

(2019) 11 UK CK 0056

In the Uttarakhand High Court

Case No : Writ Petition No. 386 Of 2019 (S/B)

State Of Uttarakhand And Another

APPELLANT

Vs

Gauri Shankar Joshi And Others

RESPONDENT

Date of Decision : 14-11-2019

Acts Referred:

Uttar Pradesh Reorganisation Act, 2000 — Section 73, 73(1), 74, 74(1), 75, 77
Uttarakhand Government Servants Seniority Rules, 2002 — Rule 9(1), 9(2), 9(4)
Constitution Of India, 1950 — Article 14, 16

Citation : (2019) 11 UK CK 0056

Hon'ble Judges : Ramesh Ranganathan, CJ;Alok Kumar Verma, J

Bench : Division Bench

Advocate : Anil K. Bisht, Amar Murti Shukla

Final Decision : Dismissed

Judgement

Alok Kumar Verma, J

1. Whether the settled final seniority list of the employees can be re- examined and re-settled in the manner, as it was done by the writ petitioners. This is the question of law in these writ petitions.
2. The Writ Petition No. 386 of 2019 (S/B) is filed seeking a writ of certiorari to set aside the Judgment and Order dated 29.03.2019 passed by the learned Public Services Tribunal, Uttarakhand at Dehradun in the Claim Petition No. 80/DB/2018 Gauri Shankar Joshi v. State of Uttarakhand.
3. The Writ Petition No. 387 of 2019 (S/B) is filed seeking a writ of certiorari to set aside the Judgment and Order dated 29.03.2019 passed by the learned Public Services Tribunal, Uttarakhand at Dehradun in the Claim Petition No. 81/DB/2018 Smt. Kalawati Martolia v. State of Uttarakhand.
4. Both the claim petitions were decided by the learned Public Services Tribunal by a common judgment, taking the Claim Petition No. 81/DB/2018 as leading case.

5. Facts, to the limited extent necessary, are that the respondents-claim petitioners were appointed through a due selection process in the State of Uttar Pradesh on Class IV posts in the year 1995 and 1996 respectively. The State of Uttaranchal (now Uttarakhand) was created with the enactment of the Uttar Pradesh Re-organisation Act, 2000 (hereinafter referred to as "the Act, 2000"). Under the Act, 2000, 9th November, 2000 was the appointed day. The respondents-claim petitioners being domicile of the State of Uttarakhand opted for the State of Uttarakhand. After creation of the State of Uttarakhand, some employees, including private respondents, were provisionally allocated to the State of Uttarakhand, whereas, the respondents-claim-petitioners, who were continuing to serve in the State of Uttar Pradesh, provisionally allocated to the State of Uttar Pradesh, awaiting their final allocation by the Central Government.

6. The employees provisionally allocated to the State of Uttarakhand were promoted by the State from Class IV to Class III post as Typist. These promotions were made in the year, 2001 and 2004 respectively. The tentative seniority list was issued on 12.08.2004 and objections were invited under the Uttarakhand Government Servants Seniority Rules, 2002 and under the provisions of the Uttarakhand Secretariat Personal Assistant, Upper Divisional Assistant, Assistant Accountant, Typist, Anusevak Absorption Rules, 2002. After considering the objections, the seniority list of employees, working in the Secretariat, was issued on 19.11.2004. In the paragraph No. 5 of the seniority list dated 19.11.2004, a stipulation was made that the said seniority was subject to the outcome of the final allocation of the employees by the Central Government and after final allocation, if senior employees were allocated to the State of Uttarakhand, then the seniority list will be amended accordingly.

7. The respondents-claim petitioners, who were serving in the Secretariat of the State of Uttar Pradesh, after passing the departmental examination, were promoted on the post of Typist vide order dated 26.09.2007.

