BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL

AT DEHRADUN

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

------ Chairman

Hon'ble Mr. Rajeev Gupta

-------Vice Chairman (A)

Claim Petition No. 149/DB/2019

S.S. Yadav, aged about 54 years s/o Late G.L. Yadav, at present working and posted as Officiating Superintending Engineer, Public Works Department, Head Quarters, Dehradun, Uttarakhand

……Petitioner

versus

1. State of Uttarakhand through Secretary P.W.D., Government of Uttarakhand, Secretariat, Subhash Road, Dehradun
2. Engineer in Chief, Public Works Department, Yamuna Colony, Dehradun

…….. Respondents

Present : Sri. L.K. Maithani, Advocate for the petitioner
Sri. V.P. Devrani, A.P.O. for the respondents

Judgement

Dated: 27th December, 2021

Per: Justice U.C. Dhyani

RELIEFS CLAIMED

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

"(i) To quash the impugned office order dated 13.01.2016 and office order dated 03.04.2018 (Annexures No. A-1 & A-2) along with its operation and effect, declaring the same are in violation of the Discipline and Appeal Rules, 2003 as amended in 2010 and also against the Rules of 2015, thus null & void in the eyes of law.

(ii) To issue an order or direction to the respondents to delete the special adverse entry from the service records of the petitioner and grant all the consequential benefits of service to the petitioner i.e. benefit of A.C.P. and promotion etc.

(iii) To issue any other suitable order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

(iv) To award the cost of the petition to the petitioner."

PETITIONER'S VERSION

2. Facts necessary for the adjudication of present claim petition are as follows:

At the time of filing the claim petition, the petitioner was working and posted as Officiating Superintending Engineer (Civil) at Headquarters under the Respondent Department.

In the year 2007, for the construction of Nauli Suspension Bridge at river Pinder, Karanprayag, tender was invited by the then Executive Engineer without getting any technical approval. At that time, the petitioner was posted as Executive Engineer, Berinag. There was no role of the petitioner while recommending and inviting tender for the said project.

He was transferred from Berinag to Provincial Division, P.W.D., Karanprayag in October, 2007. After joining in Provincial Division, P.W.D., Karanprayag, the tender was opened by the petitioner on 20.12.2007. The work was started.

At the level of Superintending Engineer, the estimate was kept pending for two months. The Chief Engineer, Garhwal, after 23 days,

made objections in the estimate and returned the same to Superintending Engineer on 17.05.2008. The petitioner removed the objections and thereafter sent the same to the Chief Engineer *vide* letter dated 23.05.2008, on which the Chief Engineer, Pauri gave his technical approval *vide* letter dated 03.06.2008.

According to the petitioner, there was no delay on his part in seeking technical approval. The delay was on the part of higher authority, due to which the first tender holder denied to extend the validity of tender beyond 20.03.2008. There was no fault or negligence on the part of the petitioner, but the respondents initiated departmental proceedings against the petitioner.

A charge sheet was issued to him, details of which have been given in para 4(iii) of the claim petition. Petitioner submitted his reply to the enquiry officer and denied the charges levelled against him. After enquiry, respondent No.1, *vide* impugned order dated 13.01.2016, punished the petitioner by awarding special adverse entry (Annexure No. A-1).

In para 4(v) of the claim petition, it has been indicated that the impugned order dated 13.01.2016 was never communicated to the petitioner and came to his knowledge only in June, 2016, when he received a copy of minutes of D.P.C.

Aggrieved by the said order, petitioner submitted his detailed representation to respondent No. 1 on 16.07.2016, with all documentary proof in support, but the respondent No. 1 did not pay heed to such representation of petitioner. The petitioner again moved reminders on 20.02.2017, 21.04.2017 and 21.08.2017 to respondent No. 1. Respondent No.1, *vide* office order dated 03.04.2018, rejected his representation.

