

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

Through audio conferencing

Present: Hon'ble Mr. Justice U.C.Dhyani
----- Chairman
Hon'ble Mr. Rajeev Gupta
-----Vice Chairman (A)

CLAIM PETITION NO. 28/NB/DB/2019

Kanti Ram Joshi, s/o Late Sri Parmanand Joshi, r/o Gram Dweena, P.O. Nagthat,
District Dehradun, Uttarakhand.

.....Petitioner

vs.

1. State of Uttarakhand through Principal Secretary & Commissioner, Department of Social Welfare, Secretariat, Dehradun.
2. Director, Social Welfare, State of Uttarakhand, Haldwani, Nainital.
3. Mrs. Vandana Singh, w/o Late Sri A.K.Singh, presently posted as Joint Director, Social Welfare, Haldwani, District Nainital.
4. Sri Gita Ram Nautiyal, s/o Not known, presently posted as Joint Director, Social Welfare, Haldwani, District Nainital.

.....Respondents

Present: Sri Kanti Ram Joshi, Petitioner
Sri Kishor Kumar, A.P.O., for the Respondents No. 1 & 2
Sri N.K.Papnoi, Advocate for the Respondent No.4.

JUDGMENT

DATED: AUGUST 06, 2021

Justice U.C.Dhyani (Oral)

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

“(a) To issue an order or direction to the Respondent No. 1 to declare the sub rule (4) of Rule 5 of Part-III- Recruitment of the Uttarakhand Social Welfare Gazetted Officers Service Rules, 2013 (Annexure No. 15 to the petition) and sub rule (4) of Rule 5 of the Uttarakhand Social Welfare Gazetted Officers Service (Amendment) Rules, 2016 (Annexure No. 17 to the petition) to be null and void.

(b) *To issue an order or direction to quash the impugned promotion order of Respondents No. 3 and 4 dated 20.11.2013 on Deputy Director (Annexure No. 16 to the petition) and dated 11.01.2019 on Joint Director Post (Annexure No. 18 to the petition) having been passed in pursuance of impugned Uttarakhand Social Welfare Gazetted Officers Service Rules, 2013.*

(c) *To issue an order or direction in the nature of declaration to direct the Respondent No. 1 to grant "notional promotion" to the petitioner on the post of Deputy Director, w.e.f. 27.11.2009 from the date when petitioner's junior Sri R.P. Pant a substantively appointed District Social Welfare Officer was made Deputy Director and further promotions in the department 'notionally' on the basis of petitioner's junior got further promotion.*

(d) *Pass such other or further order(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.*

(e) *As order to the cost as this Hon'ble Tribunal may fit and proper."*

2.1 Brief facts, giving rise to present claim petition, are as follows:

2.2 The petitioner was initially appointed as Block Development Officer. He gave his joining on 21.07.1998 in district Pauri Garhwal. Thereafter, petitioner qualified the U.P. Public Service Commission examination of the year 1998 and was selected for the post of Additional District Development Officer *Samaj Kalyan (ADDO SK)* and joined on the said post on 23.12.1999 in the Social Welfare Department, at Lucknow. The services of the petitioner were regulated by the provisions of *the Uttar Pradesh Harijan Evam Samaj Kalyan Rajpatrit Adhikari Sewa Niyamawali, 1991.*

2.3 After creation of the State of Uttarakhand, the petitioner opted for this State and discharged his services as ADDO SK in district Dehradun. *Vide* G.O. No. 58/2001 dated 27.03.2001, Social Welfare Department was restructured whereby ADDO SK post on which petitioner was appointed and working was merged with its feeder post of District Social Welfare Officer.

2.4 Petitioner preferred a writ Petition No. 1052 of 2002 before the Hon'ble High Court, challenging his merger. Hon'ble High Court *vide* order dated 06.05.2003 observed that a substantive post carrying higher pay scale could not be merged with a feeding cadre post by an O.M. dated 27.03.2001.

