BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT DEHRADUN

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

------ Chairman

Hon'ble Mr. U.D.Chaube

-------Member (A)

CLAIM PETITION NO. 13/DB/13

1. Hari Lal Deotala, S/o Late Sri Murli Dhar Deotala, aged about 57 years, presently posted as Personal Secretary to the Additional Secretary, School Education, Govt. of Uttarakhand, Dehradun.
2. Madan Mohan Bhardwaj, S/o Late Sri Vishnu Dutt Bhardwaj Aged about 54 years, presently posted as Private Secretary to the Principal Secretary, Finance, Govt. of Uttarakhand, Dehradun.
3. J.C.Pant, S/o Late Sri Vishnu Dutt Pant, aged about 57 years, presently posted as Private Secretary to the Additional Secretary, Irrigation Department, Dehradun.
4. Dinesh Chandra Gairola, S/o Late Sri Narayan Dutt Gairola, aged about 57 years, presently posted as Senior Private Secretary to Secretariat Admission Department, Govt. of Uttarakhand, Dehradun.

……Petitioners

VERSUS

1. State of Uttarakhand through Principal Secretary, Admission Department, Civil Secretariat, Dehradun.
2. Principal Secretary, Karmik, Govt. of Uttarakhand, Dehradun.
3. Principal Secretary, Law, Govt. of Uttarakhand, Dehradun.
4. Trilok Chandra, Senior Private Secretary.
5. M.S. Kunjwal, Senior Private Secretary.
6. Ram Chandra Kala, Senior Private Secretary.
7. Gopal Singh Nayal, Senior Private Secretary.
8. Kailash Chandra Joshi., Senior Private Secretary.
9. Prakash Chandra Upadhyay, Senior Private Secretary.
10. Mohan Lal Uniyal, Senior Private Secretary.
11. R.S.Dev, Senior Private Secretary
12. Rajendra Prasad, Senior Private Secretary.
13. Arvind Prakash Bhatt, Senior Private Secretary.
14. Dinesh Chandra Karnatak, Senior Private Secretary.
15. Kishan Chand Sharma (Retd.) Senior Private Secretary.
16. Anil Kumar Mamgain, (Retd.) Private Secretary.
17. Dinesh Chandra Purohit, (Retd.) Senior Private Secretary
18. Shanker Dev Arya, Senior Private Secretary.
19. Mohan Prasad Khansali, (Retd.) Private Secretary.
20. Roop Chandra Gupta, Principal Private Secretary.
21. Harshverdhan Joshi, (Retd.) Private Secretary.

22. Prakash Chandra Bhatt, Principal Private Secretary.
23. Rajbala Tomer, Principal Private Secretary
24. Virendra Singh Khairola, Senior Private Secretary
25. Subhash Chandra Panwar, Senior Private Secretary.
26. Ashok Kumar, Senior Private Secretary.
27. Hari Prasad Belwal, Senior Private Secretary.
28. Ramesh Chandra Bisht, Senior Private Secretary.
29. Om Prakash Pandey, Senior Private Secretary.
30. Sohan Lal Dobhal, Senior Private Secretary.
31. Digpal Singh Rawat, Senior Private Secretary.
32. Sab singh Negi, Senior Private Secretary.
33. Virendra Kumar Kaushik, Senior Private Secretary.
34. Laxmi Aggarwal, Senior Private Secretary.
35. Dhyan Singh, Senior Private Secretary.
36. Smt. Shobha Bhatt, Principal Private Secretary.

…….Respondents.

Present: Sri B.B.Naithani, Ld. Counsel
for the petitioners.
Sri Umesh Dhaundiyal, Ld. P.O.
for the respondent Nos. 1 & 3.
Sri T.R.Joshi, Ld. Counsel
for Respondent Nos.5,6,8 & 9.
Dr. Aparna Singh, Ld. Counsel
for Respondent Nos.7,10,11,13 & 14.

JUDGMENT

DATED: MAY 18, 2016.

(Hon'ble Mr.Justice J.C.S. Rawat, Chairman)

1. This petition has been filed for seeking following relief:-

"(i) To issue order or direction for setting aside the impugned order reflected in the Noting Sheets dated 11.2.2013 along with order dated 17.4.2012 (contained in Annexure NO. A-1 & A-2) together with the seniority list dated 27.4.2009 along with its effect and operation also after calling the entire records from the respondents.

(ii) To issue order or direction directing the respondents to redraw the seniority list taking into consideration the initial date of appointment of the petitioners in the parent departments and place above the petitioners to the respondents and also allow the benefit of notional promotion along with all consequential benefits from the date when the same has been given to the private respondents.

(iii) Any other relief which the Court deem fit and proper in the circumstances of the case.

(iv) Cost of the petition be awarded to the petitioner."

2. The State of Uttarakhand was carved out from the State of Uttar Pradesh on 9.11.2000 by the Uttar Pradesh State Reorganization Act 2000. After creation of the State of Uttarakhand, the State established a Secretariat for the smooth functioning of the Government and the State of U.P. sent few employees to the State of Uttarakhand to make the State Government functional. After creation of the State, it was experienced that sufficient staff is not available in the Secretariat, so a number of employees were requisitioned from the different departments for the smooth functioning of the State Government. The petitioner and the private respondents are the Stenographers of the Secretariat, who were requisitioned from the different Government Departments who were working as Stenographers in the said department. The State of U.P. and the Central Government could not provide sufficient staff to the Secretariat of the State of Uttarakhand, so it was felt that if the officials, who had been attached as Stenographers working as Stenographers in the Secretariat from the different departments, are not merged in the Secretariat services, the functioning of the Government would become difficult. In view of the said difficulty and exigencies, the State of Uttarakhand framed Rules for the merger by transfer of those Stenographers who had been requisitioned in the Secretariat for discharge of the work of Stenographers. These rules are called the Uttaranchal Sachivalaya Vayaktik Sahayak, Avar Varg Sahayak, Sahayak Lekhakar' Tankak' Anusevak ke Pado per Samvilien Niymawali, 2002. (hereinafter referred to as Amalgamation Rules-2002) (Annexure-R-4 to the W.S.). The provisions of Rule-6 of the said Rules is relevant for the purpose of the merger by transfer and for fixation of their seniority in the cadre of the P.A. working in the Secretariat, Government of Uttarakhand. Rule 6(2) provides the date mentioned in the order of absorption by transfer in the Secretariat on the post of Personal Assistant will be considered as

the date of substantive appointment on the basis of the pay scale and length of service on the said post of the person who has been absorbed. All the concerned employees in the Secretariat, after that date, their seniority, promotion and other service matter shall be dealt with under the relevant service rules. After the merger of the Stenographers into P.A. of the Secretariat, the inter-se seniority of the concerned post, the P.As. of the Secretariat Cadre would be on the basis of the date of substantive appointment on the post of the concerned cadre shall be taken in block at first. After fixing the seniority of the P.As. already working in the Secretariat, the employees who had come from merger by transfer in the cadre of P.A., their seniority would be fixed below the junior most P.A. of the cadre of the Secretariat services of the Uttarakhand Government. These Stenographers who were to be merged by the said rules, were to be kept as junior most employees of the Secretariat Cadre and it was also provided that the Stenographers having the same pay scale under the different departments, the seniority of such employees would be fixed on the basis of the date of substantive appointment and on the basis of the length of service reckoned from the date of their substantive appointment in the parent department. The State Government vide order dated 24.06.2002 (petitioner had wrongly mentioned the date 25.6.2002 in the amended pleading-Annexure-35-A) sought the options of the employees to give their consent to be absorbed in view of the Amalgamation Rules, 2002. The options were given by the petitioners on 25.6.2002 vide Annexure-A 36. Thereafter the State Government issued an order on 25.6.2002 that the Stenographers who have been requisitioned from different departments up to 23.12.2001 and are presently working in the Secretariat on the different posts under Amalgamation Niymawali, 2002, have been merged with immediate effect (Annexure- 4 [colly]) and the appointment letter would be issued later on. An endorsement was made in the said order if, so requisitioned employees are interested in their absorption in the Secretariat, they can send their consent also. Consequent upon the

said letter, an appointment order Annexure- 4 (colly) was issued with regard to the petitioner as well as respondents. It is mentioned in the said appointment letter that the seniority amongst the petitioner and the respondents viz the Stenographers merged on transfer would be decided later on under the Amalgamation Niymawali, 2002. It is apparent from the above order that the petitioner and the private respondents were given appointment and their seniority were to be determined later on. Thereafter the State Government vide order dated 22.11.2004, Annexure-32, fixed the seniority of petitioner and private respondents and a list was promulgated as Annexure-32. It is provided in the said office memorandum that interim list was already issued and issuance of final list was considered by the authority and also considered the representation given for fixing the seniority. The competent authority has come to the conclusion that the principle for fixing the seniority has been adopted on the basis of the Amalgamation Niymawali, 2002 and Uttarakhand Government Servant Seniority Rule, 2002 (hereinafter referred to as Seniority Rules, 2002) and list thereof has been annexed herewith the order. It is apparent that the Seniority Rules, 2002 had also been considered while fixing the seniority.

3. Immediately after issuance of the seniority list of the petitioner as well as of the private respondents in the year 2004, the Stenographers, who were merged under the Amalgamation Niymawali, 2002, preferred few writ petitions namely, Civil Writ Petition Nos. 34 of 2005 (S/B) Dinesh Chandra Purohit & others Vs. State & others, 32 of 2005 (S/B) Kailash Chandra Tiwari & others Vs. State and others, 33 of 2005 (S/B) Madan Mohan Bhardwaj & others Vs. State & others, 67 of 2005 (S/S) Roop Chand Gupta Vs. State & others & 70 of 2005(S/S) Ashutosh Bhaguna Vs. State & others before the Hon'ble High Court challenging the validity of Rule 6(2) of Amalgamation Niymawali, 2002 on the ground that Rule 6(2) is violative of the Article 14 of the Constitution . The said writ petitions were dismissed and it was held that the provisions of the Rule 6(2) are not violative of Article 14 of the Constitution of India vide judgment dated 20.12.2006. The aggrieved petitioners preferred the

special leave petition bearing No. 6076/2007 Dinesh Chand Purohit & others Vs. State of Uttaranchal & others before the Hon'ble Supreme Court. The Hon'ble Apex Court dismissed the SLP. While dismissing the said SLP, it was observed that in case any individual person is affected by the improper implementation of Rules, then he can approach the proper forum for relief of his grievances. The order of the Hon'ble Apex Court is as Annexure-A-7 on the record. After receipt of the said order, the representations were made by the P.As. who had been transferred from the Stenographers for determination of their seniority in accordance with the Rules and they had challenged the seniority list issued on 8.12.2004 in view of the direction of the Hon'ble Apex Court. The State Government issued final seniority list on 29.4.2009 which is Annexure-R-1 to the claim petition. The aforesaid seniority has been determined in accordance with Rule 6 of Amalgamation Niymawali, 2002 as well as Seniority Rules, 2002. This fact is indicated from Para 14 of the Office Memorandum under which the impugned seniority list of 29.4.2009 has been issued.

