Assistant Commissioners were recruited through promotion vide appointment order dated 30.06.2015 (in which the petitioner is also included). Thus their date of substantial appointment is 30.06.2015.

9.2 It is notable that with reference to "Substantive Appointment" the Division Bench of Hon'ble Supreme Court has in Civil Appeal No. 5573 of 2006, Uttaranchal State & others vs. Dinesh Kumar Sharma in their judgment stated that:

".....Since Shri Sharma's promotion in respect of the vacancies of the Recruitment year 1997-98, was issued on 19.11.1999, therefore the date on which the said order of promotion has been issued being

19.11.1999 it shall remain the date of Shri Sharma's substantive appointment after promotion....." Thus, it is clear that the appointment of Assistant Commissioners recruited through direct recruitment and through promotion is not "one selection". Therefore their seniority has been decided as per Rule 8(1) of "The Uttarakhand Government Servants Seniority Rules, 2002."

9.3 The promotion/appointment order dated 30.06.2015 issued by the Government only mentions previous recruitment year 2013-14 and not any specific particular back date as substantial appointment date. And due to promotion against that recruitment year, the petitioner joined and took charge on 30.06.2015 on the promotional post of Assistant Commissioner, which is the date of substantive appointment. It is also to be submitted that in the point no. 2 of the above promotion order it has been clearly mentioned that: "*Ukt Padonnati Aadesh Main Ullikhit Adhikariyon Ke Kram Ka Jyeshtha Se Koi Sambandh Nahin Hai.*" Therefore as per Rule 8(1) the name of the petitioner has been placed in the final seniority list of AC's cadre date 09.08.2021.

9.4 As per Rules, the qualifying service for promotion from the post of Commercial Tax Officer (in present-State Tax Officer) to the post of Assistant Commissioner is 07 years (as Commercial Tax Officer) in the department. The petitioner was appointed as CTO on 23.07.2009. The petitioner had not even completed the required compulsory qualifying service of 07 years for the promotion to the post of Assistant Commissioner. The petitioner and other officers were given relaxation in compulsory qualifying service through order no. 718 dated 11.12.2014 issued by Finance Section-8, Uttarakhand Government. Only after that they (in which the petitioner is also included) became eligible for promotion to the post of Assistant Commissioner. Thereafter their promotion orders were issued by Finance Section-8, Uttarakhand Government vide notification/appointment order no. 546 dated 30.06.2015. Therefore, the statement made by the petitioner that due to pending matters there was delay in their promotion is not factually true.

9.5 The appointment of directly recruited Assistant Commissioners and the appointment of Assistant Commissioners through promotion is not “one selection”. Thus the final seniority list was issued after due diligence and consideration on Rule 8(1) of the Uttarakhand Government Servants Seniority Rules, 2002 and the order dated 21.07.2020 of the Hon’ble High Court of Nainital in Writ Petition (SB) No. 297 of 2017, Dr. Sunita Pandey vs. State of Uttarakhand and others along with two other writ petitions.

10. Counter Affidavit filed by learned A.P.O. in Claim Petition No. 128/DB/2021 is on similar lines and also states the following:

10.1 The process of recruitment of directly appointed Assistant Commissioners took nearly five years. This delay was due to various reasons, one of them being various litigations going on in the Hon’ble High Court of Uttarakhand. Thus the claim of petitioner that his process of promotion was delayed for few months due to litigation is not acceptable, as the process of appointment of direct Assistant Commissioner was delayed by few years due to various reasons. So this contention of petitioner does not hold ground. The petitioner has mentioned the matter of determination of seniority of some Assistant Engineers recruited through promotion in the department of PWD. It is notable that it is not expected/required to comment on the matters related to promotion/seniority of other department, which have no parity with the present case.

