

**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)

**CLAIM PETITION NO. 40/NB/DB/2019**

Subhash Raturi, aged about 53 years, s/o Late Sri Madan Mohan Raturi, Ex-Constable (M), Indian Reserve Battalion, 1<sup>st</sup>, Bailparao, Ram Nagar, District Nainital, r/o Village Gwari, Post Office, Bhirgukhal, District Pauri Garhwal.

.....Petitioner

**vs.**

1. State of Uttarakhand through Secretary, Home Department, Govt. of Uttarakhand, Dehradun.
2. Director General of Police, Uttarakhand, Dehradun.
3. Inspector General of Police (PAC), Uttarakhand, Dehradun.
4. Commandant, Indian Reserve Police Battalion-1<sup>st</sup>, Bailparao, Ram Nagar, District Nainital.
5. Deputy Commandant, 31 Battalion, PAC, Rudrapur, District Udham Singh Nagar.

.....Respondents.

Present: Sri Bhagwat Mehra, Advocate, for the Petitioner  
Sri Kishor Kumar, A.P.O., for the Respondents

**JUDGMENT**

**DATED: NOVEMBER 26, 2021**

**Per: Justice U.C.Dhyani**

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

*"A. To set aside the impugned termination order dated 12.07.2017 and final order dated 12.07.2017, issued by Respondent No.4, as well as the order dated 23.02.2018 passed*

*by Respondent no3, whereby, the petitioner's statutory appeal was cursorily rejected (Annexure No. 1, 2 and 3 respectively to Compilation-I).*

*B. To direct the Respondents, particularly Respondent No. 4 to reinstate the petitioner in service on the post of Constable (M), along with full back wages and to grant all consequential benefits to the petitioner.*

*C. To pass any other suitable order as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.*

*D. To allow the claim petition with costs."*

2.1 The petitioner, a Police Constable, was dismissed from service *vide* order dated 12.07.2017 issued by the *Sena Nayak*, Indian Reserve Battalion, 1<sup>st</sup> Bailparao, Ram Nagar, Nainital (Copy Annexure: A1). The imputation against him was that on 31.12.2014, he remained absent from duty; on 02.01.2015 and 08.01.2015, he was found consuming alcohol; from 02.01.2015 to 08.01.2015, he continuously remained absent from his duty (unauthorized absence); inspite of being stopped by another Constable at gate no. 2 of the Battalion, he forcefully entered into the premises; did not take interest in his work; remained unauthorizedly absent from 09.03.2015 to 11 03.2015 (3 days), on 16.03.2015 (1 day), on 24.03.2015 (1 day), 31.03.2015 to 01.04.2015 (2 days), from 04.04.2015 to 06.04.2015 (3 days); he remained unauthorizedly absent from 01.05.2015 to 04.05.2015 (4 days), from 01.06.2015 to 08.06.2015 and he left the office after appending his signatures on 03.06.2015.

2.2 A show cause notice was issued to him on 16.11.2015, which was received by him on 26.11.2015. 15 days' time was given to him to file reply. The delinquent Constable filed his explanation on 06.05.2016. Proceedings in departmental inquiry were conducted from 05.08.2016 to 21.11.2016. Several witnesses namely Head Constable Ram Singh, Constable, Yogendra Singh, Constable Ganesh Dutt and *Subedar Sainya Sahayak* Khushal Singh Rawat were examined. 05.12.2016 was fixed for defense evidence. When the delinquent did not examine any witness, another date (13.12.2016) was given. On 13.12.2016, delinquent moved an application for summoning retired Head Clerk Bhagwat Sharan. On 20.12.2016, the statement of Head Constable

Bhagwat Sharan Azad was recorded. Presiding Officer gave his findings on 30.01.2017 holding him guilty of the charges levelled against him. The Disciplinary Authority, agreeing with the findings of the Presiding Officer (inquiry officer), issued a show cause notice on 28.03.2017 as to why the petitioner be not dismissed from service.