2.5 It is stated by the petitioner that he was awarded an adverse entry without proper inquiry for the year 2003-04. In Departmental Promotion Committee (DPC), held in the year 2004, under the Rules of 1991, Sri R.P. Pant, who was substantive DSWO of 1983 batch, was promoted to the post of Assistant Director and one Sri Jagmohan Singh, an ADDO of 1991, was considered for promotion to the post of Deputy Director. *Vide* Govt. Memo dated 02.06.2008, provisional separate and *inter-se* seniority lists for the DSWO and ADDO SK cadres were circulated, against which petitioner preferred a representation to the Govt.

2.6 A DPC was again held on 12.11.2009 and Sri R.P. Pant, Assistant Director was promoted to the post of Deputy Director. The petitioner was again not considered in the said DPC.

2.7 Petitioner, by means of various representations informed the Govt. in respect of his promotion, but the respondent No. 1, in spite of vacancy on higher post, chose not to consider the petitioner for promotion. It has been stated by the petitioner that the Social Welfare Department was again restructured by Office Order dated 27.05.2011.

2.8 Petitioner was transferred from ADDO SK/DSWO Tehri Garhwal to the post of Assistant Director in the Directorate, Social Welfare, which is equivalent in pay and seniority to the post of ADDO SK. The Social Welfare Department *vide* G.O. dated 31.08.2012 found a DSWO cadre officer Sri R.P. Pant eligible for promotion to the post of Joint Director while the senior officers of ADDO SK cadre like petitioner were not considered for promotion. It is further submitted that the respondent No. 1 *vide* Office Memo dated 12.02.2013 appointed one Sri Brahmpal Singh Saini, Joint Director, on

deputation from Education Department. The said appointment was illegal inasmuch as there was no such provision in the U.P. Harijan and Social Welfare Gazetted Officers Service Rules, 1991.

2.9 The Social Welfare Deptt. issued a Notification on 01.11.2013, for promulgating Uttarakhand Social Welfare Gazetted Officers Rules, 2013, whereby the earlier Rules of 1991 were repealed. It has further been stated that the DPC was held on 13.11.2013, for promoting respondents No. 3 & 4 of the DSWO cadre. To the disbelief of the petitioner, none of the officers of the ADDO cadre was considered in the above DPC and the reason given for non-consideration of any member of ADDO cadre, as stated by respondent No.1, was incomplete yearly assessments of ADDO cadre officers. The Rules of 2013 have been amended *vide* Notification dated 30.12.2016 by which a small change has been made by incorporating an amendment in Sl. No. 4 of Rule 5 Part III-Recruitment of above noted rules.

2.10 It is further stated by the petitioner that the DPC was held on 02.01.2019, in which two Deputy Directors from the DSWO cadre were again wrongly promoted under the provisions of the tailor made Rules, 2013 to Joint Director to inflict maximum damage to him and by this act of the department, no further promotional avenues are available to the petitioner. Further, it has been stated by the petitioner that *vide* order dated 28.03.2019, Assured Career Progression (ACP) has been sanctioned to respondents No. 3 & 4, but the petitioner has been left without any financial and promotional benefit and the petitioner has still been working in the grade pay of his substantial post even after completing 20 years in the Govt. Service.

2.11 Petitioner has stated that the Secretary, Social Welfare has constituted a Committee on 08.03.2017, under the Chairmanship of the Additional Secretary, Social Welfare to enquire into the irregularities of Post Matric Scholarship Scheme. This committee conducted enquiry on 'random sampling' basis in the district Haridwar and Dehradun and found gross

irregularities in the distribution of funds of this scheme. The committee has recommended further investigation by a specialized agency.

2.12 Petitioner has further stated that the mistake or the intentional favour done to DSWO cadre in 2009 has been rectified in 2019, when Social Welfare deptt. *vide* dated 08.03.2019 promoted Sri Jagmohan Singh, an ADDO SK cadre officer of 1991 batch 'notionally' *w.e.f.* 27.11.2009, as Deputy Director. The petitioner submits that on the basis of promotion of Sri R.P. Pant on 27.11.2009 on the post of Deputy Director and the promotion of Sri Jagmohan Singh, notionally from 27.11.2009, under the Rules of 1991, petitioner be also given promotion notionally from the said date. Hence, this petition.

