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. 89/DB/2020

Ashok Kumar, s/o Shri Ramjug, aged about 52 years, presently working and posted on the post of Junior Assistant in the office of District Homeopathic Medical Officer, District Haridwar.

.....Petitioner.

vs.

1. State of Uttarakhand through Secretary, Department of Ayush and Ayush Education, Govt. of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Director, Directorate, Homeothatic Medical Services,, Uttarakhand, Dehradun.
3. District Homeopath Medical Officer, District Haridwar.
4. Km. Monika.
5. Sri Preetam Singh.
6. Sri Neeraj Singh Chauhan, Senior Assistant.
7. Ms. Kumud Tiwari, Senior Assistant.
8. Ms.Anju Kumari, Senior Assistant.
9. Sri Khushal Singh, Senior Assistant.
10. Sri Bahadur Singh Bisht, Senior Assistant.

…….Respondents.

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

JUDGMENT

DATED: FEBRUARY 25, 2021

Justice U.C.Dhyani (Oral)

Petitioner has filed present claim petition on 30.09.2020 for the following reliefs:

(i) To declare that the petitioner is entitled and deserves to be regularized in service under the Rules "The Uttarakhand Regularization of Ad-hoc Appointments (On Post Outside the Purview of the Public Service Commission) Rules, 2002 and not under the Regularization Rules, 2011.

(ii) To declare that under the Rules 'The Uttarakhand Regularization of Ad-hoc Appointments (On Post Outside the Purview of the Public Service Commission) Rules, 2002 and not under the Regularization Rules, 2011', the petitioner is entitled to be considered for regularization prior to the regular appointments in the services. Thus, in view of the rules position the private respondents no. 4 to 9 are junior to the petitioner.

(iii) To issue an order or direction to the concerned respondents to consider the matter of regularization of the petitioner under 'The Uttarakhand Regularization of Ad-hoc Appointments (On Post Outside the Purview of the Public Service Commission) Rules, 2002 and not under the Regularization Rules, 2011' and regularize the services of the petitioner since the date of commencement of the Regularization Rules, 2002 or from the date prior to the appointment of the private respondents no. 4 to 9 and accordingly modify the regularization order dated 05.07.2012 along with all consequential benefits and treat the entire service of the petitioner for all service benefits including the old pension benefits and other service benefits for all practical purposes and accordingly correct the seniority position of the petitioner.

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

(v) To award the cost of the case."

2. Petitioner's services have although been regularized under Regularization Rules of 2011 *vide* order dated 05.07.2012, issued by Directorate of Homeopathy, Dehradun, but the insistence of the petitioner is that his services ought to have been regularized under the Uttarakhand Regularization of Ad-hoc Appointments (On Post Outside the Purview of the Public Service Commission) Rules, 2002 (for short, Regularization Rules of 2002), for which request has already been sent by the Director, Homeopathy to Secretary, Ayush, Govt. of Uttarakhand on 26.06.2019 (Copy of letter: Annexure A-13). When the claim petition was listed before this Tribunal, for the first time, Ld. A.P.O. opposed the maintainability of the claim petition, primarily on the ground of limitation and he, accordingly, filed objection on the same, to which the petitioner also filed his replies.

3. 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 this 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 <u>as if a reference were a suit filed in civil court</u> so, however, that-**
>
> **(i) <u>notwithstanding the period of limitation prescribed in the Schedule to the said Act, the period of limitation for such reference shall be one year</u>;**
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> **(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), <u>in accordance with the rules or orders regulating his conditions of service</u>, 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]*

4. The period of limitation, therefore, in references before the Tribunal is <u>one year</u>. In computing such period, the period beginning with the date on which the public servant makes a (statutory) representation (and not a representation merely filed for enlarging the period of limitation) 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.

5. It is the submission of Ld. Counsel for the petitioner that petitioner made several representations for his regularization under the Regularization Rules of 2002. Respondent No. 2 sent the proposal to Respondent No.1 for regularization of services of petitioner and another, but nothing has been done in the matter. Interim seniority list of the Junior Assistants has also been issued.

6. No application under Section 5 of Limitation Act, 1963 has been filed by the petitioner. Even if such an application was filed, the same would not have served any purpose. It will be useful to quote following paragraphs of decision rendered by this Tribunal on 18.11.2020 in Claim Petition No. 69/SB/2020, Smt. Kamlelshwari vs. State & others, as below:

> "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.
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> 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.
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> 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 S*hiba 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 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."

22. ....

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. ....

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

7. 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:

"13. ..... In C. Jacob v. Director of Geology and Mining and another,[(2008) 10 SCC 115], a two-Judge Bench was dealing with the concept of representations and the directions issued by the court or tribunal to consider the representations and the challenge to the said rejection thereafter. In that context, the court has expressed thus: -

"Every representation to the Government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the Department, the reply may be only to inform that the matter did not concern the Department or to inform the appropriate Department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such

representations, cannot furnish a fresh cause of action or revive a stale or dead claim."

