

**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. 158/DB/2019**

1. Biram Pal Singh s/o Sri Shambhu Prasad, r/o H.No.125, Gali No. 13, Krishna Nagar, Roorkee, District Haridwar
2. Gunjan Kumar Pundir s/o Late Sri Jaypal Singh, r/o H.No. 167/1, Chow Mandi, Roorkee, District Haridwar.
3. Sudhir Kumar, s/o Late Sri Amar Singh, r/o 33 KV, Sub Station, Lachhiwala, Doiwala, Dehradun, District Dehradun.

.....Petitioners.

**vs.**

1. State of Uttarakhand through Secretary Energy, Govt. of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Chairman, Uttarakhand Power Corporation Ltd., Urja Bhawan, Kanwali, Dehradun.
3. Managing Director, Uttarakhand Power Corporation Ltd., Urja Bhawan, Kanwali, Dehradun, and 56 others ( Private Respondents.)

.....Respondents.

Present: Sri I.P.Gairola, Advocate, for the Petitioner.  
Sri V.P.Devrani,. A.P.O., for Respondent No. 1.  
Sri V.D.Joshi & Sri S.K.Jain, Advocates,  
for Respondents No. 2& 3.  
Sri T.R.Joshi, Advocate, for Respondent No. 9.

**JUDGMENT**

**DATED: MARCH 16, 2021**

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

By means of present claim petition, petitioners seek to direct Respondent No. 2 (Chairman, UPCL) to declare the appointments of private

respondents no. 4 to 59, as Junior Engineers, as illegal. Petitioners also seek to direct Respondent No. 2 to remove private respondents no. 4 to 59 from the posts of Junior Engineers from Respondent Corporation.

In short, the petitioners have challenged the action of Respondent No.2 to appoint private respondents no. 4 to 59, as illegal.

2. Petitioners were appointed in the erstwhile State of U.P. ( UPSEB) against the substantive post of Operating Cadre, Technicians, through regular selection, on different dates. Next higher cadre of Operating Cadre is Junior Engineer. The post of Junior Engineer is regulated under the service regulations, namely, U.P. State Electricity Board Subordinate Electrical & Mechanical Engineering Services Regulations, 1972. After creation of State of Uttarakhand , Uttarakhand Power Corporation Ltd. was created as a wholly owned company of State of Uttarakhand. Services of the petitioners were merged into Uttarakhand Power Corporation Ltd. with the condition that the service conditions in respect of the employees of the UPSEB, at the time of transfer to the newly created company, shall not be inferior to those which were applicable to them earlier. An advertisement was published for appointment by way of direct recruitment of Junior Engineer (Trainee) on 23.08.2016. In response to aforesaid advertisement, Junior Engineer (Trainee) were selected and they joined as such in UPCL. According to the select list, successful candidates joined their duties as Junior Engineer (Trainee) under the quota of direct recruitment. According to the Rules of 1972, the selected Junior Engineers (Trainees) shall remain under training for a period of one year and after successful completion of training, they shall be placed in the cadre of Junior Engineer. The period of training shall be one year. The Apprentice Supervisor [Junior Engineer (Trainee)] would become eligible to be included as members of the ordinary cadre of Junior Engineers, as provided in Regulation 5(b)(i). The petitioners have become members of the service as Junior Engineers on their promotion to the post of Junior Engineer, under the quota provided for promotion in Regulations 17 and 18 of the aforesaid Rules. The system of recruitment was based on written examination and interview, but this system was later on changed according to Govt. Orders dated 25.04.2007, 10.07.2007 and order dated 15.10.2007, passed by Board of Directors of UPCL. According to the above notification dated 25.04.2007,

10.07.2007 and order dated 15.10.2007, the system of selection was based on objective type written test and negative marking for the wrong answers. According to the selection procedure applicable before 15.10.2007, the selection will base on written test followed by interview. But, after 15.10.2007, the selection shall be on the basis of objective type written test only without an interview. The petitioners passed the written examination followed by interview. Negative marking was also applicable to the petitioners.

In case of private respondents, neither the selection was made as per the earlier method of selection nor were they selected as per the new scheme. According to the earlier method of selection, the interview was necessary, but no interview was held. As per the selection procedure in the G.O. dated 25.04.2007, negative marking was supposed to be applicable, but the private respondents neither faced the interview nor negative marking criteria was applicable. In a nutshell, the private respondents no. 4 to 59 joined their duties as Junior Engineer, neither according to earlier method of selection, nor according to new procedure of selection as per G.O. dated 25.04.2007. Private respondents no. 4 to 59 were selected without following due procedure. The petitioners are aggrieved by illegal and arbitrary action of Respondent Corporation by giving seniority to direct recruited Junior Engineer (Trainees) right from the first day on which they have joined as Trainee and as a consequence of which, the petitioners are now junior to private respondents, although the selection of private respondents is bad in the eyes of law.

