

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

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

----- Chairman

Hon'ble Mr. D.K.Kotia

-----Vice Chairman (A)

**CLAIM PETITION NO. 26/DB/2017**

1. Santram s/o Late Chhotey Lal aged about 56 years presently posted as Sub-Divisional Forest Officer, Haridwar, Forest Division, Haridwar
2. R.K.Singh s/o Late S.R. Singh aged about 56 years presently posted as Deputy Project Director, Bageshwar.

.....Petitioner

**vs.**

1. State of Uttarakhand through Principal Secretary, (Forest) Government of Uttarakhand, Civil Secretariat, Dehradun.
2. Principal Chief Conservator of Forest, , Uttarakhand, Rajpur Road, Dehradun.
3. Dinesh Ram, through Principal Chief Conservator of Forest, Uttarakhand, Rajpur Road, Dehradun.
4. S.K. Upadhyay, through Principal Chief Conservator of Forest, Uttarakhand, Rajpur Road, Dehradun.
5. Girdhari Sonar, through Principal Chief Conservator of Forest, Uttarakhand, Rajpur Road, Dehradun.
6. Janmeja Singh, through Principal Chief Conservator of Forest, Uttarakhand, Rajpur Road, Dehradun.
7. Ashok, through Principal Chief Conservator of Forest, Uttarakhand, Rajpur Road, Dehradun.
8. Pramod Kumar, through Principal Chief Conservator of Forest, Uttarakhand, Rajpur Road, Dehradun.
9. Satyapal Singh, through Principal Chief Conservator of Forest, Uttarakhand, Rajpur Road, Dehradun.
10. Ghanshyam Rai, through Principal Chief Conservator of Forest, Uttarakhand, Rajpur Road, Dehradun.
11. Krishna Bahadur Singh, through Principal Chief Conservator of Forest, Uttarakhand, Rajpur Road, Dehradun.
12. Santram, through Principal Chief Conservator of Forest, Uttarakhand, Rajpur Road, Dehradun.
13. Ramaase, through Principal Chief Conservator of Forest, Uttarakhand, Rajpur Road, Dehradun.
14. Ashok Kumar Mehar, through Principal Chief Conservator of Forest, Uttarakhand, Rajpur Road, Dehradun.

15. Indra Pal Singh, through Principal Chief Conservator of Forest, Uttarakhand, Rajpur Road, Dehradun.
16. C.K. Kavidyal, through Principal Chief Conservator of Forest, Uttarakhand, Rajpur Road, Dehradun.
17. Girish Kumar Rastoagi, through Principal Chief Conservator of Forest, Uttarakhand, Rajpur Road, Dehradun.
18. Dharamveer Singh Rawat, through Principal Chief Conservator of Forest, Uttarakhand, Rajpur Road, Dehradun.
19. Maan Singh, through Principal Chief Conservator of Forest, Uttarakhand, Rajpur Road, Dehradun.
20. Aroop Banerjee, through Principal Chief Conservator of Forest, Uttarakhand, Rajpur Road, Dehradun.
21. Divakar Sinha, through Principal Chief Conservator of Forest, Uttarakhand, Rajpur Road, Dehradun.
22. Ramesh Chandra, through Principal Chief Conservator of Forest, Uttarakhand, Rajpur Road, Dehradun.
23. Rajmani, through Principal Chief Conservator of Forest, Uttarakhand, Rajpur Road, Dehradun.
24. Mahendra Pratap Singh, through Principal Chief Conservator of Forest, Uttarakhand, Rajpur Road, Dehradun.
25. Raam Gopal, through Principal Chief Conservator of Forest, Uttarakhand, Rajpur Road, Dehradun.
26. Ashok Kumar Gupta, through Principal Chief Conservator of Forest, Uttarakhand, Rajpur Road, Dehradun.
27. Anjani Kumar, through Principal Chief Conservator of Forest, Uttarakhand, Rajpur Road, Dehradun.
28. Nityanand Pandey, through Principal Chief Conservator of Forest, Uttarakhand, Rajpur Road, Dehradun.
29. R.S.Sharma, through Principal Chief Conservator of Forest, Uttarakhand, Rajpur Road, Dehradun.
30. Dharmesh Kumar Singh, through Principal Chief Conservator of Forest, Uttarakhand, Rajpur Road, Dehradun.
31. Santosh Kumar, through Principal Chief Conservator of Forest, Uttarakhand, Rajpur Road, Dehradun.
32. Rajendra Prasad Mishra, through Principal Chief Conservator of Forest, Uttarakhand, Rajpur Road, Dehradun.
33. Shivrajram Prajapati, through Principal Chief Conservator of Forest, Uttarakhand, Rajpur Road, Dehradun.
34. Jeevan Chandra Joshi, through Principal Chief Conservator of Forest, Uttarakhand, Rajpur Road, Dehradun.
35. Praveen Kumar, through Principal Chief Conservator of Forest, Uttarakhand, Rajpur Road, Dehradun.
36. Prem Narayan Shukla, through Principal Chief Conservator of Forest, Uttarakhand, Rajpur Road, Dehradun.
37. Kishan Chand, through Principal Chief Conservator of Forest, Uttarakhand, Rajpur Road, Dehradun.
38. Ram Dular Pathak, through Principal Chief Conservator of Forest, Uttarakhand, Rajpur Road, Dehradun.

