BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL

AT NAINITAL

Present: Hon'ble Mr. Justice J.C.S.Rawat

------ Chairman

&

Hon'ble Mr. U.D. Chaube

-------Member (A)

Claim Petition No. 43/N.B./2009

Smt. Govindi Verma, W/o Shri Anand Lal Verma, presently posted as Revenue Accountant (W.B.N.), Tehsil Office Didihat, District Pithoragarh, R/o Near Jal Sansthan Office Road, Bhadelbara, Pithoragarh.

……..Petitioner

Versus

1. State of Uttarakhad through Secretary, Revenue, Government of Uttarakhand, Dehradun.
2. District Magistrate, District-Pithoragarh.
3. Smt. Nirmala Pangtey, presently posted as Senior Clerk, Office of District Magistrate, Pithoragarh.
4. State of U.P. through Secretary, Revenue, Lucknow.

…….Respondents

Present : Sri Sanjay Bhatt, Advocate for the petitioner.
Sri V.P. Devrani, A.P.O. for the respondent nos. 1 & 2.
Sri Alok Mehra, Advocate for the respondent no. 3.

JUDGMENT

DATED: 26th August, 2015

Delivered by Hon'ble Mr. Justice J.C.S. Rawat, Chairman

1. This claim petition has been filed to seek the following reliefs:-

"In view of the facts and grounds as mentioned in paragraphs 4 and 5 of the instant application, the applicant prays for the following relief:

I. To set-aside the impugned order dated 19-1-2009 (Annexure No. 14), 30.1.2009 (Annexure No. 18) and 31.1.2009 (Annexure No. 22) alongwith the impugned final seniority list issued by the Respondent No. 2 (Annexure No. CA-3) and further to set-aside the impugned order dated 10.4.1991 communicated vide letter dated 19.4.1991 (Annexure No.21),

II. To direct the respondents to declare the petitioner senior to the Respondent No. 3 and restore the existing seniority list of last 25 years,

III. To direct the Respondent nos. 1 and 2 to treat the petitioner in continuous service w.e.f. 15.06.1983 and give all the consequential benefits,

IV. To pass any other suitable order as this tribunal may deem fit and proper in the facts and circumstances of the case,

V. To allow the claim petition with cost.

2. Brief facts of the claim petition are as hereunder:-

The petitioner was appointed as a junior Clerk, "arranger" in the Revenue and judicial record room on 8.6.1983 through a selection and interview for a post reserved for O.B.C. category and she joined in this post on 15.6.1983. In April-May 1986 the posts of seven Clerks were abolished as per the order of the Board of Revenue dated 21st April, 1986 and subsequent order of the Divisional Commissioner dated 17th May, 1986. Due to abolition of these posts the services of the petitioner were terminated on 9.6.1986. The petitioner worked on leave vacancy posts from 10.6.1986 to 1.9.1986. She did not serve any post from 2.9.1986 to 17.9.1986. She

again served on leave vacancy from 18.9.1986 to 31.10.1986. From 1.11.1986 she started serving continuously and she has been serving since then continuously till date.

The private Respondent No.3 was appointed as a scheduled tribe candidate and she joined her post on 1.3.1984. During April/May 1986 when, seven posts of junior clerks were abolished in the establishment of Respondent No. 2, the services of Respondent No. 3, who had joined on 1.3.1984, was not terminated while other employees, even when they had joined their services earlier were subjected to termination of service. In 1993, on 8th July, an office order was issued by the Respondent No. 2 relating to the confirmation of services of the employees working in his establishment. In this confirmation order the petitioner has been shown at Serial No. 14 and the Respondent has been shown at Serial No. 15 and the petitioner has stated that this office order of confirmation of services is also the inter se seniority list of the employees. The matter of merger of the period of break in service of the petitioner in the midst of the service periods stated above was sent to the Government in Revenue Department, but the proposal was turned down at the level of the Board of Revenue, Uttar Pradesh on 10.4.1991 a formal intimation of which was sent to the Commissioner Kumaon on 19.4.1991 for information to the petitioner through the office of the Respondent No. 2. This order of the Board of Revenue was not agitated further by the petitioner. On 23rd April, 2008, the Respondent No. 3 gave a representation to the Respondent No. 2 that the petitioner was in service since 1983 but her services were discontinued in 1986 while the Respondent No. 3 was in continuous service since March 1984 and her services were never discontinued hence the Respondent No. 3 should be shown as senior to the petitioner and the seniority list be rectified accordingly. The copy of this representation was made available to the petitioner and the petitioner was given opportunity to file objections against the representation. The petitioner filed her objections. Again on 6.12.2008 the Respondent No. 3 filed a review application. The District Officer on 19.1.2009 decided the review application and the earlier representation of the Respondent No. 3 in favour of Respondent No. 3 and against the petitioner. The petitioner submitted a review application against the order of

the Respondent No. 2 before the Respondent No. 2, which was rejected by the Respondent No. 2 on 30.1.2009.

The petitioner filed writ petition before the Hon'ble High Court which was dismissed on the basis of availability of alternative remedy on the basis of which the present petition has been filed before this Tribunal.

The Respondent No. 3 has denied the claim of the petitioner and has averred that the deponent Respondent No. 3 was given regular appointment on 1.3.1984 and she is continuously serving since then. There is no break in her services and her seniority is to be reckoned from 1.3.1984. On the other hand the services of the petitioner, who was initially appointed on 1986, were terminated on 9.6.1986. The services of the Respondent No. 3 were not terminated on the said date as she belonged to Scheduled Tribe and State Government of Uttar Pradesh had issued one Government Order on 28.1.1976 that provides protection to members of Scheduled Tribe in case of retrenchment, even where the Scheduled Tribe candidate is junior to the other colleagues whose services are terminated.

That on account of termination of services of the petitioner, she did not make any contribution to group insurance scheme and General Provident Fund. That after re-engagement the petitioner submitted one application to the Board of Revenue for condoning the break in service. The said application was rejected by Board of Revenue on 19.4.1991, in view of which the petitioner cannot be treated as senior to the deponent. Earlier the deponent was not in knowledge of these developments. As soon as the deponent came to know about these facts she immediately submitted one representation to the District Magistrate and the District Magistrate decided the representation after affording the opportunity to the petitioner to file her objections.

3. The claim petition has also been opposed by the Respondent Nos. 1 and 2 and a joint C.A./W.S. has been filed by the Respondent Nos. 1 and 2 on 24th February, 2010. In the said C.A./W.S. the respondents have averred that the petitioner was initially appointed vide order dated 08th June, 1983 and vide order of the Board of Revenue dated 21st April, 1986 communicated to the District Officer through the subsequent letter of the Commissioner dated 17th May, 1986 five posts of junior

clerk and one post of senior clerk were abolished as a result of which the petitioner did not remain in regular service from 10th June, 1986 to 31st October, 1986, although she worked in leave vacancies at various intervals during this period. The petitioner did not remain even in leave vacancy from 2.9.1986 to 17.9.1986 as she did not work in any office in this period. The petitioner was appointed afresh on 01st November, 1986. The merger/condition of break in service period of the petitioner was sent to the Commissioner on 16th October, 1987, and was also referred to the State Government on 21st September, 1990. However, the Board of Revenue vide their order dated 19.4.1991 communicated that the said proposal had been rejected as the petitioner till that time had completed only three years in service. The petitioner did not challenge the said order of the Board of Revenue at that time. In the year 2008, when a senior post in the establishment of respondent in the pay scale of Rs. 4,500-7000 was going to be vacant, then the Respondent No. 3 submitted a representation to the effect that as per the records and on the basis of the aforesaid reasons the Respondent No. 3 was senior to the petitioner. After the examination of the records and after finding no force in the objections of the petitioner the Respondent No. 3 was found senior to the petitioner and accordingly orders were passed by the Respondent No. 2 on 19.1.2009. Aggrieved by it the petitioner and her husband filed review applications which were rejected vide orders of the respondent on 30.1.2009 and the order dated 19.1.2009 was confirmed. The petitioner has not filed any suit or petition against the order dated 6th June, 1986 about termination of her services. The contention of the petitioner has been opposed by the Ld. Counsel for the respondents. Respondent No. 2 has disposed off the dispute between the petitioner and the Respondent No. 3 relying upon the directions of the Board of Revenue dated 16.3.1999 in which it has been mentioned that if after taking necessary actions under U.P. Government Servant Seniority Rules, 1991, Uttar Pradesh Vikhandikaran Rules, 1991 and Uttar Pradesh Regularization Rules, 1988 and Uttar Pradesh Collectorate Ministerial Services Rules if it is found that the seniority list is in contravention of any of the provisions of these rules then the same may be rectified at the level of the Authority having prepared the said lists, but if any appropriate correction is to be made in the earlier published seniority list then the objections shall have to be invited again and the said

objections also have to be disposed off and only then required corrections could be made. The Respondent No. 2 has disposed off the inter se seniority between these two employees after having followed the above directions of the Board of Revenue and only thereafter the Respondent No. 3 has been shown senior to the petitioner. The petitioner has further filed a rejoinder affidavit on 27.10.2010 and has again repeated the same facts which have been earlier mentioned in the main petition.

4. We have heard learned counsel for the parties and perused the records pertaining to the claim petitions.

5. Ld. Counsel for the petitioner further contended that the confirmation-cum-seniority list was published vide order dated 8.7.1993 prepared by the District Magistrate, Pithoragarh in which the present petitioner was placed at Sl. No. 14 whereas the Respondent No.3 has been placed at Sl. No. 15. Respondent No.3 had never raised any objection against the said confirmation-cum-seniority list published in the year 1993. The Respondent Nos. 3 moved an application on 23.4.2008 before the District Magistrate claiming herself to be senior to the petitioner and prayed that she may be declared senior to the petitioner, copy of the application is annexed as Annexure-8 to the claim petition. Respondent No.3 had raised this dispute after about more than 20 years. She never objected the confirmation-cum-seniority list dated 8.7.1993 made by the District Magistrate. Ld. Counsel for the petitioner contended that there cannot be any change in the existing seniority list because Respondent No.3 was sleeping over her rights and she cannot be allowed to run over a dead claim for seeking seniority after such a long period. Ld. Counsel for the petitioner further contended that it is the settled position of law that if a seniority list or promotion or any legal right accrues to a party, had not been challenged within a reasonable time before the competent Court of law, the party cannot be allowed to place his or her claim beyond that time. Ld. Counsel for the petitioner further contended that the petitioner was also promoted from the post of Junior clerk to the higher scale vide order dated 21.2.1992 which is annexed as Annexure-A-4 to the claim petition. He further contended that the said promotion order itself indicates that the word used "कोटि कम" means as per her seniority, so she has been

promoted to the higher scale in the year 1992. Ld. Counsel for the petitioner further contended that the promotion of the petitioner had never been challenged by the Respondent No.3 and by that promotion order it is clearly revealed that she was senior to the Respondent No.3. Apart from that Ld. Counsel for the petitioner further relied upon a document dated 31.1.1990 in which at Sl. No. 7 in the said seniority list the petitioner has been shown as senior to the Respondent No.3 and the said list, at the top indicates that it pertains to the seniority of the temporary employees. The petitioner has been shown at Sl. No.18 whereas Respondent No.3 has been placed at Sl. No. 19. Ld. Counsel for the respondents refuted the contention and contended that Respondent No.3 had already been promoted in the year 1989 whereas the petitioner was promoted in the year 1992. In the Counter Affidavit of Respondent No.3 at Para 11 it is mentioned that deponent was promoted to the scale of Rs.4000-6000/- w.e.f. 19.04.1989 whereas the petitioner was promoted to the same scale in the year 1991. It was further contended that the petitioner has not filed any order of promotion along with the petition. Ld. Counsel for the respondents further contended that the petitioner was shown to be senior by virtue of manipulation and concealment and when the real fact came before the competent authority, the impugned order correcting the seniority in between the parties, was made by the District Magistrate. He further contended that a Government servant who had been retrenched and re-appointed thereafter, cannot claim benefit of services rendered before the retrenchment for the purpose of seniority. He further contended that the Board of Revenue had already considered the case of the petitioner to condone the delay in the service after consideration the proposal to condone the delay was rejected.

6. We have also summoned the original file from the department. The file which has been submitted by the department, is the photocopy of the documents which were available to them. The photo copies of original record (hereinafter referred to as original record) which have been shown to us, are being also referred in the judgment.