The claim petition was presented before this Tribunal on 12.12.2019. The same was taken up by this Tribunal on 13.12.2019. Notices were issued to respondents, on admission. Respondents No.6,9,10,11,14,15, 17,18,20, 21,25,27, 30,31,36,42,44,45,49, 50,52, 56 & 58 appeared in person. Objections were filed on admission of the claim petition. Hearing on admission, thereafter, was possible only through audio/ video conferencing due to spread of Covid-19. On 09.03.2021, Ld. Counsel for the parties, who appeared in person, were heard on admission.

3. It is the submission of Ld. Counsel for the respondents that it is a stale claim and the claim petition is barred by limitation. Ld. Counsel for the petitioner, on the other hand, made an attempt to justify delay in filing the claim petition.

4. Sub section (3) of Section 4 of the U.P. Public Services (Tribunal) Act, 1976 (as applicable to State of Uttarakhand) reads as below:

**“4(3) On receipt of a reference under sub-section (1), the Tribunal shall, if satisfied after such inquiry as it may deem necessary that the reference is fit for adjudication or trial by it, admit such reference and where the Tribunal is not so satisfied, it shall summarily reject the reference after recording its reasons.”**

The Tribunal is, therefore, required to satisfy itself whether the reference is fit for adjudication by it or not? If the reference is fit for adjudication, then the reference should be admitted, and if the Tribunal is not so satisfied, it should summarily reject the reference after recording its reasons.

5. First and foremost, issue of limitation assumes significance in the backdrop of the facts of the claim petition. 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).....”

6. 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.

7. **Writ after writ, making minor alterations, orders after orders, dismissing the writ petitions and granting liberty to take recourse to approach Public Services Tribunal— the moot question is, whether the same will enlarge the scope of limitation in filing the claim petition before Public Services Tribunal?**

8. Various writ petitions were filed by the petitioners before Hon’ble High Court on the same subject matter for same relief(s). History of litigation preceding present claim petition has been given by Hon’ble High Court in its order dated 16.10.2019 in WPSS No. 900/2017, in the following manner:

“An earlier Writ Petition, being Writ Petition No. 1077 of 2008, Ashok Kumar Vs. Uttarakhand Power Corporation and others, was filed before this Court by the petitioners as against the private respondent Nos. 4 to 91 of the said Writ Petition, in which, presently the relief was modulated to the following effect : “2. That by means of that instant petition the petitioner is challenging the selection of the Respondents No: 4 to 91 on the posts of Junior Engineers (Trainee) in pursuance of the Written Test only whereas the advertisement issued by the Respondent No: 1, 2 and 3 specifically provided the mode of selection through written test and Interview. The act of the respondents no.1 to 4 selecting the respondents no. 4 to 91 on the basis of written test only is in flagrant violation of the U.P. State Electricity Board Subordinate Electrical & Mechanical engineering Services Regulations, 1972 which were prevalent and in force at the time of issue of advertisement dated 23.08.2006 and thus is liable to be set aside and quashed.”

In fact, as per the relief claimed therein, the challenge was given to the appointment made of the private respondents in pursuance to the culmination of the selection process, based on the advertisement dated 23rd August, 2006. The said Writ Petition was dismissed by the Coordinate Bench of this Court on 18th December, 2014, directing the petitioner to approach the Public Service Tribunal.

In the meantime, the petitioners of the present Writ Petition, had filed yet another the Writ Petition No. 875 of 2017 (S/S), Ashok Kumar and others Vs. State of Uttarakhand and others, wherein, the petitioners have sought the relief by modulating the relief as claimed in earlier Writ Petition No. 1077 of 2008 (S/S), Ashok Kumar Vs. Uttarakhand Power Corporation and others for determination of the inter se seniority. The said Writ Petition came up for consideration before this Court and this Court had dismissed the Writ Petition No. 875 of 2017 (S/S), Ashok Kumar and others Vs. Sate of Uttarakhand and others on 24th April, 2019, directing the petitioners to approach the Public Services Tribunal.

After the dismissal of the Writ Petition No. 875 of 2017 (S/S), Ashok Kumar and others Vs. Sate of Uttarakhand and other on 24th April, 2019, the instant Writ Petition

has emerged, wherein, the petitioners had filed the Writ Petition on 4th May, 2017, praying for the following reliefs :-

“i) issue a writ, order or direction in the nature of quo warranto removing the private respondent no. 4 to 59 as Junior Engineer as they have been appointed illegally without selecting under any prescribed procedure.

ii) issue any other writ, order or direction which this Hon’ble Court may deem just and proper in the circumstances of the case.’

iii) award the costs of the writ petition in favour of the petitioners.”