14. In Union of India and others v. M.K. Sarkar [(2010) 2 SCC 59], this Court, after referring to C. Jacob (supra) has ruled that when a belated representation in regard to a "stale" or "dead" issue/dispute is considered and decided, in compliance with a direction by the court/tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the "dead" issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.

15. From the aforesaid authorities it is clear as crystal that even if the court or tribunal directs for consideration of representations relating to a stale claim or dead grievance it does not give rise to a fresh cause of action.The dead cause of action cannot rise like a phoenix. Similarly, a mere submission of representation to the competent authority does not arrest time. In Karnataka Power Corpn. Ltd. through its Chairman & Managing Director v. K. Thangappan and another [(2006) 4 SCC 322], the Court took note of the factual position and laid down that when nearly for two decades the respondent-workmen therein had remained silent mere making of representations could not justify a belated approach.

16. In State of Orissa v. Pyarimohan Samantaray [(1977) 3 SCC 396] it has been opined that making of repeated representations is not a satisfactory explanation of delay. The said principle was reiterated in State of Orissa v. Arun Kumar Patnaik[5].

17. In Bharat Sanchar Nigam Limited v. Ghanshyam Dass (2) and others [(2011) 4 SCC 374], a three-Judge Bench of this Court reiterated the principle stated in Jagdish Lal v. State of Haryana[7] and proceeded to observe that as the respondents therein preferred to sleep over their rights and approached the tribunal in 1997, they would not get the benefit of the order dated 7.7.1992.

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: -

"....filing of representations alone would not save the period of limitation. 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.

20. In New Delhi Municipal Council v. Pan Singh and others [(2007) 9 SCC278], the Court has opined that though there is no period of limitation provided for filing a writ petition under Article 226 of the Constitution of India, yet ordinarily a writ petition should be filed within a reasonable time. In the said case the respondents had filed the writ petition after seventeen years and the court, as stated earlier, took note of the delay and laches as relevant factors and set aside the order passed by the High Court which had exercised the discretionary jurisdiction.

> 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.
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> 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. True it is, notional promotional benefits have been granted but the same is likely to affect the State exchequer regard being had to the fixation of pay and the pension. These aspects have not been taken into consideration. What is urged before us by the learned counsel for the respondents is that they should have been equally treated with Madhav Singh Tadagi. But equality has to be claimed at the right juncture and not after expiry of two decades. 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.
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> *[Emphasis supplied]*

8. At present, we are on admission of the claim petition and not on merits of the same. Relevant provisions for admitting a claim petition by this Tribunal, under the U.P. Public Services (Tribunal) Act, 1976, are as follows:

> "Section 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.
>
> 4(5): The Tribunal shall not ordinarily admit a reference unless it is satisfied that the public servant has availed of all the remedies available to him under the relevant service rules, regulations or contract as to redrressal of grievances."

9. The law is therefore clear that, when a belated representation in regard to a stale claim is considered and decided, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving dead issue or time barred dispute. The issue of limitation would be considered with reference to original cause of action and not with reference to the date on such an order is passed in compliance with a Court's direction. Neither a Court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation. It is crystal clear that even if there is Court's or Tribunal's direction for consideration of representation relating to a stale claim or dead grievance, it does not give rise to a fresh cause of action. There can be no cavil over the fact that the claim of seniority is based on the concept of equality, but the said relief has to be claimed within a reasonable time. Although there is no period of limitation for filing a claim under Article 226 of Constitution of India, but this Tribunal is neither a Constitutional Court, nor is exercising jurisdiction under Article 226 of the Constitution of India. It is a statutory Tribunal, constituted under the U.P. Public Services (Tribunal) Act No. XVII of 1976. It will exercise jurisdiction only as per Act No. XVII of 1976 and not beyond that. The period for filing a reference in this Tribunal is one year [Section- 5(1)(b)(i)]. The representation, if any, should be in accordance with the Rules or Orders regulating petitioner's conditions of service [Section-5 (1)(b)(ii)]. Even memorial to the Governor is specifically excluded [Section-5(1)(b)(ii)].

10. In such view of the matter, 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.

11. It is the submission Ld. Counsel for the petitioner that Respondent No. 2 *vide* letter dated 26.06.2019, requested Respondent No.1 to regularize the services of the petitioner under the Regularization Rules of 2002, but despite repeated requests, Respondent No.1 has not acceded to his request.

12. The fact remains that repeated reminders were sent by the department, including the last one by Dr. Rajendra Singh, Director, Homeopathy, on26.06.2019 (Annexure: A-13) to Secretary, Ayust, Govt. of Uttarakhand,

requesting the Govt. to review its order and consider the case of the petitioner and another, sympathetically. It is the Director, Homeopathy, who wrote to the Secretary, Ayush, for redreessal of petitioner's grievances.

13. Respondent no.1 is, therefore, advised to take appropriate decision on letter written by Director, Homeopathy, on 26.06.2019 (Annexure-A-13), as per law.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: FEBRUARY 25, 2021
DEHRADUN

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