According to the petitioner, charge sheet was issued to him by inquiry officer and not by the disciplinary authority and as such, the inquiry officer was appointed even before issuing the charge sheet,

which is against rules. The petitioner was never called in the inquiry. No show-cause notice was given to him before passing impugned punishment-order. The whole proceedings have been conducted in violation of principles of natural justice. Special adverse entry has not been mentioned, as penalty, in Rule 3 of the Discipline and Appeal Rules, 2003. Even on merits, the impugned punishment-order is liable to be set aside, for the reason that the petitioner was not guilty of misconduct levelled against him. According to the petitioner, he is entitled to the reliefs claimed.

C.A. & R.A.

3. Counter affidavit has been filed on behalf of respondents No. 1 & 2 denying material averments mentioned in the claim petition.

4. Rejoinder affidavit has been filed against the counter-affidavit filed on behalf of respondent No. 1 & 2. In the rejoinder affidavit, the facts mentioned in the claim petition have been reiterated.

DISCUSSION ON LIMITATION

5. Regarding limitation, it has been mentioned in the claim petition that the copy of order dated 13.01.2016, awarding special adverse entry to the petitioner, was received by him only in June, 2016. He made a representation to respondent No. 1 on 16.07.2016, but since no action was taken by the said respondent, therefore, the petitioner submitted reminders on 20.02.2017, 21.04.2017 and 21.08.2017. The representation was rejected by respondent No. 1 *vide* order dated 03.04.2018. Present claim petition has been filed on 25.11.2019.

6. According to the petitioner, there is no delay in filing the claim petition. Reliance has been placed on Rule 5 of Uttarakhand Government Servant (Adverse, Good/ Satisfactory, Very Good, Excellent, Disclosure of Excellent Annual Reports and Representation against it and Disposal of Allied Matters), 2015.

7. This Tribunal has held, in various other recent decisions that the petition filed by the petitioner before this Tribunal is neither a writ petition, nor appeal, nor application. It is just like a suit, as is evident from a bare reading of Section 5(1)(b) of the U.P. Public Services (Tribunal) Act, 1976 (for short, the Act). The words used in Section 5(1)(b) of the Act are-"……as if a reference were a suit filed in Civil Court so, however, that-(i) notwithstanding the period of limitation prescribed in the Schedule to the Act (*Limitation Act, 1963*), the period of limitation for such reference shall be one year;". It is a claim petition in which the petitioner filed a statutory representation, which was decided on 30.04.2018. The claim petition has been filed on 25.11.2019, hence the same has been filed beyond limitation of one year.

The petitioner is not entitled to the benefit of the Rules of 2015. The Tribunal has already taken cognizance of the fact that representation was filed by the petitioner, to respondent No. 1, against the impugned order dated 13.01.2016, which statutory representation has been decided by the said respondent on 03.04.2018. The period between 16.07.2016 and 03.04.2018 has already been excluded in view of Section 5(1)(b)(ii) of the Act, which says that "in computing the period of limitation, the period beginning with the date on which the public servant makes a representation ….. in accordance with the rules ….. regulating his conditions of service, and ending with the date on which such public servant has knowledge of the final order passed on such representation ….. shall be excluded."

8. The issue of limitation shall now be dealt with in detail, as below:

Clause (b) to sub-section (1) of Section 5 of the Uttar Pradesh Public Services (Tribunal) Act, 1976 provides for limitation in respect of claim petitions filed before the Tribunal, which reads as below:

> *"(b) The provisions of the Limitation Act, 1963 (Act 36 of 1963) shall mutatis mutandis apply to the reference under Section 4 as if a reference were a suit filed in civil court so, however, that-*
>
> *(i) Notwithstanding the period of limitation prescribed in the Schedule to the said Act, the period of limitation for such reference shall be one year;*
> *(ii) In computing the period of limitation the period beginning with the date on which the public servant makes a representation or prefers an appeal, revision or any other petition (not being a memorial to the Governor), in accordance with the rules or orders regulating his conditions of service, and ending with the date on which such public servant has knowledge of the final order passed on such representation, appeal, revision or petition, as the case may be, shall be excluded:*
>
> *Provided that any reference for which the period of limitation prescribed by the Limitation Act, 1963 is more than one year, a reference under Section 4 may be made within the period prescribed by that Act, or within one year next after the commencement of the Uttar Pradesh Public Services (Tribunals) (Amendment) Act, 1985 whichever period expires earlier:*
>
> *....."*
>
> *[Emphasis supplied]*

9. The period of limitation, therefore, in such reference is one year. In computing such period, the period beginning with the date on which the public servant makes a statutory representation or prefers an appeal, revision or any other petition and ending with the date on which such public servant has knowledge of the final order passed on such representation, appeal, revision or petition, as the case may be, shall be excluded.