4. The petitioner has disputed that the seniority list has not been issued in accordance with Rule 6 (2) of the Amalgamation Rule, 2002. It has further been alleged that the respondent has fixed the inter-se seniority of the Stenographers appointed as P.As. on the basis of the Seniority Rules, 2002 which was notified on 13.8.2002.

5. After issuance of the seniority list dated 29.04.2009, Sri R.C. Kala and Gopal Singh Nayal submitted the representation against the final seniority list in which the state government sought the reply of the petitioners and other P.As. and the different P.As. and including the petitioners submitted their representations alleging therein that their seniority has wrongly been fixed in this seniority list dated 29.04.2009. A committee was constituted under the Chairmanship of Principal Secretary to look into the cases of the parties. The notings were made in favour of the petitioners and thereafter, on 27.09.2012, the representations were rejected and the seniority list already issued on 29.04.2009 held to be final. After feeling aggrieved of the said order,

the petitioners have preferred this claim petition**.** Ld. Counsel for the petitioner contended that from the perusal of the impugned seniority list and the order Annexure-R-1 it is apparent that the seniority of the Stenographers working as P.As. had been fixed according to Seniority Rule 2002 and Rule 6 (2) of Amalgamation Rule, 2002; the Seniority Rules, 2002 were notified after the enforcement of the Amalgamation Niymawali, 2002. Rule 6 (2) of Amalgamation Rule specifically provides that inter-se seniority should be fixed on the basis of the date of substantive appointment in the parent department. Whereas the respondent has considered the pay scale of the employees as main criteria for determination of their seniority. It was further contended that the respondent/State has alleged in Para 4 of its W.S. that the persons who were getting higher pay scale, were placed senior than the persons who were getting the lower pay scales according to proviso of the Rule-7 of Seniority Rules, 2002. It is further contended that the respondents have taken a consistent case that the Seniority Rules, 2002 are not applicable in this case. Ld. A.P.O. relied upon the pleadings as alleged in Para 4 of the W.S. that persons who were getting higher pay scales, were made senior to the other persons according to proviso of the Rule-7 of the Seniority Rules, 2002.

6. Now the question arises as to how the seniority of the petitioners and the private respondents had to be determined by the Government/respondents. The perusal of the order dated 17.4.2012, Annexure-A-2 to the claim petition as well as the order dated 29.4.2004 passed by the Secretary of the Secretariat Administration clearly provides that the seniority of the petitioner as well as private respondents were being determined in accordance with the Uttarakhand Government Servant Seniority Rules 2002 (hereinafter referred to as Seniority Rules, 2002) and Uttaranchal Sachivalaya Vayaktik Sahayak, Avar Varg Sahayak, Sahayak Lekhakar' Tankak' Anusevak ke Pado per Samvilien Niymawali, 2002 (hereinafter referred to as Amalgamation Niymawali, 2002). Thus, it is apparent that while determining the seniority, principles laid down in the Seniority Rules,

2002 as well as the Amalgamation Niymawali, 2002 have been considered. It is also provided in the Seniority Rules, 2002 that these Rules had come into force on 13.8.2002. Perusal of the Amalgamation Niymawali, 2002 clearly signifies that these rules were notified on 22.6.2002 prior to the enforcement of the Seniority Rules, 2002. When the Amalgamation Niymawali, 2002 came into force, the Seniority Rules, 2002 were not in existence. Rule 6 of the Amalgamation Niymawali clearly provides that the date of the services of the transferred employees such as the petitioners and private respondents in Secretariat Services will be the date on which the services of such employees were merged in the existing cadre. All the employees so merged in the Secretariat Cadre will be junior to the junior most employee of the pre-existing cadre of the P.A. of Secretariat. It is further provided that the seniority of the merged employees will be determined from the date of their substantive appointment, pay scale and length of their service.

7. Thus, the impugned order clearly provides that while determining the seniority of all the petitioners as well as private respondents the competent authority has considered the Amalgamation Niymawali, 2002 also. Perusal of the impugned order also reveals that the competent authority has also taken into consideration the Seniority Rules, 2002. It is apparent from the perusal of the Annexure-A-2 in Paragraph 2 and subsequent paragraphs that Rule 6(2) as well as its explanation of Seniority Rule, 2002 has been taken into consideration for determination of the seniority of the parties. Rule 7 provides as under:

> " 7. **Seniority where appointment by promotion only from several feeding cadres**- Where according to the service rules, appointments are to be made only by promotion but from more than one feeding cadres, the seniority inter se of persons appointed on the result of any one selection shall be determined according to the date of the order of their substantive appointment in their respective feeding cadres.

Explanation- Where the order of the substantive appointment in the feeding cadre specifies a particular back date with effect from which a person is substantively appointed, that date will be deemed to be the date of order of substantive appointment and, in other cases it will meant the date of issuance of the order.

Provided that where the pay scales of the feeding cadres are different, the persons promoted from the feeding cadre having higher pay scale shall be senior to the persons promoted from the feeding cadre having lower pay scale.

Provided further that the persons appointed on the result of a subsequent selection shall be junior to the persons appointed on the result of a previous selection"

8. Now the question arises as to whether the Seniority Rules, 2002 is applicable for determination of the seniority. Ld. Counsel for the petitioner contended that the petitioners were working in the different Government departments before creation of the State of Uttarakhand and thereafter the petitioners and the respondents were called upon to discharge their work in the Secretariat of Uttarakhand at Dehradun. The Government promulgated the Amalgamation Niymawali, 2002 in the year 2002 and the employees were asked to file their options as to whether the persons so working in the Secretariat from the different departments would like to join the Secretariat in terms of Amalgamation Niymawali, 2002 or not. The petitioners as well as private respondents filed their consent as well as joined the service of the department and they started discharging their duties. The State Government vide order dated 20.72002 it was communicated that the seniority would be determined later on pursuant to the Amalgamation Niymawali, 2002. Ld. Counsel for the petitioners further contended that the petitioners, on the representation made by the State Government, joined the services of the Secretariat pursuant to the Amalgamation Niymawali, 2002 and the seniority was to be determined in accordance with those Rules and the State Government had decided their seniority absolutely in violation of the said

undertaking as well as Rule 6(2) of the Amalgamation Rules. It was further contended that the Seniority Rules, 2002 are not applicable in the case of the merger where the services have been transferred from the other departments to the Secretariat and he further contended that the seniority could not be determined in accordance with the Seniority Rules, 2002 which have been promulgated after the promulgation of the Amalgamation Niymawali, 2002.

9. Ld. A.P.O. refuted the contention and he contended that the Uttaranchal Seniority Rules, 2002 had an overriding effect on all the Service Rules framed by the Governor under the proviso to Article, 309 of the Constitution. He specifically referred Rule 2 & 3 of the said Rules which specifically provides that the Seniority Rules would apply to all Government servants in whose recruitment, condition of service has been determined by the Governor under Article 309 of the Constitution. He further contended that these Rules have a retrospective effect by virtue of the provision of the Rule 3 of the Seniority Rules. He contended that the seniority of the petitioners as well as respondents are to be determined according to the Seniority Rules, 2002 and whereas the petitioners' contention that promissory estoppels and equity applies in this case, is not tenable in the eye of law.

10. It is apparent from the perusal of the record that the petitioners as well as respondents were given an option before joining the services of the Secretariat as to whether they want to join the Secretariat pursuant to Amalgamation Niymawali, 2002, copy of the said order is (colly Annexure 4's first order and its endorsement) Annexure-A-35 to the claim petition and the reply thereof is also filed by the parties in form of Annexure-A-36. Meaning thereby there was a clear undertaking and understanding between the Government and the employees that they are giving joining in service under Amalgamation Niymawali, 2002. Now the question arises whether by virtue of the promissory estoppels and equity, Amalgamation Rules would only apply and no other rules regarding the fixation of the seniority would apply.

11. Before analyzing the concept of the promissory estoppels and equity, we would like to first deal as to whether promissory estoppels and equity applies in the service matter against the Government or not. It is settled principle that the terms and conditions of the service are governed by the Service Rules of the employees. It is also settled that the plea of promissory estoppels and equity can be set up by the person against the State when he is able to prove with adequate evidence that the State has promised him in writing in express terms to grant specific benefit and acting upon such promise he has altered his position. In such circumstance, the State Government cannot be allowed to take U-turn from their promise made to such an employee and the employee can enforce the promise made by the State Government.

12. Now we will analyze the judgments of the Hon'ble High Courts as well as Hon'ble Supreme Courts in this regard. In the case of **Abdul Salam Khan & others Vs. State of Uttarakhand & others Special Appeal No. 51/2013** decided on 20.3.2013, in this case immediately after creation of the State of Uttarakhand the Drivers of Uttarakhand Transport Corporation were given an offer being merged in the State Government. In the said offer it was provided that the employer's contribution to the contributory fund lying to the credit of the Drivers of the Corporation in their contributory fund account will be transferred to the State Government and employees' contribution therein will be transferred to the new GPF account to be opened in the name of the appellants. The Government also framed Rules on 9.7.2002 regarding merger of the Corporations' Drivers and the other Drivers worked in the other Government departments in the State department of the Government. In the said Rules in Clause 8 of Rule 6, it was provided that the past services of the Corporations' Drivers, in the Corporation would be taken into account for the purpose of pension and gratuity under the Merger Rules in addition to the people like Corporations' Drivers who were previously working in the Corporation and other Drivers working in the other departments in the State were

also merged in the State Department of the State Government. The State department prepared a seniority list according to Rules and it was challenged before the Court. During the pendency of the petition the State department also issued first amendment of the above Rules in the year 2007 whereby among other Rules Clause 8 of the Rule 6 was substituted by providing that past services only in those Autonomous Bodies/ Corporations shall be added for the purpose of pension and gratuity etc. wherein the pension, gratuity facilities were already admissible and other benefits of the past service shall not be admissible in the merged services and a proviso was also appended thereto provide that the Earned leave and Medical leave shall be in accordance with the liability after absorption and balance of leave credited to the leave account during past service shall not be added in the present service. The employees also challenged this stand of the State Government in the pending writ petition by way of amendment. The Hon'ble High Court held that the said Rule is totally in contravention of the earlier promise given to them and it is violative of Article 14 and promissory estoppel and equity was applied against the Government. The Hon'ble High Court held in Para 4 & 5 as under: -