7. Perusal of the letter of the Board of Revenue, Annexure-21 to the C.P. clearly reveals that the petitioner being employed in Pithoragarh Collectorate, the District Magistrate recommended for condonation in break in service under para/Rule 422 of the Civil Service Regulation applicable to both the States; to the Commissioner Kumaun Division and thereafter it was sent to the Board of Revenue, U.P. and the Government for seeking appropriate order of the State Government. Rule 422 of U.P. Civil Service Regulation deals about the condonation of break in service, is only applicable while computing the pension of the employees. The Board of Revenue rejected the proposal on the ground that she had not completed the stipulated service in the department and the said order is to be passed by the State Government. Thus, it is apparent that this proposal was sent by the District Magistrate to the Government, Commissioner and the Board of Revenue. According to Annexure-21, it is admitted that the power vests upon the Government. Now the question arises as to whether the Board of Revenue was competent to reject the proposal without the approval of the government. The Board of Revenue should have sent the proposal to the State Government for the relaxation with their representation or for rejection of the representation made by the petitioner. But it was never sent to the competent authority and the competent authority at that time was the State of U.P. The State Government took the cognizance of the letter of the District Magistrate and Commissioner and decided the matter on 25.4.1990 and directed the D.M. to dispose of the matter in terms of para 4 of the G.O. dated 13.12.1977. Thus before deciding the matter by Board of Revenue, the Government took cognizance of the said letter and sent a communication to the District Magistrate, Pithoragarh vide letter dated 25.4.1990. Petitioner filed certain papers on 31.01.2012 along with a list, in which paper No. 6 is the letter dated 25.04.1990. Letter of 1987 addressed by the District Magistrate as well as the letter of the Commissioner of 1988 has been referred for the reference. This letter also clearly provides that in case of the break in service of any employee, the Government has already issued a Government order on 13.12.1977 and the Para 4 of the said G.O. is relevant, we will discuss it later on. Thereafter another letter was addressed by the Collector to the Government on 21.09.1990 that the matter which has actually a different aspect and not of condonation of her period break in service under Rule

422 of Civil Service Regulations. The D.M. further mentioned in this letter as to whether the petitioner would earn the earned leave during the period of break in service. Meanwhile correspondence between the Commissioner and District Magistrate was going on. The Board of Revenue intervened in the matter on the basis of the copy of the letter sent to the Board of Revenue in the year 1987, 1988 and it was written in the letter that she did not fulfill the criteria as provided under Regulation 422 and there is no justification to condone the said the period of break in service, so the prayer was rejected. It was pointed out the said power to condone the break in service is vested in the State Government. We have also summoned the original file from the department as to know the real position of the matter. The above facts are revealed from the original record as well as from the record of the Court. Now we will deal the relevant provisions of Para 422 of the Service Regulation which are applicable in the State of Uttarakhand also which provides as under:-

> "422. Interruptions in service, either between two spells of permanent or temporary service or between a spell of temporary service and permanent service or vice versa may be condoned by the Administrative Department of the Government subject to the following conditions, namely-
>
> (i) The interruptions should have been caused by reasons beyond the control of the Government servant concerned;
>
> (ii) Service preceding the interruptions should not be less than of five year's duration and in cases where there are two or more interruptions, the total service, pensionary benefits in respect of which will be lost if the interruptions are not condoned, should not be less than five years, and
>
> (iii) Interruption should not be more than of one year's duration. In cases where there are two or more interruptions, the total of the period of all interruptions that are condoned should not exceed one year.
>
> Provided that the above power may be exercised by the sanctioning authority in cases in which the qualifying service even otherwise is not less than of ten years' duration."

8. The State Government has also issued a subsequent Government order dated 13.12.1977 which has been referred by the Joint Secretary, State Government in his letter, as stated above. The said Government order is also on record which reads as under:-

> सेवा में व्यवधान– सिविल सर्विस रेगुलेशन्स के अनुच्छेद 422 के अनुसार सेवा की दो अवधियों के मध्य उत्पन्न हुए व्यवधान /व्यवधानों का यदि मर्षण नहीं किया जाता है तो व्यवधान /व्यवधानों के पूर्व की सेवा अर्हकारी सेवा में सम्मिलित नहीं होती है। *अन्य यह निर्णय लिया गया है कि सेवा रिकार्ड में कोई विशिष्ट संकेत न होने पर राज्य सरकार के अन्तर्गत की गई सेवा की दो अवधियों के बीच हुए व्यवधान / व्यवधानों को स्वतः ही मर्षित माना जायेगा और पेंशन के लिये व्यवधान/ व्यवधानों के पूर्व की सेवा अर्हकारी सेवा मानी जायेगी सिवाय इसके कि जहां अन्यथा यह जानकारी हो कि व्यवधान* सेवा से त्याग–पत्र देने, बरखास्त कर दिये जाने अथवा सेवा से निकाल दिये जाने अथवा किसी हड़ताल में भाग लेने के कारण हुआ हो। किसी भी हालत में पेंशन के लिये व्यवधान /व्यवधानों की अवधि अर्हकारी सेवा के रूप में आगणित नहीं की जायेगी।"

9. Perusal of the above provisions clearly reveals that there was no need to condone the delay by the Government in the case of the petitioner. Thus, the matter has already been settled and unnecessarily order has been passed by the Board of Revenue. This order of the Board of Revenue is against the Government orders particularly when the State Government has already communicated this order by the above letter of the year 1990 and the matter which was referred again, did not pertain to the break in service but it was referred only for accrual of the earned leaved of the petitioner during the said period. Thus, we find that the order has been passed by the Board of Revenue under some confusion or without knowledge of the order of the State Government. The letter of the Board of Revenue clearly reveals that the Government has the power to condone the delay and the Government had already communicated to the District Magistrate in the year 1990 by a letter dated 25.4.1990 which is referred above as Paper No. 6 of the List which is quoted as under:-

"प्रेषक,

राम सहाय लाल श्रीवास्तव,
संयुक्त सचिव,
उत्तर प्रदेश शासन।

सेवा में,

जिलाधिकारी,
पिथौरागढ़।

राजस्व अनुभाग– 4 लखनऊः दिनांक :25 अप्रैल ,1990

विषय– कु0 गोविन्दी वर्मा कन्ष्ठि लिपिक कलेक्ट्रेट, पिथौरागढ़ की सेवा में हुए व्यवधान को मर्षित करने के सम्बन्ध में।

महोदय,

उपर्युक्त विषयक आपके पत्र संख्या –637–नवम् –व्य0प0, दिनांक 21 मार्च, 1990 के संदर्भ में मुझे यह कहने का निदेश हुआ है कि उपर्युक्त पत्र से संलग्न आपके पत्र दिनांक 16 अक्टूबर ,1987 में एक ओर बताया गया है कि कु0 वर्मा की सेवा में दिनांक 10.9.86 से 31.10.86 तक व्यवधान रहा और दूसरी ओर यह भी अनुरोध किया गया है कि कु0 वर्मा की सेवा में हुए दिनांक 10.6.86 से 31.10.86 तक व्यवधान को मर्षित किया जाये। दोनों में अलग अलग अवधि अंकित की गई है।

2– इस सम्बन्ध में मुझे आपका ध्यान वित्त (सामान्य) अनुभाग–3 के शासनादेश सं0–सा– 3–2085/दस–907/76, दिनांक 13 दिसम्बर, 1977 के पैरा 4 की ओर आकृष्ट करते हुए यह अनुरोध है कि उमसें दिये गये निर्देशों के अन्तर्गत मामले का परीक्षण करने के पश्चात् यदि उसके बाद भी आवश्यक समझे तो सही प्रस्ताव शासन को भेजने का कष्ट करें।

भवदीय,
राम सहाय लाल श्रीवास्तव
संयुक्त सचिव।

Thus, the matter was disposed of by the Government prior to the letter of Board of Revenue but the Board of Revenue has passed its order beyond jurisdiction. Thus, the order being void-ab-initio, is not to be taken into consideration by the competent authority while deciding the break in service of the petitioner.

10. It is correct that the petitioner joined her services in the department in the year 1983 of the respondents and the appointment letter of the petitioner is Annexure-1 to the claim petition. The said annexure clearly indicates that the petitioner had been appointed on the basis of an interview conducted on 17.3.1983

and on the recommendation of the departmental appointment committee in the establishment of the respondents and her appointment letter has been issued on 8.6.1983. Thus, this order of appointment clearly reveals that she was appointed on the regular basis on the recommendation of the recruitment committee for the year 1983. Further the appointment letter of Respondent No.3 though has not been filed along with the counter affidavit, but it is available in the photo copies of original record of the department in which it is clearly mentioned that the Respondent No.3 is a Scheduled Tribe candidate and her selection has been made on the basis of the interview held on 22.2.1984 in the establishment of the respondents. This letter was issued on 27.2.1984. Thus, it is relevant that the petitioner and Respondent No.3 belong to different year of selection. The rest of the record is not available in the original file of the department, though we had summoned the entire record. Thereafter, a list of seniority, which has been filed on 31.1.2012(at Sl. No.7), relates to the seniority of the parties and other employees and which clearly reveals that this list pertains to 12.11.1990 and it is written at the top of the list that it is the seniority list of the temporary employees appointed in the Collectorate. In this list the petitioner has been shown at sl. No. 18 and the Respondent No.3 has been shown at Sl. No.19. Thus, it is clear that the seniority list has been drawn up by the District Magistrate in the year 1990. Thereafter a confirmation list has also been filed along with the claim petition by the petitioner which is Annexure-5 to the claim petition. At the top of this list it is provided "जिला कार्यालय के निम्न कर्मचारियों को श्रेष्ठता के कम के आधार पर उनके समक्ष दर्शाये गये पद एवं वेतनमान के कम के आधार पर स्थायी घोषित किया जाता है ।". Thus, it also reveals that this confirmation list has been issued on the basis of the seniority list and in the page 2 of the said list it is also provided that this list has been prepared according to the seniority and in the said list the petitioner has been shown at Sl. No. 14 whereas Respondent No.3 has been shown at Sl. No.15. Annexure-4 to the claim petition clearly reveals that the petitioner had been promoted on the basis of her seniority to the higher scale. The promotion order of 1991 clearly reveals at the top that due to the retirement of the officials, the petitioner had been promoted according to her seniority in the higher pay scale. Thus, this letter does not disclose that she had been promoted on ad-hoc basis . The respondent No.3 has alleged in her counter affidavit that she was

promoted in the year 1989. The Ld. Counsel for the respondent could not demonstrate the said fact by any document that the respondent No.3 had ever been promoted prior to the petitioner and we, by our best efforts, could not find out any such document from the original record as well as from the record.

11. The Respondent No.3 filed a representation in the year 2008 and she claimed her seniority above the petitioner. The said representation was allowed by the D.M. and later on the review application was also rejected. Feeling aggrieved by the said order, she has preferred this claim petition. The Respondent(District Magistrate) while passing the order has relied upon order of the Board of Revenue of 1999. Now we analyze the said letter which is on the original file of the department. We have brought photo copy of the said order on record. It is an order passed on the representation of Brij Mohan Gautam an employee of Collectorate, Meerut, who had challenged the seniority list before the District Magistrate in which the Commissioner-cum-Secretary to the Board of Revenue has observed as follows:-

> " सामान्यतः इस पर प्रशासनिक रोक नहीं लगनी चाहिए और न सुनवाई होनी चाहिए। अतः इस प्रकरण को जिलाधिकारी मेरठ के इस निर्देश के साथ वापस कर दिये जाने के आदेश माननीय परिषद द्वारा दिये गये हैं कि उ0 प्र0 सरकारी सेवक वरिष्ठता ,नियमावली 1991, उ0 प्र0 विखण्डीकरण नियमावली 1991 ,उ0प्र0 विनियमितीकरण नियमावावली 1988 तथा उ0प्र0 जिला कार्यालय (क्लेक्टरी) लिपिक वर्ग सेवा नियमावली के प्राविधाानों के अन्तर्गत कार्यवाही करें ओर यदि यह पाया जाता है कि निर्गत की गई वरिष्ठता सूची इन नियमावली के किसी प्राविधान के विरूद्ध है तो वह अपने स्तर से नियमों के अन्तर्गत उसको संशोधित करके अन्तिम कर दें। परन्तु यदि वह पूर्व प्रख्यापित वरिष्ठता सूची में कोई संशोधन किया जाना उचित पाते हैं तो उनकी पुनः आपत्तियां आमंत्रित करनी पड़ेगी और उनका निस्तारण करना पड़ेगा।"

12. Firstly, this letter was addressed to the District Magistrate, Meerut and it was a matter in between the parties in which the said direction has been given. There is no circular or any general order issued under statutory power of the Board of Revenue, so the question arises, can it be made applicable in the present case; the answer would be in negative. Secondly, the order of Board of Revenue issued on

15.12.2000 has been relied upon by the respondents. It is also a representation of an employee, namely Ramsharad Yadav of Meerut and the said direction has been issued to the District Magistrate, Meerut in an individual case and this matter pertains to the Niymawali 1958 of the employees and the seniority of the employees of 1991. It did not pertain to the cadre of Class-II employees of Collectorate. This letter was issued after the creation of the State of Uttarakhand, so it has no meaning at all.