8. The allocation of the employees of the Secretariat was pending before the Central Government for their final allocation, therefore, the Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pension of Government of India issued a letter dated 28.01.2009 to the Chief Secretary of the Government of Uttar Pradesh, by which it was informed, ".....though the 175 personnel (optees) were allocated provisionally to Uttarakhand, final allocation in respect of these employees is yet to be made by the Central Government. Once the list of employees of domicile category is finalised the combined list of employees to be allocated to Uttarakhand (both "optees" and "domicile" category) would be issued by the Central Government as on appointed day i.e. 09.11.2000. There will be no difference in the seniority position of the employees who are allocated either on the basis of "optee" or "domicile" category. Further service condition of the employees are protected under Section 74 (1) of Uttar Pradesh Re-organisation Act, 2000. In the said letter dated 28.01.2009, it was also mentioned, ".. the promotion is governed by the Service Rules and also

vacancies available. All the employees allocated to Uttarakhand either on "option" basis or on "domicile" basis are to be treated alike in respect of promotion and other service conditions."

9. The final allocation list published by the Central Government on 07.08.2009 by which 270 employees were allocated to the State of Uttarakhand, in which the names of the respondents-claim petitioners Shri Gauri Shankar Joshi and Smt. Kalawati Martolia were also figured in Serial number 266 and 227 respectively as domicile category. The respondents-claim petitioners joined their services in the Uttarakhand Secretariat on 05.07.2010.

10. In the seniority list dated 19.11.2004 of Class IV employees, the names of the respondents-claim petitioners were not included, as at that time, they were serving in the State of Uttar Pradesh. Therefore, the respondents-claim petitioners requested for inclusion of their names in the seniority list. The petitioner No. 2 of these writ petitions, after receiving the representations of the respondents-claim petitioners in the month of July, 2011, invited objections from the employees, as per the conditions mentioned in the seniority list dated 19.11.2004, within a period of 15 days. Four employees, who were not party in the claim petitions before the learned Public Services Tribunal and who are not party in the present writ petitions, filed their objections before the petitioner No. 2 and after considering the objections, vide order dated 23.08.2011, the representations of the respondents-claim petitioners were decided and settled the final seniority list of Class IV employees. The seniority position of the respondents-claim petitioners were settled accordingly.

11. Thereafter, the respondents-claim petitioners submitted their representations before the petitioner No. 2 with the prayer that due to delay in final allocation of these respondents, their juniors were already promoted to Class III post in the year 2001, therefore, they must also be promoted. The petitioner No. 2 decided the matter as per the conditions mentioned in the Act, 2000 and passed an order dated 29.11.2011, by which the respondents-claim petitioners were granted notional promotion on the post of Typist w.e.f. 02.08.2001 i.e. the date when their juniors were promoted.

12. After notional promotion, the respondents-claim petitioners submitted their representations for fixation of seniority in the seniority list of Computer Operator/Typist. The petitioner No. 2 invited objections from the other employees and after considering the objections, vide order dated 19.01.2012, the seniority of the respondents-claim petitioners were re-fixed and thereby Shri Gauri Shankar Joshi, respondent-claim petitioner and Smt. Kalawati Martolia, respondent-claim petitioner were placed at Serial No. 6A and Serial No. 8A respectively in the seniority list of the Typist/Computer Operator. On 16.05.2012, the petitioners of present writ petitions in consultation with the Public Service Commission, promoted the respondents-claim petitioners to the post of Assistant Review Officer w.e.f. 25.01.2005. Thereafter, petitioners invited objections from the aggrieved persons vide order dated 21.01.2013, and after considering the

objections, the petitioner No. 2, vide order dated 29.05.2013, fixed the seniority of Shri Gauri Shankar Joshi, respondent-claim petitioner and Smt. Kalawati Martolia, respondent-claim-petitioner on the post of Assistant Review Officer and thereby they were placed at Serial No. 105A and 107A respectively in the seniority list. After fixation of the seniority of the respondents-claim petitioners on the post of Assistant Review Officer, the petitioners granted notional promotions to them on the post of Review Officer from the date when their juniors were promoted i.e. from 15.09.2008. Thereafter, for the purpose of fixation of seniority on the post of Review Officer, objections were invited vide order dated 08.10.2013 from all the employees. After inviting the objections, the seniority, in the cadre of Review Officers, of respondents-claim petitioners were fixed vide order dated 31.10.2013 and thereby Shri Gauri Shankar Joshi, respondent-claim petitioner and Smt. Kalawati Martolia, respondent-claim petitioner were placed at Serial No. 302A and Serial No. 304A respectively.