> "4. From the offer letter dated 19th January, 2002, it is clear that the proposal of merger was not compulsory; the same was optional. Proposal held out that the contributory part of the provident fund will go to the State. That suggests that the State was aware that the appellants were entitled to the benefit of contributory provident fund while working with the Corporation. It must be deemed that the State, in such circumstances, was also aware that the appellants were not entitled to pension for they were entitled to the benefit of contributory provident fund. It goes without saying that under the Payment of Gratuity Act at least, the appellants were entitled to gratuity. In that background, while proposing to take away the benefit of contributory part of the provident fund, it was held out in the proposal dated 19th January, 2002 that the services rendered in the Corporation will be taken note of for the purpose of pension and gratuity; the appellants accepted the same. When originally the Rules were framed on 9th July, 2002, there was no alteration of the proposal, as was made on 19th January, 2002. In 2007,

while contributory part of the provident fund was not returned to the appellants, it was held out by the impugned amendment that the appellants shall not be entitled to count their services rendered in the Corporation for pension, inasmuch as the service in the Corporation was not pensionable. The said First Amendment Rules of 2007 also sought to substitute Rule 6(5) of the Merger Rules. The substituted rule made it further clear that the contributory part of the provident fund shall belong to the State. Conclusion would be that in effect Rule 6(8) sought to deprive the appellants exchange of a benefit, to which they were otherwise entitled to, namely, contributory part of the provident fund till such time they remained employees of the Corporation, with the promised benefit of counting service rendered in the Corporation for the purpose of calculation of pension, as was held out in the original proposal and repeated in the original merger Rules. We, accordingly, interfere and set aside the First Amendment Rules, 2007 to the extent the same purported to substituted Rule 6(8) of the merger Rules.

5. Having regard to the fact that in the original proposal it was held out that the inter se seniority between merged employees coming from the Corporation and from other Departments of the Government, will be counted from the date of their original appointment in the Corporation and in other Departments and there being no contrary decision thereto preparation of the impugned seniority list showing the employees of the Corporation enbloc as junior to those who have come from other Departments, is also struck down being contrary to the expressed provisions contained in the rule."

13. The State Government filed a Special Leave Petition before the Hon'ble Apex Court which was dismissed.

14. Apart from that the Hon'ble Supreme Court in the case of **Surya Narain Yadav & others Vs. Bihar State Electricity Board and others 1985 (2) SLR 479** following the earlier decision rendered by the Hon'ble Apex Court in **Union of India Vs. Indo-Afghan Agencies 1968 (2) SCR 366, Motilal Padampat Sugar Mill Company Ltd. Vs. State of U.P. 1979 (2) SCR 409** held that the doctrine of promissory estoppels and equity is not based on the principle of estoppels but it is a doctrine evolved by equity in order to prevent injustice and it may be a basis of a cause of action. The

Hon'ble Apex Court in **Surya Narain Yadav Vs. Bihar State Electricity Board in Para 5,7, & 8** has held as under:-

> "5. In our view, the principle relied upon in these cases has full application to the facts before us. The Board is a statutory authority and is 'State' within the meaning of Article 12 of the Constitution. The Board has tried to seek shelter under a set of rules framed by it in exercise of the powers vested under section 79 of the Electricity (Supply) Act of 1948. In the peculiar facts of the case we are of the view that the defence is ill-placed and cannot hold as a shield against the application of the equitable doctrine. Admittedly, the trainee engineers before us formed a specific class and from time to time the Board treated them as members of class and in its resolution of April 26, 1979, recognized this fact and swore to the position that such treatment should never be repeated even if apprentice engineers were appointed.
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> 7. So far as the first aspect is concerned, we have sufficiently pointed out already that the Board had waived the requirement of examination and had, while taking advantage of the services of the appellants when it was in need, delayed the implementation of its representations. But it appears that several engineers have also been recruited either on permanent or temporary basis against regular vacancies and they are not parties to these appeals. The appellants, therefore, cannot have seniority above those people and we would not be justified in making any direction which would prejudice their seniority behind their back. It appears that there have been requirements even during the pendency of these appeals. While granting leave and while disposing of miscellaneous petitions for directions, this Court has already made it clear that appointments pendente lite would be subject to the result of the appeals. Therefore, the recruits of 1983 are bound to be subject to our directions. We are inclined to take the view that the appellants being already in employment of the Board much prior to 1983 on being taken into regular appointment of the Board have to rank above the recruits of 1983 and in the years thereafter.
>
> 8. The Board in our view is, therefore, bound to regularise the appointments of the appellants who had been taken as trainee engineers initially and have continued to be in the employment of the Board. In this view of the matter after the hearing was over we issued a mandamus to the Board to

> offer regular appointment to the appellants within three months from that day, i.e. May 3, 1985, in the appropriate cadre of Assistant Engineer or Junior Engineer, as the case may be, and such appointments were to be on probation for a period of two years as required under the rules. In regard to seniority the appellants have to rank below permanent and temporary recruits to regular posts of engineers held under the Board prior to 1983 and they shall be assigned seniority above such recruits pendente lite. We have now indicated the reasons by our judgment. The appeals are allowed and the judgment of the High Court is reversed and the Board is directed to give effect to the directions indicated above within the specified time."

15. Thus, it is apparent that the principle of promissory estoppels and equity applies in the case of service matters also.

16. Now, we will like to define the principle of promissory estoppels and equity in law. The basic doctrine of promissory estoppels and equity is that if any party, any representation oral or written or by conduct made to the other party and an unequivocal promise or representation to create a legal relation for future and with the intention that the assurance would be fulfilled, the person who had made the representation; cannot resile from his promise and the party aggrieved can seek enforcement of the promise by the Court. promissory estoppels and equity has been elaborately explained in Para 11 & 12 in **Kaniska Trading Vs. Union of India 1995(1) SCC 274** which is as under:-

> "11. The doctrine of promissory estoppel or equitable estoppel is well established in the administrative law of the country. To put it simply, the doctrine represents a principle evolved by equity to avoid injustice. The basis of the doctrine is that where any party has by his word or conduct made to the other party an unequivocal promise or representation by word or conduct, which is intended to create legal relations or effect a legal relationship to arise in the future, knowing as well as intending that the representation, assurance or the promise would be acted upon by the other party to whom it has been made and has in fact been so acted upon by the other party, the promise, assurance or representation should be binding on the party making it and that party should not be permitted to go back upon it, if it would be inequitable to allow him to do so,

having regard to the dealings, which have taken place or are intended to take place between the parties.

12. It has been settled by this Court that the doctrine of promissory estoppel is applicable against the Government also particularly where it is necessary to prevent fraud or manifest injustice. The doctrine, however, cannot be pressed into aid to compel the Government or the public authority "to carry out a representation or promise which is contrary to law or which was outside the authority or power of the officer of the Government or of the public authority to make". There is preponderance of judicial opinion that to invoke the doctrine of promissory estoppel clear, sound and positive foundation must be laid in the petition itself by the party invoking the doctrine and that bald expressions, without any supporting material, to the effect that the doctrine is attracted because the party invoking the doctrine has altered its position relying on the assurance of the Government would not be sufficient to press into aid the doctrine. In our opinion, the doctrine of promissory estoppel cannot be invoked in the abstract and the courts are bound to consider all aspects including the results sought to be achieved and the public good at large, because while considering the applicability of the doctrine, the courts have to do equity and the fundamental principles of equity must for ever be present to the mind of the court, while considering the applicability of the doctrine. The doctrine must yield when the equity so demands if it can be shown having regard to the facts and circumstances of the case that it would be inequitable to hold the Government or the public authority to its promise, assurance or representation."

The law of promissory estoppels and equity has developed in our country also by the different pronouncements of the Hon'ble Supreme Court. It is an unequivocal doctrine ; it can only be yielded when the equity so requires. Hon'ble Apex Court in the case of **Sharma Transport Vs. Government of Andhra Pradesh 2002(2) SCC 188** has further explained the proposition of doctrine in para 13 as under:-

"13. "There is preponderance of judicial opinion that to invoke the doctrine of promissory estoppel, clear, sound and positive foundation must be laid in the petition itself by the party invoking the doctrine and that bald expressions, without any supporting material, to the effect that the doctrine is attracted because the

party invoking the doctrine has altered its position relying on the assurance of the Government would not be sufficient to press into aid the doctrine."

17. In the case of **Motilal Padampat Sugar Mill Company Ltd. Vs. State of U.P.**(supra) in Para 24 & 27 it has further been explained as under:-

> "24. But it is necessary to point out that since the doctrine of promissory estoppel is an equitable doctrine, it must yield when the equity so requires. If it can be shown by the Government that having regard to the facts as they have transpired, it would be inequitable to hold the Government to the promise made by it, the Court would not raise an equity in favour of the promisee and enforce the promise against the Govenrment. The doctrine of promissory estoppel would be displaced in such a case because, on the facts, equity would not require that the Government should be held bound by the promise made by it. When the Government is able to show that in view of the facts as have transpired since the making of the promise, public interest would be prejudiced if the Government were required to carry out the promise, the Court would have to balance the public interest in the Government carrying out a promise made to a citizen which has induced the citizen to act upon it and alter his position and the public interest likely to suffer if the promise were required to be carried out by the Government and determine which way the equity lies. It would not be enough for the Government just to say that public interest requires that the Government should not be compelled to carry out the promise or that the public interest would suffer if the Government were required to honour it."
>
> In the same paragraph it is further observed that:-
>
> "……..the Government cannot, as Shah,J., pointed out in the Indo-Afghan Agencies case, claim to be exempt from the liability to carry out the promise "on some indefinite and undisclosed ground of necessity or expediency", nor can the Government claim to be the sole judge of its liability and repudiate it "on an ex parte appraisement of the circumstances". If the Government wants to resist the liability, it will have to disclose to the Court what are the facts and circumstances on account of which the Government claims to be exempt from the liability and it would be for the Court to decide whether those facts and

> circumstances are such as to render it inequitable to enforce the liability against the Government. Mere claim of change of policy would not be sufficient to exonerate the Government from the liability: the Government would have to show what precisely is the changed policy and also its reason and justification so that the Court can judge for itself which way the public interest lies and what the equity of the case demands. It is only if the Court is satisfied, on proper interest requires that the Government should not be held bound by the promise but should be free to act unfettered by it, that the court would not act on the mere ipse dixit of the Government, for it is the Court which has to decide and not the Government whether the Government should be held exempt from liability. This is the essence of the rule of law. The burden would be upon the Government to show that the public interest in the Government acting otherwise than in accordance with the promise is so overwhelming that it would be inequitable to hold the Government bound by the promise and the Court would insist on a highly rigorous standard of proof in the discharge of this burden"
>
> 27. Lastly, a proper reading of the observation of the Court clearly shows that what the Court intended to say was that where the Government owes a duty to the public to act differently, promissory estoppel cannot be invoked to prevent the Government from doing so. This proposition is unexceptionable, because where the Government owes a duty to the public to act in a particular manner, and here obviously duty means a course of conduct enjoined by law, the doctrine of promissory estoppel cannot be invoked for preventing the Government from acting in discharge of its duty under the law. This doctrine of promissory estoppel cannot be applied in teeth of an obligation or liability imposed by law."

