Virtual
Reserved judgment

BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
BENCH AT NAINITAL

Present: Hon'ble Mr. Rajendra Singh
-------Vice Chairman (J)

CLAIM PETITION NO. 46/NB/SB/2019

Dinesh Kumar, s/o Shri Lanu r/o Village Kathuli, Post Office Madannegi, District Tehri Garhwal.

.....Petitioner

vs.

1. State of Uttarakhand through Principal Secretary, Panchayat Raj, Dehradun.
2. Chief Development Officer, Tehri, District Tehri Garhwal.
3. Zila Panchayat, New Tehri, District Tehri Garhwal through its Additional Chief Officer.
4. Chairman, District Panchayat, New Tehri, District Tehri Garhwal.
5. District Youth Welfare and Prantiya Rakshak Dal Officer, Tehri Garhwal, District Tehri Garhwal.
6. Ramesh Singh Rawat, s/o Shri Amar Singh Rawat, r/o Village Kutha (Dibanu), Patti Sarjula, District Tehri Garhwal presently working as Driver at Zila Panchayat, New Tehri District Tehri Garhwal.

.....Respondents.

Present: Mrs. Monika Pant, Advocate, for the petitioner.
Sri Kishor Kumar, A.P.O., for the Respondents no. 1,2 & 5
Sri Sanjay Raturi, Advocate, for the respondents no. 3 & 4
Sri Jayvardhan Kandpal, Advocate for the respondent no.6

JUDGMENT

DATED: JANUARY 13, 2023

Present claim petition has been filed for the following reliefs:

"i) To quash the order/resolution dated 29.05.2013 passed by Zila Panchayat Tehri Garhwal whereby the services of the private respondent as Driver have been regularized and to issue appropriate directions to the respondents to consider the petitioner for appointment on the post of Driver.

ii) To pass any appropriate order as learned Tribunal maye please to think, fit and proper according to facts, reasons and circumstances of the case.

iii) To allow the petition with cost."

2. Brief facts of the case are that the petitioner is a Scheduled Caste candidate and is driver by profession. He is working in PRD (Prantiya Rakshak Dal) and is looking for a suitable post reserved for Scheduled Caste Candidate. The petitioner as well as respondent no. 6 were enrolled in PRD at new Tehri as Driver. Respondent no. 6 was regularized by impugned order dated 29.05.2013 on the post of Driver in the office of respondent no. 3. He was regularized against the law on one sanctioned post of driver in the office of respondent no. 3, which post was reserved for S.C. The post on which Sri Ramesh Chandra Rawat is now occupying should have been filled by Scheduled Caste candidate as per roster, his regularization is illegal. The petitioner filed representation with a plea that the regularization of Shri Ramesh Singh Rawat on a post which according to roster should have been filled by Schedule Caste candidate is illegal. It has also been submitted that the regularization is also illegal because there were no rules providing for regularization and thus regularization of Shri Ramesh Singh Rawat may be cancelled/revoked and post be advertised to be filled by a Scheduled Caste candidate so that under signed may get an opportunity to participate in selection process and his constitutional right guaranteed under Article 15 of the Constitution of India may not be violated.

3. Primarily, the respondents have vehemently opposed the maintainability of the claim petition on the ground that the same is barred by limitation, much less delay and laches, as has been stated by the respondent no. 3 & 4 in para 15 of the W.S. Secondly, the petitioner is not a public servant and only the disputes of the public servants are entertained as provided in the U.P. Public Services Tribunal Act, 1976. It is stated that the petitioner has filed the present claim petition only due to personal grudge and to disturb the services of the respondent no. 6. Moreover, in entire body of the claim petition petitioner has not made even an iota of averment with regard to his eligibility i.e. in the year 2011 for the post of driver, on which the respondent no. 6 was appointed.

However just to make out his case by making fabricated submissions he himself pleads that he only in the year of 2019 filed a representation and not prior to that with regard to his claim hence on this ground alone his petition is liable to be dismissed. There is a deliberate, inordinate and unexplained delay of about 6 years in filing the present claim petition which has not been explained by the petitioner and moreover he deliberately has not enclosed the delay condonation application in support of this claim petition as he has challenged the regularization dated 29/5/ 2013 in the year 2019 only, which is barred by section 5(b) of Uttar Pradesh Public Service Tribunal Act, hence on this ground alone present claim petition is liable to be dismissed.

