

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

**Through Audio/ Video Conferencing**

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

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

**CLAIM PETITION NO. 69/SB/2020**

Smt. Kamleshwari w/o Sri Surya Prakash aged about 27 years presently working and posted on the post of Constable (w) No. 126 Civil Police, at Kotwali, District Rudraprayag.

.....Petitioner.

**VS.**

1. State of Uttarakhand through Secretary (Home), Govt. of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Additional Director General of Police, Uttarakhand, Dehradun.
3. Dy. Inspector General of Police, Garhwal Region, Uttarakhand, Dehradun.
4. Senior Superintendent of Police, District Haridwar.

.....Respondents.

Present: Sri L.K.Maithani & Sri U.C.Dhaudiyal, Advocates  
for the petitioner.  
Sri V.P.Devrani, A.P.O., for respondents.

**JUDGMENT**

**DATED: NOVEMBER 18, 2020**

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

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

- (i) To quash the impugned punishment order dated 28.04.2016 (Annexure A-1) passed by Respondent No.4, impugned appellate order dated 28.03.2017 (Annexure: A 2) passed by Respondent

No.3 and order dated 27.07.2017 (Annexure: A 3) passed by Respondent No.2, with its effect and operation and with all consequential benefits.

- (ii) To issue any other order or direction which this Court may deem fit and proper in the circumstances of the case in favour of the petitioner.
- (iii) To award the cost of the petition.

2. The allegations, in brief, against the petitioner are that when she was posted in District Rudraprayag and was attached to *Kaanwar Mela* in District Haridwar, she was deputed in second half of night of 07.08.2015 in *Mahila Ghaat, Har-ki-Pauri*. S.I. Somika Adhikari instructed the petitioner to make a search of two suspected women and to supply such information to other lady Constable, but the petitioner refused to go to *Mahila Ghaat*. As a consequence of which, her duty was shifted from *Har-ki-Pauri* to *Brahma Kund*, District Haridwar. A charge of disobedience of superior's order and dereliction of duty has been levelled against the petitioner.

3. When the claim petition was taken up for the first time on 04.09.2020, the following order was passed by this Tribunal:

“Dated: 04.09.2020

Present: Sri L.K.Maithani, Advocate, for the Petitioner.

( through audio conferencing).

Sri V.P.Devrani,. A.P.O., for Respondents.

There is delay in filing the claim petition. Ld. A.P.O. prays for and is granted two weeks' time to file objections to the delay condonation application List on 22.09.2020 for hearing of delay condonation application / admission.”

On 22.09.2020, the following order was passed:

“Dated: 22.09.2020

Present: Sri L.K.Maithani, Advocate, for the Petitioner.

( through audio conferencing).

Sri V.P.Devrani,. A.P.O., for Respondents.

Ld. A.P.O. has filed objection against delay condonation. The same are taken on record.

List on 20.10.2020, on the joint request of Ld. Counsel for the parties”.

4. On 20.10.2020, hearing on delay condonation application and objections thereon/ admission was adjourned to 18.11.2020, *i.e.* for today, on the joint request of Ld. Counsel for the parties.
5. Petitioner has challenged three orders, *viz*:
- (a) Punishment order dated 28.04.2016 (Annexure A-1) passed by Respondent No.4;
- (b) Appellate order dated 28.03.2017 (Annexure: A 2) passed by Respondent No.3; and
- (c) Order dated 27.07.2017 (Annexure: A 3) passed by Respondent No.2, [order dated 27.07.2017 is a revision order].
6. The claim petition has, admittedly, been filed on 12.03.2020.
7. Section 5 of the Uttar Pradesh Public Services (Tribunal) Act, 1976 (for short, the Act) provides for limitation in respect of claim petitions filed before the Tribunal. Section 5 of the Act reads as below:

**“5.Powers and procedure of the Tribunal-** (1) (a) The Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 (Act 5 of 1908), or the rules of evidence contained in the Indian Evidence Act, 1872 (Act 1 of 1872), but shall be guided by the principles of natural justice, and subject to the provisions of this section and of any rules made under Section 7, the Tribunal shall have power to regulate its own procedure (including the fixing of places and times of its sittings and deciding whether to sit in public or in private):

*Provided* that where, in respect of the subject-matter of a reference, a competent court has already passed a decree or order or issued a writ or direction, and such decree, order, writ or direction has become final, the principle of *res judicata* shall apply;

**(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:

*Provided* further that nothing in this clause as substituted by the Uttar Pradesh Public Services (Tribunals) (Amendment) Act, 1985, shall affect any reference made before and pending at the commencement of the said Act.