13. First question arises before going into the merit of the seniority, as to whether the Respondent No.3 can claim seniority after a lapse of 23 years when all the dust has settled on the earth. It is the settled principle of law that if any right has accrued or any grievance has accrued to the petitioner, he should go before the Court or the competent authority within a reasonable time. If the litigant is not vigilant towards his right, he cannot raise the said stale grievance before the competent court of law or authority. However, the District Magistrate, after going through the entire record, passed the impugned order dated 19.01.2009, the said order is not on our record but it is available in the photocopies of the original record of the department. The case of the petitioner has been considered vis-à-vis Respondent No.3. The main issue which was dealt with by the appointing authority, was that the petitioner was retrenched and her claim for regularization of the break in service has not been condoned and as such she earned the substantive vacancy of the year 1986, whereas the Respondent No.3 was in substantive vacancy of the year 1984, so the petitioner is junior to Respondent No.3 and therefore, the list was directed to be revised accordingly. Thereafter a review petition was filed by the petitioner which was also rejected by the competent authority which is under challenge before us.

14. In pith and substance of the order is that the Respondent No.3 was held to be senior to Govindi Verma, the petitioner. The representation of Respondent no.3, which was made in the year 2008 when the seniority list was finalized in the year

1990 as we have pointed out in the preceding paras of the judgment and thereafter the confirmation according to the seniority list was made in the year 1993; the said representation by Respondent No.3 was made to correct the seniority of the petitioner in the year 2008. Thus, the core question arises as to whether in such circumstance that the appointing authority should have entertained a representation of Respondent No3 after a long delay when much water had passed through the channels and the position of the parties had settled for a period of more than 20 years and the District Magistrate taking note of the break in service, which was not allowed by the Board of Revenue in the year 1991, allowed the stale claim of Respondent No.3. It is settled position of law that there may not be unsettlement of the settled position, if a person chose to sleep over his rights for a long period and got up from his sleep at his own leisure for the reasons best known to him, he should remain kept sleeping and the authority or the Court should not bother about his rights. Such fathomable of reasons by oneself is not countenanced in law. Anyone who sleeps over his rights, is bound to suffer as we perceive the authority has not appreciated these aspects in proper prospective and proceeded on the basis that the senior should not be run over by the junior. Delay and laches are contrary to grant the relief to a sleeping person over his rights. Such an idle who is not vigilant to his rights, should not be given remotely the discretion either by the authorities or by the Courts. It is also well settled that if a person is aggrieved by an order of promoting a junior over his head and he chooses to approach the authority, he must approach immediately after such action is made by the authority and if any aggrieved person is run over by a junior in the seniority list, he should either make his representation at the time of show cause before finalizing the tentative seniority list. At the most he should challenge it before the authority immediately after the list is finalized and before publication of it. The same is the position in case of approaching the Tribunal or the Court by the aggrieved person, at least one year is provided in Section 5(1)(b) of Public Service Tribunal Act, 1976 and if he files a writ petition before the Hon'ble High Court, he should at least file the petition within the reasonable time which may not inordinately extend 3 years. In the present case the Respondent No. 3 filed her representation against the seniority list after more than 20 years without any justification, thus, the District Magistrate disposing of this stale

claim, has not considered this legal aspect. In number of decisions the Hon'ble Supreme Court has held that even the court has directed to consider a stale claim by allowing the prayer for considering the representation of the aggrieved person, even then the aggrieved person cannot file a claim petition before the Court or the Tribunal for getting a fresh cause of action by deciding the representation of the stale and dead claim. The Hon'ble Apex Court in the case of **C. Zacob Vs. Director of Geology and Mining 2008 (10)SCC 115** in para 10 has held as under:-

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

15. The Hon'ble Apex Court in the case of **Union of India Vs. M.K. Sarkar 2010(1) SCC(L&S) 1126** in Para 15 has held as under:-

> "When a belated representation in regard to a `stale' or `dead' issue/dispute is considered and decided, in compliance with a direction by the Court/Tribunal to do so, the date of such decision can not be considered as furnishing a fresh cause of action for reviving the `dead' issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches."

16. From the perusal of the aforesaid decisions it is crystal clear that if the Court or Tribunal gives directions in stale claim or dead grievance it does not give rise to a fresh cause of action. Dead cause of action cannot be allowed to be entertained. Similarly mere submission of representation before the competent authority does not arrest time. In the case of **State of M.P. Vs. Rameshwar 1976 SCC(2) 37** Hon'ble Apex Court the seniority was fixed according to length of service in regard to classified officers and grades held by that officer. No objection was filed against the gradation list so prepared. The aggrieved person filed an objection only after finalization of the gradation list so prepared. The gradation list was prepared and it was published. Then the writ petitioner filed objections against the final gradation list alleging therein that the services rendered by him in the other State before the reorganization of the State, his service should be counted for the seniority which was rejected by the authorities but the Hon'ble High Court on such a belated representation allowed relief to the petitioner and directed to count his services and to prepare the gradation list accordingly. The matter came up before the Hon'ble Apex Court and the Hon'ble Apex Court held that after reorganization of the States the State Government has prepared a common gradation list of the officers of the various departments allocated to the State of M.P., the tentative seniority list was published and objections were invited. The writ petitioner had not made any representation against the said gradation list. If the employee concerned did not file his representation within the period prescribed after the date of publication of the provisional gradation list, then his representation should have been out rightly rejected. It is erroneous to contend that the employee concerned should have waited for filing his representation or objection until the final gradation list was published. Therefore, the representation filed by the writ petitioner long after the expiry of the time mentioned in the list, such representation was rejected as belated. The petitioners were sleeping over their rights for a long period. The Hon'ble Apex Court while allowing the appeal, rejected the claim of the writ petitioners. In the present case also the claim of Respondent No.3 has become stale due to lapse of time. The authority should not have considered and should not have allowed such a belated claim after a long period as the above judgment of Hon'ble

Supreme Court is applicable in this case also. **State of M.P. Vs. Rameshwar 1976 SCC(2) 37 Hon'ble Apex Court in para 2** has held as under:-

"7. The High Court appears to have quashed a part of the gradation list mainly on two grounds. In the first place it held, following the decision of the High Court in Kanahyalal Pandit's case (supra) that as the final gradation list was published on November 11, 1964 the respondent had the right to make his representation thereafter and since his representation was not considered the order of the Government sanctioning the final gradation list was legally erroneous. Secondly it was held by the High Court that the contention of the respondent that the services rendered by the other five officers in Madhya Bharat and Vindhya Pradesh ought not to have been considered was valid and should have been given effect to by the Government in preparing the final gradation list. We are satisfied after perusal of the materials that the first ground on which the High Court quashed the gradation list was not at all sound and on that ground alone the order of the High Court is liable to be set aside. It is manifest that the object of preparing a tentative or provisional gradation list was to give an opportunity to the officers whose seniority was determined in the list to make their representations in order to satisfy the Government regarding any mistake or error that had crept in the gradation list. If the employee concerned did not file his representation within a month from the date of the publication of the provisional gradation list, then his representation should have been rejected outright. The Madhya Pradesh High Court was in error in taking the view that the employee concerned should have waited for filing his representation until the final gradation list was published. The Madhya Pradesh High Court in Kanahyalal Pandit's case had observed as follows :

According to the view taken in these cases, the preparation of combined gradation list by the State Government is, generally speaking, only an incidental or subsidiary act such as would aid and assist the Central Government in discharging its statutory responsibility of integration of services. If so, the petitioner should wait until the final gradation list is published, for it may well be that he may have no cause for any grievance against that list. On the

other hand, if he finds that he is aggrieved thereby, he is entitled to represent against it under Section 115 (5) ibid and he has a right to insist that his representation receives 'proper consideration'. There is, in this view, no ground for interfering at present with the order passed by the Government of India on the petitioner's representation dated January 5, 1962.

The aforesaid view taken by the High Court is not at all intelligible.

. . . . . .

We are, therefore, of the opinion that the judgment of the Madhya Pradesh High Court in Kanahyalal Pandit's case decided on November 17, 1964 was not correctly decided (sic). The High Court in the instant case based its order mainly on the judgment of the Madhya Pradesh Court in Kanahyalal Pandit's case which being incorrectly decided the judgment of the High Court in this case must be quashed on this ground alone, and the representation filed by the respondent long after the expiry of the time mentioned in the gazettee publishing the provisional gradation list would have to be rejected as belated."

17. Apart from that the Hon'ble Supreme Court in the case of **S.B.Dogra Vs. State of Himanchal Pradesh and Others (1992) 4 SCC 455** the seniority assigned to Sri Dogra, the appellant in this case was in three places above Sri Amrist, the other officer in the tentative seniority list circulated in March, 1977, which had become final in February, 1979. No objection was raised by Mr. Amrist regarding the placement given to Mr. Dogra in the seniority list. Some other junior officer challenged it in the Hon'ble High court but without success. Mr. Amrist, for the first time, after 5 years in the year 1983 challenged it in the Hon'ble High Court when his name was dropped from the select list in 1982. The matter was relegated to the Administrative Tribunal and the Tribunal allowed the stale claim of Mr. Amrist. But when the matter came up to the Hon'ble Apex Court, the Hon'ble Court has held that the fate of this petition would perhaps have met the same fate of dismissal as happened in the case of two junior officers, which has been decided earlier. The Hon'ble Apex court further held that the Tribunal ought not have disturbed the

seniority after such a long lapse of time when Mr. Amrist had not challenged it before the same was finalized in February, 1979. Mr. Amrist should have challenged the placement of Mr. Dogra in the seniority list which was circulated in March, 1977 inviting objections before it was finalized . If he had no objection, then it is obvious that he challenged it in the year 1983 only because his name was dropped from the select list of 1982. The Hon'ble Apex Court in these circumstances held that the Tribunal or the Court should not ordinarily disturb the seniority list of the employees which is holding the field for last several years. Thus, both the judgments of Hon'ble Apex Court also cover the present case.

18. The Hon'ble Apex Court in the case of **Govt. of W. B. Vs. Tarun K. Roy and others 2004(1) SCC 347** has held in para 34 as under:-

> "The respondents furthermore even are not entitled to any relief on the ground of gross delay and latches on their part in filing the writ petition. The first two writ petitions were filed in the year 1976 wherein the respondents herein approached the High Court in 1992. In between 1976 and 1992 not only two writ petitions had been decided. But one way or the other, even the matter had been considered by this Court in State of West Bengal and Ors. v. Debdas Kumar and Ors., [Reported in [1991] Suppl. 1 SCC 138. The plea of delay, which Mr. Krishnamani states, should be a ground for denying the relief to the other persons similarly situated would operate against the respondents. Furthermore, the other employees not being before this Court although they are ventilating their grievances before appropriate courts of law no order should be passed which would prejudice their cause. In such a situation, we are not prepared to make any observation only for the purpose of grant of some relief to the respondents to which they are not legally entitled to so as to deprive others therefrom who may be found to be entitled thereto by a court of law."

19. The same principle also applies for deciding the representation for a stale claim by the competent authority. The petitioner had already been promoted in the year 1992. Ld. Counsel for Respondent No.3 and Ld. Counsel for the State could not demonstrate that Respondent No.3 was ever promoted before 1992. On the basis of her first promotion the petitioner was granted time scale in the year 2001 after completing eight year's service on that post vide order annexure-6 to the claim petition. This aspect was also a notice of being senior of the petitioner from the Respondent No.3 who has never challenged this promotion of petitioner. Hon'ble Apex court in Para 15 and 16 in **State of Uttarakhand Vs. Shiv Charan Singh (2013)12 SCC 178** has held as under:-

> "15. It can be stated with certitude that when a junior in the cadre is conferred with the benefit of promotion ignoring the seniority of an employee without any rational basis the person aggrieved can always challenge the same in an appropriate forum, for he has a right to be considered even for ad hoc promotion and a junior cannot be allowed to march over him solely on the ground that the promotion granted is ad hoc in nature. Needless to emphasize that if the senior is found unfit for some reason or other, the matter would be quite different. But, if senior incumbents are eligible as per the rules and there is no legal justification to ignore them, the employer cannot extend the promotional benefit to a junior on ad hoc basis at his whim or caprice. That is not permissible.
>
> 16. We have no trace of doubt that the respondents could have challenged the ad hoc promotion conferred on the junior employee at the relevant time. They chose not to do so for six years and the junior employee held the promotional post for six years till regular promotion took place. The submission of the learned counsel for the respondents is that they had given representations at the relevant time but the same fell in deaf ears. It is interesting to note that when the regular selection took place, they accepted the position solely because the seniority was maintained and, thereafter, they knocked at the doors of the tribunal only in 2003. It is clear as noon day that the cause of action had arisen for assailing the order when the junior employee was promoted on ad hoc basis on 15.11.1983."