4. It is further submitted that the petitioner deliberately and with an ulterior motive to play with this learner tribunal has not disclosed the "date of order" of the Hon'ble High court of Uttarakhand at Nainital which was passed on 15/7/2014 in the Writ Petition No. 990 of 2014 WPSS (Dinesh Kumar vs State of Uttarakhand) whereby liberty was granted by Hon'ble High court to approach before this Tribunal but petitioner kept sleeping over the matter since 2014 to 2019 and in such circumstances where he has not disclosed the delay occurred from 2014 to date of filing the present claim petition in 2019, no benefit of section 5 of Uttar Pradesh Public Services Tribunal Act is liable to be given to the petitioner and on this ground the petition is liable to be dismissed. Copy of the order dated 15-07-2014 is annexed with the written submission submitted on behalf of the respondent no. 6. The petitioner has deliberately not disclosed the date of order of the Hon'ble High court dated 15-7-2014 whereby his Writ Petition No. 990 of 2014 (S/S) was dismissed for want of alternative remedy and under the limitation clause he has wrongly and with motive to hide the true and correct facts from this learner Tribunal, made wrong averments of having no delay in filing the present claim petition however there is a inordinate unexplained delay of about 5 years in filing the present claim petition hence on this ground alone the present claim petition is liable to

be dismissed with heavy cost. The petitioner has again committed grave illegality by mentioning the order of the Hon'ble High Court as a basis of the jurisdiction of the Tribunal however the petitioner as well as private respondent belongs to district Tehri Garhwal which comes under the territorial jurisdiction of Public Services Tribunal Bench at Dehradun. The present claim petition is liable to be dismissed.

5. The petitioner has challenged the order dated 29.05.2013 passed by the Zila Panchayat Tehri Garhwal before the Hon'ble High Court of Uttarakhand in writ petition no. 990 of 2014 (S/S). The Hon'ble High Court vide order dated 15.07.2014 was pleased to dismiss the writ petition on the ground of alternative remedy. Thereafter, petitioner has challenged the order dated 15.07.2014 before the Division Bench by filing Special Appeal No. 424 of 2014. The Hon'ble Division Bench decided the Special Appeal vide its order dated 21.08.2014, as follows:

> *"Appellant / writ petitioner approached this Court by filing a writ petition, wherein he has challenged the regularization of respondent No. 6. In short, the case of the appellant / writ petitioner is that the post, against which the sixth respondent is regularized, is reserved for the Scheduled Caste community. Appellant / writ petitioner is a member of the Scheduled Caste community and the sixth respondent is not a member of the Scheduled Caste community. He would also submit that the regularization is contrary to the judgment of the Constitution Bench of the Supreme Court in the case of Secretary, State of Karnataka & others vs. Uma Devi (3) & others, reported in (2006) 4 SCC 1.*
>
> *2. The learned Single Judge took the view that the writ petitioner has got an alternative remedy in the form of approaching the State Public Services Tribunal and he must, first, go to the Tribunal. The writ petition was, accordingly, dismissed on the ground of alternative remedy.*
>
> *3. We have heard the learned counsel for the appellant / writ petitioner. We have also heard the learned counsel appearing for respondent Nos. 3 & 4, who, in fact, has the case that the appellant / writ petitioner is not an employee of respondent Nos. 3 & 4. Learned counsel for the appellant / writ petitioner would submit that it is a clear case, where there is clear violation of the rules and, in the circumstances of this case, the Court should not have relegated the writ petitioner to approach the Tribunal.*
>
> *4. We are unable to agree with the learned counsel for the appellant / writ petitioner. We are of the view that the learned Single Judge was not in error in relegating the appellant / writ petitioner to approach the Tribunal. In the circumstances of the case, when the learned Single Judge has exercised his discretion to decline interference in view of the availability of alternative remedy, the appellate court would be slow*

to interfere with the refusal to exercise the discretion by the learned Single Judge.

5. Accordingly, we affirm the judgment of the learned Single Judge and the Special Appeal will stand dismissed. Consequently, the Stay Application also stands dismissed. There will be no order as to costs."

6. The present claim petition has been filed by the petitioner before this Tribunal on 22.09.2019. Thereafter, the claim petition came up for hearing on admission before the Bench on 14.10.2019. The Tribunal was of the opinion that apparently the petition is barred by time, as the petitioner has challenged the order dated 29.05.2013 passed by the respondent. Learned Counsel for the petitioner sought time to file an application for delay condonation and the copy of the order passed by the Hon'ble High Court. The claim petition was admitted on 17.03.2020 and the issue of delay was left open to be decided at the time of final hearing.

