

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

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

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

**REVIEW PETITION NO. 02/NB/DB/2019
(Arising out of the judgment dated 28.08.2019, passed in
Claim Petition No. 20/NB/SB/2019)**

Sri Vijay Narain Pandey, aged about 61 years, s/o Late Sri Girish Chandra Pandey, presently serving as Incharge Superintending Engineer, World Bank Circle, Public Works Department, Pithoragarh.

..... Review applicant

VS.

1. State of Uttarakhand through Secretary, Public Works Department, Government of Uttarakhand, Dehradun.
2. Secretary, Appointment and Personnel Department, Government of Uttarakhand, Dehradun.
3. Engineer-in-Chief (Head of Department), Public Works Department, Uttarakhand, Yamuna Colony, Dehradun.

.....Respondents

Present: Sri Bagwat Mehra, Advocate, for the review applicant
Sri Kishor Kumar, A.P.O., for the Respondents

JUDGMENT

DATED: NOVEMBER 17, 2021

Justice U.C.Dhyani (Oral)

A review application was filed by the petitioner on 02.11.2019 to review the order dated 28.08.2019 passed by this Tribunal in Claim Petition No. 20/NB/DB/2019, Vijay Narayan Pandey vs. State of Uttarakhand & others.

2. Since the review application was filed very late, therefore, learned A.P.O. objected to the maintainability of the same, on the ground of limitation. The review application before this Tribunal can be filed within 30 days as per Rule 17 of the Uttar Pradesh Public Services Tribunal (Procedure) Rules, 1992. Objections to the review application were filed by learned A.P.O. on 13.02.2020. Time to file reply against the objections filed by learned A.P.O. was given to review applicant, but no such opportunity was availed.

3. Accordingly, this Tribunal heard learned Counsel for the review applicant and Ld. A.P.O. on delay condonation application and review application. Various grounds have been taken by the petitioner (review applicant) for condoning the delay in filing review application. Since Section 5 of Limitation Act, 1963 is applicable to the review application and the delay in filing a review application may be condoned, therefore, considering the sufficiency of grounds taken by the review applicant, the delay in filing the review application is condoned, in the interest of justice.

4. The delay in filing the review application is therefore, condoned.

5. In his review application dated 02.11.2019, the review applicant has cited various grounds for recalling the order dated 28.08.2019 and for deciding the claim petition afresh on merits.

6. The judgment dated 28.08.2019 passed by this Tribunal in Claim Petition No. 20/NB/SB/2019 reads as follows:

“1. After joining the post of Junior Engineer (Civil) on 08.02.1979 on ad hoc basis, the petitioner was regularly appointed in the Irrigation Department on 19.04.1982 and was promoted to the post of Assistant Engineer on 01.07.1998.

2. After completion of 7 years of service, the petitioner became eligible for promotion to the next higher post of Executive Engineer on 30.06.2005. His claim for promotion to next post, was to be considered against the vacancy of recruitment year 2005-06 but due to some *inter-se* seniority dispute for which, some litigations were going on, the meeting of the DPC was delayed and it was convened on 20.11.2009, for considering all the eligible candidates for the post of Executive Engineer.

3. As per the contention of the petition, on the basis of a complaint, dated 12.08.2007, against the petitioner about non-disbursement of the compensation to the land owners, a departmental proceeding was initiated against him; charge sheet was issued and after considering his reply, an inquiry was conducted by the Superintending Engineer. In the inquiry report dated 16.02.2010, petitioner was exonerated from the charges, but the disciplinary authority, the Secretary to the department, disagreeing with the inquiry report and without following due procedure, passed the impugned punishment order dated 02.06.2010 (Annexure: 1) by which, the petitioner was awarded two punishments: (i) stoppage of two increments and (ii) special adverse entry.

4. Feeling aggrieved by the said order, petitioner submitted a representation/appeal to the State Government on 05.07.2010. However, the same was rejected cursorily vide order dated 28.02.2012.

5. In the DPC proceedings, held on 20.11.2009, finding the fact that the disciplinary proceeding is pending against the petitioner, respondent department, adopted sealed cover procedure and DPC was again convened on 28.08.2010, whereas, the petitioner was found unsuitable for promotion on that basis.