3. Learned A.P.O. objected to the maintainability of the claim petition, *inter alia*, on the grounds that (i) this Tribunal has no jurisdiction to grant reliefs (a) and (b), (ii) relief (a) cannot be granted in view of *Shyam Lal's* decision (*infra*), of which relief (b) is consequential and (iii) relief (c) is barred by limitation under the U.P. Public Services (Tribunal) Act, 1976.

4. Petitioner pointed out that on 18.09.2019, it was held that present petition is entertainable by this Tribunal in view of the order dated 30.04.2014, passed in Claim Petition No. 12/2009, Sri Chand Singh Negi & others vs. State of Uttarakhand & others. The petitioner also pointed out that in para 5 of the decision dated 14.02.2019 in Writ Petition No. 144(SB) of 2014, the Hon'ble High Court has observed that "*In case the petitioner approaches the Tribunal, the Tribunal shall also consider entertaining the original application taking into consideration the fact that the present writ petition has been pending on the file of this Court for past more than four years,*" and therefore the period between 2014-2019 should be excluded for the purposes of limitation.

5. Present claim petition has been filed by the petitioner before this Tribunal on 01.08.2019 for the reliefs, which have been mentioned in the inaugural paragraph of this judgment.

6. So far as the reliefs no. (a) and (b) are concerned, Hon'ble High Court of Uttarakhand at Nainital has settled the controversy that this Public Services Tribunal has no power to look into the constitutional validity of the Rules. In *WP (S/B) No. 39/2020, Shyam Lal and another vs. State of Uttarakhand and others*, Hon'ble High Court has clearly laid down that the Uttarakhand Public Services Tribunal has no power to decide the questions relating to *vires* of statutory provisions and Rules. In Paragraphs No. 30 to 38, Hon'ble Court has observed, as under:

"30. The 1976 Act does not contain any specific provision conferring power on the Tribunal, constituted under the said Act, to decide questions relating to the vires of statutory provisions and Rules. The power to create or enlarge jurisdiction is legislative in character. The Legislature alone can do it by law and no court, whether superior or inferior or both combined, can enlarge the jurisdiction of a Court. (A.R. Antulay). In the absence of any such power being conferred on it by the Legislature, it is not the function of this Court to confer any such jurisdiction on the Tribunal constituted under the 1976 Act, for the jurisdiction of a Court/Tribunal can be created, enlarged or divested only by the Legislature, and not by the Court. (A.R. Antulay; and Shorter Constitution by D.D. Basu (18th Edition) Reprint 2002). The High Court would not ordinarily, in the exercise of its power of judicial review, prescribe functions to be discharged by the Tribunal which the State Legislature has not stipulated.

31. Even otherwise, as held by the Supreme Court in Madras Bar Association, the answer to the question, whether any limitation can be read into the competence of the legislature to establish and confer jurisdiction on Tribunals, would depend upon the nature of jurisdiction that is being transferred from Courts to Tribunals. These yardsticks would vary depending on whether the jurisdiction is being shifted from the High Court, or the District Court or a Civil Judge. The 1976 Act was promulgated for adjudication of disputes relating to employment matters of public servants of the State Government etc. The jurisdiction of the Civil Courts, for redressal of their grievances, was taken away, (Public Services Tribunal Bar Assn.), and cases then pending in the Civil Court were transferred to it. Unlike the Tribunal constituted under the 1976 Act, cases pending in the High Court were initially transferred to the Administrative Tribunals constituted under the 1985 Act. It is only in terms of the law declared by the Supreme Court, in L. Chandra Kumar, were the decisions of these Tribunals, constituted in terms of the 1985 Act and as enacted by Parliament under Article 323-A of the Constitution, made subject to the

judicial review of the High Court under Article 226 of the Constitution of India.

32. The Service Tribunals constituted under the 1976 Act have not been conferred jurisdiction, by the Legislature to adjudicate disputes relating to the vires of statutory provisions or rules. It is, therefore, not open to the High Court, when the validity of statutory provisions are under challenge before it in proceedings under Article 226 of the Constitution of India, to relegate the person aggrieved thereby to avail the remedy of approaching the Public Services Tribunal constituted under the 1976 Act.