7. The writ petition filed by the petitioner was decided by the Hon'ble High Court vide order dated 15.07.2014 and thereafter Special Appeal filed by the petitioner, which was decided by the Hon'ble High Court vide order dated 21.08.2014. Even if the period during which litigation was pending before the Hon'ble High Court, is excluded, it was for the petitioner to approach this Tribunal within one year from the date of passing of the order of Hon'ble High Court, but the petitioner did not do so. Therefore, the claim petition is barred by limitation also.

8. Public Servant is defined in Section 2(b) of the U.P. Public Services (Tribunal) Act, 1976, which reads as under:

"2(b) "public servant" means every person in the service of pay of-
(i) the State Government; or
(ii) a local authority not being a Contonment Board; or
(iii) any other Government (including any company as defined in Section 3 of the Companies Act, 1956 in which not less than fifty per cent of paid up share capital is held by the State Government) but does not include-
(1) a person in the pay or service of any other company; or
(2) a member of the All India Services or other Central Services;]

The petitioner has stated in his petition that petitioner is working in PRD (Prantiya Rakshak Dal). The P.R.D. does not come under the definition of public servant in view of Section 2(b) of the Uttar

Pradesh Public Services (Tribunal) Act, 1976. Therefore, his claim petition is not cognizable by this Tribunal.

9. In present claim petition, petitioner seeks to quash the order dated 29.05.2013, which was an order on non-statutory representation of the petitioner.

ON LIMITATION

10. The detailed examination of the issue of limitation is as below:

11. This Tribunal has held, in various 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;".

12. Clause (b) to sub-section (1) of Section 5 of the Uttar Pradesh Public Services (Tribunal) Act, 1976 pro*vide*s 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]

13. 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.

14. 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]

15. It is apparent that Section 5 of the Limitation Act applies to appeals or applications. 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.

16. 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.

17. 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]*

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 for 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." Section 9 of the Limitation Act, therefore, runs contrary to the interest of the petitioner.

21. 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.

22. To recapitulate, 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 may be 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 one's plight may appear to be.

23. 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 were (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.

24. Philosophy underlying the Law of Limitation may, briefly, be stated thus:

(i) One of the considerations on which the doctrine of limitation and prescription is based upon is that there is a presumption that a right not exercised for a long time is non-existent [Salmond's Jurisprudence, eighth edition, pages 468,469].

(ii) The object of the law of limitation is to prevent disturbance or deprivation of what may have been acquired in equity and justice by long

enjoyment or what may have been lost by party's own inaction, negligence or latches [AIR 1973 SC 2537(2542)].

(iii) The object of law of limitation is in accordance with the maxim, *interest reipublicae ut sit finis litium*-which means that the interest of the state requires that there should be an end to litigation.

(iv) Statutes of limitation and prescription are statutes of peace and repose.

(v) Rule of vigilance, which is foundation of statute of limitation, rests on principles of public policy.

(vi) The purpose of Rules of Limitation is to induce the claimants to be prompt in claiming relief.

(vii) Parties who seek to uphold their legal rights should be vigilant and should consult their legal experts as quickly as possible. They cannot sleep over the matter and at a later stage seek to enforce their rights, which is likely to cause prejudice to other parties. This is precisely the reason why periods of limitation are prescribed in many statutes.

(viii) The Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy within a time fixed by the legislature [AIR 1958 Allahabad 149(153)].

(ix) Law of limitation is procedural. It would apply to proceedings *i.e.* law in force on the date of institution of proceedings irrespective of date of action- Object of statute of limitation is not to create a right but to prescribe periods within which proceedings can be instituted.

(x) The limitation for institution of a legal action is a limitation on the availability of a legal remedy during a certain period of time. Different periods are prescribed for various remedies. The idea is that every legal action must be kept alive for a legislatively fixed period of time. The object of legal remedy is to repair a damage caused by reason of a legal injury suffered by the suitor. A legal remedy, therefore, can never come into existence before a legal injury occurs. It is the legal injury that calls legal remedy to life and action. Limitation fixes the life span of a legal remedy for the redressal of

a legal injury. It is not considerable that the legislature would fix the limitation to run from a point earlier than the occurrence of a legal injury, after which only a legal remedy can come into existence. Jurisprudentially, therefore, a period of limitation can only start running after an injury has occurred. Then an appropriate legal remedy springs into action.