13. In the year 2014, the promotional exercise was undertaken from the post of Review Officer to the post of Section Officer, in which the respondents-claim petitioners participated. Shri Gauri Shankar Joshi and Smt. Kalawati Martolia, the respondents-claim petitioners, were promoted to the post of Section Officer vide promotional order dated 30.06.2014 and 07.08.2014 respectively, by putting them on one year probation. On 12.04.2017, the services of the respondents-claim petitioners were confirmed on the post of Section Officer.

14. In the year, 2017, the private respondents moved their objections dated 02.01.2017 and 02.05.2017 and after considering these objections, the petitioner No. 2, vide order dated 11.09.2017, placed Shri Gauri Shankar Joshi, respondent-claim petitioner at Serial No. 147A from Serial No. 6A and placed Smt. Kalawati Martolia, respondent-claim petitioner at Serial No. 147B from Serial No. 8A of the seniority list in the cadre of Computer Operator/Typist. Shri Gauri Shankar Joshi, respondent-claim petitioner and Smt. Kalawati Martolia, respondent-claim petitioner filed Writ Petition No. 454 of 2017 (S/B) and Writ Petition No. 455 of 2017 (S/B) respectively before this Court. Both the writ petitions were decided on 22.09.2017, by which, the petitioner No. 2, herein, was directed to consider the objections of the respondents-claim petitioners and pass orders in accordance with law. In the compliance of the order dated 22.09.2017, the objections were submitted by the respondents-claim petitioners against the order dated 11.09.2017. Considering all the facts, the petitioner No. 2 passed an order dated 16.11.2018, by which, the seniority of the respondents-claim petitioners were fixed and Shri Gauri Shankar Joshi, respondent-claim petitioner and Smt. Kalawati Martolia, respondent -claim petitioner were placed to Serial No. 147A from Serial No. 6A and Serial No. 147B from Serial No. 8A respectively and vide aforesaid order the respondents-claim petitioners were reverted from the post of Section Officer to the post of Review Officer.

15. After hearing the parties, the learned Public Services Tribunal noted the letter of Central Government dated 28.01.2009, final allocation list dated 07.08.2009

promotion and seniority lists, issued by time-to-time, judgments of the Hon'ble Apex Court and this Court in P.S. Sadasivaswamy v. State of Tamil Nadu, (1975) 1 SCC 152, Shiba Shankar Mohapatra v. State of Orissa, (2010) 12 SCC 471 and Writ Petition (S/B) No. 326 of 2017, Ajay Kumar v. State of Uttarakhand, decided on 24.09.2018 and observed that under the Uttarakhand Government Servants Seniority Rules, 2002, representation can be filed only against the tentative seniority list; the claim-petitioners were granted notional promotion on the analogy that their juniors were given the same benefits; once the seniority list is finalized, no such representation can be entertained; seniority of the claim-petitioners with the private respondents was finally determined, following the procedure prescribed in the Seniority Rules at each stage and relevant point of time; while settling the seniority of the claim-petitioners and others on different stages i.e. Class IV post, as Typist or Assistant Review Officer or Review Officer, the objections were invited at every stage from the employees; private respondents never filed any representation/objection against the tentative seniority lists; seniority list of Typist was finalized in 2011, for Assistant Review Officer on 16.05.2012 and for the post of Review Officer on 29.05.2013; it was not open to the private respondents to complain against the final seniority list which was already settled and finalized in the year, 2011, after giving them the opportunity of hearing; finalization of the seniority list is a quasi-judicial function and authority deciding the seniority cannot review the long standing seniority, in the absence of any powers in the Rules; the private respondents never filed any objections and they kept quiet for a long period of about six years; the claim-petitioners were granted notional promotion from the date, when their juniors were promoted; the argument of the respondents, put forward about promotion of the private respondents prior in time to the claim-petitioners, has no meaning, in view of the order of the Central Government dated 28.01.2009 to clarify the position that the service conditions of the employees will remain protected as per the mandate of the Act, 2000; the impugned reversion order dated 16.11.2018 is not sustainable for the reasons that reversion of the employees amounts to major penalty; it cannot be inflicted without any notice or without giving an opportunity of hearing; before issuing the impugned reversion order from Section Officer to the post of Review Officer, no show cause notice was issued to the claim-petitioners; the claim-petitioners were denied the opportunity of hearing; long standing seniority, which the claim-petitioners were retaining from the year, 2011, has been disturbed on the representations of the private respondents, moved in January, 2017, after a long period of six years; the private respondents were having opportunity to challenge the seniority of the claim-petitioners at prior three stages; private respondents never challenged the same; seniority list of the claim-petitioners on the post of Typist, issued in the year, 2011, on the post of Assistant Review Officer, issued in the year, 2012 and on the post of Review Officer, issued in the year, 2013 was finally settled; the claim-petitioners were promoted to the post of Section Officer in June, 2015; after three years of their promotion, representations of the private respondents were wrongly entertained and settled seniority was unsettled; reversion order is not valid; the