2.3 In reply, the delinquent petitioner submitted his reply on 11.07.2017. He pleaded that departmental proceedings be kept in abeyance till his regular salary is released. He also pleaded that the notice regarding his dismissal from service for unauthorized absence of 30 days is contrary to the Rules; the imputations against him are not serious in nature; he also pleaded that he should be given punishment of reduction in rank on the minimum pay scale and also prayed for considering his case for compulsory retirement. The Constable petitioner, thereafter, did not submit further written explanation. The Disciplinary Authority did not think it proper to stay departmental proceedings. The *Sena Nayak* found that there was violation of Para 373 A of the Police Regulations. The Disciplinary Authority did not find the explanation of the delinquent Constable satisfactory and therefore, directed that he be dismissed from service (Annexure: A1). *Vide* order dated 12.07.2017 (Annexure: A2), after considering the reply to the show cause notice, an order was passed to the effect that he is not entitled to the salary and allowances on the basis of 'No work No pay' (Fundamental Rule 73, Financial Handbook Vol. 2 to 4). Departmental appeal was preferred by the delinquent petitioner against his punishment. The Appellate Authority, Director General, PAC *vide* order dated 23.02.2018, dismissed the departmental appeal which was preferred against the punishment order dated 12.07.2017 by a detailed order. Still aggrieved against the same, he preferred a revision, but was dismissed on the ground that the same is not maintainable.

2.4 Finding no other alternative, the petitioner preferred present claim petition.

3. The petitioner remained absent from time to time as has been indicated in the impugned order passed by the Disciplinary Authority which was affirmed by the Appellate Authority. Annexure: A8 indicates that on 08.01.2015, the petitioner was medically examined. The Medical Officer gave opinion that 'person has consumed alcoholic like substance not over toxicated effect'. Copy of the charge sheet has been brought on record as Annexure: A9. The charge sheet also indicates the names of the witnesses proposed to be examined by the department. The petitioner gave reply to the charge sheet on 06.05.2016 (Annexure: A10) denying all the allegations levelled against him. The petitioner, in his reply has, *inter-alia*, stated that he is suffering from respiratory problems and therefore, he is using Corex, a Homoeopathic medicine. In his reply, he has alleged violation of the principles of natural justice. He also stated that he has been denied reasonable opportunity of hearing. Annexure: A11 contains detailed findings of the inquiry officer, which findings run in 34 pages. Every fact has been mentioned in the inquiry report, which was submitted to *Sena Nayak*, 1<sup>st</sup> Indian Reserve Battalion, Bailparao, Ram Nagar, Nainital. On having perused inquiry report (Annexure: A11), we find that not only the facts have been mentioned in detail, the description of the testimony of the departmental witnesses finds place in the same, the reasons in support of the findings have also been given. The contents of the inquiry officer's report are already part of the record. Annexure: A 13 is the copy of the show cause notice which was given under Fundamental Rule 73 of Financial Handbook, Vol. 2 to 4 for unauthorized absence of the petitioner, at different intervals, which are counted as 30 days. Annexure: A 14 is the copy of application of the delinquent petitioner whereby he prayed for keeping departmental proceedings in abeyance. On 11.04.2017, the petitioner moved a Writ Petition being WPSS No. 576 of 2017 (Annexure: A15) before the Hon'ble High Court of Uttarakhand. The order dated 11.04.2017 reads as below:

*"Learned Counsel for the petitioner submits that present lis is squarely covered by the judgment rendered by the Division Bench of this Court in Special Appeal No. 432 of 2012, decided on 18.03.2013.*

*Accordingly, the writ petition is disposed of in terms of above cited judgment. Respondents are directed to consider the case of the petitioner, to grant the regular pay scale along with annual increments to the petitioner from due dated i.e. the date of his initial appointment with all consequential benefits within a period of eight weeks from today.*

*Pending application, if any, stands disposed of accordingly.”*

4. Petitioner, along with others, had also filed Special Appeal No. 432 of 2012 before the Hon'ble High Court. Hon'ble High Court *vide* order dated 18.03.2013 directed that- the writ petitioners/ appellants shall be entitled to receive and State of Uttar Pradesh shall be obliged to pay the difference, on that account until 08.11.2000 and State of Uttarakhand shall be obliged to pay the difference from 09.11.2000.

5. The copy of the revision addressed to Additional Director General Police (Admin.) on 21.06.2018 has been brought on record as Annexure: A16. The revision was directed against the order dated 12.07.2017 and Appellate Order dated 23.02.2018. In his revision, revisionist petitioner has stated that since he has completed 20 years of service in the respondent department therefore, he should be given compulsory retirement. Another plea has been taken by him that since DIG is the appointing authority of the petitioner, therefore, *Sena Nayak*, Indian Reserve Battalion cannot remove him from service (*The Tribunal has been informed that any constable may be sent on duty to Indian Reserve Battalion, 1<sup>st</sup> Bail Parav, Ram Nagar, Nainital. The officer who has ordered that the petitioner should be dismissed from service is an equivalent officer*). Representation/revision dated 21.06.2018 was dismissed on the ground that the same was not maintainable. The order dated 12.07.2018 (Annexure: A17) is an expression of the same.