(xi) When the language of statute is clear, the court is bound to give effect to its plain meaning uninfluenced by extraneous considerations but where the language of the enactment is not itself precise or is ambiguous or of doubtful import, recourse may be had to extraneous consideration. No exception can be recognized in these rules of construction in the case of Limitation Act [AIR 1941 PC 6 (9)].

(xii) The Rules of Limitation are, *prima facie*, rules of procedure [AIR 1953 Allahabad 747 (748) (FB)].

(xiii) When the Act prescribes a period of limitation for the institution of a particular suit, it does not create any right in favour of person or define or create cause of action, but simply prescribes that the remedy can be exercised only within a limitation period and not subsequently.

(xiv) Section 3 of the Limitation Act puts an embargo on the Court to entertain a suit, if it is found to be barred by limitation.

(xv) The Court cannot grant any exemption from limitation on equitable considerations or on grounds of hardships [AIR 1935 PC 85].

(xvi) Section 5 of Limitation Act does not apply to the suit, as the word 'suit' is omitted by the legislature in the language of the said section and therefore delay in filing suit cannot be condoned while invoking Section 5 [2010 (168) DLT 723].

(xvii) Section 5 deals only with the admission of appeals and applications after time [1952 All LJ (Rev.) 110 112 (DB)].

(xviii) Courts have no power to extend the period of limitation on equitable ground and equity cannot be the basis for extending the period of limitation.

(xix) Provisions of Section 5 of Limitation Act will be applicable not only to an appeal but will also apply to an application.

(xx) The practical effect of Section 21 of the Administrative Tribunals Act, 1985 is the same as that under Section 5 of the Limitation Act 1962, which also enables a person to apply to the Court even after the period specified for making the application is over, leaving the discretion in the Court to condone or not to condone the delay.

(xxi) Section 5 is not applicable to proceedings under the Contempt of Courts Act [1988 All LJ 1279].

(xxii) In cases covered by statutory period of limitation, the limitation sets in by automatic operation of law.

(xxiii) If suit for specific performance of contract has not been filed within prescribed period of limitation, then the same cannot be entertained and the delay cannot be condoned by taking recourse to Section 5, since said provision is for extension of time prescribed in law only in matter of appeals and applications and not in matter of delay in filing of suit resulting in legal bar [AIR 2008 (NOC) Page 2085 (Patna)].

(xxiv) Where an application under Section 9 of the Administrative Tribunals Act was filed after about 4 years from the limitation, the fact that the employee's representation against impugned order of dismissal was pending or that he was making repeated representation would not save the limitation and said delay could not be condoned on that ground.

25. Original Section 5(1)(b), before it was substituted by U.P. Act No. 13 of 1985 (*w.e.f.* 28.01.1985), was as follows:

> "5(1)(b): The provisions of the Limitation Act, 1963, shall apply to all references under Section 4, as if a reference were a suit or application filed in the Civil Court:
>
> Provided that where any court subordinate to the High Court has before the appointed date passed a decree in respect of any mater mentioned in Section 4, or passed an order dismissing a suit or appeal for non-prosecution and that decree or order has not become final, any public servant or his employer aggrieved by the decision of such court may make a reference to the Tribunal within 60 days from the appointed date, and the Tribunal may affirm, modify or set aside such decree (but may not remand the case to any such court), and such decision of the Tribunal shall be final."

26. Earlier, the words 'suit or application' were existing before the amendment. After the amendment, the word 'application' was

omitted. The period of limitation of one year was introduced. Further, the mode of computation of period of limitation was also prescribed.

27. The intention of the legislature by substituting Section 5(1)(b) is clear. Earlier, the provisions of the Limitation Act, 1963, were applicable to all references under Section 4, as if the reference were a 'suit' or 'application' filed in the Civil Court. After amendment, the provisions of the Limitation Act, 1963, are applicable to reference under Section 4, as if a reference were a 'suit' filed in Civil Court. The word 'application' was omitted. The period of limitation for reference has been prescribed as one year. How the period of limitation shall be computed, has been prescribed in Section 5(1)(b)(ii) of the Act.