39. Bhupendra Pratap Singh, through Principal Chief Conservator of Forest, Uttarakhand, Rajpur Road, Dehradun.
40. Gorakhnath Yadav, through Principal Chief Conservator of Forest, Uttarakhand, Rajpur Road, Dehradun.
41. Shraavan Kumar, through Principal Chief Conservator of Forest, Uttarakhand, Rajpur Road, Dehradun.
42. Kuber Singh Bisht, through Principal Chief Conservator of Forest, Uttarakhand, Rajpur Road, Dehradun.
43. Mahendra Bahadur Singh, through Principal Chief Conservator of Forest, Uttarakhand, Rajpur Road, Dehradun.
44. Vijay Bahadur, through Principal Chief Conservator of Forest, Uttarakhand, Rajpur Road, Dehradun.
45. Dipandra Arya, through Principal Chief Conservator of Forest, Uttarakhand, Rajpur Road, Dehradun.
46. Akhilesh Tiwari, through Principal Chief Conservator of Forest, Uttarakhand, Rajpur Road, Dehradun.
47. Lakshman Singh, through Principal Chief Conservator of Forest, Uttarakhand, Rajpur Road, Dehradun.

.....Respondents.

Present: Sri Shashank Pandey, Counsel  
for the petitioner.

Sarvsri U.C.Dhaundiyal &  
Sri V.P.Devrani, A.P.O .  
for the Respondents No. 1 & 2.

### **JUDGMENT**

**DATED: MAY 23, 2018**

#### **Justice U.C.Dhyani (Oral)**

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

“ (a) To issue order or direction, directing the respondents to call for the records and quash the seniority list dated 13.04.2016 to the extent private respondents and petitioners are concerned.

(b) To issue order or direction, directing the respondents to re-determine the seniority of the petitioner vis-à-vis the private respondents after determining the seniority of the respondents from the day vacancy in their quota arose in the light of PFS Service Rules and prevalent Seniority Rules.

- (c) To give the consequential benefits to the petitioners.
- (d) To give any other relief that the Hon'ble Court may deem fit and proper in the circumstances of the case.
- (v) To give cost to the petitioners."

2. Brief facts, giving rise to present claim petition, are as follows:

Petitioners were appointed on the post of Forest Range Officers (for short, Ranger) through U.P. Public Service Commission in the years 1978 and 1981. It was declared Gazetted Class-II, in the year 1995. When the petitioners joined on the post of Ranger, their services were governed by U.P. Subordinate (Rangers, Deputy Rangers and Foresters) Service Rules, 1951. Forest Range Officers' promotional post is Assistant Conservator of Forest (for short, ACF). It was being governed by UP Forest Service Rules, 1952 (for short, 1952 Rules). As per Rules 5 and 6 of the 1952 Rules, the source of recruitment to the post of ACF was 66.67% by direct recruitment and 33.33% by promotion. Minimum qualifying service for promotion was 8 years.