33. The fact however remains that this would, as held by the Supreme Court in L. Chandra Kumar, enable a litigant to avoid approaching the Public Services Tribunal, and to directly invoke the extra-ordinary jurisdiction of the High Court under Article 226 of the Constitution of India, by raising a challenge, albeit frivolous, to the constitutional validity of a statutory provision or rule. This would, in turn, result in docket explosion in the High Court, and its precious time and resources being needlessly spent in adjudicating such frivolous challenges to the constitutional validity of statutory provisions and Rules. In this context it is useful to note that, in Krishna Sahai, the Supreme Court had commended to the State of Uttar Pradesh to consider the feasibility of setting up of an appropriate tribunal under the 1985 Act in the place of the Public Services Tribunal functioning under the 1976 Act so that, apart from the fact that there would be uniformity in the matter of adjudication of service disputes, the High Court would not be burdened with service litigation; and a Tribunal, with plenary powers, could function to the satisfaction of everyone

34. Again in Rajendra Singh Yadav, the Supreme Court opined that there was no justification why a Service Tribunal of a different pattern should operate in the State of Uttar Pradesh with inadequate powers to deal with every situation arising before it; a Tribunal set up under the Administrative Tribunals Act would have plenary powers to deal with every aspect of the dispute; the U.P. Services Tribunal should be substituted by a Tribunal under the Administrative Tribunals Act, as early as possible, to enable uniformity of functioning, and the High Court being relieved of the burden of dealing with certain service disputes; steps should be taken to replace the Service Tribunal, by a Tribunal under the Administrative Tribunals Act, 1985, as that would give the Tribunal the necessary colour in terms of Article 323-A of the Constitution; disputes which arise, on account of the Service Tribunal not having complete jurisdiction to deal with every situation arising before it, would then not arise; and several States had already constituted such Tribunals under the 1985 Act.

35. Both in Krishna Sahai and in Rajendra Singh Yadav, the Supreme Court had opined that it would be appropriate for the State of Uttar Pradesh (which would also include the successor State of Uttarakhand) to change its manning to maintain judicial temper in the functioning of the Tribunal. The State Government was directed to consider the feasibility of setting up an appropriate Tribunal under the Administrative Tribunals Act,

1985 in the place of the existing Service Tribunal established under the 1976 Act. (Public Services Tribunal Bar Assn.). Despite repeated directions of the Supreme Court, and though nearly three decades have since elapsed, the Public Services Tribunal constituted under the 1976 Act has not been substituted by a State Administrative Tribunal under the 1985 Act.

36. Article 144 of the Constitution requires all authorities, Civil and Judicial, in the territory of India to act in aid of the Supreme Court. The singular Constitutional role of the Supreme Court under the Constitution, and correspondingly of the assisting role of all authorities - civil or judicial in the territory of India-towards it, mandate the High Court, which is one such judicial authority covered under Article 144 of the Constitution, to act in aid of the Supreme Court. While the High Court is independent, and is a co-equal institution, the Constitutional scheme and judicial discipline requires that the High Court should give due regard to the orders of the Supreme Court which are binding on all courts within the territory of India. (Spencer & Co. Ltd. and another v. Vishwadarshan Distributors (P) Ltd.; M/s Bayer India Ltd. and others v. State of Maharashtra and others; CCE v. Dunlop India Ltd.; and E.S.P. Rajaram v. Union of India)].

37. The orders of the Supreme Court are judicial orders, and are otherwise enforceable throughout the territory of India under Article 142 of the Constitution. The High Court is bound to come in aid of the Supreme Court in having its orders worked out. (Spencer & Co. Ltd.; M/s Bayer India Ltd.; and E.S.P. Rajaram). The High Court has an obligation, in carrying out the Constitutional mandate, maintaining the writ of the Supreme Court running large throughout the country. (M/s Bayer India Ltd.; E.S.P. Rajaram; and Spencer & Co. Ltd.). Acting in aid of the Supreme Court, the High Court should ensure that the orders of the Supreme Court are adhered to by all, both in letter and spirit. It is obligatory for this Court, therefore, to ensure that the orders of the Supreme Court, in Krishna Sahai; and Rajendra Singh Yadav, are adhered to by the Government of Uttarakhand and, as directed therein, to take action forthwith to ensure that an Administrative Tribunal is constituted for the State of Uttarakhand under the 1985 Act. Let a copy of this order be sent to the Chief Secretary, Government of Uttarakhand. The Chief Secretary is requested to take necessary action forthwith, and submit an action taken report to this Court within four months from today.