A writ of quo warranto is sought as against the appointment of private respondent Nos. 4 to 59 of the present writ petition, which was already a subject matter, in question, which stands adjudicated in Writ Petition No. 1077 of 2008 (S/S), Ashok Kumar Vs. State Power Corporation and others, directing the petitioners to approach the Public Service Tribunal.

By re-modulating the relief claimed in the earlier Writ Petition No. 1077 of 2008 (S/S) and subsequent Writ Petition No. 875 of 2017 (S/S), where in the relief of seniority was modulated, the present Writ Petition has yet again been filed for a writ of quo warranto.

This Court is of the view that as against the selection of the private respondents, the writ of quo warranto would not lie and would not be maintainable. Secondly, as far as the challenge given to the appointment of the private respondents is concerned that the issue was already decided by the Writ Court in Writ Petition No. 1077 of 2008 (S/S) on 18th December, 2014, granting liberty to the petitioner to approach the Public Service Tribunal. The said Writ Petition too was dismissed directing the petitioners to approach the Public Service Tribunal.

In view of the earlier decisions already taken, merely by re-modulating the relief giving it different facet, the petitioners tacitly claimed the same relief, which was already denied by this Court. Hence, this Court is of the view that the Writ Petition is not maintainable and the same is accordingly dismissed with the liberty open to the petitioners to have a recourse to the approaching Public Services Tribunal for the reliefs claimed therein.”

9. Hon’ble High Court while dismissing WPSS No. 875/2017, Ashok Kumar and others vs. State of Uttarakhand on 24.04.2019, directed the petitioners to approach Public Services Tribunal. Earlier too, in WPSS No. 1077/2008, Ashok Kumar vs. State Power Corporation and another, directed the petitioners to approach Public Services Tribunal *vide* order dated 18.12.2014. In other words, the challenge given to the appointments of private respondents was already adjudicated by the Hon’ble Court in WPSS No. 1077/2008 on 18.12.2014, granting liberty to the petitioners to approach Public Services Tribunal. WPSS No. 900/2017 was also dismissed on the ground of alternate remedy *vide* order dated 16.10.2019. The respondents, according to the petition, were appointed in UPCL on different dates in the year 2007. Ideally, the claim petition ought to have been filed before this Tribunal within one year, i.e. in the year 2008, which has not been done. As per the liberty granted to the petitioners by Hon’ble High Court, the claim petition ought to have been filed at the earliest, and at any rate up to 18.12.2015, assuming that the delay in filing the writ petition was condoned by the Hon’ble High Court. This claim petition, as we have noted earlier, was filed before this Tribunal on 13.12.2019. Hon’ble High Court in its order dated 16.10.2019, passed in

WPSS No. 900/2017, has nowhere condoned the delay in approaching Public Services Tribunal for the reliefs claimed therein.

10. It is the submission of Sri V.P.Devrani, Ld. A.P.O., representing Respondent No.1, Sri V.D.Joshi and Sri S.K.Jain, Ld. Counsel for Respondents No. 2 & 3 and Sri T.R.Joshi, Ld. Counsel for Respondents No. 9, that this is inordinate delay in filing the claim petition and such delay in approaching this Tribunal has not been satisfactorily explained. It is hopelessly time barred.

11. Liberty was granted to the petitioners to take recourse to approach Public Services Tribunal, firstly, in the year 2014, secondly, in the year 2017 and for the third time, in the year 2019, while dismissing different writ petitions filed by them for identical relief(s). It is the submission of Sri V.D.Joshi and Sri S.K.Jain, Ld. Counsel for Respondents No. 2 & 3, that 'recourse' does not mean that a time barred or incorrect claim, ignoring limitation clause, can be entertained by Public Services Tribunal. The Tribunal shall entertain the petition, only as per law. The limitation for filing such reference is one year as per Clause 5(i)(b) of the Uttar Pradesh Public Services (Tribunal) Act, 1976. In WPSS No. 900/2017, S/Sri Biram Pal Singh, Gunjan Kumar Pundir, Vichitra Kumar Chaturvedi and Sudhir Kumar were the petitioners. In present claim petition, S/Sri Biram Pal Singh, Gunjan Kumar Pundir and Vichitra Kumar Chaturvedi are the petitioners. WPSS No. 1077/2008 filed on behalf of petitioners was dismissed on 18.12.2014.

12. It is apparent that Section 5 of Limitation Act, 1963 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, 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 [ which may not be confused with Section 5 of the Limitation Act, 1963].