Rules, nowhere authorizes to entertain such representations against the long standing settled seniority; entire exercise of reversion is without jurisdiction and it resulted into the miscarriage of justice and is also violative to the provisions of Rules and Article 14 and 16 of the Constitution of India. The learned Tribunal allowed the claim petition on 29.03.2019 and after setting aside the impugned order dated 16.11.2018 and revoking the reversion order of the claim-petitioners, the respondent No. 2 of the claim petition was directed to restore the status of the claim-petitioners, if reverted earlier, from the very date of their reversion, with all consequential benefits, within a period of three months from the date of presentation of the copy of judgment.

16. Being aggrieved by the impugned judgment and order dated 29.03.2019, passed by learned Tribunal, these writ petitions are filed.

17. We have heard the learned counsel for the parties and gone through the impugned judgment and perused the materials placed on record.

18. Mr. Anil K. Bisht, learned Standing Counsel, appearing for the petitioners, has submitted that the private respondent Nos. 2 to 4 presented their representations; in the representations, it was stated that they were promoted on the post of Typist in the Uttarakhand Secretariat on 10.12.2004; the respondents-claim petitioners were appointed as Typist on 26.09.2007 by the State of Uttar Pradesh; the respondents-claim petitioners gave their joining on 05.07.2010; the private respondents prayed for granting them seniority similarly as had been given to the respondents-claim petitioners; after hearing the matter, the petitioner No. 1 issued Office Memorandum dated 11.09.2017, by which the seniority of the respondents-claim petitioners were changed; objections were invited and after the receiving the objections of the employees, the department finally re-fixed the seniority of the respondents-claim petitioners; private respondents joined their services in the State of Uttarakhand in November, 2000; whereas, the respondents-claim petitioners joined the State in the year, 2010; the respondents-claim petitioners were promoted on the post of Computer Operator/Typist in the State of Uttar Pradesh in September, 2007; whereas, the private respondents were promoted in the State of Uttarakhand, in the month of December, 2004; the private respondents got their promotions prior to joining of the respondents-claim petitioners in the State of Uttarakhand; the promotion from Class IV post to Class III post is a new appointment; it can be given only upon passing of test; who passed the Computer examination on later point of time cannot claim seniority from back date; seniority was not the criteria for promotion on Class III post; on the said analogy, the respondents-claim petitioners are juniors to the private respondents; private respondent No. 2 was promoted on Group "C" post vide order dated 10.08.2004 after passing the departmental examination; private respondent Nos. 3 and 4 were also promoted on the post of Typist on 10.12.2004; whereas, the respondents-claim petitioners were promoted on Group "C" post by the Uttar Pradesh Secretariat on 26.09.2007; the seniority could not be given to the respondents-claim petitioners

w.e.f. 2001; the Central Government had given the same status to the both "optees" and "domicile" category employees; the seniority of the respondents-claim petitioners would be counted in the cadre of Typist w.e.f. 26.09.2007; the respondents-claim petitioners are juniors in the feeding cadre to the private respondents; the respondents-claim petitioners passed the departmental examination only in the year, 2007; whereas, private respondents were promoted in the cadre of Typist in the year, 2004; promotions cannot be given to the respondents-claim petitioners from the date when the private respondents were given promotions.