10.2 The judgment of Hon’ble High Court dated 21.07.2020 has clearly defined how the seniority has to be determined where the recruitment is both through promotion and direct appointment and this judgment is particularly pertaining to State Tax Department and Assistant Commissioner Cadre to which the petitioner belongs. As per the petitioner, the Assistant Commissioner’s seniority should be based on the vacancy year for which the appointments are being made. In this respect also he is junior to directly appointed Assistant Commissioners as direct Assistant

Commissioners were recruited against the vacancies arising in the year 2009-10 and 2010-11.

10.3 Since the order dated 11.12.2014, which provided relaxation in compulsory qualifying service to Smt. Kalpana Tripathi and some others was filed as Annexure CAR-5 with the Counter Affidavit in this claim petition implying that relaxation in qualifying service was given to the petitioner Sri Anjani Kumar Singh vide this order, appeared to be incorrect as the name of the petitioner, Anjani Kumar Singh was not mentioned in this order, clarification was sought in this regard. Subsequently, learned A.P.O. submitted copy of the G.O. dated 16.04.2015 by which relaxation in qualifying service was given to Sri Anjani Kumar Singh and certain others and stated that this order was intended to be filed with this C.A. and the C.A. may be deemed to indicate this G.O. dated 16.04.2015 as Annexure CAR-5. Reacting to this, learned Counsel for the petitioner (Sri Anjani Kumar Singh) has filed Supplementary written arguments mainly stating that the promotion of the petitioner was done in the selection year 2014-15 though the process of holding DPC was delayed by the respondents because of a pending litigation and the promotion order could only be issued on 30.06.2015; regarding promotion order of the petitioner having been made with the assistance of relaxation Rules, there is existing law for relaxation in the promotion of the Govt. Servant, hence the department has recommended the said relaxation for promotion of the petitioner; it is settled law that the law does not depend on the presumption and the seniority should be determined on the basis of prevalent Rules of the seniority.

DISCUSSION

11. The main argument of learned Counsel for the petitioner in Claim Petition No. 102/DB/2021 is that the petitioner cannot be treated junior to the private respondents as the petitioner has been allotted the selection year '2013-14' and thus she should be considered senior to private

respondents, who have joined the service on 07.01.2015. The respondents have not challenged the promotion of the petitioner from the previous selection year and therefore, they cannot rely upon the decision of *Uttaranchal Forest Rangers Association v. State of Uttar Pradesh*, which holds that no *inter-se* seniority can be granted in favour of promotees, simply because their corresponding vacancy existed prior to direct recruits taking birth in the cadre. This judgment also holds that no retrospective promotion can be given and seniority can only be given from the date of substantive appointment. This judgment does not prohibit granting seniority to the petitioner who has been promoted from a previous year and her promotion has remained unchallenged. The private respondents have also defended the seniority list on the ground that 'selection year' as mentioned in the promotion order of the petitioner, is actually the year of vacancy. While it is clear that selection year is different from the year of vacancy or year of recruitment. Respondent State has also opposed the petition and has relied upon the case, *State of Uttaranchal vs. Dinesh Kumar Sharma*, Appeal (civil) 5573 of 2006. The case is not applicable in present facts as in that case the petitioner was asking for promotion from the date of vacancy, however, in this case there is no such prayer of the petitioner, having been promoted as far back as in 2015 for the "Selection Year" 2013-14.

12. The respondents, responding to the above contention of learned Counsel for the petitioner, have quoted many rulings and have pointed out that it is wrong to suggest that the promotion order dated 30.06.2015 carries a back date of conferring the said promotion from the year 2013-14. A perusal of this promotion order filed as Annexure A-2 to the claim petition reveals that clause-2 of this promotion order states that it has nothing to do with seniority. The same terminology of selection year has been used even in respect to the respondents for the years 2007-08, 2008-09, 2009-10, 2010-11 and according to this absurd logic, the respondents would gain further seniority over the claimants. The petitioner has made a vague

statement that because of a pending litigation, promotion order could only be issued on 30.06.2015, while the petitioner has not specified which pending litigation she is talking about and what is the bearing of that litigation on the present case.