Rule 3(h) of the 1952 Rules defines 'Member of Service', to mean a person appointed in substantive capacity, under the provisions of these Rules or of Rules or order in force, previous to the introduction of these Rules, to a post in the cadre of the service. The Note appended to Rule 3(h) provides that all the members of the Provincial Forest Service (old), shall, from the date of issuance of these Rules, be deemed to be members of U.P. Forest Service. It clarified that these Rules shall not be applicable to the members of Indian Forest Service. 1952 Rules remained in force till the U.P. Forest Service Rules 1993 (for short, 1993 Rules) came into being. Rule 5 of the 1993 Rules changed the quota of persons appointed through direct recruitment and through promotion from 66.67% and 33.33% to 50% each.

When new Rules came into force, total number of posts, in the U.P. Forest Services, were 275. Out of these 275 posts, only 102 were permanent posts. Remaining 173 were temporary posts. As per Appendix-B of the 1952 Rules, temporary posts could only be filled up

by the promoted candidates. Thus, the quota could only be made applicable to 102 permanent posts. Since the quota for promotion at that time was 1/3, therefore, 34 posts, out of 102 posts, were for promotion quota and remaining 68 posts were under direct quota. Since temporary vacancies could only be filled by promotion quota, therefore, total number of posts, under such quota, were 207 (173+34) and 68 posts were under direct quota.

On 05.11.1993, i.e., the date of enforcement of new Rules, there were 277 persons working in the State Forest Services. Out of such 277 persons, 192 were directly recruited. Only 85 persons were working against the promotion quota. Annexure: A 5, which is a copy of seniority list, circulated on 28.04.1994, showed that there was breakdown in the Quota Rule and direct recruits were appointed in excess of their quota. To the contrary, vacancies under promotion quota, were not filled up, in spite of the fact that qualified persons were available under such quota. Petitioners were later on promoted to the post of ACF in the year 1997.

Seniority of the petitioners, *vis-à-vis* others, is decided on the basis of Rule 8 of the Uttarakhand Government Servants Seniority Rules, 2002 (for short, Seniority Rules, 2002). Rule 8 says that the seniority of the persons would be fixed as per the date of appointment in the cadre. First proviso to the aforesaid Rules clearly mandates that where appointments in any source have been made in excess of the quota, the seniority of the persons, so appointed, shall be pushed down to subsequent years, in which there are vacancies according to the quota.

It is also averred in the petition that, for many years, direct recruitments were being made in U.P. Forest Services without considering percentage quota of posts, laid down for direct recruitment and no regular promotions were made from the post of Rangers. Two petitions were filed in the Hon'ble Supreme Court, a reference of which shall be given at an appropriate stage. Between

1986 to 1997, no promotion was made on the post of ACF. When the petitioners were promoted in 1997, they were confident that since the direct recruits were appointed in excess of their quota, they will be placed senior to many direct recruits. No seniority list was ever circulated in the State of U.P. The petitioners were finally allocated to State of Uttarakhand in the year 2006.

Tentative seniority list was circulated *vide* order dated 09.07.2007. Objections were invited on the same. Petitioners also filed their objections, which were dealt with by Chief Conservator of Forests, who admitted that the direct appointees have been appointed in excess of their quota. A copy of tentative seniority list dated 09.07.2007 and letter dated 31.01.2008 of C.C.F. have been brought on record as Annexures: A 6 and A 7 respectively. Another seniority list was circulated *vide* order dated 04.03.2009, which only depicted *inter se* seniority of the promotees. Direct recruits did not find place in such seniority list. Petitioners immediately gave detailed objections to the aforesaid tentative seniority list. *Vide* order dated 03.02.2010, final seniority list was circulated, which contained the names of promoted officers only. *Inter se* seniority, between direct recruits and promotees, still remained undecided. *Vide* order dated 14.08.2013, 18 persons were promoted to the post of Deputy Director. Petitioners objected to such promotion and they moved representations, but such representations were not decided..