18. It is well settled now that the above principle of promissory estoppels and equity cannot be used to compel Government or public authority to carry out the representation or a promise which is prohibited by law and which is devoid of power of the authority of the Government.

19. Thus, from the above pronouncements we can very safely hold that the following ingredients are satisfied, the principle of promissory estoppels and equity can be invoked:-

i. A party must make an unequivocal promise or affect the legal relationship to arise in future.

ii. The representation was intended to create a legal relation or affect the legal relationship to arise in future.

iii. A clear foundation has to be laid down in the petition with supporting documents.

iv. It has to be established that the party invoking the doctrine has altered the position relying on the promise.

v. The government can resile from the promise when public interest would be prejudiced if the Government work required to carry out the promise.

vi. The Court will not apply the doctrine in abstract.

vii. The Government when seeks exemption on the ground of public interest, the Government would have to disclose definite ground to resile from the promise.

viii. If the Government wants to resile from the liability, the Government would have to disclose to the Court what are the facts and circumstances on account of which the Government claims to seek exemption from the liability and it would be for the Court to decide whether those facts and circumstances are such as to render it unequivocally enforce the liability against the Government.

ix. Mere claim of change of policy would not be sufficient to exonerate the Government from the liability

x. The Government or public authority cannot be compelled to carry out a representation or promise which is prohibited by law.

xi. The Government cannot be asked to carry out a representation or promise if the promise had been given by an authority who had no authority to make such promise, the Government cannot be compelled to fulfill such promise.

20. Now we will visualize the factual aspect of the present case.

21. The petitioners have been working in the different Government Departments prior to the creation of the State or prior to asking them

to come to the Government. The Government promulgated the Amalgamation Niymawali in the year 2002. The Amalgamation Niymawali clearly provides how the seniority of persons so appointed in the Government would be determined. The Seniority Rule has been extracted above. The Government in persuasion of above Rules promulgated the Government Order dated 24.06.2002 (Annexure-35) which is quoted as Under:-

"उत्तरॉचल शासन
सचिवालय प्रशासन विभाग
संख्या– 1729/एक–04/2002
देहरादूनः दिनांक 25 जून, 2002

कार्यालय– ज्ञाप

अधोहस्ताक्षरी को यह कहने का निदेश हुआ है कि पूर्व में कार्मिकों की कमी को देखते हुए विभिन्न राजकीय विभागों के 23.12.2001 तक के सम्बद्ध तथा वर्तमान में सचिवालय में सेवास्थानान्तरण पर तैनात कार्मिकों का उत्तरांचल सचिवालय मं ''उत्तरांचल सचिवालय वैयक्तिक सहायक, अवर वर्ग सहायक, सहायक लेखाकार, टंकक, अनुसेवक के पदों पर संविलियन नियमावली, 2002' के अंतर्गत संविलियन, तात्कालिक प्रभाव से, किया जाता है।

2– सचिवालय में संविलीन होने वाले ऐसे कार्मिकों का संबंधित पद पर मौलिक नियुक्ति का आदेश, यथास्थिति, बाद में अन्य सेवाशर्तो आदि के साथ पृथक से निर्गत किया जाएगा।

24/6/02
(पी0सी0शर्मा)
सचिव।

संख्याः 1729/एक–4/2002, तद्दिनांकः
प्रतिलिपि निम्नलिखित को सूचना एवं आवश्यक कार्यवाही हेतु प्रेषितः–
(1) महालेखाकार, उत्तरांचल प्रकोष्ठ, इलाहाबाद।
(2) प्रमुख सचिव/सचिव, उत्तरांचल शासन।
(3) निजी सचिव, मा0 मुख्यमंत्री जी।
(4) समस्त मा0 मंत्रीगण के निजी सचिव।
(5) कोषाधिकारी, देहरादून।
(6) वित्त अधिकारी, उत्तरांचल शासन।
(7) संबंधित विभागाध्यक्ष/कार्यालयाध्यक्ष।
(8) संबंधिक कर्मचारियों को इस निर्देश के साथ कि यदि वे सचिवालय में संविलियन हेतु इच्छुक हों तो अपनी सहमति प्रस्तुत करें।
(8) विभागीय आदेश पुस्तिका।

आज्ञा से,

24/6/02

(पी0सी0शर्मा)
सचिव।

22. Thus, this Government order has been issued under Article 166 of the Constitution and options had been sought pursuant to the Amalgamation Niymawali, 2002. The Stenographers were appointed in the Secretariat, had given their consent to the said merger. Thus, it is clear that after seeking the consent of the Stenographers, they were merged in the Secretariat services in accordance with Rule 6 of the Amalgamation Niymawali, 2002. Thereafter, their seniority had to be determined in accordance with Rule 6(2) of the Amalgamation Niymawali, 2002. It is also a settled principle of law that seniority and promotion are the interest and condition of service of any employee, thus, the date of joining in the Secretariat created an interest of the petitioners against the post of the Stenographers in the Secretariat. It is clear that the petitioners as well as private respondents changed their position and absorbed in the Secretariat services, thus, from the perusal of the above document and analysis it is clear that the Government had made an unequivocal promise or representation by way of a Government order Annexure- colly A-4 and A-35 to the claim petition. The said promise was intended to create the legal relationship between the employees and Government. The Stenographers have filed supporting documents in their favour as we have stated above and they had also altered their position relying on the promise and understanding. Now, we have to see as to whether Government can resile from the promise that their seniority would not be determined according to Rule 6(2) of the Amalgamation Niymawali, 2002. It can only be resiled in the public interest. The said reason had to be disclosed in the pleadings as well as by way of the supporting documents. As we have stated earlier that the supporting documents as well as the plea of written statement taken by the Government would be considered by the Court. The Government immediately after merger in 2002, promulgated the Seniority rules, 2002 to fix the seniority in accordance with Seniority Rules, 2002. Now the question arises can the State Government take a U-turn on the aforesaid ground of Rule 2 & 3 of Seniority Rules, 2002 which read as under:-

> *"**2**. **Over-riding effect**- These rules shall apply to all Government servants in respect of whose recruitment and conditions of service, rules may be or have been made by the Governor under the proviso to Article 309 of the Constitution.*
>
> ***3**. These rules shall have effect notwithstanding anything to the contrary contained in any other service rules made here to above*."

23. These rules have been made retrospective and the operation of these rules were made by general sweeping subordinate legislation. The Government has not considered the individual rule while framing these rules. Ld. A.P.O. could not demonstrate that prior to framing of Seniority Rules, 2002, the Amalgamation Niymawali, 2002 were taken into consideration and it was found that it was not in the public interest so these rules, if found inconsistent to the Seniority Rules, 2002, would stand superseded.

24. We have also gone through the pleadings of the petitioners. The petitioners, by way of amendment, have added Para 4.31 to 4.39 regarding how principle promissory estoppel and equity is applicable in the case of petitioners. After amendment the State /respondents were given time to file supplementary C.A./W.S. and Ld. A.P.O., on 8.4.2016 gave a statement that he did not want to file any supplementary C.A. against the aforesaid amendments as well as such statement was given by some of the private respondents before the Court. Thus, the State Government had not, by way of pleadings, rebutted the statement. If the pleadings are not rebutted, it will be deemed to have been an admitted and the fact will remain admitted to the respondents. In the additional C.A. the State Government could have stated the reasons as to why the public interest would have suffered if the existing provision 6(2) would exist in favour of the petitioners. In view of the above discussion we hold that the Amalgamation Niymawali, 2002 regarding seniority would apply in spite of retrospective provision given in the said Seniority Rules, 2002.

25. Now we have to discuss as to whether the Uttarakhand Seniority Rules, 2002 would occupy the field regulating the seniority of the parties of the lis or not. Ld. Counsel for the petitioner has contended that Rule 6(2) of the Amalgamation Niymawali, 2002 provides on absorption after fixing inter-se seniority on the concerned post of the employees of the Secretariat Cadre on the basis of date of substantive appointment on the concerned cadre and the absorbed employees will be kept in enbloc after the Junior most P.A. of the Secretariat cadre in the seniority list. It is further provided that the Seniority of the absorbed employees would be fixed below the junior most employee of the Secretariat Cadre. The seniority of such employees would be fixed on the basis of the length of service reckoned from the date of the substantive appointment in the parent department and on the basis of the same pay scale. Ld. Counsel for the petitioner further contended that the petitioners had been absorbed on 25.6.2002 and on the date of the appointment/ absorption of the petitioners as well as private respondents Rule 6(2) was operative and there was no any other rule for fixation of the seniority of the employees like Seniority Rules, 2002. The Seniority Rules, 2002 came into existence in the month of August, as such the persons appointed prior to the enforcement of the Seniority Rules, 2002, would be governed by their departmental rules regarding fixation of the seniority, even though it is inconsistent to that Seniority Rule 2002. Ld. Counsel for the petitioners also contended that the Seniority Rule 2002 is prospective in its operation and it is clearly provided in the Rule 1 that the Rule shall come into force at once namely from the date of the notification of the Rule. The petitioners were appointed/ absorbed as P.A. in the Secretariat Cadre prior to the enforcement of the Seniority Rules, 2002, so they had a right over the post and all consequential benefits of service would accrue from the date of their appointment not from any later date. Ld. Counsel for the petitioner has further contended that the State Government had misinterpreted the Rules and invoked the Seniority Rules, 2002 while allowing the seniority to the private respondents; the State

Government had taken into consideration the Rule 7 of the Seniority Rule, 2002 which provides that a person who is having higher pay scale pursuant to different source of selection, may be senior but this anomaly is not acceptable because Rule 6(2) of Amalgamation Niymawali, 2002 clearly provides that the date of substantive appointment while fixing the seniority of the petitioners as well as private respondents had an essence in their parent department. The date of appointment of the petitioners is much earlier to the private respondents and no private respondent got higher pay scale in comparison to the petitioners at the time of induction in the service of the parent department. Ld. A.P.O. refuted the contention and supported the order passed by the State Government on the different dates.