13. 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 application has not been filed in-time then he can file it later, provided he has shown ‘sufficient cause’ for late filing of the same.

14. Section 5 of the Limitation Act, 1963 is not applicable to the proceedings pending before any Tribunal because mostly the Tribunals are constituted only by enactments which prescribe all modes of remedies and they never borrow any provision from outside sources and, to put it in other words, such Special Laws can be called as “*Self-contained Enactments*”. For example, the enactment regarding *Land Acquisition, Banking Tribunals, Income Tax Tribunals, Rent Control, etc.*

15. In *City and Industrial Development Corporation vs. Dosu Aardeshir Bhiwandiwalla 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.”

16. 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.



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 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.”

*[Emphasis supplied]*

18. 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.

19. Here, objection to the maintainability of claim petition on the ground of limitation is not a mixed question of law and fact. Petitioners have nowhere claimed that they had no knowledge of the orders passed by the Hon’ble Court in 2014. Hence, the issue of limitation is being discussed and decided at the very outset.

20. The above view of the Tribunal is fortified by the decision rendered by Hon’ble Supreme Court in State of Uttaranchal and another vs. Sri Shiv Charan Singh Bhandari and others, 2013 (2) U.D. 407, relevant paragraphs of which are quoted herein below:

“18. In State of T.N. v. Seshachalam [(2007) 10 SCC 137], this Court, testing the equality clause on the bedrock of delay and laches pertaining to grant of service benefit, has ruled thus: -

“..... Delay or laches is a relevant factor for a court of law to determine the question as to whether the claim made by an applicant deserves consideration. Delay and/or laches on the part of a government servant may deprive him of the benefit which had been given to others. Article 14 of the Constitution of India would not, in a situation of that nature, be attracted as it is well known that law leans in favour of those who are alert and vigilant.”

19. There can be no cavil over the fact that the claim of promotion is based on the concept of equality and equitability, but the said relief has to be claimed within a reasonable time. The said principle has been stated in Ghulam Rasool Lone v. State of Jammu and Kashmir and another, Special Leave Petition (Civil) No. 14126 of 2009.

21. Presently, sitting in a time machine, we may refer to a two-Judge Bench decision in P.S. Sadasivasway v. State of Tamil Nadu [(1975) 1 SCC 152], wherein it has been laid down that a person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time, but it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters.

22. We are absolutely conscious that in the case at hand the seniority has not been disturbed in the promotional cadre and no promotions may be unsettled. There may not be unsettlement of the settled position but, a pregnant one, the respondents chose to sleep like Rip Van Winkle and got up from their slumber at their own leisure, for some reason which is fathomable to them only. But such fathoming of reasons by oneself is not countenanced in law. Any one who sleeps over his right is bound to suffer. As we perceive neither the tribunal nor the High Court has appreciated these aspects in proper perspective and proceeded on the base that a junior was promoted and, therefore, the seniors cannot be denied the promotion. Remaining oblivious to the factum of delay and laches and granting relief is contrary to all settled principles and even would not remotely attract the concept of discretion. We may hasten to add that the same may not be applicable in all circumstances where certain categories of fundamental rights are infringed. But, a stale claim of getting promotional benefits definitely should not have been entertained by the tribunal and accepted by the High Court.....Not for nothing, it has been said that everything may stop but not the time, for all are in a way slaves of time. There may not be any provision providing for limitation but a grievance relating to promotion cannot be given a new lease of life at any point of time.

*[Emphasis supplied]*

21. Since specific time period has been provided in the Act to file a claim petition (a reference) and the petitioners have not filed the same within that time (one year) and Hon'ble High Court has not condoned the delay in filing the claim petition, therefore, admittedly, the claim petition is barred by limitation. More than one writ petition was filed on behalf of the petitioners before Hon'ble High Court. In every writ, liberty was granted to them to approach the Tribunal. Plea for condoning the delay on the ground of pursuing remedy before Hon'ble High Court was available to the petitioners only for the period when the first writ petition was pending before Hon'ble Court and not after that. 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.

22. **In such view of above discussion, this claim petition is clearly barred by limitation and that being so, should not be admitted in view of Section-4(3) of the U.P. Public Services (Tribunal) Act (No. XVII of 1976). The reference is not fit for adjudication and is, therefore, not admitted.**

23. **The reference is thus summarily rejected under sub-section (3) of Section 4 of the U.P. Public Services (Tribunal) Act, 1976 (as applicable to the State of Uttarakhand).**

**(RAJEEV GUPTA)**  
VICE CHAIRMAN (A)

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

*DATE: MARCH 16, 2021*  
*DEHRADUN*

*VM*