28. It may be noted here that such amendment in the U.P. Public Services (Tribunal) Act, 1976, was introduced in the year 1985, the year in which the Administrative Tribunals Act, 1985, was enacted by the central legislature. Although the word 'application' has been used in Section 21 of the Administrative Tribunals Act, 1985, still, the limitation for admitting such application is one year from the date on which final order has been made. As per sub section (3) of Section 21 of the Administrative Tribunals Act, 1985, an application may be admitted after the period of one year, if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period.

29. The delay in filing application before the Tribunal (created under the Administrative Tribunals Act, 1985) can, therefore, be condoned under Section 5 of the Limitation Act, 1963, which is not the case in respect of a reference (a suit) filed before the Tribunal created under U.P. Public Services (Tribunal) Act, 1976.

30. The petitioner was required to press for his claim within a reasonable time, as per the principle enunciated by the Hon'ble Apex

Court in *Gulam Rasul Lone vs. State of J & K and others, (2009) 15 SCC 321,* which has not been done.

31. It may be pointed out, at the cost of repetition, that non-statutory representation shall not extend the period of limitation. Otherwise also, the claim petition may be dismissed on the ground of delay and laches.

32. The view taken by this Tribunal is fortified by the decision of Hon'ble High Court of Allahabad in Civil Misc. WPSB No. 24044 of 2017, Kaushal Kishore Shukla (C.P. No. 464) vs. State of U.P. and others [2017 6 AWC 6452] on 03.11.2017, the relevant paragraphs of which are excerpted herein below for convenience:

> "10.By order dated 30.08.2017, State Public Services Tribunal had dismissed the Claim Petition No.1884 of 2015, which reads as under :-
>
> > "Petitioner has challenged order dated 24.02.2000 and 27.10.2000, since petition is barred by limitation in view of Section 5 (1) (b) of U. P. Public Services (Tribunal) Act 1976. Learned counsel for the petitioner argued that condonation of delay is possible on the basis of rule laid down in Hon'ble Apex Court judgment December 17, 2014 in Writ Petition (Civil) No.562/2012, "Assam SanmilitaMahasangha&Ors. Vs. Union of India &Ors.", and Writ Petition (Civil) No.876/2014 "All Assam Ahom Association &Ors. Vs. Union of India &Ors.". He further submitted that violation of fundamental rights granted in part III of constitution of India cannot be subjected to statutory limitations.
> >
> > Learned P. O. objected on the ground of bar created by Section 5 (1) (b) of Act and submitted that Tribunal has no power to condone the delay as proceedings are original in nature. He placed before us Allahabad High Court's Judgment given in the case of Karan Kumar Yadav Vs. U. P. State Public Services Tribunal and others 2008 (2) AWC 1987 (LB).
> >
> > In view of the above, we dismiss the claim petition on the ground of limitation.
> >
> > Learned counsel for petitioner is free to approach appropriate court/forum in accordance with law."
>
> 11. Learned counsel for the petitioner while challenging the impugned order dated 30.08.2017 passed by the Tribunal submits that the sole case of the petitioner before the Tribunal was that his source of livelihood has been taken away without following the procedure established by law guaranteed under Article 21 of the Constitution, as right to livelihood is also included under right to life in view of various decisions of Honble Supreme Court, as such, his claim petition cannot be dismissed on the ground of delay and laches in view of law laid down by Hon'ble the Apex Court in the case of Assam Sanmilita Mahasangha & Ors. vs. Union of India & Ors. AIR 2015 SC 783 wherein it has been held as under :-
>
> > "Given the contentions raised specifically with regard to pleas under Articles 21 and 29, of a whole class of people, namely, the tribal and non-tribal citizens of Assam and given the fact that agitations on this core are ongoing, we do not feel that petitions of this kind can be dismissed at the threshold on the ground of delay/laches. Indeed, if we were to do so, we would be guilty of shirking our Constitutional duty to protect the lives of our own citizens and their culture. In fact, the time has come to have a relook at the doctrine of laches altogether when it comes to violations of Articles 21 and 29.