13. The Tribunal observes that the promotion order dated 30.06.2015 states that against the vacant posts of Assistant Commissioner of the selection year 2013-14 and selection year 2014-15, the following officers are hereby promoted and 10 officers including petitioner (Smt. Kalpana Tripathi) are kept under the head of selection year 2013-14 and 11 other officers including petitioner (Sri Anjani Kumar Singh) are kept under the head of selection year 2014-15. Para 2 of this order states that sequence of officers mentioned in the promotion order has no relation to seniority. It is, therefore, clear that this order does not intend to grant the seniority of the selection year 2013-14 to Smt. Kalpana Tripathi and others who are promoted against the vacant posts of the selection year 2013-14. As a matter of fact, the relaxation in qualifying service to Smt. Kalpana Tripathi, petitioner has been given vide order dated 11.12.2014 (annexed as Annexure No. CAR-5) to the claim petition no. 102/DB/2021 and only after issuance of this order, she has become eligible to be considered for promotion to the post of Assistant Commissioner. Thus, she was not eligible to be considered for promotion to the post of Assistant Commissioner in the selection year 2013-14 which ends on 30.06.2014 and could not be given retrospective promotion from the selection year 2013-14 by any stretch of imagination. Similarly, the petitioner (Sri Anjani Kumar Singh) was given relaxation in qualifying service vide G.O. dated 16.04.2015 and he was not eligible for promotion before this date.

14. It has been contended on behalf of the petitioners that their promotional exercise was delayed by the official respondents because of pending litigation and the promotion order could only be issued on 30.06.2015 but they have not specified what was the pending litigation and what was the bearing of this litigation on the present case. The Counter

Affidavit filed by learned A.P.O. in C.P. No. 128/DB/2021 states that the process of recruitment of directly appointed Assistant Commissioners took nearly five years. This delay was due to various reasons, one of them being various litigation going on in the Hon'ble High Court of Uttarakhand. Thus, the claim of the petitioner that his process for promotion was delayed by few months is not acceptable as the process of appointment of direct Assistant Commissioners was delayed by few years due to various reasons and therefore, this contention of the petitioner does not hold ground. The Tribunal also observes that no back dates, with effect from which the petitioners are substantively appointed, are specified in the appointment (promotion) order of the petitioners to the post of Assistant Commissioner and, therefore, according to Rule 8 of the Rules of 2002, the date of issuance of the order i.e. 30.06.2015 shall be deemed to be the date of substantive appointment of the petitioners on the post of Assistant Commissioner. That is the legal position which this Tribunal is bound to recognize.

15. The question remains whether the petitioners and respondents should have been arranged in a cyclic order as they have been selected in the same selection year 2014-15. In this regard, the Tribunal observes the following:

15.1 Rule 8 of the Rules of 2002 provides for arranging the names of promotees and direct recruits in cyclic order when they are appointed on the basis of any one selection. It is clear that the selection process for the petitioners was distinctly different from the selection process of the private respondents. The selection process for the direct recruits started with the advertisement of vacancies in 2011 and culminated with the issuance of their appointment order on 02.01.2015. On the other hand, the selection process of the petitioners started only after granting relaxation to them in qualifying service in the selection year 2014-15 and culminated on 30.06.2015. Various rulings cited by the respondents also support the fact that these are different selections. The provisions of Rule 18 of the Rules of 1983 are also of no help to the petitioners as the Rule 18 is in Part-5 of these

Service Rules, which is for determination of vacancies, procedures for direct recruitment and promotion and combined seniority list. Rule 18 is for the combined seniority list and reads as below:

“18. Combined select list,- If in any year of recruitment appointments are made both by direct recruitment and by promotion, a combined select list shall be prepared by taking the names of candidates from the relevant lists, in such manner that the prescribed percentage is maintained, the first name in the list being of the person appointed by promotion.”