20. Now we will like to proceed as to whether the petitioner's seniority has been correctly assessed by the respondent in the year 1992. Ld. Counsel for the petitioner contended that the petitioner was appointed in the year 1983 but her services were terminated by the District Magistrate on 6.6.1986. she worked on leave vacancy up to June, 1986 and thereafter she w as reinstated on 1.11.1986. Ld. Counsel for the petitioner contended that the District Magistrate laid stress only on the point that the letter of the District Magistrate regarding merger of the break in service period had been rejected by the Board of Revenue, hence she cannot be given any benefit of it. Ld. Counsel for the petitioner referred Rule 422 of the Civil Service Regulation in which it is specifically provided that the period of such break in service will be deemed to have been condoned in case the said break in service is not due to the reasons assigned on the part of the petitioner. He further relied on Para-4 of the Government Order of 13.12.1977 in which it has been held that the such period of service would not be counted towards as break in service and would be condoned automatically. Ld. Counsel for the petitioner further pointed out that the petitioner was appointed with due process of law and thereafter she was provided reinstatement in service. The service record of the petitioner reveals this fact which has been filed along with the claim petition. It was further contended that the petitioner was appointed prior to appointment of Respondent no.3 and as such she is senior to Respondent No. 3 and her services would be counted from the date of the first appointment. He further contended that the period for break in service though it did not matter more in the case during the service of the petitioner but at the same time had been condoned, so the period of retrenchment would be counted towards her service. He further pointed out that retrenched employee has always a right to be reinstated in service as soon as the post is available in the department. It was not the fault of the petitioner to remain out of the job but she was compelled by the respondents to dispense with her service after the abolition of the posts. In view of the above, she is entitled of her seniority from the date when she had entered into the services. The Ld. Counsel for the respondents refuted the contention and contended that the respondent no. 3 had not been retrenched from the service and as such her appointment remained valid from the year 1984 whereas the petitioner was re-appointed after the retrenchment in the year 1986. The

petitioner's seniority would be counted from the date of her second appointment not from the date of her first appointment. The main controversy, thus arises, which is the date of appointment for the purpose of seniority. Petitioner's appointment had been dealt with under the U.P. district Office (Collectorates) Ministerial Service Rules, 1980 (hereinafter referred to as Ministerial Service Rules, 1980). Perusal of the above rules reveals that Rule 14 deals with the procedure for recruitment. Rule 14 clearly provides as Under:-

"14. **Determination of vacancies.--**

The appointing authority shall determine and notify to the Secretary of the District Selection Committee of the Employment Exchange, as the case may be in accordance with the rules and orders for the time being in force, the number of vacancies to be filled during the course of the year as also the number of vacancies to be reserved for candidates belonging to the Scheduled Castes, Scheduled Tribes and other categories under Rule 6."

21. Thus, the appointing authority has to determine the number of vacancies for the year and it has to be notified to the district selection committee. Thereafter the recruitment is to be made in accordance with law. Rule 15 deals with the procedure for direct recruitment to the post in category A and Rule 5, in which the case of the parties falls and the procedure for appointment has been laid down in the Subordinate Officers of Ministerial Staff Direct Recruitment Rules, 1979. Thus, it is apparent from the above rule that the year wise vacancies have to be notified to the District Selection Committee and the committee year wise gives the appointment to the candidates. Now the first and the foremost question arises for determination that the petitioner and the Respondent No.3 belong to which of the year of vacancy. The original record was summoned from the respondents and we also summoned the order of appointment of the petitioner dated 1.11.1986 but the same could not be filed by the respondents in spite of their best efforts. Perusal of the file, which was submitted to the Court reveals that the entire documents are not available on record. The matter pertains about a period of 3 decades, so it may be that the entire

record is not traceable in the office. The order of appointment of the petitioner clearly reveals that the petitioner has been appointed on the basis of the interview by the selection committee dated 17.3.1983, so the vacancy would have been of 1982 -1983 and she will be deemed to be from a batch of 1982- 1983. The appointment letter of Respondent No.3 is in photocopy of the original file of the department (which is also a photo copy), reveals that the respondent No.3 has been appointed on the basis of interview held on 22.2.1984 and she has been appointed on the said post. Thus it is clear that Respondent No.3 will be deemed to be from a batch of 1983- 1984. Copy of the appointment letter of both the persons petitioner as well as Respondent No. 3 respectively are quoted below:-

"आदेश

कुमारी गोविन्दी वर्मा ग्राम पपदेउ पिथौरागढ जो एक पिछड़ी जाति की अभ्यर्थी हैं और जिन्होंने दिनांक 17.03.1983 को हुये साक्षात्कार/ चयन समिति में सर्वाधिक अंक प्राप्त किये हैं कि नियुक्ति वेतनमान रू0 354–10–424 दा0रो –10 454 –12 –314 द0रो0– 12 –550 में अनेन्जर के पद पर राजस्व एवं न्यायिक अभिलेखागार पिथौरागढ में की जाती है। इनकी सेवायें पूर्ण रूपेण अस्थाई हैं और किसी भी समय बिना पूर्व सूचना/ नोटिस के समाप्त की जा सकती हैं।

कुमारी गोविन्दी वर्मा को कार्यभार ग्रहण करने से पूर्व निम्न प्रमाणपत्र प्रस्तुत करने होंगेः–

1. स्वस्थता प्रमाण पत्र अधीक्षक, जिला चिकित्सालय पिथौरागढ़।
2. शैक्षिक अर्हताओं (हाई स्कूल/इन्टरमीडिएट आदि) के प्रमाण पत्र जा किसी राजपत्रित अधिकारी द्वारा प्रमाणित हो तथा सेवायोजन कार्यालय का मूल पंजीकरण पत्र।
3. चरित्र प्रमाण पत्र जो राजपत्रित अधिकारी के जो प्रार्थी/ अभ्यर्थी से संबंधित न हो।

अभ्यर्थी आदेश प्राप्ति के सात दिन अन्दर अपना कार्यभार ग्रहण करने की सूचना उपरोक्त प्रमाणपत्रों के साथ संबंधित अधिकारी को प्रस्तुत करेंगे।

कुमारी गोविन्दी वर्मा के कार्यभार ग्रहण करने पर संबंधित कर्मचारी/ अभ्यर्थी जो अस्थाई रूप से अरेन्जर के पद पर कार्य कर रहे/ रही हैं की सेवायें स्वतः ही समाप्त हो जावेगी।

मोहन चन्द्र जोशी
जिलाधिकारी पिथौरागढ़

कार्यालय जिलाधिकारी , पिथौरागढ़।
संख्या 48 /अ0पंजी (सा0 लि0) दिनांक फरवरी 27 ,1984

आदेश।

कुमारी निर्मला धर्मसक्तू पुत्री श्री लक्ष्मणसिंह निवासी ग्राम तिक्सेन पो0ओ0 मुनस्यारी तहसली मुनस्यारी जिला पिथौरागढ जो एक अनुसूचित जन जाति की अभ्यर्थी हैं और जिन्होने दिनांक 22.2.1984 को हुये साक्षात्कार में सर्वाधिक अंक प्राप्त किय की नियुक्ति वोडर के पद पर राजस्व एवं न्यायिक अभिलेखाकार पिथौरागढ़ में वेतनमान रू0 354–10–424 द0रो–10–454–125550 में की जाती है। इनकी सेवायें पूर्ण रूपेण अस्थायी हैं और किसी भी समय बिना पूर्व /सूचना नोटिस के समाप्त की जा सकती हैं।

कुमारी निर्मला धर्मसक्तु के कार्यभार ग्रहण करने पर श्री भुवन चन्द्र जोशी जो तदर्थ रूप से वोडर के पद पर कार्य पूर्ण रूपेण अस्थाई रूप से कार्य कर रहे थे की सेवायें स्वतः समाप्त हो जावेंगी।

कुमारी निर्मला धर्मसक्तु जो कार्यभार ग्रहण करने के साथ 2 निम्न प्रमाण पत्र भी प्रस्तुत करने होंगे।

4. स्वस्थता प्रमाण पत्र जो अधीक्षक, जिला चिकित्सालय पिथौरागढ़ के द्वारा प्रदत्त हो।
5. हाई स्कूल/इन्टर परीक्षा उत्तीर्ण की प्रमाणति प्रतियां जो किसो राजपत्रित अधिकारी द्वारा प्रमाणित हो ।
6. दो चरित्र प्रमाण पत्र जो राजपत्रीत अधिकारी के द्वारा निर्गत हो ओर प्रार्थिनी से संबंधित न हो।

(वी0के0 शर्मा)

प्रतिलिपि निम्नांकित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषितः–

1. कुमारी निर्मला धर्मसक्तु उक्त।
2. श्री भुवन चन्द्र जोशी उक्त द्वारा प्र0अ0, रा0एवं न्यायिक अभिलेखागार पिथौरागढ़।
3. देयक लिपिक , जिला कार्यालय पिथौरागढ़।
4. सा0 लि0 / व्य0पत्रावली कुमारी निर्मला धर्मसक्तू।
5. प्रभारी अधिकारी ,राजस्व एवं न्यायिक अभिलेखागार पिथौरागढ़।

(वी0के0 शर्मा)
(जिलाधिकारी पिथौरागढ)

22. Now it is clear that both the employees had been appointed for the different years' vacancies. Rule 22 of the Ministerial Service Rules, 1980 deals with seniority which is as under:-

"**22. Seniority.--**

(1) Seniority in any category of posts in the Service shall be Districtwise.

(2) Seniority in any category of posts in the service shall be determined from the date of order of substantive appointment and where two or more persons are appointed together from the order in which their names are arranged in the appointment order:

Provided that --

(i) the inter se seniority of persons directly appointed to the Service shall be the same as determined at the time of selection.

(ii) the inter se seniority of persons appointed to the Service by promotion shall be the same as it was in the substantive post held by them at the time of promotion."

Thus, Rule 22(2) clearly provides that the seniority in any category of posts in service will be determined from the date of the order of substantive appointment. Thus, the petitioner got the substantive appointment in the year 1983 against the vacancy accrued in the year 1982-83. Thereafter Rule 22 (2) (I) also provides about the inter-se seniority of the persons directly appointment to the service shall be determined at the time of selection. Thus, this Rule clearly provides that the selection year and the substantive appointment is the decisive period for the seniority. For the sake of arguments the Public Service Commission or the Selection Board makes the selections of the candidates in accordance with the merit and recommends the names to the Government or the authority and the persons, their seniority would be governed according to competitive examination. If any person is selected and his seniority has been determined by the Committee but due to certain formalities which are to be carried out either by the State or by any authority, was not completed within the stipulated period and the persons whose formalities have been completed, were appointed and the persons so appointed will never run over the persons without their faults who had not joined the services who had been appointed in a proper procedure in accordance with rule. In this view, the petitioner would get seniority over Respondent No.3.

The main thrust of the order of the District Magistrate providing seniority to Respondent No.3 is the order of Board of Revenue. We have earlier discussed in detail that the State Government was competent to merge or to condone the period which had come in between the service of the petitioner. According to Board of Revenue's order of 1991 clearly reveals that the State Government is competent to pass order under Regulation 422 of C.S.R. We have also referred the Government order prior to the order of Board of

Revenue who was the final authority in this matter has asked the District Magistrate to decide this matter in terms of the notification of the Government of U.P. of 1977. In Para 4 of the said notification which has been extracted in the preceding paragraph of the judgment clearly provides that such period, if it is not at the fault of the petitioner, would be condoned automatically. In view of that notification that period has already been condoned, so the period of break in service would not come on the way of the petitioner as such the seniority will be gained by the petitioner from the date when she was appointed against a substantive vacancy accrued in the year 1982-1983.