> Tilokchand Motichand is a judgment involving property rights of individuals. Ramchandra Deodhar's case, also of a Constitution Bench of five judges has held that the fundamental right under Article 16 cannot be wished away solely on the "jejune' ground of delay. Since Tilokchand Motichand's case was decided, there have been important strides made in the law. Property Rights have been removed from part III of the Constitution altogether by the Constitution 44th Amendment Act. The same amendment made it clear that even during an emergency, the fundamental right under Article 21 can never be suspended, and amended Article 359 (1) to give effect to this. In Maneka Gandhi v. Union of India, (1978) 1 SCC 248 decided nine years after TilokchandMotichand, Article 21 has been given its new dimension, and pursuant to the new dimension a huge number of rights have come under the umbrella of Article 21 (for an enumeration of these rights, see Kapila Hingorani v. State of Bihar, (2003) 6 SCC 1 at para 57). Further, in Olga Tellis & Ors. v. Bombay Municipal Corporation, (1985) 3 SCC 545, it has now been conclusively held that all fundamental rights cannot be waived (at para 29). Given these important developments in the law, the time has come for this Court to say that at least when it comes to violations of the fundamental right to life and personal liberty, delay or laches by itself without more would not be sufficient to shut the doors of the court on any petitioner."

12. Learned counsel for the petitioner has also placed reliance on the judgment given by Hon'ble the Apex Court in the case of S. S. Rathore vs. State of Madhya Pradesh (1989) 4 SCC 582 wherein it has been held as under :-

> " We are of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of, a six months' period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen. We, however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsuccessful representations not provided by law are not governed by this principle.
>
> It is appropriate to notice the provision regarding limitation under s. 21 of the Administrative Tribunals Act. Sub-section (1) has prescribed a period of one year for making of the application and power of condonation of delay of a total period of six months has been vested under subsection (3). The Civil Court's jurisdiction has been taken away by the Act and, therefore, as far as Government servants are concerned, Article' 58 may not be invocable in view of the special limitation. Yet, suits outside the purview of the Administrative Tribunals Act shall continue to be governed by Article 58.
>
> It is proper that the position in such cases should be uniform. Therefore, in every such case only when the appeal or representation provided by law is disposed of, cause of action shall first accrue and where such order is not made, on the expiry of six months from the date when the appeal was-filed or representation was made, the right to sue shall first accrue. Submission of just a memorial or representation to the Head of the establishment shall not be taken into consideration in the matter of fixing limitation."

13. Accordingly, Shri R. C. Saxena, learned counsel for the petitioner submits that the impugned order passed by the State Public Services Tribunal thereby dismissing the claim petition on the ground of delay and laches is liable to be set aside keeping in view the law laid down by Hon'ble the Apex Court as stated above as well as Article 21 of the Constitution of India.

14. We have heard learned counsel for the parties and gone through the records.

15. Period of limitation for filing the claim petition is provided under Section 5 (1) (b) of the U. P. Public Services (Tribunal) Act, 1976, which reads as under :-

"(1) (b). The provisions of the Limitation Act, 1963 (Act 36 of 1963) shall mutatis mutandis apply to 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.

16. A Division Bench of this Court in the case of Karan Kumar Yadav vs. U. P. State Public Services Tribunal and Ors., 2008 2 AWC 1987 All while interpreting the Section 5 (1) (b) of U. P. Public Services (Tribunal) Act, 1976 held as under :-

> **"Section 5(1)(b) aforesaid lays down the applicability of Limitation Act and confines it to the reference under Section 4 of the Act, 1976 as if a reference was a suit filed in the civil court. This leaves no doubt that a claim petition is just like a suit filed in the civil court and in the suit the period of limitation cannot be extended by applying the provisions of Section 5 of the Limitation Act. Sub-clause (i) of Section 5 of the Tribunal's Act, specifically provide limitation for filing the claim petition, i.e., one year and in Sub-clause (ii) the manner in which the period of limitation is to be computed has also been provided.**

Section 5 of the Limitation Act, reads as under:

> Extension of prescribed period in certain case.--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 case 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.

Its applicability is limited only to application/appeals and revision. It hardly requires any argument that Section 5 does not apply to original suit, consequently it would not apply in the claim petition. Had the Legislature intended to provide any extended period of limitation in filing the claim petition, it would not have described the claim petition as a suit, filed in the civil court in Section 5(1)(b) and/or it would have made a provision in the Act giving power to the Tribunal, to condone delay, with respect to the claim petition also.

In view of the aforesaid provision of the Act and the legal provision in respect to the applicability of Section 5 of the Act, it can safely be held that the application for condonation of delay in filing a claim petition would not be maintainable nor entertainable. The Tribunal will cease to have any jurisdiction to entertain any claim petition which is barred by limitation which limitation is to be computed in accordance with the provisions of the Tribunal's Act itself and the rules framed thereunder."