This Rule also talks of appointments made in any year of recruitment and cannot cover the instant case where the selection processes of direct and promotees have commenced in different selection years. Moreover, this Rule does not govern the determination of seniority which is prescribed in Rule 22 of the Service Rules of 1983. Rule 22 regarding seniority is as below:

“22. Seniority. (1) Except as hereinafter provided, the seniority of persons in any category of posts shall be determined from the date of the order of substantive appointment and if two or more persons are appointed together, by the order in which their names are arranged in the appointment order:

Provided that if the appointment order specifies a particular back date with effect from which a person is substantively appointed, that date will be deemed to be the date of order of substantive appointment and, in other cases, it will mean the date of issue of the order:

Provided further that, if more than one orders of appointment are issued in respect of any one selection, the seniority shall be as mentioned in the combined order of appointment issued under sub-rule (3) of Rule 19.

(2) the seniority inter-se of persons appointed directly on the result of any one selection shall be the same as determined by the Commission:

Provided that a candidate recruited directly may lose his seniority if he fails to join without valid reasons when vacancy is offered to him. The decision of the appointing authority as to the validity of reason shall be final.

(3) The seniority inter se of persons appointed by promotion shall be the same as it was in the cadre from which they were promoted.”

The sub-rule (3) of Rule 19 referred to in Rule 22 is as below:

“19(3) If more than one orders of appointment are issued in respect of any one selection, a combined order shall also be issued mentioning the names of the persons in order of seniority as determined in the selection or, as the case may be, as it stood in the cadre from which they are promoted. If the appointments are made both by direct recruitment and by promotion, names shall be arranged in accordance with the list prepared under Rule 18.”

The above again refers to any one selection.

15.2. The Tribunal holds that, in the instant case, as the direct recruitment and promotions were ‘different selections’, there was no requirement of issuing the combined order of appointment according to

Rule 19(3) of the Service Rules of 1983 and the seniority shall be governed by the Rule 22 (1) only of the Rules of 1983 *i.e.* from the date of order of substantive appointment. The Seniority Rules of 2002 have overriding effect over the Service Rules and Rule 8(1) of the Seniority Rules is similar to the Rule 22(1) of the Service Rules of 1983. Rule 8 of the Seniority Rules of 2002 is reproduced as below:

“8. Seniority where appointment by promotion only from and direct recruitment—

(1) Where according to the service rules appointments are made both by promotion and by direct recruitment, the seniority of persons appointed shall, subject to the provisions of the following sub-rules, be determined from the date of the order of their substantive appointments and if two or more persons are appointed together, in the order in which their names are arranged in the appointment order;

Provided that if the appointment order specifies a particular back date, with effect from which a person is substantively appointed, that date will be deemed to be the date of order of substantive appointment and, in other cases, it will mean the date of order:

Provided further that a candidate recruitment directly may lose his seniority, if he fails to join without valid reasons, when vacancy is offered to him the decision of the appointing authority as to the validity of reasons, shall be final.

(2) The seniority inter se of persons appointed on the result of any one selection—

(a) through direct recruitment, shall be the same as it is shown in the merit list prepared by the Commission or by the Committee, as the case may be;

(b) by promotion, shall be as determined in accordance with the principles laid down in rule 6 or rule 7, as the case may be, according as the promotion are to be made from a single feeding cadre or several feeding cadres.

(3) Where appointments are made both by promotion and direct recruitment on the result of any one selection the seniority of promotees vis-a-vis direct recruits shall be determined in a cyclic order the first being a promotee as far as may be, in accordance with the quota prescribed for the two sources.

Illustrations--*(1) Where the quota of promotees and direct recruits is in the proportion of 1:1 the seniority shall be in the following order;*

First Promotee

Second Direct recruits and so on.