19. The respondents-claim petitioners, on the other hand, submitted that the learned Tribunal had rightly allowed the claim petition filed by them and, for the same reason, these writ petitions are liable to be dismissed.

20. The respondents-claim petitioners were appointed on Class IV post in the Secretariat of erstwhile State of Uttar Pradesh in the year, 1995 and 1996 respectively. The State of Uttaranchal (now Uttarakhand) came into existence by the Act, 2000. Under the Act, 09.11.2000 was the appointed day. The employees of all the departments, including that of Secretariat, were asked to exercise their options for allocation of their services either at Uttar Pradesh or at Uttaranchal (now Uttarakhand). The respondents-claim petitioners opted to serve in the State of Uttarakhand. The final allocation list published by the Central Government on 07.08.2009.

21. The persons provisionally allocated to the State of Uttaranchal promoted from Class IV posts to Class III posts as Typist in the year, 2001 and 2004. The seniority list of employees of Class IV, working in the Secretariat of the State of Uttaranchal, was issued on 19.11.2004. The names of the respondents-claim petitioners were not included in the seniority list. The respondents-claim petitioners joined their services in the Secretariat of the State of Uttarakhand on 05.07.2010. On the representations of the respondents-claim petitioners, the final seniority of these respondents-claim petitioners in the cadre of Class IV was settled on 23.08.2011. Shri Gauri Shankar Joshi, respondent-claim petitioner and Smt. Kalawati Martolia, respondent-claim petitioner were placed at Serial No. 11A and Serial No. 11D respectively. The respondents-claim petitioners were granted notional promotions on the posts of Typist under the provisions of Part 2 to 4 of the Financial Handbook on 29.11.2011 w.e.f. 02.08.2001, i.e. the date when the juniors were promoted. Vide order dated 19.01.2012, the seniority of the respondents-claim petitioners were re-fixed and Shri Gauri Shankar Joshi, respondent-claim petitioner and Smt. Kalawati Martolia, respondent-claim petitioner were placed at Serial No. 6A and Serial No. 8A respectively in the seniority list of the Typist/Computer Operator. Vide order dated 16.05.2012, the respondents-claim petitioners were promoted on the post of Assistant Review Officers w.e.f. 25.01.2005, i.e. the date when the juniors were promoted. On 29.05.2013, the seniority of Shri Gauri Shankar Joshi, respondent-claim petitioner and Smt. Kalawati Martolia, respondent-claim petitioner were fixed on

the posts of Assistant Review Officer and in the seniority list, they were placed at Serial No. 105A and 107A respectively. The respondents-claim petitioners were granted notional promotions on the posts of Review Officer on 08.08.2013, from the date when their juniors were promoted, i.e. from 15.09.2008. On 31.10.2013, the seniority of Shri Gauri Shankar Joshi, respondent-claim petitioner was fixed at Serial No. 302A and seniority of Smt. Kalawati Martolia, respondent-claim petitioner was fixed at Serial No. 304A in the cadre of Review Officer. Shri Gauri Shankar Joshi, respondent-claim petitioner was promoted to the post of Section Officer vide promotional order dated 30.06.2014 and Smt. Kalawati Martolia, respondent-claim petitioner was promoted to the post of Section Officer vide promotional order dated 07.08.2014. On 12.04.2017, the services of the respondents-claim petitioners were confirmed on the posts of Section Officer. On the objections of the private respondents, the seniority of the respondents-claim petitioners were re-fixed on 11.09.2017 and Shri Gauri Shankar Joshi, respondent-claim petitioner was placed at Serial No. 147A from Serial No. 6A and Smt. Kalawati Martolia, respondent-claim petitioner was placed at Serial No. 147B from Serial No. 8A of the seniority list in the cadre of Computer Operator/Typist and on 16.11.2018, by the impugned orders, the petitioners of these two writ petitions had re-fixed the seniority of the respondents-claim petitioners and reverted them from the posts of Section Officer to the posts of Review Officer.