6. Feeling aggrieved by the same, petitioner approached the Hon'ble High Court by filing a writ petition No. 85 (S/B) of 2016, Vijay Narain Pandey vs. State of Uttarakhand and others, after a period of about six years. In the Counter Affidavit, respondents submitted that the claim of the petitioner for promotion was not considered on account on the punishment order dated 02.06.2010. The petitioner submitted his Rejoinder Affidavit in the writ petition. The above writ petition was heard by the Division Bench of the Hon'ble High Court in detail and on 08.08.2018, the same was dismissed on the ground of delay and laches. However, the petitioner was granted liberty to assail the order of punishment, which he could not assail in the writ petition. Thereafter, this petition was filed by the petitioner on 08.05.2019, before this Court, for seeking the relief to set aside the impugned punishment order dated 02.06.2010, passed by the respondent No. 1, its appeal rejection order dated 28.02.2012 and the charge sheet dated 25.06.2009, and to grant all consequential benefits to the petitioner.

7. As the petitioner has challenged the orders, passed by the respondents in the year 2010 and 2012, after a delay of about seven years, hence, a delay condonation application has been filed along with an affidavit, in which, the only ground for condonation of delay has been mentioned, that the liberty was granted to the petitioner, by the Hon'ble High Court, to assail the main punishment order, hence, petitioner has filed this petition for challenging the order passed in 2010 and 2012.

8. The delay condonation application, has been opposed by the respondents with an affidavit, on the ground that as per Section 5(1) (b) (1) of the U.P. Public Services Tribunal Act, 1976, as applicable in the State of Uttarakhand, the period of limitation for filing such reference is only one year from the date of order, passed against the petitioner, whereas, the present claim petition has been preferred beyond the prescribed period of limitation. There is a delay of nine years, to

challenge the impugned order dated 02.06.2010, passed by the respondent No. 1. There is also a delay of seven years in challenging the appellate order dated 28.02.2012 and of ten years for challenging the charge sheet dated 25.06.2009. The delay, as caused by the petitioner, was willful and deliberate and is not condonable, as such, and it is unexplained. The petitioner cannot take any benefit from the order of the Hon'ble High Court, because of the reasons that the Hon'ble High Court itself has decided their petition, as time barred, and the liberty, if any, was granted, as per the provisions of law and the petitioner has not shown any other cogent reason for condonation of delay. Hence, the application is liable to be rejected and petition being time barred, is also needs to be dismissed at the admission stage.

9. We have heard both the sides on the delay and perused the record.

10. The charge sheet dated 25.06.2009, impugned punishment order dated 02.06.2010 and the appellate order dated 28.02.2012 were the final orders, against which the petitioner was having right to challenge the same before the court, within a period of one year i.e. lastly upto 28.02.2013. The punishment order was passed on the basis of an inquiry, based on the charge sheet dated 25.06.2009 but after exhausting the departmental remedy of appeal on 28.02.2012, the petitioner was sleeping over for a period of more than seven years. There is no such contention of the petitioner that he was not informed/communicated about the punishment order. The punishment order dated 25.02.2010 was properly communicated to him in time, as he filed its review petition, which was finalized on 28.02.2012. Hence, inaction on the part of the petitioner for more than seven years, to challenge the punishment order and its reviewing order, cannot be justified on the basis of the writ petition, filed before the Hon'ble High Court because of the reasons that the writ petition itself was time barred and it was filed by the petitioner for seeking promotion, while against the order of the adverse entry, the petitioner was having separate cause of action for which he never filed any petition in time. The writ petition filed by the petitioner before the Hon'ble High Court itself was dismissed on the ground of delay, referring to the judgment of the Hon'ble Apex Court in *Shiba Shankar Mohapatra (2010) 12 SCC 471*.

11. The petitioner has contended that by the order of the Hon'ble High Court, liberty was reserved to the petitioner to assail the order, which he could not assail in that writ petition. We find that the Hon'ble High Court, nowhere condoned the delay for challenging the punishment order. Reserving the liberty was subject to the provisions of the law. The punishment order passed in 2010 and its review order passed on 28.02.2012, became final and the period of limitation to challenge the same, finally passed in February 2013.

12. The petitioner approached this Court in May 2019, even the Hon'ble High Court was approached by him in 2016, i.e. after a period of three years. There is no justification for that period and there is no cogent reason to justify the delay after 2016 to 2019. Even if the period of pendency of writ petition is exempted, but the period, prior to the

filing of the writ petition i.e. from 2013 to 2016, has not been explained anywhere properly.

13. This court finds that the petitioner has failed to explain the delay in filing this petition and we are of the view that the petition is hopelessly time barred and the delay condonation application deserves to be dismissed. Consequently, the claim petition also deserves to be dismissed at the admission stage, being time barred.

The delay condonation application is hereby rejected and the claim petition, being time barred, is also dismissed at the admission stage.”

7. A Division Bench comprising of the then Hon’ble Vice Chairman (J) and Hon’ble Member (A), therefore, dismissed the claim petition at the admission stage by holding that the claim petition is time barred.