(2) Where the said quota is in the proportion of 1:3 the seniority shall be in the following order :--

First Promotee

Second to fourth Direct recruits

Fifth Promotee

Sixth to eight Direct recruits and so on.

Provided that—

- (i) where appointments from any source are made in excess of the prescribed quota, the persons appointed in excess of quota shall be pushed down, for seniority, to subsequent year in which there are vacancies in accordance with the quota.*
- (ii) where appointments from any source fall short of the prescribed quota and appointment against such unfilled vacancies are made in subsequent year or years, the persons so appointed shall not get seniority of any earlier year but shall get the seniority of the year in which their appointments are made, so however, that their names shall be placed at the top followed by the names, in the cyclic order of the other appointees;*
- (iii) where, in accordance with the service rules the unfilled vacancies from any source could, in the circumstances mentioned in the relevant service rules be filled from the other source and appointment in excess of quota are so made, the persons so appointed shall get the seniority of that very year as if they are appointed against the vacancies of their quota.”*

Rule 8(2) and 8(3) of the Rules of 2002 are not applicable in the instant case because the promotees and direct recruits have not been appointed on the basis of any one selection but have been appointed on the basis of different selections. Therefore the seniority has to be determined according to Rule 8(1) of the Rules of 2002.

16. The case law quoted by the petitioner in Claim Petition no. 128/DB/2021 about the promotion to the post of Executive Engineer has a different factual matrix than the instant case.

17. The Tribunal observes that the judgment of Hon'ble High Court dated 21.07.2020 in WPSB No. 297 of 2017, Smt. Sunita Pandey vs. State of Uttarakhand & others along with two other writ petitioners is most relevant in the instant case as this judgment is pertaining to the State Tax Department and Assistant Commissioner cadre and has clearly defined how the seniority has to be determined, where the recruitment is both through promotion and direct appointment. Paras no. 48 to 60 of this Judgment have been quoted in the written arguments filed by Sri Abhijay Negi which

have been reproduced in this order. Paras no. 61 to 68 of this judgment are reproduced herein below:

“61. As held by the Division Bench, in Mr. Rakesh Nautiyal²⁶, the words "any one selection" in Rules 8(2)(a) and (b) cannot be construed as a selection relating to a recruitment year, for it is well settled that a provision must be construed according to the natural meaning of the language used. The Court, in interpreting a Statute or a statutory rule, must therefore proceed without seeking to add words which are not to be found in the Statute or the statutory rule, (Southern Petrochemical Industries Co. Ltd. v. Electricity Inspector & ETIO²⁹; Union of India v. Mohindra Supply Co.³⁰; Bank of England v. Vagliano Bros³¹; CIT v. Anjum M.H. Ghawala³²; J. Mr. Srinivasa Rao v. Govt. of A.P.³³), for Courts cannot re-write, recast or reframe legislation as it has no power to legislate. (Rohitash Kumar v. Om Prakash Sharma³⁴; Hardeep Singh v. State of Punjab³⁵). Statutory language must always be given presumptively the most natural and ordinary meaning which is appropriate in the circumstances, (Chertsey Urban District Council v. Mixnam's Properties Ltd³⁶), and must be construed according to the rules of grammar. (State of U.P. v. Dr. Vijay Anand Maharaj³⁷). Any interpretation which leads to addition/deletion of words in a statute should not be adopted.

62. It is difficult for us to accept the submission of Mr. C.D. Bahuguna, learned Senior Counsel, that Rule 8(2)(b) of the 2002 Rules takes its colour from Rule 16 of the 1983 Rules, since Rule 16 merely prescribes the manner of selection by promotion to the posts of Assistant Commissioner, and nothing more. The said rule does not relate to determination of inter-se seniority between direct recruits and promotees. The question, which then arises for consideration, is what do these words "any one selection" mean?

