

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
BENCH AT NAINITAL**

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

----- Chairman

Hon'ble Mr. A.S.Nayal

-----Member (A)

CLAIM PETITION NO. 48/NB/DB/2020

Pravesh Sharma, aged about 42 years, S/o Late Sri Hari Shankar Sharma, R/o Village Jagatpura, P.O. Rudrapur, Tehsil Rudrapur, Udham Singh Nagar .

.....Petitioner.

vs.

1. State of Uttarakhand through Principal Secretary, Department of Home, Govt. of Uttarakhand, Dehradun.
2. Director General of Police, Uttarakhand Police Headquarters, Dehradun.
3. Deputy Inspector General of Police, Kumaon Range, Nainital.
4. Superintendent of Police, District Pithoragarh

.....Respondents.

Present: Sri Vinay Kumar, Advocate, for the Petitioner.
Sri Kishore Kumar, A.P.O., for Respondents.

JUDGMENT

DATED: JULY 26, 2021

Justice U.C.Dhyani (Oral)

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

- (i) To quash the impugned punishment order dated 09.09.2009 passed by the Superintendent of Police, Pithoragarh; whereby the petitioner has been dismissed from service (Annexure: A-1).
- (ii) To quash the impugned Appellate Order dated 10.12.2009 passed by the Inspector General of Police, Kumaon Range, Nainital,

whereby the departmental appeal filed by the claimant has been rejected and thereby affirmed the punishment order dated 09.09.2009 passed by the S.P., Pithoragarh (Annexure: A-2) as well as the order dated 25.05.2010 passed by the revisional authority.

(iii) To issue direction in the nature of mandamus commanding and directing the respondents to reinstate the claimant in service on the post of Constable (Armed Police) and grant all consequential service benefits from the date of his dismissal from service till date, as has been provided in the Govt. order dated 12.10.1979 relied by the respondents for dismissing the claimant from the services.

(iv) To award the cost of the petition or to pass such order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case.

2. Brief facts, giving rise to present claim petition, are as follows:
 - 2.1 Petitioner was recruited on the post of Constable in Police Department in the State of Uttar Pradesh on 10th December, 1996 and after creation of the State of Uttarakhand, his services were allocated to the Uttarakhand Police.
 - 2.2 Prior to petitioner's recruitment in Police Department, one Habib-Ur-Rehman lodged an FIR No. 769/1994 under Sections 323, 325, 504, 506 IPC at Police Station Rudrapur against the petitioner and three others, on 06.11.1994, for abusing and assaulting him with stick. On the basis of complaint lodged by Habib-Ur-Rehman, Case Crime No.2723/1998, State Vs. Rakesh & others was registered in the Court of Chief Judicial Magistrate, Udham Singh Nagar. On 25.02.2009, Ld. Chief Judicial Magistrate, Udham Singh Nagar in the criminal case under Section 323 IPC convicted the petitioner and other persons. The petitioner, after being imposed a punishment of one month's rigorous imprisonment under Section 323 IPC, was exonerated under Section 325, 504, 506(2) IPC.
 - 2.3 On the basis of judgment dated 25.02.2009, passed by Chief Judicial Magistrate, Udham Singh Nagar, S.P., Pithoragarh, relying on Govt. Order No. 6/10/79 dated 12.10.1979, passed the impugned punishment order dated 09.09.2009, dismissing the services of the petitioner.
 - 2.4 The G.O. Dated 12.10.1979 (Annexure: A-4), issued by the then State of U.P. was in respect of the proceedings to be initiated against the

employee who has been convicted in the criminal case. But if the employee is acquitted in the appeal, then the proceedings of dismissal from service will be treated as null and void and consequently the employee will be reinstated in service along with all consequential benefits.