8. There is no error apparent on the face of record, inasmuch as the time period for filing claim petition before this Tribunal is, admittedly, one year in view of Section 5(1)(b) of the U.P. Public Services (Tribunal) Act, 1976. Scope of review is very limited.

9. This Tribunal has held, in various other recent decisions that the petition filed by the petitioner before this Tribunal is neither a writ petition, nor appeal, nor application. It is just like a suit, as is evident from a bare reading of Section 5(1)(b) of the U.P. Public Services (Tribunal) Act, 1976 (for short, the Act). The words used in Section 5(1)(b) of the Act are-“.....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 Act (*Limitation Act, 1963*), the period of limitation for such reference shall be one year;”. It is not such claim petition in which the petitioner made a statutory representation or filed an appeal, revision or any other petition, in accordance with the Rules or orders relating to his conditions of service so as to exclude the period during which such representation, appeal or revision was pending (reference: Section 5(1)(b)(ii) of the Act).

10. Clause (b) of sub-section (1) of Section 5 of the Uttar Pradesh Public Services (Tribunal) Act, 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 the reference under Section 4 as if a reference were a suit filed in civil court so, however, that-

(i) Notwithstanding the period of limitation prescribed in the Schedule to the said Act, the period of limitation for such reference shall be one year;

(ii) In computing the period of limitation the period beginning with the date on which the public servant makes a representation or prefers an appeal, revision or any other petition (not being a memorial to the Governor), in accordance with the rules or orders regulating his conditions of service, and ending with the date on which such public servant has knowledge of the final order passed on such representation, appeal, revision or petition, as the case may be, shall be excluded:

Provided that any reference for which the period of limitation prescribed by the Limitation Act, 1963 is more than one year, a reference under Section 4 may be made within the period prescribed by that Act, or within one year next after the commencement of the Uttar Pradesh Public Services (Tribunals) (Amendment) Act, 1985 whichever period expires earlier;

.....”

[Emphasis supplied]

11. The period of limitation, therefore, in such reference 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.

12. 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.”

[Emphasis supplied]

13. It is apparent that Section 5 of the Limitation Act applies to appeals or applications (but not to applications under Order 21 CPC, *i.e.*, Execution of Decrees and Orders). Petitioners file claim petitions, pertaining to service matters, before this Tribunal. Claim petition is neither an appeal nor an application. It is a 'reference' under Section 4 of the Act, as if it is a suit filed in Civil Court, limitation for which is one year. 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.PC (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. It is settled law that inherent power cannot be exercised to nullify effect of any statutory provision.

14. 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.

15. 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]

16. **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.**

17. To recapitulate, as per the scheme of law, the Tribunal can consider the delay in filing the claim petition only within the limits of Section 5 of the Act [of 1976] and not otherwise. It may be noted here that the period of limitation, for a reference in this Tribunal, is one year. In computing the period of limitation, 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. Apart from that, this Tribunal is not empowered to condone the delay on any other ground, in filing a claim petition. It may also be noted here that delay could be condoned under Section 5 of the Limitation Act, 1963, only in respect of an appeal or an application in which the appellant or applicant is able to show sufficient cause for condoning such delay. A reference under the Act [of 1976] before this Tribunal is neither an appeal nor an application. Further, such power to condone the delay is available to a Tribunal constituted under the Administrative Tribunals Act, 1985. In such Tribunal, delay in filing application might be condoned under Section 21, "if the applicant satisfies the Tribunal that he/she had 'sufficient cause' for not making the application within such period." Since this Tribunal has not been constituted under the Administrative Tribunals Act, 1985 and has been constituted under the Uttar Pradesh Public Services (Tribunal) Act, 1976, in which there is no such provision to condone the delay on showing such sufficient cause, therefore, this Tribunal cannot to condone the delay in filing a claim petition, howsoever reasonable one's plight may appear to be.

18. It may be reiterated, at the cost of repetition, that only a 'reference' is filed in this Tribunal, which is in the nature of a 'claim'. It is not a writ petition, for the same is filed before Constitutional Courts only. Limitation for filing a reference in the Act [of 1976] is one year, as if it is a suit. 'Suit' according to Section 2(l) of Limitation Act, 1963 does not include an application. As per Section 3 of the Limitation Act, 1963, every suit instituted, appeal preferred and application made after the prescribed period shall be dismissed. Section 5 of the Limitation Act, 1963 has no applicability to 'references' filed before this tribunal. Section 5 of the Act of 1976 is self contained code for the purposes of limitation, for a 'reference' before this Tribunal.

19. This Tribunal does not find substance in the review application. The same is devoid of merits and is therefore, dismissed.

20. Review application is, accordingly, dismissed. No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: NOVEMBER 17, 2021
DEHRADUN
KNP