23. There is another angle of the matter that the petitioner had been retrenched from the services due to the abolition of post; she was not a permanent employee of the department, so she was not declared as surplus employee of the department. The government order dated 10.12.1973 which is a photocopy at Pg. 89 of the original record of the department issued by the Finance Department Section II, in which it is provided that the Government, if due to certain administrative reasons abolishes the posts in any establishment, there are two types of employees, permanent and temporary. Permanent employees cannot be removed without following the procedure of the Rules, so they had been classified as surplus employees. In case they are to be removed, some other posts are made available to them and thereafter they are asked to leave the post of establishment where the posts had been abolished. There are certain employees which can be removed by way of retrenchment, they are called retrenched employees. The question arose before the Finance Department if any retrenched employee is re-employed in any establishment, how his pay would be fixed. The Government has issued the direction for the fixation of pay and other benefits. The relevant portion is extracted below:-

"शासन इस विषय पर विचार कर रहा था कि क्या छंटनी–शुदा कर्मचारियों को भी वेतन निर्धारण के संबंध में वही सुविधा प्रदान कर दी जाय जो फालतू कर्मचारियों को दी गई है। समस्त परिस्थितियों पर विचार करने के उपरान्त राज्यपाल महोदय फालतू कर्मचारियों

की भांति छंटनी –शुदा कर्मचारियों को वेतन भी निम्न रीति से निर्धारित किये जान की स्वीकृति प्रदान करते हैः

(1) यदि उनका पूर्व वेतन, उस वेतनक्रम के जिसमें उन्हें पुनर्नियुक्त किया गया है, के न्यूनतम से अधिक था, तो उनका वेतन वित्तीय नियम संग्रह ,खंड –2 , भाग –2 के मूल नियम 27 के अन्तर्गत उसी स्तर पर और यदि वह स्तर न आता हो तो ठीक निम्न स्तर पर निर्धारित कर दिया जाय और इस प्रकार निर्धारित किये गये और पूर्व में प्राप्त किये गये वेतन में जो अन्तर आये उसे वित्तीय नियम संग्रह ,खंड –2 , भाग 2 के मूल नियम 19 के साथ पठित मूल नियम 9 (23) बी के अन्तर्गत वैयक्तिक वेतन के रूप में दे दिया जाय जो कि उनकी अगली वेतन वृद्धि में विलीन कर दिया जाय। मूल नियम 27 के अन्तर्गत उन्हें अगली वेतन भी उसी तिथि से देय होगी जो छंटनी से पूव अवसर पर प्राप्त स्तर पर की गई सेवा की गणना करके आती है।"

24. In pith and substance the extracted provision is that the fixation of pay from the date they joined, is more or less, they should get the same pay even if they would not have been retrenched from the services. Pay benefit also clearly reveals that for all purposes their services have been recognized from the date when the petitioner was appointed against the substantive vacancy in the year 1993. Thus, the continuity of the service also had to be given to the petitioner while fixing her salary.

25. Now, we have to see what is effect of the findings given by us as well as the letter by the Government in the case of petitioner's seniority. It is clear that the Board of Revenue has specifically indicated that the State Government is the competent authority not the Board of Revenue to decide the condonation of break in service of the petitioner, at the same time the proposal has been rejected when the Government had already decided the said issue on earlier occasion by referring para 4 of the G.O. dated 13.12.1977. Thereafter the District Magistrate only inquired from the State of U.P. as to whether she will earn the leave during the said period or not. According to the Government letter read with G.O. dated 13.12.1977 Para 4, the period of break in service has already been deemed to have been condoned. A contrary order has been issued by the Board of Revenue. Now, if the Government

was competent, it was within the jurisdiction of the Government, hence the order of Government will prevail and the subsequent order passed by any subordinate who was not competent to pass the order, would have no avail. In this case the Government in the year 1977 have already issued a Government Order, then there was no occasion to the Board of Revenue to issue a simultaneous order against the order of the Government as well as the decision of the Government dated 25.4.1990. In this aspect we would like to refer a judgment of the **Hon'ble Apex Court in State of Uttaranchal Vs. Alok Sharma 2009(2) SCC 358**. In the instant case the respondents before the Hon'ble Supreme Court were the employees of two subsidiary companies of Kumaun Mandal Vikas Nigam Ltd.. The companies went into liquidation according to decision taken by the Government. The Government also framed the U.P. Absorption of Retrenched Employees of Government or Public Corporations in Government Services Rules, 1991 under which absorption was permissible only in respect to those employees who were appointed on or before 1.10.1986. The Rule 3(1) further lays down that the procedure for absorption should be prescribed by a notified order. Thereafter no such notified orders were made. Thereafter a letter was issued on 30.12.1995 in which it was mentioned that the retrenched employees to the date of the letter would be adjusted on the available post keeping in view their qualification. Thereafter another letterr dated 26.2.1996 was issued wherein it was provided that those employees would be absorbed whose services have been regularized before 1.10.1986. Some of the respondents were appointed after 1.10.1986, they were not apparently eligible yet they claimed absorption by way of writ petition. The writ petition was allowed by the Hon'ble High Court. The Hon'ble Supreme Court allowed the appeal and held that if any rule or notified order prescribes a mode or manner in which recruitment would be given effect, no order under Article 162 of the Constitution can be made by way of alteration or amendment of the said earlier notification without mentioning the supersession of the said portion of the rule. It is also provided that if any power of relaxation regarding cut off date is given in any notification, the said notification cannot relax without the power and the authority of the Government. The Hon'ble Apex Court also held that the circular dated 30.12.1995 and 26.2.1996 are required to be constituted in accordance with the above settled position of law. As such

statutory power cannot be divested by the subsequent orders. If the Board of Revenue was not competent to issue such direction contrary to the Government, so it cannot be said to be in consonance of law. The District Magistrate was not bound by the contrary letter of Board of Revenue, which was against the G.O. of 1977. As such this letter does not require quashing of the order. It cannot be looked into. The District Magistrate had allowed the Respondent No.3 to run over the petitioner by the impugned order, is not sustainable in the eyes of law. Ld. Counsel for the respondents could not demonstrate anything against the above legal and factual proposition which has been pointed above.

26. Ld. Counsel for the petitioner contended that the petitioner has claimed the quashing of the order of Board of Revenue passed in the year 1991. This amendment was incorporated only when the Ld. Counsel for the respondents heavily contended that without quashing the order of the Board of Revenue, 1991, other relief cannot be granted. Ld. Counsel for the petitioner in such a situation amended his prayer for seeking the quashment of the order of Board of Revenue passed in the year 1991. Ld. Counsel for the petitioner further contended that during the course of the arguments as well as perusal of the documents reveals that the said order is not an order passed on behalf of the State Government or by the Board of Revenue as a Government order. That is merely a communication to the Board of Revenue not to accept the request of the petitioner. He further pointed out that the Board of Revenue was not competent to reject the application of the petitioner and the Government was fully competent to pass such order on the application of the petitioner. If the Board of Revenue had no power to reject the application, that would be treated without jurisdiction. He further contended that there was no need to reject the order of the Board of Revenue when the Government had already passed that order in the year 1990 vide letter dated 25.04.1990 that the petitioner's application will stand disposed of in terms of the notification issued by the Government of U.P. on 13.12.1977 (Para 4 relevant), in which it has been clarified that if the interruption is not caused because of the reason of resignation, dismissal, removal from the service or participation in the strike, the period of

interruption would be condoned automatically and the period would be counted towards qualifying services. Since the interruption in the service of the petitioner was caused due to the retrenchment, which was beyond her control, the period of interruption was liable to be condoned automatically. Ld. Counsel for the petitioner further contended that the impugned order dated 10.04.1991 being contradictory to the notification dated 13.12.1977, para 4 of the aforesaid Government order and the Government's letter dated 25.4.1990 passed in the case of the petitioner is not sustainable in the eyes of law. Hence, it is of no avail and the petitioner in these circumstances is not pressing the relief for quashing the said order. The petitioner further contended that the purpose of the respondents is only to harass the petitioner. If he will press the relief to quash the order of the Board of Revenue passed in the year 1991, then the question of jurisdiction as well as the question of delay would arise before the Court and there will be a further harassment at the behest of the respondents. So, the order being null and void, he is not pressing the said relief. Ld. Counsel for the petitioner further contended there was no need to challenge this order before any competent Court because the Government orders of 1990 and 1977 had already been in existence and the services of the petitioner had already been condoned automatically by virtue of the above orders, hence the petitioner was not at all required to file any claim petition for the same. Ld. Counsel for the petitioner further contended that this order has only been challenged when Ld. Counsel for the respondents insisted upon without seeking quashment of the order of Board of Revenue, the petition would be infructuous. The petitioner in extra precaution sought the quashment of the said order. Ld. Counsel for the petitioner further contended even if he presses the said relief, this Court is competent to quash the order. He further contended that delay for not seeking the quashing the relief is self explained in view of the disposal of the representation of the petitioner by the Government on 25.4.1990. This order can be quashed by this Tribunal on the ground that the said relief is the part cause of action arose in Uttarakhand also because it relates to the employees of Uttarakhand who cannot challenge this order in U.P. P.S.T. by virtue of Section 4 read with Section of 2 of Uttarakhand.P.S.T. Act. The Ld. Counsel further pointed out that, after going through the entire record, Ld. Counsel for the petitioner contended that there was no need to challenge this order

and there is no question of any delay or any sort of illegality by not challenging this order. Ld. Counsel for the respondents further contended that the relief of 1991 is time barred.

27. We are completely in agreement with the Ld. Counsel for the petitioner and now we have to examine as to whether without seeking any quashment of the order of 1991, petitioner can get other relief claimed in this petition. The first aspect of the matter is that the application which has been rejected by the Board of Revenue, had no power to reject the same; the power of condonation of interruption period in the service was with the State Government. If the Board of Revenue was not agreeable, the Board of Revenue could have sent the said proposal to the Government and could have obtained the order which would have been passed by the Government. If the Board of Revenue would have adopted the said mode, then it would have come to the fact that the Government has already passed an order on 25.04.1990 and there is no need to pass any order by the Board of Revenue. The function of the Board of Revenue was only of a post office and not beyond that. Secondly, if the question is already covered by the Government Order of 13.12. 1977 then there was no need to reject the proposal against the Government order. The petitioner has acquired the right to have the condonation of her period by virtue of notification dated 13.12.1977 issued by the Government and letter dated 25.04.1990, thereafter any communication by any subordinate authority contra to that effect has no force and it is against the law. The third aspect of the matter is that the interruption which is to be condoned during the break in service, was for the pensionary benefits as has been held in the preceding paragraphs. At present the seniority of the petitioner vis-à-vis Respondent No.3 has to be determined, as such the relief is independent and it cannot be based on the said relief. Apart from that the letter which is written by the subordinate authority of the State Government, who had no power, cannot be looked into as a piece of law. Hence, the letter of Board of Revenue is not al all enforceable by the subordinate authorities which is issued in contravention of Government Order 13.12. 1977 and the letter dated 25.4.1990. The order of the Government would prevail. Apart from that

whether such type of order requires any certiorari for quashing the order. If we go through the judgment of the Hon'ble Apex Court in **State of Uttaranchal Vs. Alok Sharma** (supra), where Rules provided cutoff date to absorb those employees who had been retrenched from the Government company in Uttarakhand on or before 01.10.1986. The Government issued the circular letter in contravention of the Rules framed under Article 309 of the Constitution providing the cutoff date of 1995-96, a back date after 01.10.1986. The Hon'ble Supreme Court ignoring the above circular letter issued in the year 1995-96 extending the cut-off date, a different form of the Rules was held to be arbitrary and discriminatory and were struck down without any relief claimed in this petition because these orders were totally ultra vires . Hon'ble Apex Court in Para 24 **State of Uttaranchal Vs. Alok Sharma** has held as under :-

> "The High Court did not find that the cut-off date to be arbitrary or discriminatory and was, thus, liable to be struck down being ultra vires Article 14 of the Constitution of India. It did not hold that the conditions precedent contained in the Rules prescribing procedure for such recruitment and/ or grant of power of relaxation have been complied with. An authority, unless a power is conferred on it expressly, cannot exercise a statutory power. Power of relaxation must be specifically conferred. Such power having been envisaged to be conferred by reason of a rule made under the proviso appended to Article 309 of the Constitution of India, the contention of the learned counsel for the respondents that relaxation must be deemed to have been granted cannot be accepted."

28. In this case also the order of the Board of Revenue is totally arbitrary and ultra vires to the Government order dated 1990 and 1977 and thus, the authorities will not take any note of it.

