

**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)

**MISC. SUBSTITUTION APPLICATION NO. 01/NB/DB/2019**

**&**

**MISC. RECALL APPLICATION NO. 01/NB/DB/2019**

Suraj Kumar Sharma, aged 25 years, s/o Late Sri Pradeep Kumar Sharma, r/o 87,  
near Banoi Baba Mandir, Lalateli, Bajariya Shahjahanpur, Uttar Pradesh.

.....Applicant

In

**CLAIM PETITION NO. 39/NB/DB/2016**

Pradeep Kumar Sharma (since deceased) s/o Sri Babu Ram Sharma, R/o village  
Ram Nagar, Bhagatpuri, Nainital, Postal Address C/o Rajendra Kumar Sharma  
r/o House No. 218, Jwala Nagar, Civil Line, Rampur (U.P.)

.....Petitioner

**vs.**

1. State of Uttarakhand through Secretary, Pay Jal, Govt. of Uttarakhand, Secretariat, Dehradun.
2. Chief General Manager, Uttarakhand Jal Sansthan, Jal Bhawan, B-Block, Nehru Colony, Dehradun.
3. General Manager, Uttarkahand Jal Sansthan, Bheemtal, district Naintial.
4. Executive Engineer, Uttarakhand Jal Sansthan, Haldwani, District Nainital.

.....Respondents

Present: Sri Kaushal Pandey & Sri Mehboob Rahi, Advocates  
for the applicant-petitioner  
Sri Kishor Kumar, A.P.O., for the Respondent No. 1.  
Sri Vinod Tiwari, Advocate for the Respondents No. 2 to 4.

**JUDGMENT**

**DATED: AUGUST 06, 2021**

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

Chronology of events leading to filing of recall application and substitution application, is as follows:

(i) Claim petition No. 39/NB/DB/2016 was filed by the petitioner on 09.12.2016. The Division Bench of this Tribunal *vide* order dated 21.02.2018 passed the following order:

"Dated: 21.02.2018

*Present: None for the petitioner*

*Sri V.P.Devrani, A.P.O.*

*for the respondent No. 1*

*None for the respondents No. 2 to 4*

*Learned A.P.O. has raised an objection that the petition is hopelessly time barred and the grounds for justifying the delay is not sufficient. Furthermore, none is appearing for the petitioner since last three dates.*

*The record reveals that the petitioner was present on 23.11.2017 and he sought time. Thereafter, two dates have been fixed i.e. on 20.12.2017 and 10.01.2018, but none was present on behalf of the petitioner in spite of giving last opportunity. He was given further opportunity and next date was fixed for today i.e. 21.02.2018.*

*As petition has been filed against the order of dismissal from service passed in the year 2011 and this petition has been filed on 09.12.2016 after a period of about five years from passing the impugned order and the delay is more than three years seven months.*

*The petitioner approached the Tribunal in contempt petition and he has stated in the application that he has no source of income and managing expenses for filing claim petition. This is not a sufficient reason to justify the delay.*

*The petitioner has also raised the plea that his claim petition is not time barred because of the reason that he was under the impression that the delay will be counted from the date of decision of his contempt petition. The law does not permit for such counting.*

*Finding no sufficient reason to justify the delay, the petition is dismissed at the admission stage as being barred. "*

(ii)

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he sole petitioner died on 30.04.2018 due to illness, leaving behind his son as legal representative.

(iii)

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two applications were, therefore, moved (i) for recalling the order dated 21.02.2018, passed in claim petition No. 39/NB/DB/2016 along with delay condonation application and (ii) substitution application, which too was filed along with delay condonation

application, to substitute the legal representative of the petitioner (since deceased).

2. It may be noted here that the petitioner passed away on 30.04.2018 and the recall application along with substitution application, with delay condonation application for condoning the delay in filing both the applications were filed, on 05.11.2019.