10. It will be useful to quote Section 5 of the Limitation Act, 1963, as below:

> *"**Extension of prescribed period in certain cases**.—Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.*
>
> *Explanation.—The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section."*
>
> *[Emphasis supplied]*

11. It is apparent that Section 5 of the Limitation Act applies to appeals or applications (but not to applications under Order 21 CPC, *i.e.*, Execution of Decrees and Orders). Petitioners file claim petitions, pertaining to service matters, before this Tribunal. Claim petition is neither an appeal nor an application. It is a 'reference' under Section 4 of the Act, as if it is a suit filed in Civil Court, limitation for which is one year. It is, therefore, open to question whether Section 5 Limitation Act, 1963, has any application to the provisions of the Act [of 1976]. In writ jurisdiction, the practice of dealing with the issue of limitation is different. Also, there is no provision like Section 151 C.P.C. or Section 482 Cr.PC (inherent powers of the Court) in this enactment, except Rule 24 of the U.P. Public Services (Tribunal) (Procedure) Rules, 1992, which is only for giving effect to its orders or to prevent abuse of its process or to secure the ends of justice. It is settled law that inherent power cannot be exercised to nullify effect of any statutory provision.

12. This Tribunal is not exercising the jurisdiction under Article 226 of the Constitution. The Act of 1976 is self contained Code and Section 5 of such Act deals with the issue of limitation. There is no applicability of any other Act while interpreting Section 5 of the Act of 1976.

13. It may be noted here, only for academic purposes, that the language used in Section 21 of the Administrative Tribunals Act, 1985 (a Central Act) is different from Section 5 of the U.P. Public Services (Tribunal) Act, 1976 (a State Act). It is not a *pari materia* provision. Relevant distinguishing feature of the Central Act is being reproduced herein below for convenience:

> *"21. Limitation- (1) A Tribunal shall not admit an application— (a).....within one year from the date on which such final order has been made. .....*
>
> *(3) Notwithstanding anything contained in sub-section (1) or sub section (2), an application maybe admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period."*
>
> *[Emphasis supplied]*

14. **It, therefore, follows that the extent of applicability of limitation law is self contained in Section 5 of the Uttar Pradesh Public Services (Tribunal) Act, 1976. Section 5 of the Act [of 1976] is the sole repository of the law on limitation in the context of claim petitions before this Tribunal.**

15. The petitioner, in his claim petition, has attributed reasons for condoning the delay in filing claim petition. As per the scheme of law, the Tribunal can consider the delay in filing the claim petition only within the limits of Section 5 of the Act [of 1976] and not otherwise. It may be noted here that the period of limitation, for a reference in this Tribunal, is one year. In computing the period of limitation, period beginning with the date on which the public servant makes a representation or prefers an appeal, revision or any other petition (not being a memorial to the Governor), in accordance with the rules or orders regulating his conditions of service, and ending with the date on which such public servant has knowledge of the final order passed on such representation, appeal, revision or petition, as the case may be, shall be excluded. Apart from that, this Tribunal is not empowered to condone the delay on any other ground, in filing a claim petition. It may also be noted here that delay could be condoned under Section 5 of the Limitation Act, 1963, only in respect of an appeal or an application in which the appellant or applicant is able to show sufficient cause for condoning such delay. A reference under the Act [of 1976] before this Tribunal is neither an appeal nor an application. Further, such power to condone the delay is available to a Tribunal constituted under the Administrative Tribunals Act, 1985. In such Tribunal, delay in filing application might be condoned under Section 21, “if the applicant satisfies the Tribunal that he/she had ‘sufficient cause’ for not making the application within such period.” Since this Tribunal has not been constituted under the Administrative Tribunals Act, 1985 and has been constituted under the Uttar Pradesh Public Services (Tribunal) Act, 1976, in which there is no such provision to condone the delay on

showing such sufficient cause, therefore, this Tribunal cannot condone the delay in filing a claim petition, howsoever reasonable petitioner's plight may appear to be.