29. Now the next question arises as to whether we can enter into the arena for quashing the order of 1991 passed by the Board of Revenue. Ld. Counsel for the petitioner could not demonstrate that the petitioner had made any statutory representation to the competent authority or she had challenged this order before the competent court at any point of time. When this petition was filed before this Tribunal in the year 2009, the petitioner did not join this prayer for quashing the

impugned order dated 10.4.1991 passed by the Board of Revenue and it was only added by an amendment on 6.3.2014. Initially the petitioner filed a writ petition before the Hon'ble High Court bearing No. 388/09, which was heard by me (as then I was), the petition was relegated to the Tribunal and thereafter the petitioner filed this petition before the Tribunal. The petitioner could not demonstrate by any document that the said order was challenged before the Hon'ble High Court also Thus, Ld. Counsel for the respondents only contended that the relief claimed in the petition to quash the order of Board of Revenue passed in the year 1991 suffers from delay and laches. Ld. Counsel for the petitioner refuted the contention. It is provided under Section 5 of the Public Services Tribunal Act that notwithstanding the period of limitation prescribed in the scheduled to the Limitation Act, 1963, the period for such reference (claim petition) shall be for one year. To file a claim petition is only for one year. As we have pointed out that the original claim petition did not contain the aforesaid prayer apart from other prayer and it was amended later on, so she was permitted to amend the petition in the year 2014. Now it is undisputed that the petitioner had filed this claim petition for seeking the above relief after a lapse of more than 20 years. The Ld. Counsel for the respondent No. 3 contended that it is settled position of law, the Court in exercise of its jurisdiction does not inordinately assist the Tardy, Indolent, Acquiescent and Lethargic. There is inordinate delay on the part of the petitioner in filing a writ petition before the Hon'ble Uttarakhand High court in the year 2009 as well as the claim petition in the year 2009. Ld. Counsel for the petitioner further emphasized that the Respondent No.3 claimed seniority from the petitioner and she had been shown senior to Respondent No.3 in the seniority list issued in the year 1990 and till 1993. The said seniority list was revised and the Respondent No.3 was made senior at the behest of the Respondent No.3 only on the basis of the letter of Board of Revenue issued in the year 1991 ignoring the Government Order dated 13.12.1977 and letter of Government of 1990 , so she had made this claim petition before the Tribunal.

30. The Hon'ble Apex Court in the case of **Joginder Nath Vs. Union1975(1) SLR 33** in Para 9,10,11 has held as under:-

"In our opinion on the facts and in the circumstance of this case the preliminary objection raised on behalf of the respondents cannot succeed. The first list fixing the seniority of the Judicial officers initially recruited to the Delhi Judicial Service was issued on 2.8.1971. This was subject to revision on good cause being shown. Petitioners also, as we shall show hereinafter in this Judgment on one ground or the other, wanted their position to be revised in the seniority list. They, however, did not succeed. A revised seniority list was issued on 2,6,1973. The filing of the writ petition was not designedly delayed thereafter.'Since the petitioners' position in the seniority list vis-a-vis respondents 3 to 6 had not been disturbed in the new list dated 2.6.1973 it was sufficient for the petitioners to challenge the list dated 2.8.1971. We shall point out in this judgment that except the promotion to the posts of Additional District Judges, the seniority in relation to which 559 also is under challenge in this writ application, nothing special had happened creating any right in favour of the respondents or no ***such position had been created the disturbance of which would unsettle the long standing settled matters. The writ application, therefore, cannot be thrown out on the ground of delay in regard to any of the reliefs asked for by the petitioners***.

It has been pointed out by Hidayatullah, C.J. in the case of Tilokchand Motichand & Ors. v. H. B. Munshi & Anr.(1) at page 831 "The action of courts cannot harm innocent parties if their rights emerge by reason of delay on the part of the person moving the Court." The learned Chief Justice had said at page 832. "Therefore, the question is one of discretion for this Court to follow from case to case. There is no lower limit and there is no upper limit. A case may be brought within Limitation Act by reason of some Article but this Court need not necessarily give the total time to the litigant to move this Court under Art. 32. Similarly in a ***suitable case this Court may entertain such a petition even after a lapse of time. It will all depend on what the breach of the Fundamental Right and the remedy claimed are and how the delay arose***. In the case of Rabindra Nath Bose & Ors. v. Union of India & OrS.(2) Sikri J, as he then was, delivering the judgment on behalf of the Court has said at page 712 : "The highest Court in this land has been given Original Jurisdiction to entertain petitions under Art. 32 of the Constitution. It could not have been the intention that this Court would go into stale demands after a lapse of years." But under what circumstances a petition under Art.32 of the Constitution should be thrown out on the ground of delay, has been pointed out in the last paragraph on that page by observing. "it would be unjust to deprive the respondents of the rights which have accrued to them. Each person ought to be entitled to sit back. and consider that his appointment and promotion effected a long time ago would not be set aside after the lapse of a number of years." On the facts of this case the petition was held to have been filed after inordinate delay.

In a recent decision of this Court, Bhagwati, J. delivering the judgment on behalf of the bench of five Judges in Ramchandra Shankar Deodhar and others. v. The State of Maharashtra and others(3) it age 265 has said "In the first place, it must be remembered that the rule which says that the Court may not inquire into belated and stale claims is not a rule of law, but a rule of practice based on sound and proper exercise of discretion, and there is no inviolable rule that whenever there is delay, the court must necessarily refuse to entertain the petition. Each case must depend on its own facts." on the facts and in the circumstances of this case we do not feel persuaded to throw out the petition on the ground of delay as there is none to disentitle the petitioners to claim relief."

31. In the case of **Indian Iron & Steel Co. Ltd. Vs. Prahalad Singh (2001) 1 SCC 424** Hon'ble Supreme Court in Para 12 has held as under:-

"Whether relief can be declined on the ground of delay and laches, depends on the facts and circumstances of each case. In this case claim was made almost after a period of 13 years *without any reasonable or justifying ground and there was nothing* on record to explain this delay as held by the Tribunal. When the respondent did not make claim for 13 years without any justification and on merits also he had no case, the Tribunal did not rightly grant him any relief. Even otherwise the findings of facts recorded by the Tribunal in the light of the Standing Orders aforementioned cannot be said to be untenable or perverse.

32. In view of the above proposition of law the petitioner cannot be thrown out rightly on the ground of delay if sufficient justification has been shown. Now we

have to see whether there was any justification on the part of the petitioner to file a belated claim of quashment of the said order of Board of Revenue. As we have pointed out earlier that the petitioner's claim had already been decided by the Government prior to the impugned order of the Board of Revenue in favour of the petitioner. We have also pointed out Rule 422 of CSR and extracted above also. We have also extracted relevant para 4 of the Government order dated 13.12.1977. Thereafter the petitioner's confirmation was considered by the authorities and she was confirmed and the confirmation list issued in the year 1993 indicates that it was according to the seniority. The promotion order of the petitioner further reveals that the petitioner was promoted in the year 1991 that was also in accordance with the seniority. The petitioner was also given the time scale after completing 8 years in the year 1999. Respondent No.3 was also aware about all these developments. The confirmation list issued in accordance with the seniority clearly reveals that the petitioner was shown senior to the Respondent No.3. Thus, it was sufficient to assume to the petitioner that the D.M. has taken into consideration the Government order issued in the year 1990 and the notification issued in the year 1977. This position remained till 2008. The petitioner was shown as senior and Respondent No.3 was shown junior. The petitioner had taken recourse of notification issued in the year 1977. It was also assumed till 2008 that the order of the Board of Revenue as being a contradictory order of the State Government issued after the order of the State Government, had not been taken into consideration. The petitioner had been shown senior immediately before Respondent No.3. Thus, no right has accrued to a third party in this case during this period. The D.M. considered the rejection order issued in the year 1991 by the Board of Revenue while deciding the impugned order. Till that time the petitioner could not assume that the order issued by the State Government had not been implemented. The actions of the D.M., Pithoragarh completely reveals that till 2008 he was following the order of the State Government and he did not disturb the seniority of the petitioner till that date. When the D.M. disturbed the seniority of the petitioner by the impugned order, the cause of action arose again to the petitioner. It is further revealed from the office correspondence of the photocopy of the original file that the D.M. immediately after receiving the letter of the Government in the year 1990 (extracted above) agreeing

the said position, put a further query that as to whether the petitioner would earn the Earned leave during that period or not. This fact clearly reveals that the D.M. had totally ignored the said order being ultra vires to the Government order issued under Article 162 of the Constitution in the year 1977. The condonation of interrupted period was to be automatically condoned and no specific order was required to that effect under the Government order dated 13.12.1977. Thus petitioner's cause of action to seek the quashment of the order of 1991 again arose, hence, this petition has been filed. Hon'ble Apex Court in the above judgments has held that if the circumstance shows that there is justification for filing the claim petition after a long time, the claim petition can be entertained. When the D.M. Pithoragarh disturbed the seniority of the petitioner by the impugned order ignoring the G.O. dated 13.12.1977 and Government letter of the year 1990 and relying upon on the ultra vires letter of Board of Revenue, a cause of action arose to the petitioner to seek the quashment of the said letter of the Board of Revenue. Thus, part cause of action also arose within the territory of the Uttarakhand and as well as of the U.P. It was pointed out that the Public Services Tribunal has power to entertain a petition for part cause of action arose in the State of Uttarakhand only within one year from the date of the cause of action. The petitioner's cause of action arose when the petitioner's seniority was disturbed by the D.M. by the impugned order on the basis of the representation of Respondent No.3 submitted in the year 2008. This fact also shows that the petitioner has now a continuous cause of action to seek the quashing of the order of Board of Revenue and to seek setting aside the findings recorded by the D.M. Thus, the petitioner has a continuing cause of action, hence this petition is well within time also. In view of the above peculiar facts of this case, we cannot throw this petition on the ground of delay on the part of the petitioner. As we have pointed out that the order of the Board of Revenue is totally ultra vires to the Government order dated 13.12.1977 and it was also beyond jurisdiction of the Board of Revenue. The Board of Revenue had no jurisdiction to reject the prayer of the petitioner without taking approval of the State Government. Thus, the order of the Board of Revenue of 1991 is not sustainable in the eyes of law.

33. It may be pointed out that while delivering the judgment the Tribunal has taken double standards for adjudicating the claim of the respondent No.3 and petitioner on the point of delay. The petitioner's case, as we have pointed out above is sufficiently covered to justify the delay whereas the Respondent No.3 has not given any justification to file claim petition after a long time. The Respondent No.3, as alleged in her pleadings that the confirmation list and other documents were manipulated by the petitioner and the manipulation was not in the knowledge of Respondent No.3. From the perusal of the record it is revealed that the confirmation list was issued in the year 1993 and it cannot be held that such confirmation list would not come to the knowledge of Respondent No.3. By virtue of the confirmation, Respondent No.3 had earned permanency in the service and the permanency also gives so many benefits to the Respondent No.3. Merely saying that the petitioner manipulated her seniority in the list and it was not within her knowledge, cannot be taken true because the Collectorate is not such a big office where such things cannot be said to be within the knowledge of the Respondent No. 3. It is also revealed from the representation of Respondent No.3, which is Annexure-8 to the claim petition, that Respondent No.3 nowhere alleged that she has no knowledge and she did not see the confirmation list. Perusal of the representation if taken into entirety, reveals that it was well within the knowledge of Respondent No.3 that the petitioner was senior to her. In these circumstances we hold this Tribunal has not taken different parameters to the different parties while dealing with the issue of delay.

34. Now the question which arises before the court is that as to whether the Uttarakhand Public Services Tribunal has jurisdiction to decide the matter or not? In this context the petitioner has sought a prayer by way of amendment to quash an order dated 10-4-1991 communicated vide order dated 19-4-1991, Annexure -21 to the claim petition which has been passed by Board of Revenue, U.P. It is undisputed that the petitioner and the Respondent No. 3 had been appointed in early eighties in the establishment

of the Collectorate, Pithoragarh. After creation of the State of Uttarakhand both the respondent as well as the petitioner had become the employees of the Collectorate, Pithoragarh which falls within the jurisdiction of Uttarakhand. Thus, the petitioner was appointed for Pithoragarh and she remained an employee there till the creation of the state of Uttarakhand from the state of U.P. and consequent upon the creation of the State , by virtue a Government order of Central Government, September, 2001, she automatically became the employee of the State of Uttarakhand. Similar position is also to private Respondent No. 3. It is also undisputed that the petitioner was appointed in the service in the year 1983. It is also undisputed that the Respondent No.3 joined services in the year 1984. When the posts of junior clerk were abolished in the establishment of the respondents, the petitioner was retrenched but the services of the Respondent No.3 were not terminated as there was an order of the Government where the quota of Scheduled Tribe had not been fulfilled. The Scheduled Tribe employees could not be terminated on the abolition of the post. They should be absorbed against the regular reserved post .It is also undisputed that the petitioner was again reinstated in the year 1986. However , the petitioner worked on the leave vacancy immediately after the retrenchment for different periods but she could not serve any post only from 2.9.1986 to 17.9.1986 for the same. The petitioner has made a request to the District Magistrate for the merger of the period for break in service of the petitioner. The said proposal was sent through the Commissioner to the Government through Board of Revenue but at the level of Board of Revenue, U.P. this proposal was turned down in the year 1991 without sending it to the Government . State Government sent a communication to the D.M., Pithoragarh and decided the issue in terms of 13.12.1977 G.O. In the peculiar facts and circumstances of case the petitioner filed petition for several other relief for which the cause of action has arisen

within the territory of the Uttarakhand as is evident from the relief as we have incorporated in the preceding para No.1

35. Now we have to analyze the legal proposition as to whether the Tribunal situated at Uttarakhand has got the jurisdiction to set aside the order passed by the Board of Revenue, U.P. or the power vests upon the U.P, public Services Tribunal, Lucknow.