According to pleadings, tentative seniority list was issued on 02.06.2015. Objections were invited. Petitioners filed their objections. Their objections were overruled and final seniority list was issued on 13.04.2016, which clearly shows that direct recruits were appointed in excess of their quota. Aggrieved against the same, petitioners have preferred present claim petition.

3. It will also be useful to reproduce Para 4 (F, G,H,I,) of the petition herein below for convenience:-

4 (f) At the time when new rules came into force, the total number of posts in the U.P. Forest Services were 275. Out of these 275 posts, only 102 were permanent posts whereas 173 were temporary posts. As per Appendix 'B' of the 1952 Rules, the temporary posts could only be filled by the promoted candidates. Thus the quota could only be made applicable on the 102 permanent posts. Since the quota for promotion at that time was 1/3, therefore, out of 102 posts, 34 posts were for the promoted quota and remaining 68 posts were under direct quota.

(g) Since temporary vacancies could only be filled by the Promotion Quota, the total number of posts under the promotion quota were 207 (173+34) and 68 posts were under direct quota.

(h) Surprisingly, as on 05.11.1993, i.e., the date of promulgation of new rules, there were 277 persons working in the State Forest Service. Out of such 277 persons, 192 were directly recruited, whereas only 85 persons were working against the Promotion Quota. A copy of the Seniority list circulated on 28.04.1994 is enclosed with this petition as Annexure: A 5.

(i) This clearly showed that there was a breakdown in the Quota rule and the direct recruits were appointed in excess of their quota. On the other hand, the promoted quota vacancy was not filled up in spite of the fact that qualified persons were available under promotion quota.

4. In C.A./W.S., a reference of Rule 6 of the 1952 Rules has been given. The same has been quoted as below:-

**“6- Number of Appointments to be made- The Governor shall decide the number of vacancies to be filled from each of the two sources specified in rule 5 provided that not more than 33 1/3 percent of the total number of posts in the Service shall be filled from the source mentioned in clause (b) of rule 5. In deciding the number of vacancies to be filled from each of the two sources each year, regard shall be had to the relative number of promoted and directly recruited officers in the cadre of**

the Service. The above percentage will be observed if suitable officers are available for promotion to that extent.”

5. It has been pleaded in C.A. that the State Government has the authority to appoint direct recruits in the contingency of non-availability of suitable officers from promotion quota. It has also been averred that Rule 8 of The U.P. Seniority Rules, 1991 and The Uttarakhand Seniority Rules, 2002 will be applicable when the selection year is the same. In the instant case, according to Respondents No. 1 & 2, the appointment of direct recruits were done before 1990, while petitioners and other similarly situated Rangers were promoted in the year 1997. The appointing authority of ACF is undoubtedly the Governor. It is also pleaded that there has been no change in the seniority list issued by the State of U.P..
6. As many as 47 officers were arrayed as party respondents in the claim petition. Respondent No. 43 died during pendency of present claim petition. The names of Respondents No. 18 and 24 were deleted from the array of parties, on the request of petitioner. Except respondent No.59, none other private respondent has filed C.A./W.S., despite service of notice.
7. In a nutshell, petitioners have challenged the seniority list of State Forest Officers finalized by the Department of Forest & Environment, Government of Uttarakhand on 06.04.2016 (Annexure: A1) principally on the grounds that direct recruitment was made in excess of the quota earmarked for direct recruitment and the temporary posts were filled by direct recruitment, while such posts could only be filled up by promotion.
8. Learned counsel for the petitioners has argued that where the appointments in any source are made in excess of the quota, the seniority of the persons appointed in excess of quota shall be pushed down to subsequent years in which vacancies occur in the quota. [*Proviso* to Rule 8 of the Seniority Rules of 2002].