(2) .....

(3).....”

*[ Emphasis supplied ]*

8. The period of limitation, therefore, in such references is one year. In computing such period, the period beginning with the date on which the public servant makes a 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.
9. The punishment order, in the instant case, was passed on 28.04.2016, appellate order was passed on 28.03.2017 and revision was returned by the appropriate authority on 27.07.2017. The claim petition, therefore, in any case, ought to have been filed on or before 27.07.2018, which has not been filed on time. The claim petition has, as stated above, been filed only on 12.03.2020.
10. The petitioner has made an attempt to justify the delay in filing the claim petition by stating, in the affidavit in support of delay condonation application, that the delay is not deliberate or intentional. The delay is attributed to exigency of work and nature of duty, she could not file the claim petition on time. The delay is also attributed to the fact that the petitioner was not in a position to leave the town on account of care of her infants (twins). No document in support thereof has been filed by the petitioner, which she could have filed.
11. Ld. A.P.O. submitted that the provision of revision is not available in Police Act, 2007 and the very object of the petitioner to file the

revision was to fill up the gap (of limitation). According to Ld. A.P.O., the delay is for approx three years and, therefore, the petition should be dismissed at the admission stage.

12. This Tribunal is of the view that no ‘sufficient cause’ has been shown by the petitioner to condone the delay. The expression ‘sufficient cause’ depends upon the facts of each case. There cannot be a straightjacket formula for accepting and rejecting explanation furnished for the delay caused in filing the petition. While considering the matter, the Courts should not lose sight of the fact that by not taking the steps within the time prescribed, a valuable right has accrued to the other party which should not be defeated lightly by condoning the delay in a routine manner. The Courts, however, should strike a balance between the resultant effect of the order it is going to pass upon the parties either way.

13. 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.

14. It is apparent that Section 5 of Limitation Act applies to appeals or applications. Petitioners file claim petitions, pertaining to service matter, before this Tribunal. Claim petition is neither an appeal nor an application. It is, therefore, open to question whether Section 5 Limitation Act, 1963 has any application to the provisions of the Act of 1976. The Judges manning this Tribunal are not exercising writ jurisdiction under Article 226 of the Constitution of India. 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.P.C. (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. The Tribunal is, therefore, strictly required to adhere to the provisions of Section 5 of the Act of 1976.

15. Section 5 of the Indian Limitation Act, 1963 (Act 36 of 1963) is an enabling provision to assist the litigants who fail to do an act within the prescribed time period as originally fixed under various enactments. For example, a litigant who fails to file an Appeal before the superior courts within the permissible time period as originally fixed then he can file it after the expiry of the prescribed time period provided he has to show 'sufficient cause' for non-filing the Appeal within the time period. Likewise, before the subordinate courts or any superior court, the litigants have to file necessary applications under various enactments for smooth running of the case, but if such applications have not been filed in-time then he can file it later, provided he has shown 'sufficient cause' for late filing of the same.
16. Section 5 of the Indian Limitation Act, 1963 is applicable only to the situation where the suit is already filed and pending for disposal. If the Suit is not filed within the stipulated time-period, then this provision is not applicable to get an extension of time period for filing the same. Appeals or applications can be filed arising from pending suits.
17. Likewise, this provision is applicable only to the proceedings which are exclusively pending before the Courts and it is not applicable to the proceedings pending before any Tribunal because mostly the Tribunals shall be constituted only by an enactment which prescribes all modes of remedies and it never borrows any provision from outside sources and, to put it in other words, such Special Laws can be called as "*Self-contained Enactments*". For example, *Rent Control Acts, Land Acquisition Act, , Banking Tribunals, Income Tax Tribunals, etc.,*
18. Similarly, for the enforcement of the Decrees, Orders passed by the court of law the litigants has to file an Execution application before the Executing Court by exercising the provisions under Chapter *Execution in*

*Part II (Sections 36 to 74) with the aid of Order XXI of the First Schedule of Code of Civil Procedure, 1908 (5 of 1908).* For filing such an Execution application, Section 5 of the Indian Limitation Act, 1963 is strictly not applicable because the Execution Petition should be filed within the time-period, as originally fixed under the Enactments failing which the litigant/Decree-Holder, in the eyes of law, shall be deemed to have exhausted his lawful remedies, as such, he cannot, thereafter, enforce his rights as obtained under the Decrees, Orders, etc., passed by the Courts in his favour.