16. It may be reiterated, at the cost of repetition, that only a 'reference' is filed in this Tribunal, which is in the nature of a 'claim'. It is not a writ petition, for the same is filed before Constitutional Courts only. Limitation for filing a reference in the Act [of 1976] is one year, as if it is a suit. 'Suit' according to Section 2(l) of Limitation Act, 1963 does not include an application. As per Section 3 of the Limitation Act, 1963, every suit instituted, appeal preferred and application made after the prescribed period shall be dismissed. Section 5 of the Limitation Act, 1963 has no applicability to 'references' filed before this tribunal. Section 5 of the Act of 1976 is self contained code for the purposes of limitation, for a 'reference' before this Tribunal.

17. One may argue, on the strength of Section 2(b) of the Limitation Act, 1963, that 'application' includes a 'petition', but the Tribunal has noticed, at the same time, that the word 'Suit' does not include an 'appeal' or 'application', as has been mentioned in Section 2(l) of the Limitation Act, 1963.

18. Section 5(1)(b) provides that (although) the provisions of the Limitation Act, 1963, *mutatis mutandis* apply to reference under Section 4 as a reference were a suit filed in civil court, but continues to say, in the same vein, that notwithstanding the period of limitation prescribed in the Schedule to the said Act, the period of limitation for such reference shall be one year. Section 5(1)(b) is therefore, specific in the context of limitation before this Tribunal.

19. Sub-section (1) of Section 4 of the Act 1976 has used the language ".....a person who is or has been a public servant and is aggrieved by an order pertaining to a service matter within the jurisdiction of the Tribunal, may make a reference of claim to the Tribunal for the redressal of his grievance.

19.1 Statement of Objects and Reasons (SOR) reads as below:

"....Section 4 of the said Act provides that a person who is or has been a public servant and is aggrieved by an order pertaining to a service matter within the jurisdiction of the Tribunal may make reference of claim to the Tribunal for redressal of his grievance....."

19.2 Section 4-A of the Act has also used the words "references of claims" and "reference of claim" in Sub-section (1) and Clauses (a) & (b) to Sub-section (5) of such Section.

19.3 Clause (b) to Sub-section (1) of Section 5 of the Act has used the word "reference" in such clause. Sub-section (2) of Section 5 of the Act has also used the word "reference". Sub Section (5-A) to Section 5 of the Act has also used the word 'reference' in its text.

19.4 Section 7 of the Act provides power to make Rules. Clause (c) to Sub-section (2) of Section 7 of the Act provides for "the form in which a reference of claim may be made."

19.5 Furthermore, the Schedule appended to the Act has also used the words "reference of claim" or "references of claims". Rule 4 of the Uttar Pradesh Public Services Tribunal (Procedure) Rules, 1992, provides for the following "(1) Every reference under Section 4 shall be addressed to the Tribunal and shall be made through a 'petition' presented in the Form-I by the petitioner.....(2) The petition under sub-rule (1) shall be presented....."

19.6 The heading of Rule 5 is Presentation and scrutiny of petition.

19.7 Rules 4, 5, 6, 8, 16 etc. use the word 'petition', which, in fact, is a "reference". The petition is only a medium of presentation. The Rules are always subordinate to the Act. The Rules are always supplementary. They are always read with the provisions of the Act. In a nutshell, a petition which is filed before this Tribunal is, in fact, a "reference of claim".

19.8 ‘Petition’ According to New International Webster’s Comprehensive Dictionary, means “(1) a request, supplication, or prayer; a solemn or formal supplication (2) A formal request, written or printed, addressed to a person in authority and asking for some grant or benefit, the redress of a grievance, etc. (3) *Law* a formal application in writing made to a court, requesting judicial action concerning some matter therein set forth (4) that which is requested or supplicated.”