Such Rule reads as under:

“Provided that- where appointments from any source are made in excess of the prescribed quota, the persons appointed in excess of quota shall be pushed down, for seniority, to subsequent year in which there are vacancies in accordance with the quota.”

9. Learned counsel for the petitioners has also argued that between 1986 to 1997, no promotion was made on the post of Assistant Conservator of Forests, while there was a promotion quota under the Service Rules of 1952. He also submitted that final seniority list was prepared by the Government of Uttar Pradesh on 28.04.1994 (Annexure: A5) in which 277 officers were listed; whereas the officers of direct recruitment included in the seniority list were 192 only 85 promotees find place in this list and, therefore, direct recruits were appointed in excess of quota prescribed under the Rules.
  
10. Learned counsel for the petitioners also submitted that Hon’ble Supreme Court considered such issue in the decision of *Keshav Chandra Joshi and Ors vs. Union of India and Ors*, AIR 1991 SC 284, and in *writ petition(Civil) No. 626 of 1986, Makar Dhvaj and Ors vs. Neera Yadav and another (contempt petition) decided on 04.01.1994*. Learned counsel for the petitioners argued that in the decision of Keshav Chandra Joshi and Makar Dhvaj (*supra*), the Hon’ble Apex Court issued direction to determine the seniority between the direct recruits and promotees in accordance with quota rule after ascertaining number of vacancies which existed in the year 1974-75 and every year thereafter. It is the submission of learned counsel for the petitioners that the Government of Uttar Pradesh while preparing and finalizing the seniority list of Assistant Conservator of Forests on 28.04.1994 has not followed the directions given by the Hon’ble Apex Court in the aforementioned cases.

11. *Per contra*, Learned A.P.Os. have submitted that the seniority list dated 28.04.1994 in which direct recruits have been included, allegedly, in excess of their quota, was finalized by the Government of U.P. as per the judgments of Hon'ble Supreme Court in the above noted cases, which is evident from the inaugural paragraph of the Office Memorandum dated 28.04.1994 (Annexure: A5), by which final seniority list was issued. Learned A.P.Os. have further submitted that the seniority list of 1994 was prepared by the Government of Uttar Pradesh in accordance with Rule 6 of the Uttar Pradesh Forest Service Rules, 1952, which reads as under:

*“6. Number of Appointments to be made- The Governor shall decide the number of vacancies to be filled from each of the two sources specified in rule 5 provided that not more than 33 1/3 percent of the total number of posts in the Service shall be filled from the source mentioned in clause (b) of rule 5. In deciding the number of vacancies to be filled from each of the two sources each year, regard shall be had to the relative number of promoted and directly recruited officers in the cadre of the Service. The above percentage will be observed if suitable officers are available for promotion to that extent.”*

Learned A.P.Os. have submitted that the Government of Uttar Pradesh issued the final seniority list in 1994 according to Rule 6 of the Service Rules of 1952 applying that part of the rule, which says that *“In deciding the number of vacancies to be filled from each of the two sources each year, regard shall be had to the relative number of promoted and directly recruited officers in the cadre of the Service. The above percentage will be observed if suitable officers are available for promotion to that extent.”*