26. We have considered the contention of the parties and perused the record. It is well settled principle that appointment is a right where the party fulfills all the conditions to be appointed to a particular post. If a person is appointed, the promotion or the seniority is not a fundamental right, but it is an interest and a condition to the service under which the party has joined the services. Thus, the petitioners' interest was created from the date when they joined the services i.e. prior to the enforcement of the Seniority Rules, 2002. It is admitted that the Seniority Rules, 2002 came into existence after two months of the promulgation of the Amalgamation Niymawali, 2002. Thus, a person, who is appointed on any particular date, his service conditions would be governed from the date when he had been appointed to a particular post. Now we have to see the Seniority Rules, 2002 had any retrospective effect by which the right of the petitioners, which had been derived by them, had been taken away by the new Seniority Rules, 2002. Perusal of the Seniority Rules, 2002 clearly provides that these rules shall come into force with immediate effect i.e. from 13.8.2002. Rule 2 & 3 provide as under:-

> "**Rule-2- Over-riding effect**- These rules shall apply to all Government servants in respect of whose recruitment

and conditions of service, rules may be or have been made by the Governor under the proviso to Article 309 of the Constitution.

Rule-3- these rules shall have effect notwithstanding anything to the contrary contained in any other service rules made here to above."

27. Ld. A.P.O. tired to convince us that by way of Rule 2 & 3, operation of this rule has been made retrospective. If we go through the provisions of Rule 1, 2 & 3, then it is clear that these rules are not retrospective in its operation. The Rules clearly provide any rule may be or have been made by the Governor under Proviso of Article 309 of the Constitution, will be subject to the provisions of the Seniority Rules, 2002 and perusal of Rule 3 clearly provides that any inconsistent provision existing in the Service Rules made prior to the enforcement, the provision of Seniority Rule will prevail. Thus, the harmonious construction of these three Rules clearly provides that the date on which the Seniority Rules, 2002 had been promulgated thereafter any appointment/ absorption is made in the previous notified Service Rules, the Seniority Rules, 2002 would have an overriding effect on those rules and to that extent the seniority would be governed according to Seniority Rules, 2002 and the persons appointed prior to the enforcement of the Seniority Rules, 2002, the departmental rules would govern the field. We are completely in agreement with the contention of the Ld. Counsel for the petitioner that the seniority is to be fixed on the basis of the Rules existing at the time of the appointment. In the present case the absorption of the petitioners were made on 25.6.2002 when the Seniority Rules, 2002 were not in existence at all and these rules came into existence only on 13.8.2002 and could not be applied in fixing the seniority among the petitioners and private respondents. Hon'ble Apex Court in Para 12 & 13 in the case of **Union of India Vs. S.S. Uppal and others 1996(2) SCC pg. 168** has held as under:-

"We are of the view that the question of seniority of Uppal, the respondent No. 1, has to be determined by the rules in force on the date

of his appointment to IAS. The fixation of seniority in the IAS follows appointment to the service. The Year of Allotment in the IAS will have to be determined according to the provisions of seniority rules which are in force at the time of his appointment. The date of occurrence of vacancy has really no relevance for the purpose of fixation of seniority in the IAS. The fixation of seniority is done only after an officer is appointed to IAS. The Central Government is competent to amend the seniority rules from time to time keeping in view the exigencies of administration.

There is also another aspect of the case. The appointment as IAS, after inclusion of the name of a candidate in the select list, is not automatic. Mere inclusion of the name in the panel does not confer any right of appointment. This is also not a case of inordinate delay. The State Government as well as the officer concerned had to go through certain formalities before the actual appointment was made. It appears from the facts of this case that after the vacancy had arisen on 1.2.1989, a proposal of appointment of Uppal to IAS from the State Government was put up on 14.2.1989. Thereupon Uppal was promoted to IAS on 15.2.1989. It cannot be said that there was unusual delay in appointing him to IAS by which he could be said to have been prejudicated. The revised seniority rules that came into force on 3rd February, 1989, applied uniformly to all the officers who were appointed on or after the date."

28. It was further contended by the Ld. Counsel for the petitioner that the Seniority Rules, 2002 are not applicable in the case of the petitioners and private respondents. He further contended that the petitioners and the respondents belong to one cadre of the Stenographers and they are not of different feeding cadre while fixing the seniority of the petitioners as well as of private respondents. It was further contended that Rule 6 & 7 did not provide regarding the amalgamation of the cadre into one cadre. Thus, these rules are not at all applicable. He further contended that Rule 6(2) of the Amalgamation Niymawali, 2002 provides contingency of amalgamation in a particular cadre. He further contended that Rule 6 & 7 of the Seniority Rules, 2002 are silent about the merger and amalgamation of two cadres into one. This contingency had not been taken into consideration so the Seniority Rules, 2002 are not at all applicable. Ld. A.P.O. refuted the contention. Ld. A.P.O. could not demonstrate from the Seniority Rules, 2002 that these rules deal

with about the amalgamation of two cadres, would be dealt while fixing the seniority of the cadre.

29. Rule 6 & 7 of the Seniority Rules 2002 are as under:-

> " **Rule -6 Seniority where appointment by promotion only from a singly feeding cadre**- Where according to the service rules, appointments are to be made only by promotion from a singly feeding cadre, the seniority inter-se of persons so appointed shall be the same as it was in the feeding cadre.
>
> ***Explanation****-A person senior in the feeding cadre shall even though promoted after the promotion of a person junior to him in the feeding cadre shall, in the cadre to which they are promoted, regain the seniority as it was in the feeding cadre.*
>
> **Rule-7 Seniority where appointment by promotion only from several feeding cadres**- Where according to the service rules, appointments are to be made only by promotion but from more than one feeding cadres, the seniority inter se of persons appointed on the result of any one selection shall be determined according to the date of the order of their substantive appointment in their respective feeding cadres
>
> *Explanation*…….
>
> Provided that where the pay scales of the feeding cadres are different, the persons promoted from the feeding cadre having higher pay scale shall be senior to the persons promoted from the feeding cadre having lower pay scale.
>
> Provided further that the persons appointed on the result of a subsequent selection shall be junior to the persons appointed on the result of a previous selection."

Thus, these rules did not provide regarding determination of seniority of two caders merged into one. Thus, there is no inconsistency between the Seniority Rules, 2002 and Amalgamation Niymawali, 2002. Rule 6(2) of the Amalgamation Niymawali, 2002 covers the total field as on today. The State Government has determined the seniority on the basis of Rule 7 as extracted above, of petitioners as well as private respondents which is not in accordance with law.

30. Ld. Counsel for the petitioner further contended that after creation of the State, it was experienced that sufficient Peons (Anusevak) were not available in the Secretariat, so a number of Peons (Anusevak) were requisitioned from the different departments for the smooth functioning of the State Government. Service of the Peons (Anusevak) were also merged in the Peon Cadre in the Secretariat by Amalgamation Niymawali, 2002. Ld. Counsel for the petitioner further contended that the Amalgamation Niymawali, 2002 being applicable on the Peons (Anusevaks) and they are also similarly situated persons like P.As absorbed in the Secretariat and the seniority list of the Peons (Anusevaks) was prepared by the Respondents/State Government which has been filed as Annexure A-3 of paper book pg. 146/55-58 along with claim petition. The seniority list of Peons (Anusevks) reveals the fact that seniority of the Peons (Anusevaks) had been fixed on the basis of the date of their substantive appointment and not on the basis of pay scale. A number of persons shown in this list who are getting higher pay, had been given the seniority at a lower level whereas the persons who had been getting a lower pay scale, they had been made senior to those who are getting higher pay scale. The respondents/ State Government has taken criteria of length of service and the substantive appointment of the Peons (Anusevaks) for determining their seniority. Ld. Counsel for the petitioner has contended that the State Government has made two different yardsticks for two different categories of employees amalgamated from the same Rule of Amalgamation Niymawali, 2002. He further contended that Rule 6(1) clearly provides that the services of P.As, Upper Division Assistants, Peons etc. have been merged into the Secretariat services in their respective cadre. Ld. A.P.O. refuted the contention and he supported the version of his written statement and contended that the seniority of the Peons (Anusevaks) has been determined according to their rules.

31. For appreciating the contentions of the parties it would be relevant to quote certain paragraphs of the written statement, orders and the

relevant rules in the judgments. Paragraph 20 of the written statement is as under:-

"(20) याचिका के प्रस्तर 4.26 याचीगणों द्वारा किया गया उल्लेख इस आधार पर स्वीकार्य नहीं है कि सचिवालय प्रशासन विभाग के कार्यालय आदेश दिनांक 17 अप्रैल, 2012 के प्रस्तर 6 में निम्न उल्लेखानुसार कि "सचिवालय प्रशासन विभाग के कार्यालय ज्ञाप दिनांक 22.1.2004 द्वारा अनुसेवक संवर्ग की ज्येष्ठता सूची संगत नियमों के तहत निर्धारित प्रकियानुसार निर्धारित की गयी है । सचिवालय मे अनुसेवकों के पृथक संवर्ग है तथा उस संवर्ग की वरिष्ठता का अपर निजी सचिव संवर्ग की वरिष्ठता से कोई संबंध नही है ।"

Perusal of the written statement clearly reveals that their seniority has been determined according to the relevant rules. The relevant rules is the same rule which is applicable in the case of the P.As. i.e. the petitioners as well as private respondents. Rule 6(2) of Amalgamation Niymawali 2002 provides for fixation of the seniority. Perusal of the Rule 6(1) is also important which is quoted below:-

"6(1) सचिवालय में वैयक्तिक सहायक, अवर वर्ग सहायक/ सहायक लेखाकार/ टंकक/ अनुसेवक के पद पर संविलियन के आदेश में इंगित तिथि संबंधित कर्मचारो की सचिवालय में संबंधित पद पर मौलिक नियुक्ति की तिथि मानी जायेगी और उस तिथि के बाद संबंधित पद पर उसकी ज्येष्ठता पदोन्नति एवं अन्य सेवा संबंधी मामले संगत सेवा नियमावली के अन्तर्गत व्यवहृत होंगे ।"