36. It is clearly revealed from Section 4/ read with Section 2 of Uttarakhand P.S.T. Act that the Government servant of Uttarakhand can file the claim petition before this Tribunal and the Government servant of U.P. can file the claim petition before the U.P. Public Services Tribunal. The definition of public servant specifically provides in the Act that public servant means every person in service or pay of the Government of Uttarakhand or Government of U.P. respectively .In this case the petitioner is admittedly in the pay of the state of Uttarakhand . She is not in the employee of State of U.P. and she had ceased to be a public servant of state of U.P.

37. Now we have to see whether it should be filed within the territorial jurisdiction of the Tribunal. The petitioner's relief as indicated above from relief Nos. 1 to 5, except a part of relief No.1, is maintainable in this Tribunal as contended by the respondents.

38. Where the question of territorial jurisdiction is concerned, it is settled position of law that cause of action of a matter is a decisive question of the territorial jurisdiction of the Court. The cause of action implies a right to sue. The material fact which are imperative on the suiter to allege and prove constitute a cause of action. Cause of action is not defined. It has, however been judicially interpreted inter alia to mean that every fact which would be necessary for the plaintiff to prove, if traversed, nor supports his right to the judgment of the Court. Negatively put, it would mean that everything which if not proved, gives the defendant a minimum right to judgment, would be part of cause of action. It is important beyond any doubt for every claim there has to be a cause of action, if not, the complaint or the pleadings in the petition either before the High Court or

before the Tribunal as the case may be, shall be rejected summarily. Clause-2 of Article-226 of the Constitution of India reads as under:-

> *[(2) The power conferred by clause(1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories*.]

Section 20 (C) of C.P.C. reads as under:-

(a) the cause of action, wholly or in part, arises.

[1][***]

Although, in view of Section 141 of C.P.C the provisions of CPC are not applicable to the writ petitions or petition before the Tribunal. Phraseology used in Section 20 (C) of the CPC and Clause 2 of Article 226 being in paramateria, the decisions of the Courts rendered on interpretation of Section 20 (C) shall apply to the writ proceedings also. It is also a settled position of law that the entire bundle of facts pleadings in the petition, need not constitute a cause of action as what is necessary to be proved before, the petitioner can obtain an order or decree is the material facts. The expression material fact is also known as integral facts. Sometimes the integral facts may have a single cause of action and some times it had a part cause of action in the territory of one Court and part cause of action may be in the territory of the other Court and there are also certain integral facts in which there is a continuous cause of action till the petition is filed before the Court. The part cause of action of the integral facts may be alike of a continuing cause of action. What would be the territorial jurisdiction of a particular case or a petition before the Court, Tribunal and the High Court is to be decided by the cause of action. It is the tritie of law that if there is single cause of action and the petitioner has pleaded a bundle of facts which did not disclose the cause of action or integral facts for the decision of the claim petition, the said Court where the single cause of action has arisen,

would have the territorial jurisdiction over the matter. If the integral facts constitute a part cause of action in one of the territory of the Court, Tribunal or High Court, it should be filed in any of the Courts where the part cause of action has arisen. If the cause of action arises in part in different Courts, it would be open to the litigant who is *Dominus Litis* to have its *forum conveniens*. The litigant has a right to go to the Court where the part of cause of action has arisen. It is incorrect to say that the litigant chooses any particular Court. The choice of the litigant is by reason of the jurisdiction of the Court being attracted by part cause of action arising with a jurisdiction of the Court. The continuous cause of action is alike a part cause of action theory and it is also relevant for the decision of the limitation as well as for filing the petition.

As discussed above, now I would like to visit the various pronouncements of the Hon'ble Apex Court in this background. In the single cause of action theory, the **Hon'ble Apex Court in the Aligarh Muslim University Enterprises (P) Vs. V.Vinay Engineering Enterprises (P) 1994 (4) SCC 710, in para 2** has held as under:-

> ''*2. We are surprised, not a little, that the High Court of Calcutta should have exercised jurisdiction in a case where it had absolutely no jurisdiction. The contracts in question were executed at Aligarh, the construction work was to be carried out at Aligarh,, even the contracts provided that in the event of dispute the Aligarh Court alone will have jurisdiction. The arbitrator was from Aligarh and was to function there. Merely because the respondent was a Calcutta-based firm, the High Court of Calcutta seems to have exercised jurisdiction where it had none by adopting a queer line of reasoning. We are constrained to say that this is a case of abuse of Jurisdiction and we feel that the respondent deliberately moved the Calcutta High Court ignoring the fact that no part of the cause of action had arisen within the jurisdiction of that Court. It clearly*

shows that the litigation filed in the Calcutta High Court was thoroughly unsustainable"

Thus in that case the total work was executed in Aligarh and the Arbitrator was also of the Aligarh who discharged his functions in Aligarh in arbitration proceedings merely because the firm who contacted to construct the work was of Calcutta based firm. There was nothing to do with the work at Calcutta. The High Court of Calcutta entertained the writ petition ignoring the facts no part cause of action arose within the jurisdiction of the Calcutta High Court. The petition had error of lack of jurisdiction so it was not sustainable.

39. In **Union of India Vs. Adani Export Ltd 2002(1) SCC 567**, the Hon'ble Apex Court has held that in order to confer jurisdiction of High Court or the Tribunal to entertain a petition, it must disclose that the integral facts pleaded in support of it, constitute a cause so as to empower the Court to decide the dispute in the entire or a part of it arose within its jurisdiction.

In **National Textile Corporation Ltd.Vs. Haribox Swalram[6] (2004)9 SCC 786 Hon'ble Apex Court in para 12.1** has held as under:-

"12.1. As discussed earlier, the mere fact that the writ petitioner carries on business at Calcutta or that the reply to the correspondence made by it was received at Calcutta is not an integral part of the cause of action and, therefore, the Calcutta High Court had no jurisdiction to entertain the writ petition and the view to the contrary taken by the Division bench cannot be sustained. In view of the above finding, the writ petition is liable to be dismissed."

Thus, it is apparent from the above decision of the Hon'ble Apex Court that the petition must have nexus on the basis whereof a prayer can be granted.

40. In the case of **Kusum Ingots & Alloys Ltd. Vs. Union of India 2004(6) SCC 254** (before Hon'ble Justice V.N.Khare, C.J. and Hon'ble Justice S.B.Sinha and Hon'ble Justice S.H.Kapadia, JJ) the appellant was a company registered under the Indian Companies Act. Its registered office was at Mumbai. It obtained a loan from the Bhopal Branch of State Bank of India. Respondent no. 2 issued a notice for repayment of the said loan from Bhopal purported to be in terms of the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Questioning the vires of the said act, a writ petition was filed before the Delhi High Court by the appellant which was dismissed on the ground of lack of territorial jurisdiction. The only submission made on behalf of the appellant before the High Court as also before the Supreme Court was that the constitutionality of a parliamentary Act was in question, the High Court of Delhi had the requisite jurisdiction to entertain the writ petition. The question that arose for consideration before the Supreme Court was whether the seat of Parliament or the legislature of a State would be a relevant factor for determining the territorial jurisdiction of a High Court to entertain a writ petition under Article 226 of the Constitution.

> A parliamentary legislation when it receives the assent of the President of India and is published in the Official Gazette, unless specifically excluded, will apply to the entire territory of India. If passing of a legislation gives rise to a cause of action, a writ petition questioning the constitutionality thereof can be filed in any High Court of the country. It is not so done because a cause of action will arise only when the provisions of the Act or some of them which were implemented shall give rise to civil or evil consequences to the petitioner. A writ court, it is well settled, would not determine a constitutional question in a vacuum. Therefore, a writ petition questioning the constitutionality of a parliamentary Act shall not be maintainable in the High Court of Delhi only because the seat of the Union of India is in Delhi."

41. In the case of **Nasiruddin Vs. State of U.P. 1975 (2) SCC 761** the decision of the Hon'ble Supreme Court in the above case is the authority on the proposition of part cause of action theory for the territorial jurisdiction. In the Nasirduddin case which has been decided by a bench of five Hon'ble Judges of Supreme Court (Ray,

A.N. (CJ) Mathew, Kuttyil Kurien Krishnaiyer, V.R. Fazalali, Syed Murtaza JJ) United Province High Courts (Amalgamation) Order 1948 provides that the chief Court of Avadh was amalgamated in the existing High Court of Allahabad and it was provided in the amalgamation order, the new High Court shall have the jurisdiction of any area out side the united provinces. All such original appellate and other jurisdiction as under the law in force immediately before the appointed day, is exercisable in respect of any areas out side the United Provinces by either of the existing High Court. The new High Court shall have in respect of any area outside the United Provinces all such original appellate and other jurisdiction as under the law in force immediately before the appointed day is exercisable in respect of that area in the High Court in Allahabad. According to the Amalgamation Order 1948 the judges of the new High Court shall sit at Allahabad or at any such other place in United Province as Chief Justice may, with the prior approval of the Governor of the United Province appointed and there will be a strength of judges not less than two in number as nominated by the Chief Justice by the new High Court for the said seat and they will sit in Lucknow after the concurrence of the Governor of the Avadh in order to exercise in respect of cases arising in such areas and the Chief Justice was empowered to confer the jurisdiction of the cases in Lucknow also. Clause 14 proviso (2) of the amalgamation order further provides that the Chief Justice in its discretion, order 'any case' or 'class of case arising' in the said area, shall be heard at Allahabad. A dispute arose when a writ petition was filed by the petitioner before the Lucknow High Court for quashing an order passed by the State Appellate Tribunal, Luciknow and the said writ petition belongs to Ruhelkhand Division, which was within exclusive jurisdiction of the seat of Allahabad; the point of jurisdiction was raised that the Lucknow Bench has no jurisdiction to entertain and decide the said petition and a full court of the Allahabad High Court held that because the matter arose from the Ruhelkhand area, the specific jurisdiction lies with the seat of Allahabad High Court so the seat of Lucknow has no jurisdiction to entertain the said petition. So the appeals were preferred before the Hon'ble Apex Court. The Hon'ble Apex Court has held that amalgamation order describes Allahabad High Court as the new High Court. The two High Courts have amalgamated in the new High court and the seat of the new High Court is at Allahabad or such place as may be determined

(Lucknow), there is no permanence attached to the Allahabad. The Lucknow was the seat of the Government and Allahabad had its own historical facts that the High Court was also there before the amalgamation order. It was further held, the Chief Justice cannot reduce the area of Avadh by taking away the jurisdiction from Avadh to Allahabad. Once the power is exercised in Clause-14 about the seat of the Avadh, the words used "as the Chief Justice may direct", means that exercise the power to direct what areas in Avadh area are for exercise of jurisdiction by judges at Lucknow Bench. Once that power is exercised, it is exhausted. In pith and substance and the spirit of the order, the Lucknow became the seat in respect of the cases arising in area in Avadh. While deciding the case of Nasiruddin, the Hon'ble Apex Court in para 37 has held as under:-

> *"The meaning of the expression "in respect of cases arising in such areas in oudh" in the first proviso to paragraph 14 of the order was answered by the High Court that with regard to applications under Article 226 the same will be "a case arising within the areas in oudh, only if the right of the petitioner in such an application arose first at a place within an area in oudh. The implication according to the High Court is that if the right of the petitioner arose first at any place outside any area in oudh and if the subsequent orders either in the revisional or appellate stage were passed by an authority within an area in oudh then in such cases the Lucknow Bench would not have any jurisdiction. The factor which weighed heavily with the High Court is that in most cases where an appeal or revision would lie to the State Government, the impugned order would be made at Lucknow and on that view practically all writ petitions would arise at Lucknow.*
>
> *The conclusion as well as the reasoning of the High Court is incorrect. It is unsound because the expression "cause of action" in an application under Article 226 would be as the expression is understood and if the cause of action arose because of the appellate order or the revisional order which came to be passed at Lucknow than Lucknow would have jurisdiction though*

> *the original order was passed at a place outside the areas in oudh. It may be that the original order was in favour of the person applying for a writ. In such case an adverse appellate order might be the cause of action. The expression "cause of action is well-known. If the cause of action arises wholly or in part at a place within the specified oudh areas, the Lucknow Bench will have jurisdiction. If the cause of action arises wholly within the specified oudh areas, it is indisputable that the Lucknow Bench would have exclusive jurisdiction in such a matter. If the cause of action arises in part within the specified areas in oudh it would be open to the litigant who is the dominus litis to have his forum conveniens. The litigant has the right to go to a Court where part of his cause of action arises. In such cases, it is incorrect to say that the litigant chooses any particular Court. The choice is by reason of the 519 jurisdiction of the Court being attracted by part of cause of action arising within the jurisdiction of the Court*".