38. In so far as the present case is concerned, the petitioner has challenged the constitutional validity of the Rules made under the proviso to Article 309 of the Constitution of India. He cannot, therefore, be relegated to approach the Public Services Tribunal.”

7. Since, in the instant claim petition, the petitioner has challenged the constitutional validity of the Rules framed under *proviso* to Article 309 of the Constitution of India, therefore, reliefs (a) and (b) are not amenable to the jurisdiction of this Tribunal, in view of the decision rendered by Hon’ble High

Court in *WP (S/B) No. 39/2020, Shyam Lal and another vs. State of Uttarakhand and others*.

8. This Tribunal, therefore, is of the view that the declaration as to whether the sub rule (4) of Rule 5 of Part-III- Recruitment of the Uttarakhand Social Welfare Gazetted Officers Service Rules, 2013 and sub rule (4) of Rule 5 of the Uttarakhand Social Welfare Gazetted Officers Service (Amendment) Rules, 2016 are null and void and are legislation in colourable exercise of power to benefit a class of employees, cannot be adjudicated by this Tribunal. This Tribunal is, therefore, unable to give the declaration, as has been prayed for by the claim petitioner in the claim petition. In other words, since the *vires* of the above Service Rules of 2013, as amended by Amending Rules of 2016, cannot be looked into, therefore, this Tribunal is bereft of jurisdiction to give any decision on reliefs (a) and (b) of the claim petition.

9. The petitioner has also fairly conceded, during the course of arguments, that reliefs No. (a) and (b) cannot be granted by this Tribunal in view of the observations of Hon'ble High Court in Shyam Lal's decision(*supra*).

* * *

10. Relief (c) is for giving direction to respondent No. 1 to grant notional promotion to the petitioner on the post of Deputy Director w.e.f. 27.11.2009, the date his junior was made Deputy Director and further promotion in the department notionally from the date his junior got further promotion.

11. Clause (b) of sub-section (1) of Section 5 of the U.P. Public Services (Tribunal) Act, 1976 reads as under:

“(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]

12. 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.

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. Petitioner has filed claim petition, 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. 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.

15. The Tribunal is, therefore, strictly required to adhere to the provisions of Section 5 of the Act of 1976.

16. In *City and Industrial Development Corporation vs. Dosu Aardeshir Bhiwandiwalla 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."

17. 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.

[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 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.

18. 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 meteria* 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]

19. **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.**

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 for convenience:

“17. In Bharat Sanchar Nigam Limited v. Ghanshyam Dass and others, [(2011) 4 SCC 374], a three-Judge Bench of this Court reiterated the principle stated in Jagdish Lal v. State of Haryana (1977) 6 SCC 538 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: -

“.....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*, (2009) 15 SCC 321.

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. Sadasivaswamy 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. Anyone 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.

[Emphasis supplied]

21. It is a statutory Tribunal, constituted under the U.P. Public Services (Tribunal) Act, 1976. It should 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)].

22. The petitioner was required to be alert and vigilant. He was required to press for his claim within a reasonable time, which has not been done. Even if period between 2014-2019, when petitioner's writ petition remained pending before Hon'ble High Court is excluded for the purpose of limitation, the delay between 2009-2014 remains unexplained. Such delay cannot be condoned. The claim petition in respect of relief (c) is, therefore, beyond limitation.

23. Reliefs (a) and (b) are not amenable to the jurisdiction of this Tribunal and relief (c) is barred by limitation.

24. Claim petition thus stands disposed of with above observations. No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: AUGUST 06, 2021
DEHRADUN.
KNP