20. According to Section 9 of the Limitation Act, 1963, “where once time has begun to run, no subsequent disability or inability to institute a suit or make an application stops it.”

21. In the instant case, office order dated 13.01.2016 and office order dated 03.04.2018 (Annexures A-1 & A-2) have been put to challenge. The claim petition has been filed on 25.11.2019. The same, in any case, ought to have been filed on or before 03.04.2019. There is delay of more than seven months while assailing office order dated 03.04.2018.

22. Claim petition is liable to be dismissed on this ground alone but since we are in final hearing, therefore, it seems appropriate to briefly discuss the merits of the claim petition also.

* * *

DISCUSSION ON MERITS

22. Amended Rule 7, as substituted by the Uttarakhand Government Servant (Discipline and Appeal) Amendment Rules, 2010, which govern the field, are excerpted hereunder:

> “ 4. Substitution of Rule 7.- In the principal rules for Rule 7, the following rule shall be substituted, namely-
>
> 7. Procedure for imposing major punishment.-Before imposing any major punishment on a government servant, an inquiry shall be conducted in the following manner:-

(1) Whenever the Disciplinary Authority is of the opinion that there are grounds to inquire into the charge of misconduct or misbehavior against the government servant, he may conduct an inquiry.

(2) The facts constituting the misconduct on which it is proposed to take action shall be reduced in the form of definite charge or charges to be called charge sheet. The charge sheet shall be approved by the Disciplinary Authority.

Provided that where the appointing authority is Governor, the charge sheet may be signed by the Principal Secretary or Secretary, as the case may be, of the concerned department.

(3) The charges framed shall be so precise and clear as to give sufficient indication to the charged government servant of the facts and circumstances against him. The proposed documentary evidences and the names of the witnesses proposed to prove the same along with oral evidences, if any, shall be mentioned in the charge sheet. (4) The charge sheet along with the documentary evidences mentioned therein and list of witnesses and their statements, if any, shall be served on the charged government servant personally or by registered post at the address mentioned in the official records. In case the charge sheet could not be served in aforesaid manner, the charge sheet shall be served by publication in a daily newspaper having wide circulation:

Provided that where the documentary evidence is voluminous, instead of furnishing its copy with charge sheet, the charged government servant shall be permitted to inspect the same.

(5) The charged government servant shall be required to put in written statement in his defence in person on a specified date which shall not be less than 15 days from the date of issue of charge sheet and to clearly inform whether he admits or not all or any of the charges mentioned in the charge sheet. The charged government servant shall also be required to state whether he desires to cross-examine any witness mentioned in the charge sheet, whether he desires to give or produce any written or oral evidence in his defence. He shall also be informed that in case he does not appear or file the written statement on the specified date, it will be presumed that he has none to furnish and ex-parte inquiry shall be initiated against him.

(6) Where on receipt of the written defence statement and the government servant has admitted all the charges mentioned in the charge sheet in his written statement, the Disciplinary Authority in view of such acceptance shall record his findings relating to each charge after taking such evidence he deems fit if he considers such evidence necessary and if the Disciplinary Authority having regard to its findings is of the opinion that any penalty specified in Rule 3 should be imposed on the charged government servant, he shall give a copy of the recorded findings to the charged government servant and

require him to submit his representation, if he so desires within a reasonable specified time. The Disciplinary Authority shall, having regard to all the relevant records relating to the findings recorded related to every charge and representation of charged government servant, if any, and subject to the provisions of Rule 16 of these rules, pass a reasoned order imposing one or more penalties mentioned in Rule 3 of these rules and communicate the same to the charged government servant.

(7) If the government servant has not submitted any written statement in his defence, the Disciplinary Authority may, himself inquire into the charges or if he considers necessary he may appoint an Inquiry Officer for the purpose under sub-rule (8).

(8) The Disciplinary Authority may himself inquire into those charges not admitted by the government servant or he may appoint any authority subordinate to him at least two stages above the rank of the charged government servant who shall be Inquiry Officer for the purpose.