22. The Government of Uttaranchal (Karmik Department) issued directions through a Government Order No. 1478/XXX(2)/2004 dated 15.09.2004 that final allocation had not yet been done in certain categories and there were a lot of vacancies for promotion quota. Therefore, in the classes in which such situation existed, keeping in view the mutual seniority prior to the formation of the State of Uttaranchal, the interim promotion should be done with the restriction that such promotion will be subject to the final allocation made by the Government of India. Personnel working in the State of Uttar Pradesh but allotted to the State of Uttaranchal will be entitled to get promotions according to their seniority if they were accessible in the State of Uttaranchal after the final allocation. If the junior personnel had got promotion in the State of Uttaranchal already and if the post was not available then consideration will be given to the promotions of senior personnel and no compensation will be given to the junior most person on reversion.

23. The respondents-claim petitioners were granted notional promotions from the date when their juniors were promoted.

24. The learned Standing Counsel, appearing for the petitioners, submitted that the private respondent No. 2 was promoted in Group "C" post vide order dated 10.08.2004 after passing the departmental examination and private respondent Nos. 3 and 4 were promoted on the posts of Typist on 10.12.2004, whereas, the respondents-claim petitioners were promoted by the State of Uttar Pradesh on the said post on 26.09.2007. Therefore, the promotions of the private

respondents were prior in time to the respondents-claim petitioners. On the other hand, the learned counsel for respondents-claim petitioners, submitted that in the year 2006-2007, the departmental promotion was exercised by the State of Uttar Pradesh from Class IV posts to Class III posts, i.e. for the posts of Typist for selection year 2006-2007 and the respondents-claim petitioners were promoted to the said posts on 26.09.2007. The submissions of the learned Standing Counsel is not acceptable in the light of the provisions of Section 74 of the Act, 2000, the letter of the Central Government, issued on 28.01.2009 and Order of the State Government dated 15.09.2004.

25. Prior to the publication of the final allocation list dated 07.08.2009, a letter dated 28.01.2009 was issued by the Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pension of Government of India to the Chief Secretary of the Government of Uttar Pradesh, by which it was informed, ".....though the 175 personnel (optees) were allocated provisionally to Uttarakhand, final allocation in respect of these employees is yet to be made by the Central Government. Once the list of employees of domicile category is finalised the combined list of employees to be allocated to Uttarakhand (both "optees" and "domicile" category) would be issued by the Central Government as on appointed day i.e. 09.11.2000. There will be no difference in the seniority position of the employees who are allocated either on the basis of "optee" or "domicile" category. Further service condition of the employees are protected under Section 74(1) of Uttar Pradesh Re-organisation Act, 2000. In the said letter dated 28.01.2009, it was also mentioned, ".. the promotion is governed by the Service Rules and also vacancies available. All the employees allocated to Uttarakhand either on "option" basis or on "domicile" basis are to be treated alike in respect of promotion and other service conditions."

26. According to sub-section (1) of Section 73 of the Act, 2000, the Central Government has been empowered to make the allocation of every person who immediately before the appointed day was serving in connection with the affairs of the existing State of Uttar Pradesh shall, on and from that day provisionally continue to serve in connection with the affairs of the State of Uttar Pradesh unless he was required, by general or special order of the Central Government to serve provisionally in connection with the affairs of the State of Uttarakhand. The proviso to Section 74(1) of the Act, 2000 stipulates that any action contrary to this proviso would be violative of the proviso to Section 74. Section 75 relates to continuance of officers in the same post and contemplates persons who, immediately before the appointed day, are holding or discharging duties on a post or office.

27. Sections 73 and 74 of the Act, 2000 relevant for deciding the issues raised in these writ petitions are quoted hereunder:

"73. Provisions relating to other services.-(1) Every person who immediately before the appointed day is serving in connection with the affairs of the existing State of Uttar Pradesh shall, on and from that day provisionally continue to serve

in connection with the affairs of the State of Uttar Pradesh unless he is required, by general or special order of the Central Government to serve provisionally in connection with the affairs of the State of Uttaranchal:

Provided that every direction under this sub-section issued after the expiry of a period of one year from the appointed day shall be issued with the consultation of the Governments of the successor States.

(2) As soon as may be after the appointed day, the Central Government shall, by general or special order, determine the successor State to which every person referred to in sub-section (1) shall be finally allotted for service and the date with effect from which such allotment shall take effect or be deemed to have taken effect.