Thus, perusal of Rule 6(1) clearly provides this amalgamation order is applicable to P.As. as well as to the Peons (Anusevaks) and subsequent provision 6(2) deals with the fixation of the seniority of these two cadres. Thus, the W.S. of the respondents /State Government is totally misconceived and misplaced. The order passed by the Principal Secretary, Sri S.Raju on 17.04.2012 (pg. 146/6) deals this aspect while rejecting the representations of the petitioners in Para 6 which is as under:-

"(6) सचिवालय प्रशासन विभाग के कार्यालय–ज्ञाप दिनांक 22 नवम्बर 204 द्वारा अनुसेवक संवर्ग की ज्येष्ठता सूचि संगत नियमों के तहत निर्धारित प्रकियानुसार निर्धारित की गयी है । सचिवालय मे अनुसेवकों के पृथक संवर्ग है तथा उस संवर्ग की वरिष्ठता का अपर निजी सचिव संवर्ग की वरिष्ठता से कोई संबंध नही है । अतः अनुसेवक संवर्ग की ज्येष्ठता निर्धारण हेतु लिये गये कथित भिन्न आधारों के अनुसार ही अपर निजी सचिव संवर्ग की वरिष्ठता निर्धारण संबंधी कथन स्वीकार्य नही है ।"

The above orders impugned in the petition also give a different picture of the factual aspect. Thus, it is apparent that Rule 6(2) has been interpreted in favour of the petitioners and the private respondents that the Rule 6(2) would not be applicable from the date of the substantive appointment but the salary would be the criteria for fixation of the seniority, whereas in the case of the Peons (Anusevaks) the same Rule 6(2) of the Amalgamation Niymawali, 2002 has been interpreted the pay scale would not be the criteria but the substantive appointment will be the criteria for fixation of the seniority. In the case of the P.As., the persons who were getting higher pay scales, they have been made senior to those who had been appointed substantively prior point of time. Thus, these two different yardsticks have been made for different people of the same class. BY the enforcement of Rule 6(1) and 6(2) the Peons (Anusevaks) and the P.As. are one class for getting benefits, they cannot be discriminated at any point of time by interpreting the same provisions differently for different classes of officers/ officials coming within the purview of above rules. While interpreting a legal provision it is applicable to the same set of fact may be one and the interpretation cannot be changed according to man to man. Interpretation means action of explaining the meaning of something. For interpreting a statutory provision, the authority is required to make an insight into the provision and unfold its meaning by means of well- established cannons of interpretation, having regard to object purpose, historicism of law and several other well- known factors. Importantly, interpretation of a legal provision is always independent of the facts of any given case “Application” means practical use or relevance and hence, application of a statutory provision would always depend on the exact facts of a given case. Thus, it is well settled principle of law that two different interpretations of a clause cannot be made for different citizens who are similarly situated persons. Thus, in this case the interpretation and application are applicable in toto in case of P.As. as well as of the Peons (Anusevaks). The contention of the State Government that the matter

pertains to a different department does not arise because all the acts and omissions are made by the officers, would be of the State and not of any individual officer. Inspite of the fact that discrimination has been shown to the competent authority, the competent authorities have tried to avoid conveniently by the aforesaid explanation. On this score the impugned seniority list and the impugned orders are liable to be quashed.

32. Ld. A.P.O. also raised a plea that the petition is barred by the limitation, delay and laches. Ld. A.P.O. contended that the first seniority list was issued in the year 2004. The said list was not challenged before the Court. Thereafter a subsequent seniority list was issued in the year 2009 against which the petitioners have made representations and that was also decided in the year 2009. The petitioners have filed this claim petition in the year 2013 after lapse nearly of 4 years. According to Section -5 (1) (b) of Public Services Tribunal Act, 1976 the petition should have been filed within a period of one year from the date of the cause of action. He further contended that this petition is time barred so it should not be entertained. Ld. Counsel for the petitioners refuted the contention and contended that pursuant to the order of Hon'ble Supreme Court passed in the year 2007 in which it is provided that in case any individual person is affected by the improper implementation of the rule, then he can approach the proper forum for redressal of his grievances. Thus, the petitioners in pursuance of the said judgment, filed the representation before the Government about the improper implementation of the Rules while fixing the seniority. The Government again issued a seniority list in the year 2009. The Ld. Counsel for the petitioner further enumerated the detailed fact as to how the petition does not suffers the defect of delay and laches and limitation; he further pointed out that the Government suo-moto issued a tentative list in January, 2009 and it was again finalized in 2009 itself. After issuance of the seniority list Annexure-A-12 clearly provides that a number of employees including petitioners submitted their representations and this letter clearly reflects that separate

representations along with evidence were invited by the Principal Secretary. The letter of 2011 (Annexure-A-12)is as under:-

""उत्तराखण्ड शासन
सचिवालय प्रशासन (अधि0) अनुभाग–2
संख्याः–1194)/XXXI(2)/2011
देहरादून दिनांक 30 अगस्त, 2011
कार्यालय–ज्ञाप

1 सर्वश्री रूप चन्द गुप्ता, निजी सचिव		9 सर्वश्री सुभाष चन्द्र पंवार, निजी सचिव	
2 विरेन्द्र सिंह खैरोला,	"	10 वीरेन्द्र कौशिक,	"
3 मदन मोहन भारद्वाज	"	11 एच0 पी0 बेलवाल,	"
4 दिनेश चन्द्र गैरोला,	"	12 भुवन चन्द जोशी,	"
5 जे0 सी0 पन्त,	"	13 अशोक कुमार,	"
6 रमेश चन्द बिष्ट,	"	14 हरिदत्त देवतला,	"
7 पी. सी0 भट्ट,	"	15 श्रीमती लक्ष्मी अग्रवाल,	"
8 ओ0 पी0 पाण्डे,	"		

सचिवालय प्रशासन (अधि0) अनुभाग–2 के कार्यालय–ज्ञाप संख्या 130/XXXI(2)2009 दिनांक 29.4.2009 के द्वारा अपर निजी सचिवों की अंतिम ज्येष्ठता सूचि के विरूद्ध आपके द्वारा प्रस्तुत सामुहिक प्रत्यावेदन में संविलियन नियमावली–2002 के नियम 6 (2) तथा ज्येष्ठता नियमावली–2002 के नियम 6 के अनुसार मूल विभाग में की गई सेवा अवधि की गणना, मौलिक नियुक्ति को तिथि के आधार पर ज्येष्ठता सूचि बनाये जाने का अनुरोध किया गया है ।

उक्त के संबंध मे कृप्या अपना पृथक पृथक प्रत्यावेदन दो सप्ताह में साक्ष्यों सहित उपलब्ध कराने का कष्ट करें ।

(डॉ0 रणबीर सिंह)
प्रमुख सचिव

Ld. Counsel for the petitioners further contended that there is another letter by the Section Officer to the P.As. including one of the petitioners in which it has been mentioned that a meeting under the chairmanship of the Principal Secretary was held regarding fixation of the seniority of the P.As. and the representations of Sri R.C.Kala and Sri Gopal Singh Nayal were received and placed before the committee and the reply of the affected persons were sought till 9.10.2012. This letter is quoted below:-

"उत्तराखण्ड शासन

सचिवालय प्रशासन (अधि0) अनुभाग–2
संख्याः–4(12– विविध)/XXXI(2)/2009
देहरादून दिनांक 05 अक्टूबर, 2012

कार्यालय–ज्ञाप

1 श्री रूप चन्द गुप्ता,
निजी सचिव,
उत्तराखण्ड शासन

2 श्री हरी दत्त देवतला,
निजी सचिव,
उत्तराखण्ड शासन

3 श्रीमती लक्ष्मी अग्रवाल,
निजी सचिव,
उत्तराखण्ड शासन

कृप्या अपर निजी सचिवों की ज्येष्ठता के संबंध में प्रमुख सचिव, सचिवालय प्रशासन विभाग, उत्तराखण्ड शासन की अध्यक्षता में दिनांक 27.09.2012 को सम्पन्न बैठक में विचार विमर्शोपरान्त एवं प्रमुख सचिव महोदय द्वारा दिये गये निर्देशानुसार श्री आर0 सी0 काला एवं श्री गोपाल सिंह नयाल, निजी सचिव द्वारा प्रस्तुत प्रत्यावेदनों की छायाप्रतियां आपको इस आशय से संलग्न कर प्रेषित हैं कि संलग्न प्रत्यावेदनो पर अपना लिखित अभिकथन दिनांक 09.10.2012 तक इस अनुभाग को उपलब्ध करा दें ।

(जी0 एन0 पन्त)
अनुभाग अधिकारी

Ld. Counsel for the petitioners further contended that it is also pertinent to mention here that the petitioners have filed Annexure-33, the opinion of Karmik Vibhag dated 9.6.2012 (paper No. 146/60) in which it has been observed that the inter-se seniority among the petitioners and private respondents should be determined according to date of substantive appointment. It was further opined that the Seniority Rule, 2002 is not applicable because the said rules are in case of promotion and not in case of absorption of the employees. This document merely shows that the Government was thinking to decide the matter in favour of the petitioners; thereafter there is also a noting of the Additional Secretary; there is some mistake in framing of the rules which requires an amendment from the retrospective date; it was opined by the Additional Secretary that in case of absorption, the date of substantive appointment should be given preference. The Law Department was also asked in this matter and the opinion of the Additional L.R. is on record which is also in favour of the petitioners. The Ld. Counsel further contended that The matter was being considered in favour of the petitioners, so there was no occasion for the petitioners to come to the Court or the Tribunal to file a claim

petition. Ld. Counsel for the petitioners further contended that it is revealed from the documents that the Principal Secretary who had been dealing this matter and showing his sympathy, was transferred and replaced by another Principal Secretary and the matter was decided against the petitioners. It is also evident from the record that in the noting of the office to the Principal Secretary a tentative seniority list was also prepared by the Administrative Department i.e. Annexure-A-19 Pg.146/17 to the claim petition. Thus, the proceedings before the Government were going in favour of the petitioners as such they had not challenged this order before the Tribunal. Ld. Counsel for the petitioner further contended that the delay and laches have been explained properly by the petitioners by way of producing the documents before the Tribunal.