3.1 Objections have been filed on behalf of the respondents No. 2, 3 & 4 supported by an affidavit of Sri H.K.Pandey, General Manager, Uttarakhand Jal Sansthan, Bheemtal, District Nainital. It is the submission of learned Counsel for respondents No. 2, 3 & 4 that the petitioner, after dismissal from service in the year 2011, filed present petition on 09.12.2016, after a long delay which he could not justify and the petition was dismissed on the ground of delay and laches. Even after such a long delay, no one appeared on behalf of the petitioner for the last three dates immediately before passing the order dated 21.02.2018. It is stated that the right to sue does not survive as the sole petitioner died after two months of passing the order dated 21.02.2018.

3.2 It is argued by Sri Vinod Tiwari, Ld. Counsel for Respondents No. 2 to 4 that applicant has not filed the substitution application within the time limit permitted by law. Under order 22 R 3 CPC, the limitation for filing substitution application is 90 days. Petitioner filed the same on 05.11.2019 highly belatedly and reasons for such delay are not sufficiently explained. As per Order 22 R 3(2) CPC, where within the time limit permitted by law, no application is made under sub rule (1) of R 3, the suit shall abate so far as the deceased petitioner is concerned. Therefore, in the present case, the substitution application is not within time, and the applicant has not prayed for setting aside the abatement, because after 90 days the petition shall abate. The applicant is not entitled to be substituted without setting aside the abatement and even on the ground of delay, which the applicant could not justify.

4. Rules 17 and 18 of the U.P. Public Services (Tribunal) (Procedure) Rules, 1992 are quoted, as below:

*“17. Review petition-(1) No petition for review shall be entertained unless it is filed within thirty days from the date of the order of which the review is so sought.*

*(2) A review petition shall ordinarily be heard by the same Bench which has passed the order, unless, for reasons to be recorded in writing, the Chairman directs that it be heard by any other Bench.*

*(3) Where a petition for review of any judgment or order has been disposed of, no further petition for further review shall lie.*

*18. Substitution of legal representatives.-(1) in the case of death of a party during the pendency of the proceedings before the Tribunal, the legal representatives of the deceased party may apply within ninety days of the date of such death for being brought on record as necessary parties.*

*(2) Where no application is received from the legal representatives within the period specified in sub-rule (1), the proceedings against the deceased party shall abate;*

*Provided that the Tribunal may on application and for good and sufficient reasons set aside the order of abatement and substitute the legal representatives.”*

*[Emphasis supplied]*

5. It may be noted here that the petitioner was alive during pendency of the proceedings before the Tribunal. The petition was dismissed on 21.02.2018. Petitioner died on 31.04.2018. Hence, Rule 18(2) of the Rules of 1992 will not be attracted.

6. The order dated 21.02.2018 is sought to be recalled. The petitioner died on 30.04.2018. Substitution application and recall application have been filed on 05.11.2019. The substitution application has been filed after about one and half years. No sufficient reasons have been furnished for explaining the delay in bringing the legal representative on record. Hence, delay condonation application in filing substitution application and recall application is dismissed, and as a consequence thereof substitution application and recall application are dismissed.

7. There is one more reason for not taking a liberal view in condoning the delay in bringing the legal representative on record along with recall application.

8. In the claim petition No. 39/NB/DB/2016, following reliefs were sought:

*“(i) To issue a writ, order or direction in the nature of certiorari to quash the order dated 19.05.2011 passed by the respondent No. 2*

*(ii) To issue a writ, order or direction in the nature of mandamus directing the respondents to reinstate the petitioner in service with all consequential benefits*

*(iii) To issue a writ, order or direction in the nature of mandamus directing the respondents to pay the entire salary since June 1998 with 18 % interest.*

*(iv) To issue any other or further writ, 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 petition in favour of the petitioner.”*

9. 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]*

10. 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.

11. 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.*

12. 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.

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

14. The 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.

15. 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.”*

16. 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.”*

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 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]*

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. The claim petition was admittedly barred by limitation. The Tribunal *vide* order dated 21.02.2018, dismissed the same, at the admission stage, as being time barred, although in the absence of the petitioner. The same is not liable to be recalled on merits also.

20. Delay condonation application in bringing Legal Representative of the deceased petitioner on record, as also recall application is dismissed and as a consequence therefore, both Misc. Applications are also dismissed.

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

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

*DATE: AUGUST 06, 2021*  
*DEHRADUN.*  
*KNP*