(3) Every person who is finally allotted under the provisions of sub-section (2) to a successor State shall, if he is not already serving therein be made available for serving in the successor State from such date as may be agreed upon between the Governments concerned or in default of such agreement, as may be determined by the Central Government.

74. Other provisions relating to services.-(1) Nothing in this section or in section 73 shall be deemed to affect on or after the appointed day, the operation of the provisions of Chapter I of Part XIV of the Constitution in relation to determination of the conditions of service of persons serving in connection with the affairs of the Union or any State:

Provided that the conditions of service applicable immediately before the appointed day in the case of any person deemed to have been allocated to the State of Uttar Pradesh or to the State of Uttaranchal under section 73 shall not be varied to his disadvantage except with the previous approval of the Central Government.

(2) All services prior to the appointed day rendered by a person,-

(a) if he is deemed to have been allocated to any State under section 73, shall be deemed to have been rendered in connection with the affairs of that State;

(b) if he is deemed to have been allocated to the Union in connection with the administration of the Uttaranchal, shall be deemed to have been rendered in connection with the affairs of the Union, for the purposes of the rules regulating his conditions of service.

(3) The provisions of section 73, shall not apply in relation to members of any All-India Service."

28. Section 77 of the Act, 2000 gives power to the Central Government for directions to State Governments. Section 77 of the Act, 2000 stipulates that the Central Government may give, such directions to the State Government of Uttar Pradesh and the State Government of Uttaranchal as may appear to it to be necessary for the purpose of giving effect to the foregoing provisions of the Part

VIII and the State Government shall comply with such directions. Therefore, the State Government cannot overlook the guidelines issued by the Central Government.

29. In the light of the provisions of the Act, 2000, the State Government cannot over-ride the order of the Central Government, which had been issued in the exercise of the powers conferred by Section 73 and Section 77 of the Act, 2000. Therefore, conditions of the respondents-claim petitioners will be protected as per mandate of Section 74 of the Act, 2000, order dated 28.01.2009 of the Central Government as well as the Government Order dated 15.09.2004, issued by the Government of Uttaranchal. Therefore, after final allocation of the respondents-claim petitioners to the State of Uttarakhand vide order dated 07.08.2009 of the Central Government, the respondents-claim petitioners will be deemed to be allocated to the State of Uttarakhand w.e.f. the appointed day, i.e. 09.11.2000. This fact is not disputed that the respondents-claim petitioners and private respondents were working in Class IV post on the appointed day. This fact is also not disputed that the respondents -claim petitioners were granted notional promotion on the post of Typist, Class III post w.e.f. 02.08.2001, i.e. the date when the juniors were promoted.

30. The learned Standing Counsel, appearing for the petitioners, argued that the private respondents submitted their representations dated 14.05.2016, 02.01.2017 and 02.05.2017, in which they took the ground that the seniority of the private respondents were wrongly disturbed since the respondents-claim petitioners were promoted from Class IV posts to Class III posts i.e. on the post of Typist in the year, 2007, later in time from the private respondents. The learned counsel for the respondents-claim petitioners submitted that objections were invited for settling the seniority of respondents-claim petitioners at every stage but the private respondents never submitted their objections at any stage and after a long period of six years, the private respondents had submitted such objections against the settled seniority of the respondents-claim petitioners.

31. The private respondents had opportunities to challenge the tentative seniority of the respondents-claim petitioners at prior three stages. The seniority of the respondents-claim petitioners was finally settled for the post of Typist in the year, 2011, for the post of Assistant Review Officer on 16.05.2012 and on the post of Review Officer on 29.05.2013 after inviting the objections, but, the private respondents never filed their objections either against the fixation of seniority or against the notional promotions of the respondents-claim petitioners. In these circumstances, it appears that the private respondents had woken up from their stupor after a long gap and moved objections.