(c) GOLDEN RULE OF INTERPRETATION IS THE LITERAL CONSTRUCTION OF A STATUTORY RULE:

63. The golden rule of interpretation of statutes is its literal construction. Where the language of an enactment is plain and clear upon its face, and is susceptible to only one meaning, then, ordinarily, that meaning should be given by the Court. In such a case the task of interpretation can hardly arise. (Union of India v. Sankalchand Himatlal Sheth³⁸). The duty of the Court is to give effect to the intention of the legislature, as that intention is to be gathered from the language employed having regard to the context in connection with which it is employed. (Banarsi Debi v. I.T. Officer³⁹; Attorney- General v. Carlton Bank⁴⁰). The primary rule of construction is that the intention of the Legislature must be found in the words used by the Legislature itself. (Unique Butyle Tube Industries Pvt. Ltd., v. Uttar Pradesh Financial Corporation⁴¹). The legislature is deemed to intend and mean what it says. The need for interpretation arises only when the words used in the statute are, on their own terms, ambivalent and do not manifest the intention of the legislature. (ITC Ltd. v. Commissioner of Central Excise, New Delhi⁴²). As the statute is an edict of the legislature, the language employed therein is the determinative factor of legislative intent. (Raghunath Rai Bareja v. Punjab National Bank⁴³; Shiv Shakti Coop. Housing Society v. Swaraj Developers⁴⁴).

64. In construing a statutory provision, the first and foremost rule of construction is the literal construction. All that the Court has to see, at the very outset, is what does the provision say. If the provision is unambiguous and if, from that provision, the legislative intent is clear, the Court need not call into aid other rules of construction of Statutes (Raghunath Rai Bareja⁴³; Hiralal Ratanlal v. STO⁴⁵), nor would it be open to the Courts to adopt any other hypothetical construction on the ground that such hypothetical construction is more consistent with the alleged object and

policy of the Act. (*Kanai Lal Sur v. Paramnidhi Sadhukhan*⁴⁶), as it is well recognised that the language used speaks the mind and reveals the intention of the framers. (*C.I.T. v. T.V. Sundaram Iyengar (P) Ltd*⁴⁷).

65. Efforts should be made to give meaning to each and every word used by the legislature, and it is not a sound principle of construction to brush aside words in a statute as being inapposite surplusage, if they can have a proper application in circumstances conceivable within the contemplation of the Statute. (*Gurudevdatto v. State*⁴⁸; *Justice Chandrashekaraiiah v. Janejere*⁴⁹). The language employed in a Statute is the determinative factor of the legislative intent. The legislature is presumed to have made no mistake and to have intended to say what it has said. Assuming there is a defect in the words used by the legislature, the Court cannot correct or make up the deficiency, especially when a literal reading thereof produces an intelligible result. (*Raghunath Rai Bareja*⁴³; *Ombalika Das v. Hulisa Shaw*⁵⁰; *CIT v. Sodra Devi*⁵¹; *Prakash Nath Khanna v. CIT*⁵²; and *Delhi Financial Corpn. v. Rajiv Anand*⁵³). It would be impermissible to call in aid any external aid of construction to find out the hidden meaning. (*D.D. Joshi v. Union of India*⁵⁴). The other rules of interpretation i.e., the mischief rule (Heydons rule), purposive interpretation, etc can only be resorted to when the plain words of a Statute are ambiguous or lead to no intelligible result or, if read literally, would nullify the very object of the Statute or statutory rule. Where the words of a Statute or a rule are clear and unambiguous, recourse cannot be had to principles of interpretation other than the literal rule. (*Swedish Match AB v. Securities and Exchange Board of India*⁵⁵; and *Raghunath Rai Bareja*⁴³).