19. In *City and Industrial Development Corporation vs. Dosu Aardeshir Bhiwandiwala and others*, (2009) 1 SCC 168, Hon'ble Supreme Court observed, as below:

“It is well settled and needs no restatement at our hands that under Article 226 of the Constitution, the jurisdiction of a High Court to issue appropriate writs particularly a writ of Mandamus is highly discretionary. The relief cannot be claimed as of right. One of the grounds for refusing relief is that the person approaching the High Court is guilty of unexplained delay and the laches. Inordinate delay in moving the court for a Writ is an adequate ground for refusing a Writ. The principle is that courts exercising public law jurisdiction do not encourage agitation of stale claims and exhuming matters where the rights of third parties may have accrued in the interregnum.”

20. In *Shiba Shankar Mohapatra and others vs. State of Orissa and others*, (2010) 12 SCC 471, Hon'ble Supreme Court has observed as below:

“It was not that there was any period of limitation for the Courts to exercise their powers under Article 226 nor was it that there could never be a case where the Courts cannot interfere in a matter after certain length of time. It would be a sound and wise exercise of jurisdiction for the Courts to refuse to exercise their extra ordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who standby and allow things to happen and then approach the Court to put forward stale claim and try to unsettle settled matters. It is further observed by the Hon'ble Apex Court that, no party can claim the relief as a matter of right as one of the grounds for refusing relief is that the person approaching the court is guilty of delay and laches. The Court exercising public law jurisdiction does not encourage agitation of stale claim where the right of third parties crystallizes in the interregnum.

In *R.S. Makashi v. I.M. Menon & Ors.* AIR 1982 SC 101, this Court considered all aspects of limitation, delay and laches in filing the writ petition in respect of inter se seniority of the employees.

The Court referred to its earlier judgment in *State of Madhya Pradesh & Anr. v. Bhailal Bhai etc. etc.*, AIR 1964 SC 1006, wherein it has been observed that the maximum period fixed by the Legislature as the time within which the relief by a suit in a Civil Court must be brought, may ordinarily be taken to be a reasonable standard by which delay in seeking the remedy under Article 226 of the Constitution can be measured.”

*[Emphasis supplied]*

This Tribunal is not even 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.

21. 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 hereinbelow 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 may be 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.”

22. Ld. Counsel for the petitioner submitted that in a few cases, this Tribunal has condoned the delay in filing the claim petitions. Ld. A.P.O. replied that objections have always been raised by the Respondent-State in appropriate cases, in condoning delay in admitting the claim petitions. Ld. A.P.O. also submitted that a patently wrong order is not a binding precedent on the Tribunal, which is not a Court of Record. Moreover, the orders passed on ‘concession’, cannot be treated as ‘precedents’. Since copies of



those orders (as referred to by Ld. Counsel for the petitioner) are not before us, therefore, it will be wholly out of context, for us, to comment upon the legality of those orders.

23. **It, therefore, follows that the extent of applicability of Limitation Act, 1963 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.**

24. Here, objection to the maintainability of claim petition on the ground of limitation is not a mixed question of law and fact. Petitioner has nowhere claimed that she had no knowledge of the orders impugned, when the same were passed. Hence, the issue of limitation is being decided at the very outset.

25. Since specific time period has been provided in the Act to file a claim petition (a reference) and the petitioner has not filed the same within that time (one year), therefore, admittedly, the claim petition is barred by limitation. Alternatively, no 'sufficient cause' has been shown by the petitioner to condone the delay in filing the same. We, therefore, hold that the claim petition is clearly barred by limitation. Application for condonation of delay is, therefore, dismissed. The objections filed by the respondents in this behalf are allowed.

26. As a consequence thereof, the claim petition is dismissed, as barred by limitation.

(RAJEEV GUPTA)  
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)  
CHAIRMAN

*DATE: NOVEMBER 18, 2020*  
*DEHRADUN*

*VM*