32. Seniority is a facet of interest. In *Rabindra Nath Bose v. Union of India*, (1970) 1 SCC 84 : AIR 1970 SC 470, the Hon'ble Apex Court has observed that it will be neither just or equitable to deprive person who have been promoted many years ago, of the rights that have accrued to them regarding their rank and seniority by purporting to conduct a review of promotion after the lapse of many

years. In *Maloon Lawrence Cecil D' Souza v. Union of India*, (1976) 1 SCC 599 : AIR 1975 SC 1269, the Hon'ble Apex Court has held that the settled seniority cannot be unsettled after a long period. In *Shiba Shankar Mohapatra v. State of Orissa*, (2010) 12 SCC 471 : AIR 2010 SC 706, the question whether a belated challenge against the seniority list can be entertained was considered. The Hon'ble Apex Court observed, "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 *Ram Chandra Shanker Deodhar v. State of Maharashtra*, (1974) 1 SCC 317 : AIR 1974 SC 259, considered the effect of delay in challenging the promotions 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 promotions which have accrued to them during the intervening period." In *Union of India v. S.K. Goel*, (2007) 14 SCC 641, the Hon'ble Apex Court observed, "..Since the matter of seniority has been well settled and this Court in a plethora of cases has held that the seniority/promotions granted on the strength of D.P.C. selection should not be unsettled after a lapse of time." In *Rajendra Pratap Singh Yadav v. State of U.P.*, (2011) 7 SCC 743, the Hon'ble Apex Court has held, "We deem it appropriate to reiterate that in service jurisprudence there is immense sanctity of a final seniority list. The seniority list once published cannot be disturbed at the behest of person who choose not to challenge it for four years. The sanctity of the seniority list must be maintained unless there are very compelling reasons to do so in order to do substantial justice. This is imperative to avoid avoidable litigation and unrest and chaos in the services." The petitioners could not able to show any compelling reason to unsettle the settled seniority of the respondents-claim petitioners at the behest of the private persons after a long period of six years.

33. The Uttarakhand Government Servants Seniority Rules, 2002 was notified on 13.08.2002 for determination of seniority of persons appointed to the services under the State Government. Rule 9(1) stipulates that as soon as may be after appointments are made to a service, the appointing authority shall prepare a tentative seniority list of the persons appointed substantively to the service in accordance with the provisions of the Rules, 2002. According to the sub-rule(2) of Rule 9 of the Rules, 2002, the tentative seniority list shall be circulated amongst the persons concerned inviting objections, by a notice of reasonable period, which shall not be less than seven days from the date of circulation of the tentative seniority list. Sub-rule(4) of Rule 9 of Rules, 2002 stipulates that the appointing authority shall, after disposing of the objection by a reasoned order, issue a final seniority list.

34. In *State of U.P. v. Dinkar Sinha*, (2008) 1 SCC (L&S) 38, the Hon'ble Apex Court held that being a civil right, seniority cannot be infringed but by the valid rules.

35. The Uttarakhand Government Servants Seniority Rules, 2002 did not contain

a stipulation regarding receiving objections against the final and settled seniority list. Therefore, in the absence of any power in the Rules, 2002, the final and settled seniority cannot be reviewed.

36. The petitioners issued the impugned reversion order dated 16.11.2018. Before issuing the impugned reversion order of the respondents-claim petitioners from Section Officer to the post of Review Officer, no show cause notice was given to the respondents-claim petitioners. Reversion of the employees amounts to major penalty and has civil consequences. It cannot be inflicted without giving an opportunity of hearing. After disturbing the settled seniority of the respondents-claim petitioners, which the respondents-claim petitioners were retaining from the year, 2011, sudden reversion of the respondents-claim petitioners by the impugned order dated 16.11.2018 from the post of Section Officer to the post of Review Officer, without issuing even a notice to the respondents-claim petitioners, is violation of Article 14 and 16 of the Constitution of India.

37. In the facts and circumstances of the present case, we consider the impugned order dated 16.11.2018 was highly unjust, arbitrary, inequitable, unreasonable and against settled principle of law. In view of the above detailed discussion, we are of the considered view that the learned Public Services Tribunal is not erred in law. We do not find any perversity or infirmity in the impugned Judgment and Order dated 29.03.2019, passed by the learned Public Services Tribunal, Uttarakhand, warranting interference. Therefore, both the writ petitions are liable to be dismissed.

38. In the result, Writ Petition No. 386 of 2019 (S/B) and Writ Petition No. 387 of 2019 (S/B) are dismissed. Parties shall bear their own costs.