66. It is no doubt true that a fortress ought not to be made of the dictionary, as a Statute or rule always has some purpose or object to accomplish, whose discovery is the surest guide to its meaning. (*Union of India & others v. Sankalchand Himatlal Sheth*⁵⁶). While it is permissible to look into the object of the Legislation (*Inder Sain v. State of Punjab*⁵⁷), if the provision is unambiguous and if, from that provision, the legislative intent is clear, we need not call into aid the other rule of construction of statutes. (*Hiralal Rattanlal*⁴⁵). It is only where the words, according to their literal meaning, produce an inconsistency, or an absurdity or inconvenience so great as to convince the Court that the intention could not have been to use them in their ordinary signification, the Court would be justified in putting on them some other signification, which, though less proper, is one which the Court thinks the words will bear. (*Sankalchand Himatlal Sheth*⁵⁶; *River Wear Commissioners v. Willam Adamson*⁵⁸). It must be borne in mind that a provision is not ambiguous merely because it contains a word which, in different contexts, is capable of different meanings. It would be hard to find anywhere a sentence of any length which does not contain such a word. A provision is ambiguous only if it contains a word or phrase which, in that particular context, is capable of having more than one meaning. (*Kirkness (Inspector of Taxes) v. John Hudson & Co., Ltd.*⁵⁹).

67. As noted hereinabove, Rule 14 of the 1983 Rules requires the appointing authority to determine, and intimate the Commission, the number of vacancies on the post of Assistant Commissioners to be filled during the course of the year. On being so intimated, the exercise of selecting Assistant Commissioners for their appointment, either by promotion or by direct recruitment, is required to be undertaken by the Uttarakhand Public Service Commission. As the stipulation is of "one selection", and not "selection in one year" or "selection in a recruitment year", it is not necessary that the selection must take place in one year. While the process of selection may spread over more than a year, it must relate to "one selection" to satisfy the requirement of the Rule. "One selection" can be said to take place, say in cases where the State Government sends one intimation for selection of candidates for appointment to the post of Assistant Commissioners both by promotion and by direct recruitment or, even in cases where different requisitions are sent, the Public Service Commission undertakes the selection process

simultaneously, for selecting candidates both by promotion and by direct recruitment. It is only then can "one selection" be said to have taken place, in which event alone would Rules 8(2)(a) and (b) be attracted, and not otherwise.

68. Admittedly, in the present case, the selection process undertaken by the Public Service Commission was not one, but was separate, that too at different points of time, also in different years. While the petitioners and respondent nos. 12 to 26 were appointed by direct recruitment on 06.07.2005, the 5th respondent was promoted as Assistant Commissioner two years thereafter on 28.06.2007. Neither is it contended before us that the direct recruitment and promotion exercise related to one selection, nor has any material been placed on record in support of any such claim. Consequently, Rules 8(2)(a) and (b), which would apply only in determining inter-se seniority of persons appointed on the result of "any one selection", has no application to the facts of the present case. The inter-se seniority between the petitioners and respondent nos. 12 to 26 on the one hand, and the 5th respondent-claim petitioner on the other, must therefore be determined only in terms of Rule 8(1) i.e. from the date of the order of their substantive appointment. Rule 8(3) of the 2002 Rules, on which great reliance is placed by Mr. C.D. Bahuguna, learned Senior Counsel, is also not applicable to the case on hand. The said Rule also uses the words "any one selection" as is used in Rule 8(2). Since, admittedly, appointments were not made, both by promotion and direct recruitment, on the result of "any one selection", the cyclic order prescribed in Rule 8(3) would also be inapplicable to the case on hand."

According to the above, Rule 8(1) of the Seniority Rules of 2002 is applicable in the instant case. Therefore, the seniority has to be determined from the date of substantive appointment, which is 02.01.2015 for the private respondents and 30.06.2015 for the petitioners.

18. In view of the above, the Tribunal holds that the petitioners have been rightly placed below private respondents in the impugned seniority list dated 09.08.2021. The claim petitions are accordingly dismissed. No order as to costs.

19. Let a copy of this order be placed in the files of both the claim petitions no. 102/DB/2021 and 128/DB/2021.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: SEPTEMBER 21, 2022
DEHRADUN.
KNP