11. It is, therefore, the argument of learned A.P.Os. that the State Government had discretion in apportioning total vacancies between direct recruits and promotees under the abovementioned rule. Learned A.P.Os. have also submitted that after the seniority list of Uttar Pradesh was issued in 1994, various tentative seniority lists were issued in 2007(Annexure: A6), 2009 (Annexure: A8), 2010 (Annexure: A10) and 2015 (Annexure: A14) and all these seniority lists are based on the seniority list issued by the Government of Uttar Pradesh on 28.04.1994 (Annexure: A5). The Government of Uttarakhand has not altered the seniority list of 1994, in respect of the persons who were already there in the seniority list, after creation of the State of Uttarakhand on 9.11.2000.
12. Learned A.P.Os. also submitted that while preparing the final seniority list dated 06.04.2016, which is under challenge in this claim petition, *inter se* seniority of the officers in the seniority list dated 28.04.1994 issued by the Government of Uttar Pradesh has been maintained and therefore, the seniority list prepared by Govt. of Uttar Pradesh is the sole basis of the seniority list issued by the Government of Uttarakhand on 06.04.2016.
13. Learned A.P.Os. have also argued that the seniority of the persons, who are included in the seniority list of 1994, issued by the Government of Uttar Pradesh, cannot be altered by the Government of Uttarakhand, as the seniority list of 1994 was issued before creation of the State of Uttarakhand and only the State of Uttar Pradesh can make any changes in it. Learned A.P.Os. have referred to the judgment of the Hon'ble Supreme Court in *State of Uttarkahand vs. Umakant Joshi* (infra) and the judgment of Hon'ble High Court of Uttarakhand at Nainital in *Dr. Kamaljeet Singh vs. State of Uttarakhand (infra)* to show that this Tribunal has no jurisdiction to alter/change the decision of the Government of Uttar Pradesh with respect to the seniority list issued in 1994. Various decisions taken by the Government of Uttar Pradesh for determining the quota in respect of the direct recruits and promotees and allocation of temporary posts to the direct recruits for the

purpose of preparing final seniority list in 1994 can be changed/revised, if at all required, by the Government of Uttar Pradesh only. Learned A.P.Os. have also submitted that the seniority list of 1994 issued by the Government of Uttar Pradesh has also not been changed/revised even after the promotion of the petitioners (and others) in 1997 by the U.P. Government.

14. The decision rendered by Hon'ble Supreme Court in *State of Uttarakhand and another vs. Umakant Joshi, 2012(1) UD 583*, and subsequent judgment delivered by Hon'ble High Court of Uttarakhand in *Dr. Kamaljeet Singh, and another vs. State of Uttarakhand and others 2018(1) UD, 337*, which is based on Umakant Joshi's decision, go squarely against the petitioners. It will be apposite to reproduce relevant paragraphs of Umakant Joshi's decision (*supra*) herein below for convenience:

"9.....Ld. counsel appearing for appellant Nos. 1 & 2 and.....Ld. counsel appearing for State of Uttarakhand argued that the impugned order is liable to be set aside because while granting relief to respondent No.1, the High Court completely ignored that he..... guilty of laches.....Ld. Counsel further argued that the Uttarakhand High Court did not have the jurisdiction to direct promotion of respondent No.1 to Class-I post with effect from a date prior to formation of the new State .....

11. We have considered the respective submissions. It is not in dispute that at the time of promotion.....w.e.f. 16.11.1989 by the Government of U.P., the case of respondent No.1 was not considered.....That exercise could have been undertaken only by the Government of U.P. and not by the State of Uttaranchal (now State of Uttarakhand) which was formed on 09.11.2000. **Therefore, the High Court of Uttarakhand, which too came into existence with effect from 9.11.2000 did not have the jurisdiction to entertain the writ petition filed by respondent No.1 for issue of a mandamus to the State Government to promote him to Class-I post with effect from 16.11.1989.....**who were promoted to Class-I post vide order dated 22.02.2001 with retrospective effect. It appears to us that the Counsel, who appeared on behalf of State of Uttarakhand and the Director of Industries, did not draw the attention of the High Court that it was not competent to issue direction for promotion of respondent No.1 with effect from a date prior to formation of the new State, and that too, without hearing the State of Uttar Pradesh and this is the reason

why the High Court did not examine the issue of its jurisdiction to entertain the prayer made by respondent No.1.

12. In view of the above, we hold that the writ petition filed by respondent No.1 in 2008 in the Uttarakhand High Court claiming retrospective promotion to Class-I post with effect from 16.11.1989 was misconceived and the High Court committed jurisdictional error by issuing direction for his promotion to the post of General Manager with effect from 16.11.1989 and for consideration of his case for promotion to the higher posts with effect from the date of promotion of his so called juniors.