(9) Where the Disciplinary Authority has appointed Inquiry Officer under sub-rule (8), he will forward the following to the Inquiry Officer, namely:

(a) A copy of the charge sheet and details of misconduct or misbehavior;

(b) A copy of written defence statement, if any submitted by the government servant;

(c) Evidence as a proof of the delivery of the documents referred to in the charge sheet to the government servant;

(d) A copy of statements of evidence referred to in the charge sheet.

(10) The Disciplinary Authority or the Inquiry Officer, whosoever is conducting the inquiry shall proceed to call the witnesses proposed in the charge sheet and record their oral evidence in presence of the charged government servant who shall be given opportunity to cross-examine such witnesses after recording the aforesaid evidences. After recording the aforesaid evidences, the Inquiry Officer shall call and record the oral evidence which the charged government servant desired in his written statement to the produced in his defence.

Provided that the Inquiry Officer may, for reasons to be recorded in writing, refuse to call a witness.

(11) The Disciplinary Authority or the Inquiry Officer whosoever is conducting the inquiry may summon any witness to give evidence before him or require any person to produce any documents in accordance with the provisions of the Uttar Pradesh Departmental

Inquiries (Enforcement of Attendance of Witness and Production of Documents) Act, 1976 which is enforced in the State of Uttarakhand under the provisions of Section 86 of the Uttar Pradesh Reorganization Act, 2000.

(12) The Disciplinary Authority or the Inquiry Officer whosoever is conducting the inquiry may ask any question, he pleases, at any time from any witness or person charged with a view to find out the truth or to obtain proper proof of facts relevant to the charges.

(13) Where the charged government servant does not appear on the date fixed in the enquiry or at any stage of the proceeding in spite of the service of the notice on him or having knowledge of the date, the Disciplinary Authority or the Inquiry Officer whosoever is conducting the inquiry shall record the statements of witnesses mentioned in the charge sheet in absence of the charged government servant.

(14) The Disciplinary Authority, if it considers necessary to do so, may, by an order, appoint a government servant or a legal practitioner, to be known as "Presenting Officer" to present on his behalf the case in support of the charge.

(15) The charged government servant may take the assistance of any other government servant to present the case on his behalf but not engage a legal practitioner for the purpose unless the Presenting Officer appointed by the Disciplinary Authority is a legal practitioner of the Disciplinary Authority, having regard to the circumstances of the case, so permits.

(16) Whenever after hearing and recording all the evidences or any part of the inquiry jurisdiction of the Inquiry Officer ceases and any such Inquiry Authority having such jurisdiction takes over in his place and exercises such jurisdiction and such successor conducts the inquiry such succeeding Inquiry Authority shall proceed further, on the basis of evidence or part thereof recorded by his predecessor or evidence or part thereof recorded by him:

Provided that if in the opinion of the succeeding Inquiry Officer if any of the evidences already recorded further examination of any evidence is necessary in the interest of justice, he may summon again any of such evidence, as provided earlier, and may examine, cross examine and re-examine him.

(17) This rule shall not apply in following case; *i.e.* there is no necessity to conduct an inquiry in such case:-

(a) Where any major penalty is imposed on a person on the ground of conduct which has led to his conviction on a criminal charge; or

(b) Where the Disciplinary Authority is satisfied, that for reasons, to be recorded by it in writing, it is not reasonably practicable to hold an inquiry in the manner provided in these rules; or

(c) Where the Governor is satisfied that in the interest of the security of the State it is not expedient to hold an inquiry in the manner provided in these rules."

23. In the instant case, there has been breach of such rule, as has been stated by the petitioner in this claim petition.

24. Although ld. A.P.O. argued that the impugned order has not been given as punishment, this Tribunal is of the view that impugned order has been passed as punishment and such punishment has not been prescribed in the Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003.

25. The punishments which has been provided in the Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003, are as follows:

"(a) Minor Penalties:

(i) Censure;
(ii) Withholding of increments for a specified period;
(iii) Recovery from pay of the whole or part of any pecuniary loss caused to Government by negligence or breach of order;
(iv) Fine in case of persons holding Group "D" posts

Provided that the amount of such fine shall in no case exceed twenty five percent of the month's pay in which the fine is imposed.