33. Ld. A.P.O. further reiterated his stand that the private respondents and petitioners had been promoted to the higher posts. The petition is time barred as well as suffers from delay and laches. Ld. A.P.O. further contended that mere noting did not confer any right to the petitioners unless a final order has been passed. During the business of the State it is necessary to conduct a thorough review and scrutiny by large number of officer and authorities so that a proper decision may be taken by the competent authority. Unless the decision has been taken on the noting and it has been communicated to the petitioners, only then the petitioners can take the benefit of the above letter and the noting. In the State Government different agencies and officers are involved to deal a matter, so all the officers give their opinion which can be considered as n individual opinion. If, after considering all the opinions, it is combined by an order of the competent authority that is the only order which gives a cause of action to the parties. He further contended that merely notings were in favour of the petitioners, so they cannot take benefit of limitation; repeated representations does not stop to run the limitation.

34. After due consideration of the submissions made by the Ld. Counsel for the parties it is very clear that the Principal Secretaries of the

Government are authorized on behalf of *Raj Pramukh* under the business rules of the State. All the orders are issued by the Principal Secretaries, though these may be in the name of the Government. It is also well settled principle of law that A noting recorded in the file is merely a noting simpliciter and nothing more. It merely represents expression of opinion by the particular individual. By no stretch of imagination, such noting can be treated as a decision of the Government. Even in the case where the competent authority records its opinion and pass an order on the file in affirmation and the order is not issued and communicated to the petitioners, such noting and order of the competent authority has no value, unless and until the order is issued and communicated by the competent authority on the basis of the notings made by the different officers. In the present case the petitioners are taking plea that notings are in favour of the petitioners, so they were happy and they had not filed any petition before the Tribunal or the High Court. As we have pointed out unless and until the notings are culminated into an order, it did not derive any cause to the petitioners. It is also necessary that before bringing a claim petition before the Tribunal or a writ petition before the High Court, there must be an enforceable legal right. The petitioners are claiming that the notings made by the officers had given understanding that the matter is going to be decided in favour of the petitioners. Merely these notings did not confer any right upon the petitioners. It is also necessary to create a legal right that an order of the statutory authority must be passed and communicated to the person concerned as to confer an enforceable right. If the order would have been passed in favour of the petitioners then they could have claimed legal protection of the delay. The Hon'ble Apex Court Para 52 in the case of **Laxminarayan R. Bhattad Vs. State of Maharashtra 2003 (5) SCC 413** has held as under:-

"The correspondences exchanged between the parties also do not show that the minutes drawn fructified in an order conferring any legal right upon the appellant. By reason of the endorsement in the note-sheet no policy decision had been taken. It is now well known that a right

created under an order of a statutory authority must be communicated so as to confer an enforceable right."

35. Hon'ble Supreme Court in the case of **Sethi Auto Service Station and another Vs. Delhi Development Authority and others 2009 (1) SCC 180** in Para 14 & 15 has held as under:-

> "14. It is trite to state that notings in a departmental file do not have the sanction of law to be an effective order. A noting by an officer is an expression of his viewpoint on the subject. It is no more than an opinion by an officer for internal use and consideration of the other officials of the department and for the benefit of the final decision-making authority. Needless to add that internal notings are not meant for outside exposure. Notings in the file culminate into an executable order, affecting the rights of the parties, only when it reaches the final decision-making authority in the department; gets his approval and the final order is communicated to the person concerned.
>
> 15. In **Bachhittar Singh Vs. The State of Punjab AIR 1963 SC 395**, a Constitution Bench of this Court had the occasion to consider the effect of an order passed by a Minister on a file, which order was not communicated to the person concerned. Referring to the Article 166(1) of the Constitution, the Court held that order of the Minister could not amount to an order by the State Government unless it was expressed in the name of the Rajpramukh, as required by the said Article and was then communicated to the party concerned. The court observed that business of State is a complicated one and has necessarily to be conducted through the agency of a large number of officials and authorities. Before an action is taken by the authority concerned in the name of the Rajpramukh, which formality is a constitutional necessity, nothing done would amount to an order creating rights or casting liabilities to third parties. It is possible, observed the Court, that after expressing one opinion about a particular matter at a particular stage a Minister or the Council of Ministers may express quite a different opinion which may be opposed to the earlier opinion. In such cases, which of the two opinions can be regarded as the "order" of the State Government? It was held that opinion becomes a decision of the Government only when it is communicated to the person concerned."

36. Thereafter the Hon'ble Supreme Court in the case of **State of Uttaranchal and another Vs. Sunil Kumar Vaish and others 2011(8) SCC 670** in Para 24 has held as under:-

> *"A noting recorded in the file is merely a noting simpliciter and nothing more. It merely represents expression of opinion by the particular individual. By no stretch of imagination, such noting can be treated as a decision of the Government. Even if the competent authority records its opinion in the file on the merits of the matter under consideration, the same cannot be termed as a decision of the Government unless it is sanctified and acted upon by issuing an order in accordance with Articles 77(1) and (2) or Articles 166(1) and (2). The noting in the file or even a decision gets culminated into an order affecting right of the parties only when it is expressed in the name of the President or the Governor, as the case may be, [pic]and authenticated in the manner provided in Article 77(2) or Article 166(2). A noting or even a decision recorded in the file can always be reviewed/reversed/overruled or overturned and the court cannot take cognizance of the earlier noting or decision for exercise of the power of judicial review.*

37. Thus, the perusal of the above judgments it is clear that noting recorded in the file is merely a noting simpliciter and nothing more. It is an opinion of an individual. In the case of petitioners, the petitioners and other persons were making representations and making repeated representations does not confer any right to seek condonation of delay. It is apparent from the record that the final seniority list was issued on 22.11.2004, Annexure-32 to the claim petition. In the meantime the parties had challenged the Rule 6 of Amalgamation Niymawali before the Hon'ble High Court. The Hon'ble High Court dismissed the writ petition. Feeling aggrieved by the said order the aggrieved parties again filed S.L.P. before the Hon'ble Supreme Court. The Hon'ble Apex Court in the year 2007 dismissed

the S.L.P. and while dismissing the said S.L.P. it was observed that in case any individual person is affected by improper implementation of the Rules, he may put up his grievance before the competent forum regarding improper implementation of the rules. Thereafter the representations were made to the Government and the Government after considering the order of the Hon'ble Apex Court as well as the Rules, issued the final seniority list on 29.4.2009 which is Annexure-R-1 to the W.S. It is apparent that the seniority list has been finalized on 29.4.2009. There is no statutory provision thereafter to make the representation before any competent authority. Merely making representations on one pretext or other, that their representations would be allowed is of no avail to the petitioners. We will firstly see whether making repeated representations condones the delay or not. The Hon'ble Apex Court in several judgments has held that merely giving repeated representations is of no avail to the parties. It did not condone the delay. 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 outrightly 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 (supra) Hon'ble Apex Court in para** has held as under:-

> "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."

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.

38. Hon'ble Supreme Court in the case of **Lipton India Ltd. and Others Vs. Union of India and Others 1994(6) SCC 524** in Para 14 has held as under:-

> "**14.**The period for which the relief of refund is claimed is the period commencing from December 1984 to May 1988. The writ petition was filed in June 1988. In the reply affidavit, relief is claimed up to November 1988. Shri A. Subba Rao, learned counsel for the State Trading Corporation submitted that the writ petition is liable to be dismissed on the ground of laches. Learned Counsel submitted that while the aforesaid formula was implemented as far back as 1983, the petitioner approached this Court only in the year 1988 - five years later and that there is no explanation for this delay. While we agree that the petitioner could have approached the court earlier, it cannot be said that the writ petition suffers from such laches as to merit dismissal on that ground. At the same time, it must be remembered that the claim for refund in the present case does not arise from or founded upon a statutory provision - much less is this a case where a provision or a notification having statutory force is struck down. <u>The present claim is one which ought to have been agitated in a civil court. We have entertained the writ petition because a complaint of discrimination was made in implementation of a scheme of general application evolved by this Court (sic) pursuant to the</u>

> observations of this Court in its order dated 8-2-1982. In such a situation, the petitioner cannot claim a greater relief than he could have claimed in the suit. Accordingly, we direct that the petitioner's claim will be limited to the period of three years prior to the date of filing of this writ petition. Insofar as the period subsequent to the filing of the writ petition, i.e., up to November 1988, is concerned, the petitioner shall be entitled to it on the same basis as the claim for the period anterior to the filing of writ petition. The respondent State Trading Corporation shall examine the petitioner's claim in the light of this judgment, with notice to the petitioner and determine the amount, if any, payable to it. The petitioner shall be entitled to interest on the amount found due at the rate of 6% per annum from the date of this judgment up to the date of realisation.

It is also necessary to mention that the claim petition in hand is also cognizable by the Civil Court, by virtue of Section 28 of Public Services Tribunal Act, the said power has been vested in the Uttarakhand Public Services Tribunal; prior to the creation of the Tribunal, the matters were to be heard and decided by the Civil Court. Hence, the principle of Civil Court as enumerated above, is also applicable in this case.

39. In the case of **New Delhi Municipal Council Vs. Pan Singh 2007 (2) AIR SCW 1705** seventeen senior most Shift In-Charge for certain reasons opted to become Meter Readers and these 17 senior most persons were in a higher pay scales and their pay scales were protected. Thereafter, some of the similarly situated Meter Readers preferred a claim before the Industrial Tribunal and the Industrial Tribunal awarded on 07.01.1998 an award in which other senior Meter Readers, who were similarly situated persons were granted the same pay scale which was provided to the 17 Meter Readers. As soon as the award was pronounced in the year 1998, the respondents who had been appointed after 12.2.1982, filed a writ petition before the Hon'ble High Court claiming the same relief in July 1999 and the High Court allowed the writ petition. The Hon'ble Supreme Court setting aside the

judgment of the Hon'ble High Court observed in Para 16,17 & 19 as under:-

> *"16.* There is another aspect of the matter which cannot be lost sight of. Respondents herein filed a Writ Petition after 17 years. They did not agitate their grievances for a long time. They, as noticed herein, did not claim parity with the 17 workmen at the earliest possible opportunity. They did not implead themselves as parties even in the reference made by the State before the Industrial Tribunal. It is not their case that after 1982, those employees who were employed or who were recruited after the cut-off date have been granted the said scale of pay. After such a long time, therefore, the Writ Petitions could not have been entertained even if they are similarly situated. It is trite that the discretionary jurisdiction may not be exercised in favour of those who approach the Court after a long time. Delay and laches are relevant factors for exercise of equitable jurisdiction.
>
> *17.* Although, there is no period of limitation provided for filing a Writ Petition under Article 226 of the Constitution of India, ordinarily, Writ Petition should be filed within a reasonable time..
>
> *19.* In **Shiv Dass v. Union of India & Ors. [2007(2) SCALE 325** :
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> "9. It has been pointed out by this Court in a number of cases that representations would not be adequate explanation to take care of delay. This was first stated in **K.V. Raja Lakshmiah v. State of Mysore (AIR 1967 SC 993)**. There is a limit to the time which can be considered reasonable for making representations and if the Government had turned down one representation the making of another representation on similar lines will not explain the delay. In State of Orissa v. Sri Pyarimohan Samantaray, (AIR 1976 SC 2617) making of repeated representations was not regarded as satisfactory explanation of the delay. In that case the petition had been dismissed for delay alone. See State of Orissa v. Arun Kumar (AIR 1976 SC 1639 also).
>
> 10. In the case of pension the cause of action actually continues from month to month. That, however, cannot be a

ground to overlook delay in filing the petition. *It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years.* The High Court did not examine whether on merit appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone."