2.5 Petitioner preferred a Criminal Appeal No. 24 of 2009 before Sessions Judge, Udham Singh Nagar against the order dated 25.02.2009, passed by Chief Judicial Magistrate, Udham Singh Nagar. *Vide* judgment dated 21.10.2009 (Annexure: A-5), passed by Ld. Sessions Judge in the criminal appeal, the petitioner was acquitted of the charges. Thereafter no appeal or revision was preferred by the State Government against order dated 21.10.2009 (Annexure: A-5) and as such order passed by Ld. Sessions Judge attained finality.

2.6 The petitioner moved a departmental appeal before Inspector General of Police, Kumaun Range, Nainital. The said departmental appeal was dismissed by the appellate authority *vide* order dated 10.12.2009, affirming the order of disciplinary authority, on the ground that the petitioner concealed the fact about his criminal antecedents while applying for the job. A revision was filed by the petitioner against appellate order dated 10.12.2009, passed by I.G., Police Kumaun Range, Nainital, before Director General of Police, Uttarakhand, which was also rejected by the Authority in Revision *vide* order dated 25.05.2010.

2.7 Being aggrieved with the orders passed by disciplinary authority, appellate authority and revisional authority, present claim petition has been filed.

3. Ld. A.P.O. raised objection on the ground that the matter has been brought before the Tribunal after inordinate delay, therefore, the claim petition is not maintainable, being highly time barred.

4. Since the punishment order dated 09.09.2009 (Annexure: A-1) and appellate order dated 10.12.2009 (Annexure: A-2), among others, are under challenge in the present claim petition, therefore, a delay condonation application has been filed on behalf of the petitioner for condoning the delay of 10 years and 3 months in filing present claim

petition. An affidavit has been filed in support thereof with the photocopies of the prescriptions of Amrit Hospital, Rudrapur, Uttarakhand.

5. Issue of limitation assumes significance in the backdrop of the facts of the claim petition. Clause (b) of sub-section (1) of Section 5 of the Uttar Pradesh Public Services (Tribunal) Act, 1976 (for short, the Act of 1976) provides for limitation in respect of claim petitions filed before the Tribunal, which reads as below:

“(b) The provisions of the Limitation Act, 1963 (Act 36 of 1963) shall mutatis mutandis apply to 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 after the commencement of the Uttar Pradesh Public Services (Tribunal) (Amendment) Act, 1985 whichever period expires earlier:

.....”

[Emphasis supplied]

7. 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 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.
8. 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.

9. 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, 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.
10. The Tribunal is, therefore, strictly required to adhere to the provisions of Section 5 of the Act of 1976.
11. 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.”

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.

12. In *City and Industrial Development Corporation vs. Dosu Aardeshir Bhiwandiwala and others*, (2009) 1 SCC 168, Hon'ble Supreme Court has 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.”

[Emphasis supplied]

13. In *Shiba Shankar Mohapatra and others vs. State of Orissa and others*, (2010) 12 SCC 471, Hon'ble Supreme Court has ruled, 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.

[Emphasis supplied]

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.

14. 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]

15. **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 .**
16. The petitioner was dismissed from service on 09.09.2009 on the ground, *inter alia*, that the petitioner concealed the fact about his criminal antecedents while applying for the job of Constable in Police Department. The appellate authority dismissed his departmental appeal on 10.12.2009. Revision was preferred against the same. The revision was also dismissed *vide* order dated 25.05.2010. Present claim petition has been filed on 12.08.2020, which is much beyond the time prescribed under Section 5 of the Uttar Pradesh Public Services (Tribunal) Act, 1976 [as applicable to Uttarakhand].
17. The petitioner was required to be alert and vigilant. He 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.

18. This Tribunal is, therefore, unable to condone the delay of 10 years 03 months in filing the claim petition. Application made therefor is, accordingly, dismissed.
19. When the claim petition is clearly barred by limitation and delay in filing the same could not be condoned, therefore, the claim petition should not be admitted in view of Section 4(3) of the U.P. Public Services (Tribunal) Act, 1976.
20. The reference is not fit for adjudication and is, therefore, not admitted, as barred by limitation.

(A.S.NAYAL)
MEMBER (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: JULY 26, 2021
NAINITAL

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