(b) Major Penalties:

(i) Withholding of increments with cumulative effect;
(ii) Reduction to a lower post or grade or time scale or to lower stage in a time scale;
(iii) Removal from the Service which does not disqualify from future employment,
(iv) Dismissal from the Service, which disqualifies from future employment

Explanation:- The following shall not amount to penalty within the meaning of this Rule, namely:-

(i) Withholding of increment of a Government Servant for failure to pass a departmental examination or for failure to fulfill any other

condition in accordance with the rules or orders governing the service;

(ii) Reversion of a person appointed on probation to the Service during or at the end of the period of probation in accordance with the terms of appointment or the rules and orders governing such probation;

(iii) Termination of the Service of a person appointed on probation during or at the end of the period of probation in accordance with the terms of the Service for the rules and orders governing such probation."

26. It is evident from the record that the impugned order has been passed as punishment, which has not been prescribed as such under the Discipline and Appeal Rules, 2003 (*supra*). Therefore, the same is not sustainable in law.

27. Impugned order dated 13.01.2016 was passed by the disciplinary authority. When the petitioner moved statutory representation against the same, it was not placed before the Hon'ble Chief Minister (Hon'ble Departmental Minister). While the disciplinary authority took the approval of Hon'ble Chief Minister, while awarding impugned punishment, no such approval was taken from the Hon'ble Chief Minister while deciding statutory representation, communicated through office order dated 03.04.2018, which is a big lacuna in the present case.

28. While learned A.P.O. submitted that the delinquent Petitioner should not have opened the tender without obtaining technical sanction, Learned Counsel for the petitioner submitted that the petitioner was transferred from Berinag to Provincial Division, P.W.D., Karanprayag, in October, 2007 and after joining in Provincial Division, P.W.D., Karanprayag, the tender was opened by him on 20.12.2007. The work was started. At the level of Superintending Engineer, the estimate was kept pending for two months. The Chief Engineer, Garhwal, after 23 days, made objections in the estimate and returned the same to Superintending Engineer on 17.05.2008. The petitioner removed the

objections and thereafter sent the same to the Chief Engineer *vide* letter dated 23.05.2008, on which the Chief Engineer, Pauri, gave his technical approval *vide* letter dated 03.06.2008. There was no delay on his part in seeking technical approval. The delay was on the part of higher authority, due to which the first tender holder denied to extend the validity of tender beyond 20.03.2008. There was no fault or negligence on the part of the petitioner, but the respondents initiated departmental proceedings against the petitioner.

29. The Tribunal would have dealt with the merits of the claim petition further, but no useful purpose will be served by increasing the volume of the judgment by expanding the pages. The same is not going to add to the weight of the judgement.

30. Rule 14 of Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003, reads as below:

> "The Governor may, at any time, either on his own motion or on the representation of the concerned Government Servant review any order passed by him under these rules, if it has brought to his notice that any new material or evidence which could not be produced or was not available at the time of passing the impugned order or any material error of law occurred which has the effect of changing the nature of the case."

31. Limitation is for the Tribunal, not for the Govt. We have observed that the impugned punishment ought not to have been given to the petitioner, for various reasons, enumerated herein above. The Govt. can always review or revise its own order. No time limit has been prescribed for the Govt. to do the same. Although the claim petition has substance on merits, but since the same has been filed beyond limitation period, therefore, no direction can be issued to the respondent authorities.

32. Before parting with, it will be appropriate to quote the following observations of Hon'ble Apex Court in State of Uttarakhand & another

vs. Shiv Charan Singh Bhandari & others, (2013) 12 SCC 179, as below:

> "Not for nothing, it has been said that everything may stop but not the time, for all are in a way slaves of time."

ORDER

33. It has been observed earlier that the Tribunal does not feel it necessary to discuss the merits of the claim petition further, as the claim petition is clearly barred by limitation.

34. The Tribunal also refrains from issuing any direction, leaving it open to the Govt. to review/ revise its own decision, if considered appropriate, as per law.

35. The claim petition is dismissed, as barred by limitation. No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: 27th December, 2021
DEHRADUN
RS