42. It is apparent from the perusal of the above judgment that even if a person is posted anywhere or a policy decision regarding any district is taken at Lucknow at the principal seat of the Government, the Hon'ble Apex Court has held the Allahabad High Court, in case the district falls within territorial jurisdiction of the new High Court and the seat of Lucknow of the Allahabad High Court would have the jurisdiction to entertain the petition. Thereafter, the matter came up again before the Hon'ble Apex Court in **U.P. Rashtriya Chini Mill Adhikari Parishad Vs. State of U.P. 1995 (4) SCC 738**. Hon'ble Apex Court following the decision of Nasuriddin's case has held as follows:-

> *"The conclusion as well as the reasoning of the High Court is incorrect. It is unsound because the expression "cause of action" in an application under Article 226 would be as the expression is understood and if the cause of action arose because of the appellate order or the revisional order which came to be passed at Lucknow than Lucknow would have jurisdiction though the original order was passed at a place outside the areas in Oudh. It may be that the*

original order was in favour of the person applying for a writ. In such case an adverse appellate order might be the cause of action. The expression "cause of action " is well-known. If the cause of action arises wholly or in part at a place within the specified Oudh areas, the Lucknow Bench will have jurisdiction. If the cause of action arises wholly within the specified Oudh areas, it is indisputable that the Lucknow Bench would have exclusive jurisdiction in such a matter. If the cause of action arises in part within the specified areas in part within the specified areas in Oudh it would be open to the litigant who is the dominus litis to have his forum conveniens. The litigant has the right to go to a Court where part of his cause of action arises. In such cases, it is incorrect to say that the litigant chooses any particular Court. The choice is by reason of the jurisdiction of the Court being attracted by part of cause of action arising within the jurisdiction of the Court. Similarly, if the cause of action can be said to have arisen partly within specified areas in Oudh and partly outside the specified Oudh areas, the litigant will have the choice to institute proceedings either at Allahabad or Lucknow. The Court will find out in each case whether the jurisdiction of the Court is rightly attracted by the alleged cause of action." While reaching the above conclusion this Court kept in view the plain language of clause 14 of the Amalgamation Order. No provision of the Code of Civil Procedure was noticed, referred to or taken into consideration directly or indirectly. The territorial jurisdiction of a Court and the "cause of action" are interlinked. To decide the question of territorial jurisdiction it is necessary to find out the place where the "cause of action" arose. We, with respect, reiterate that the law laid down by a Four-Judge Bench of this Court in Nasiruddin's case holds good even today despite the incorporation of an Explanation to Section 141 to the Code of Civil Procedure.

There is no dispute that the Amalgamation Order is a special law which must prevail over the general was This Court interpreted the relevant expression in Clause 14 and did not take any support from any general law. The discussion by the Division Bench of the High

Court by evolving the so called theory of "exercise of jurisdiction revolving on the place of sitting" as compared to the theory of "cause of action" is wholly misconceived and has no legal basis whatsoever. This part of the High Court judgment is mentioned to be rejected"

43. Thereafter the matter came up for consideration in **the Uttaranchal Forest Rangers Association (Direct Recruitment) and others Vs. State of U.P. and others 2006(10)SCC 346** before the Hon'ble Apex Court. The Hon'ble Apex Court in Para 44 of its decision has held as under:-

"*44. The second impugned order dated 12.4.2004 is further vitiated for the following reasons:*

(b) ***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.*

(c) ***Parties***.- *None of the direct recruits who would be directly affected by the order 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 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*."

44. Thereafter **in State of Uttarakhand and another Vs. Umakant Joshi 2012(1) UD 583 (Division Bench of Hon'ble G.S. Singhvi andHon'ble Sudhansu Jyoti**

Mukhopadhaya, J.J.), in which the relief claimed by the petitioner was found within the jurisdiction of the Allahabad High Court, Hon'ble Apex Court has laid down that the Allahabad High Court has got the jurisdiction to entertain the writ petition as filed by the petitioner. The Respondent No.1 (hereinafter called petitioner) filed a writ petition before the Uttarakhand High Court for issuance of mandamus to the State Government of U.P. as well as to the State Government of Uttarakhand to promote him w.e.f. 16.11.1989 i.e. the date the persons junior to him were promoted to Class-I post. The petitioner was awarded adverse entries in the annual confidential report for the year 1987-88, 1988-89, 1989-90 and 1991-92. Apart from it, departmental enquiry was also initiated against the petitioner between July, 1996 and March 1997. Thus, enquiries were culminated in issuance of order dated 23.1.1999 whereby the punishment of reduction to the minimum of the pay scale was imposed on the petitioner. As a sequel to this, an adverse entry was made in the A.C.R. of the petitioner for the year 1995-96. The petitioner made a representation on 14.1.2000 to the State of U.P. for consideration/ review of the order of punishment. He also filed writ petition in the Allahabad High Court for quashing the order of punishment. The State of Uttaranchal (now Uttarakhand) and the High Court of Uttaranchal (now Uttarakhand) were carved out on 9.11.2000. The said writ petition was transferred by the Allahabad High Court to the Uttarakhand High Court and the said writ petition was disposed of by relegating the petitioner's petition to the Uttarakhand Public Services Tribunal. During the pendency of the petition before the Tribunal, the Govt. of Uttarakhand considered the representation of the petitioner and punishment order was withdrawn vide order dated 11.8.2005 and expunged the adverse entry recorded in the A.C.R. of the petitioner for the year 1995-96. The Tribunal taking cognizance of the said fact, decided the petition as infructuous. Thereafter, the petitioner again filed a writ petition before the Hon'ble High Court of Uttarakhand claiming in the petition that the petitioner may be given the benefits of the time scale and selection grade respectively w.e.f. the date of completion of 8 years and 14 years of service and notional promotion to Class-I post from 1989. He also placed reliance of his claim upon the orders passed in favour of Sri R.K.Khare who was promoted to Class-I post w.e.f. 16.11.1989. He also relied upon the order dated 22.1.2001 passed by the Government of State of U.P. and

Uttarakhand and he also claimed the seniority w.e.f. 16.11.1989. It is apparent from the perusal of the record that the petitioner was bypassed or made junior, promoting the other juniors to a higher scale due to the adverse entries as well as punishment awarded by the State of U.P. The State of U.P. was never made a party to the writ petition and no officer, who was aggrieved by the said relief, was made party to the writ petition. He independently sought the relief of Mandamus to fix his seniority w.e.f. 16.11.1989 and the seniority of selection grade as well as other benefits w.e.f. 1989. One of the appellant before the Hon'ble Supreme court was allotted to the new State of Uttarakhand and the other appellant was appointed in U.P. and he opted the Hill Cadre in 1992. The main contention of the petitioner before the Hon'ble Supreme Court was that the Hon'ble High Court of Uttarakhand which came in existence on 9.11.2000, did not have the jurisdiction to entertain the writ petition filed by the petitioner and to issue a mandamus to the State Government to promote him to Class-I post w.e.f. 16.11.1989, more so because the issue is raised and the writ petition involved examination of legality of the decision taken by the State of U.P. to promote Sri R.K. Khare w.e.f. 16.11.1989 and other officers who were promoted to Class-I post vide order dated 22.1.2001 with retrospective effect. The State of Uttarakhand also raised a contention before the Hon'ble Apex Court that the High Court was not competent to issue direction of promotion of the petitioner w.e.f. a date prior to the formation of new State and that too without hearing the State of U.P. that is why the High Court did not examine the issue of jurisdiction to entertain the prayer made by the petitioner. In this regard the total cause of action arose before the State of U.P. and no part of cause of action arose in the State of Uttarakhand. In view of the above facts, the Hon'ble Apex Court held that the entire petition was a misconceived petition and as such the High Court of Uttarakhand has no jurisdiction to entertain the petition. Hon'ble Apex Court in the case of Umakant Joshi (supra) in para 26 & 27 has held as under:-

> "26. *We have considered the respective submissions. It is not in dispute that at the time of promotion of Class-II officers including Shri R.K. Khare to Class-I posts with effect from 16.11.1989 by the Government of Uttar Pradesh, the case of respondent No.1 was not considered because of the adverse remarks recorded in his Annual Confidential Report and*

the punishment imposed vide order dated 23.1.1999. Once the order of punishment was set aside, respondent No.1 became entitled to be considered for promotion to Class-I post with effect from 16.11.1989. That exercise could have been undertaken only by the Government of Uttar Pradesh and not by the State of Uttaranchal (now the State of Uttarakhand), which was formed on 9.11.2000.

27. Therefore, the High Court of Uttarakhand, which too came into existence with effect from 9.11.2000 did not have the jurisdiction to entertain the writ petition filed by respondent No.1 for issue of a mandamus to the State Government to promote him to Class-I post with effect from 16.11.1989, more so because the issues raised in the writ petition involved examination of the legality of the decision taken by the Government of Uttar Pradesh to promote Shri R.K. Khare with effect from 16.11.1989 and other officers, who were promoted to Class-I post vide order dated 22.1.2001 with retrospective effect."

45. The perusal of the above Umakant Joshi case(supra), the judgment is not applicable in this case. There is no official of U.P. involved in this matter. Both the officials belong to the State of Uttarakhand and are the officials of the State of Uttarakhand. Apart from that there is no official posted in the State of U.P. of which seniority is to be disturbed. The impugned order passed by the Board of Revenue, as we have noticed is ultra vires to the Government order dated 13.12.1977 and has no impact either on the State of U.P. It will only effect the rights of the employees of the State of Uttarakhand only of the parties of the lis. Thus, the above judgment is not applicable in this case.

46. First we have held that main cause of action arises before the Tribunal of State of Uttarakhand. However, the order which is sought to be quashed has already been passed by the State Government of U.P. in the year 1990 prior to the issuance of the letter by the Board of Revenue of 1991 and the letter of the Board of Revenue is in contravention of the Government order as such a part cause of action arises before the State of Uttarakhand. Thus, in view of the judgment of the Constitutional Bench of the Hon'ble Apex Court the petition can be filed before any of the Court where part cause of action or claimants claim arises. Thus, in view of the above findings, if we quash the order, we will have to mould the relief that this order would not be effective in the case of the petitioner and the Respondent No.3 and the Board of Revenue of Uttarakhand will take note of it in view of the

Government's decision dated 13.12.1977 and the letter of 1990 issued by the State of U.P. The said letter of U.P. Board of Revenue 1991 being ultra vires to the said government order dated 13.12.1977 and the letter dated 25.4.1990 issued by the State of U.P. will have no effect. The consequence of the quashment will be applicable in the State of Uttarakhand and it is directed to the D.M., Commissioner and the Board of Revenue not to follow the direction contained in the letter of Board of Revenue of 1991. Thus, we conclude that this Court has got the jurisdiction to entertain the petition. The petition is liable to be allowed.

ORDER

The claim petition is allowed. The impugned orders dated 19.01.2009 (Annexure No. 14), 30.01.2009 (Annexure No. 18) and 31.01.2009 (Annexure No. 22) and the impugned order dated 10.04.1991 communicated vide letter dated 19.04.1991 (Annexure No. 21) are not sustainable and Annxure 14, 18 & 22 are hereby quashed. The respondent nos. 1, 2 & 3 are directed not to give effect of the order of the Board of Revenue dated 10-04-1991 communicated vide letter dated 19-04-1991 (Annexure No. 21 of the claim petition). The said order is held to be unsustainable in view of the Government Order of Government of State of Uttar Pradesh dated 13-12-1977 applicable to the State of Uttarakhand and letter dated 25-04-1990. The parties shall be bear on their own cost.

Sd/- Sd/-

(U.D.CHAUBE) **(JUSTICE J.C.S.RAWAT)**
MEMBER (A) CHAIRMAN

V.M.

DATE: 26th August, 2015

NAINITAL