17. Thus, as per law laid down by a Division Bench of this Court in the case of Karan Kumar Yadav (Supra), the period of limitation for filing the claim petition before the State Public Services Tribunal is of one year.

18. In the instant matter, petitioner has challenged the impugned order dated 24.02.2000 passed by opposite party no.4/Senior Superintendent of Police, Kanpur as well as appellate order dated 27.10.2000 passed by opposite party no.3/Dy. Inspector General of Police, Kanpur Region, Kanpur before the State Public Services Tribunal, Lucknow by filing the claim petition after passing a decade, as such, the same is barred by limitation. Hence, the Tribunal had rightly dismissed the claim petition filed by the claimant after placing the reliance on the judgment given by a Division Bench of this Court in the case of Karan Kumar Yadav (Supra).

19. Hon'ble the Apex Court in the case of Rajasthan Public Service Commission and anr. vs. Harish Kumar Purohit and ors. (2003) 5 SCC 480 held that a bench must follow the decision of a coordinate bench and take the same view as has been taken earlier. The earlier decision of the coordinate bench is binding upon any latter coordinate bench deciding the same or similar issues.

20. Hon'ble the Apex Court in the case of Sant Lal Gupta and ors. vs. Modern Co-operative Group Housing Society Ltd. and ors. (2010) 13 SCC 336 held that a coordinate bench cannot comment upon the discretion exercised or judgment rendered by another

> coordinate bench of the same court. The rule of precedent is binding for the reason that there is a desire to secure uniformity and certainty in law. Thus, in judicial administration precedents which enunciate rules of law forum the foundation of the administration of justice under our system. Therefore, it has always been insisted that the decision of a coordinate bench must be followed. (Vide Tribhovandas Purshottamdas Thakkar v. Ratilal Motilal Patel and ors. AIR 1968 SC 372).
>
> 21. So far as the reliance placed by the petitioner in the case of Assam Sanmilita Mahasangha &Ors.(Supra) as well as S. S. Rathore are concerned, the said case are entirely different from the facts which is involved in the present case. As in the present case Act itself has prescribed for a period of limitation for challenging the order before the State Public Services Tribunal, Lucknow and the said situation does not exist in the said case, so the petitioner cannot derive any benefit from the aforesaid judgment. Moreover, the Tribunal has given a liberty to the petitioner to approach court/forum in accordance with law.
>
> **22. For the foregoing reasons, we do not find any illegality or infirmity on the part of the Tribunal thereby dismissing the claim petition filed by the petitioner/claimant as being barred by limitation.**
> 23. In the result, writ petition lacks merit and is dismissed."
>
> *[Emphasis supplied]*."

33. It was observed by Hon'ble Supreme Court in the case of Basavraj and another vs. Special Land Acquisition Officer, reported in (2013) 14 SCC, 81, that the Court has no power to extend the period of limitation on equitable grounds. 'A result flowing from a statutory provision is not an evil'. The statutory provision may cause hardship or inconvenience to a particular party but the Court has no choice but to enforce it giving full effect to the same. 'The law is hard but it is the law'. 'Inconvenience is not a decisive factor to be considered while interpreting a statute.'

34. It was observed by Hon'ble Supreme Court in the case of Balwant Singh vs. Jagdish Singh & others, reported in (2010) 8 SCC 685, that the law of limitation is a specific law and has definite consequences on the right and obligation of a party to arise. Liberal construction cannot be equated with doing injustice to the other party.

35. In M/S Shanti Conductors (P) Ltd. vs. Assam State Electricity Board and others, (2020) 2 SCC 677, it was observed by Hon'ble Apex Court that, in the event, a suit is instituted after the prescribed period, it shall be dismissed although limitation has not been set up as a defence. The Court, by mandate of law, is obliged to dismiss the suit, which is filed beyond limitation even though no pleading or arguments are raised to that effect.

36. 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, in which it was held that non-statutory representation will not extend the period of limitation, 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."

37. The claim petition is dismissed on the ground of delay and laches, as also on the point of limitation. Also, this Tribunal has no jurisdiction to decide the petition of a non-public servant. The claim petition is dismissed on this ground also. No order as to costs.

38. It is made clear that the Tribunal has not expressed any opinion on the merits of the case.

(RAJENDRA SINGH)
VICE CHAIRMAN (J)

DATED: JANUARY 13, 2023
DEHRADUN.
KNP