40. In the case of **State of Uttaranchal and another Vs. Shiv Charan Singh Bhandari and others (2013) 12 SCC 179** in Paragraphs 13,14,15,16,17,18,19, 20,21 & 22 the Hon'ble Apex Court has held as under:-

"13. At the very outset, we would like to make it clear that we are not going to deal with the cancellation of promotion of the said Madhav Singh Tadagi as the same is sub-judice before the High Court and an order of stay has been passed. We may further clarify that advertence to the same by us is not required for the adjudication of the controversy involved in these appeals.

14. The centripodal issue that really warrants to be dwelled upon is whether the respondents could have been allowed to maintain a claim petition before the tribunal after a lapse of almost two decades inasmuch as the said Madhav Singh Tadagi, a junior employee, was conferred the benefit of ad hoc promotion from 15.11.1983. It is not in dispute that the respondents were aware of the same. There is no cavil over the fact that they were senior to Madhav Singh Tadagi in the SAS Group III and all of them were considered for regular promotion in the year 1989 and after their regular promotion their seniority position had been maintained. We have stated so as their inter-se seniority in the promotional cadre has not been affected. Therefore, the grievance in singularity is non-conferment of promotional benefit from the date when the junior was promoted on ad hoc basis on 15.11.1983.'

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 emphasise 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.

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

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

18. **In Union of India and others v. M.K. Sarkar (2010) 2 SCC 59** this Court, after referring to C. Jacob (supra) has ruled that when a belated representation in regard to a "stale" or "dead" issue/dispute is considered and decided, in compliance with a direction by the court/tribunal to do so, the date of such decision cannot be considered as furnishing

a fresh cause of action for reviving the "dead" issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.

19. From the aforesaid authorities it is clear as crystal that even if the court or tribunal directs for consideration of representations relating to a stale claim or dead grievance it does not give rise to a fresh cause of action. The dead cause of action cannot rise like a phoenix. Similarly, a mere submission of representation to the competent authority does not arrest time.

20. In **Karnataka Power Corpn. Ltd. through its Chairman & Managing Director v. K. Thangappan and another (2006) 4 SCC 322** the Court took note of the factual position and laid down that when nearly for two decades the respondent-workmen therein had remained silent mere making of representations could not justify a belated approach.

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

22. In Bharat Sanchar Nigam Limited v. Ghanshyam Dass (2) and others[6], a three-Judge Bench of this Court reiterated the principle stated in **Jagdish Lal v. State of Haryana (1997)6 SCC 538** and proceeded to observe that as the respondents therein preferred to sleep over their rights and approached the tribunal in 1997, they would not get the benefit of the order dated 7.7.1992

41. From the perusal of the record it is revealed that the parties to the lis have been granted many promotions in accordance with the rules. None of the parties could demonstrate before us the promotion avenues from Stenographer to higher post but it is apparent from the perusal of the headings of the petition and array of the parties that all the parties had received two or three promotions. It is also apparent

from the perusal of the supplementary affidavit of Sri Kailash Chandra Joshi bearing No. 245/Misc/ Supplementary affidavit dated 14.7.2014 that many of the petitioners and respondents have been promoted. He has also filed Annexure SA-7, SA-8 and SA-9 dated 10.12.2004, 30.09.2008 and 28.2.2014 respectively by which the parties had been promoted to the higher post. There is no dispute that the parties have not been promoted to the higher post. The respondents and petitioners had, thus, obtained higher post since long and their long standing promotions cannot be disturbed.

42. Now we will deal if the promotions have been made out of the same seniority list, what is the position of law. Hon'ble Supreme Court In this regard in the case of **Shiba Shankar Mohapatra and others Vs. State of Orissa & others 2011(1) SCC (L&S) 229** in Paragraph 18,19,20,21,22,23,24,28 & 29 has held as under:-

> " 18. The question of entertaining the petition disputing the long standing seniority filed at a belated stage is no more res integra. A Constitution Bench of this Court, in **Ramchandra Shanker Deodhar & Ors. v. State of Maharashtra & Ors. AIR 1974 SC 259**, considered the effect of delay in challenging the promotion and seniority list and held that any claim for seniority at a belated stage should be rejected inasmuch as it seeks to disturb the vested rights of other persons regarding seniority, rank and promotion which have accrued to them during the intervening period. A party should approach the Court just after accrual of the cause of complaint. While deciding the said case, this Court placed reliance upon its earlier judgments, particularly in **Tilokchand Motichand v. H.B. Munshi, AIR 1970 SC 898**, wherein it has been observed that the principle, on which the Court proceeds 1 in refusing relief to the petitioner on the ground of laches or delay, is that the rights, which have accrued to others by reason of delay in filing the writ petition should not be allowed to be disturbed unless there is a reasonable explanation for delay. The Court further observed as under:-
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> "A party claiming fundamental rights must move the Court before others' rights come out into existence. The action of the Courts cannot harm innocent parties if their rights emerge by reason of delay on the part of person moving the court."

19. This Court also placed reliance upon its earlier judgment of the Constitution Bench in **R.N. Bose v. Union of India & Ors. AIR 1970 SC 470**, wherein it has been observed as under:-

"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 defeated after the number of years."

20. In **R.S. Makashi v. I.M. Menon & Ors. AIR 1982 SC 101**, this Court considered all aspects of limitation, delay and laches in filing the writ petition in respect of inter se seniority of the employees. The Court referred to its earlier judgment in **State of Madhya Pradesh & Anr. v. Bhailal Bhai etc. etc., AIR 1964 SC 1006**, wherein it has been observed that the maximum period fixed by the Legislature as the time within which the relief 1 by a suit in a Civil Court must be brought, may ordinarily be taken to be a reasonable standard by which delay in seeking the remedy under Article 226 of the Constitution can be measured. The Court observed as under:- "We must administer justice in accordance with law and principle of equity, justice and good conscience. 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….. The petitioners have not furnished any valid explanation whatever for the inordinate delay on their part in approaching the Court with the challenge against the seniority principles laid down in the Government Resolution of 1968… We would accordingly hold that the challenge raised by the petitioners against the seniority principles laid down in the Government Resolution of March 2, 1968 ought to have been rejected by the High Court on the ground of delay and laches and the writ petition, in so far as it related to the prayer for quashing the said Government resolution, should have been dismissed." (Emphasis added)

21. The issue of challenging the seniority list, which continued to be in existence for a long time, was again considered by this Court **in K.R. Mudgal & Ors. v. R.P. Singh & Ors. AIR 1986 SC 2086**. The Court held as under:- "A government servant who is appointed to any post ordinarily should at least after a period of 3-4 years of his appointment be allowed to attend to the duties attached to his post peacefully and without any sense of insecurity…… Satisfactory service conditions

postulate that there shall be no sense of uncertainty amongst the Government servants created by writ petitions filed after several years as in this case. It is essential that any one who feels aggrieved by the seniority assigned to him, should approach the Court as early as possible otherwise in addition to creation of sense of insecurity in the mind of Government servants, there shall also be administrative complication and difficulties…. In these circumstances we consider that the High Court was wrong in rejecting the preliminary objection raised on behalf of the respondents to the writ petition on the ground of laches." (Emphasis added)

22. While deciding the case, this Court placed reliance upon its earlier judgment in Malcom Lawrance Cecil D'Souza v. Union of India & Ors. AIR 1975 SC 1269, wherein it had been observed as under:- "Although security of service cannot be used as a shield against the administrative action for lapse of a public servant, by and large one of the essential requirement of contentment and efficiency in public service is a feeling of security. It is difficult no doubt to guarantee such security in all its varied aspects, it should at least be possible to ensure that matters like one's position in a seniority list after having been settled for once should not be liable to be re-opened after lapse of many years in the instance of a party who has itself intervening party chosen to keep quiet. Raking up old matters like seniority after a long time is likely to resort in administrative complications and difficulties. It would, therefore, appear to be in the interest of smoothness and efficiency of service that such matters should be given a quietus after lapse of some time." (Emphasis added) 1

23. In B.S. Bajwa v. State of Punjab & Ors. AIR 1999 SC 1510, this Court while deciding the similar issue re-iterated the same view, observing as under:- "It is well settled that in service matters, the question of seniority should not be re-opened in such situations after the lapse of reasonable period because that results in disturbing the settled position which is not justifiable. There was inordinate delay in the present case for making such a grievance. This along was sufficient to decline interference under Article 226 and to reject the writ petition". (Emphasis added)

24. In **Dayaram Asanand v. State of Maharashtra & Ors. AIR 1984 SC 850**, while re-iterating the similar view this Court held that in absence of satisfactory explanation for inordinate delay of 8-9 years in questioning under Article 226 of the Constitution, the validity of the

seniority and promotion assigned to other employee could not be entertained.

28. In **K.A. Abdul Majeed vs. State of Kerala & Ors. (2001) 6 SCC 292**, this Court held that seniority assigned to any employee could not be challenged after a lapse of seven years on the ground that his initial appointment had been irregular, though even on merit it was found that seniority of the petitioner therein had correctly been fixed.

29. It is settled law that fence-sitters cannot be allowed to raise the dispute or challenge the validity of the order after its conclusion. No party can claim the relief as a matter of right as one of the grounds for refusing relief is that the person approaching the Court is guilty of delay and the laches. The Court exercising public law jurisdiction does not encourage agitation of stale claims where the right of third parties crystallises in the interregnum.

43. In view of the above we find that the petitioners' petition suffers from delay, laches and limitation. The petition is liable to be dismissed.

ORDER

The claim petition is hereby dismissed. No order as to costs.

(U.D.CHAUBE)
MEMBER (A)

(JUSTICE J.C.S.RAWAT)
CHAIRMAN

DATE: MAY 18,2016
DEHRADUN

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