13. In the result, the appeals are allowed, the impugned order is set aside and the writ petition filed by respondent No.1 is dismissed.”

15. Observations made by the Division Bench of Hon’ble High Court of Uttarakhand at Nainital made in **Writ petition 102 of 2017 (S/B) Dr. Kamaljeet Singh and another vs. State of Uttarakhand and others, 2018 (1) U.D. 337**, are also excerpted herein below in order to bring home the point that this Tribunal should not commit jurisdictional error by entering into the merits of the claim petition any further:

11. we can deduce two principles, as laid down by the Hon’ble Apex Court. Firstly, in respect to any rights that the persons, who are allocated or working after the creation of the State of Uttarakhand is concerned, which relates to the period anterior to the date of the creation of the State of Uttarakhand, the proper and competent authority would be the State of Uttar Pradesh. The State of Uttarakhand could not have the authority to deal with such a matter. Secondly, in relation to any such complaint, the proper forum to ventilate the grievance would be the High Court of Allahabad or the Tribunal created under the law passed by the State of Uttar Pradesh.

12. Noticing this as the state of the law and applying it to the facts of this case, without going into any other aspect, which is projected by ....., we would think that the impugned order cannot be sustained. By the impugned order, the State of Uttarakhand has purported to give the benefit of absorption to the third respondent with

reference to a date, which is clearly anterior to the date of the creation of the State of Uttarakhand. If at all this could have been done, it could have been done only by the State of Uttar Pradesh”.

16. **It is, therefore, held that this Tribunal has no territorial jurisdiction to decide the present claim petition.**
17. Petitioners, if they are so advised, may avail appropriate remedy by filing petition before appropriate forum. Claim petition may, therefore, be returned to the petitioners for presentation before the appropriate forum.
18. It is made clear that we have not expressed any opinion on the merits of the claim petition.

**D.K.KOTIA)**  
VICE CHAIRMAN (A)

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

*DATE: MAY 23, 2018*  
*DEHRADUN*

VM

15. Ld. Counsel for the petitioners very emphatically submitted that the claim petitioners be allowed on the basis of pleadings and grounds taken herein below:-----

16. *Per contra*, Ld. A.P.O., representing Respondents No. 1 & 2, assailed the claim petition on three principal grounds, viz, (i) this tribunal has no territorial jurisdiction to decide present claim petition. Private respondents have been vested with crucial rights and, therefore, the dispute cannot be adjudicated except with the intervention of Central Government, as provided under Section 74 of U.P. Reorganization Act, 2000; (ii) the quota for promotee Rangers is up to 33.33% and not 33.33%; and (iii) the State Government had the power to appoint ACFs, considering exigency of service, when suitable Rangers were not available.

17. Suppose, appointments from any source are made in excess of the prescribed quota, what will happen? We may find the reply to this question in *Proviso* to Rule 8 of the Seniority Rules of 2002, which runs as below:-

**“Provided that- where appointments from any source are made in excess of the prescribed quota, the persons appointed in excess of quota shall be pushed down, for seniority, to subsequent year in which there are vacancies in accordance with the quota.”**

18. We may also seek guidance from three landmark decisions rendered by Hon’ble Apex Court in Arvind Singh Bains (2006) 6 SCC 673

19. Hon’ble Apex court in Para ... of the judgment rendered in Devendra Prasad Sharma (1997) 4 SCC 422 as below:-.....

20. It was held by the Hon’ble Apex Court in K.C.Joshi...(1992)supp.1 SCC 272.....

21. No definite reply of Paragraphs 4 A to 4 E has been given in the C.A. However Rule 6 of the 1952 Rules has been mentioned in the C.A., a reference of which has already been given above in Para 3 of this judgment.

22. Opinion dated 31.01.2008 (Annexure: A 7) given by the CCF. ....

In C.A./W.S. (para 10) , an attempt has been made to justify on the ground that it is an opinion n. ....

Whether the quota of direct recruits is in excess or not?.....