6. The Disciplinary Authority passed order dated 12.07.2017. Departmental Appeal against the same was dismissed on 23.02.2018. On 21.06.2018, the petitioner moved for revision, which was also dismissed by the I.G. (Personnel) *vide* order dated 12.07.2018. The claim petition was filed on 16.09.2019. The revision was filed by the petitioner under the belief that the same is maintainable. Even if it be conceded for the sake of arguments

that the revision was filed under the *bonafide* belief that the same is maintainable, the fact remains that there is delay in filing the claim petition. Although the respondent department has not filed written objections against the delay condonation application, but learned A.P.O., during the arguments, opposed the maintainability of the claim petition, *inter-alia*, on the ground that same is barred by limitation.

7. 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).

8. 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]

9. 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.

10. 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]

11. 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.

12. 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.

13. 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]*

14. **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.**

15. 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.

16. 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.

17. Claim petition is liable to be dismissed on this ground alone that the claim petition is barred by limitation.

\* \* \*

18. Since we are in the final hearing, therefore, it will be appropriate to deal with merits of the claim petition also.

19. Considering the facts of the case, as have been mentioned in the body of the judgment above, the punishment awarded to the petitioner is, certainly, disproportionate. It is unthinkable that a Constable consuming alcohol (*even if habitual*) shall meet the punishment of dismissal from service, notwithstanding the fact that consuming alcohol or being in inebriated state while on duty is certainly a 'misconduct'.

20. In Civil Appeal No. 1510/2009, Munna Lal vs. Union of Indian & other (Copy Annexure: A18), the Hon'ble Supreme Court interfered with the punishment on the ground *inter-alia* that the charges levelled against the appellant were not proved satisfactorily. The imputation against the appellant of the Civil Appeal No.6510/2009 was that he was found in a drunken condition while on shift duty at the Indian Airlines Cargo gate. The immediate superior officer of the appellant, on reaching the office, felt smell of alcohol and suspected that the appellant must have been in a drunken condition. The Assistant Commandant ordered to take the appellant to the airport dispensary for medical check- up. The doctor on duty examined him and stated that the appellant was conscious though incoherent in speech, his

pupils were equal and normal, his pulse and B.P. were normal and there was an element of doubt about alcohol and suspicion of mild smell of alcohol and for confirmation he was referred to Safdarjang Hospital for further medical checkup. Learned counsel for the appellant, in *Munna Lal's* case, contended that there was no medical evidence to prove that the appellant was drunken on that day and he was alcoholic and he was also not taken to Safdarjang Hospital as suggested by the duty doctor on panel at the Airport. The appellant also contended that reliance could not have been placed on the oral evidence given by the witnesses. Learned counsel appearing for the respondent, in *Munna Lal's* case submitted that the appellant was found guilty of dereliction of duty previously also and there were other disciplinary proceedings against the conduct of the appellant. The Hon'ble Supreme Court, in the absence of positive evidence, held that the charges levelled against the appellant were not proved satisfactorily.

Here, the petitioner's case is different. He was found in intoxicated state by the Medical Officer, although the plea of the petitioner is that he was suffering from the respiratory disease and consumed Corex, a homeopathic medicine. That is not the only imputation against the petitioner. On various occasions also, he was found absent from duty. His total absence from duty, at different intervals, is 30 days. He moved revision before the competent authority, Additional Director General of Police (Admin.) requesting that since he has completed 20 years of service in police department, therefore, his case be considered for compulsory retirement

21. The standard of proof in the departmental proceedings is preponderance of probability and not proof beyond reasonable doubt, which the respondent department has proved before the Disciplinary Authority, whose findings have been affirmed by the Appellate Authority. The Tribunal has already noted above that the Disciplinary Authority has given detailed report and has given cogent reasons as to why the petitioner should be held guilty of the charges levelled against him. This Tribunal is of the view that 'misconduct' is definitely proved against the petitioner, although it is of view

that the punishment awarded to him is disproportionate to the misconduct committed by him.

22. Since the Tribunal has held above that the claim petition is barred by limitation, therefore, it is not proper, for us, to give any direction to the respondent authorities to consider the case of the petitioner for compulsory retirement. The Tribunal is also unable to give a direction to the respondent department to reconsider the punishment awarded to the petitioner on the ground that the same is disproportionate to the misconduct committed by him. It may be stated, at the cost of repetition, that 'misconduct' has been proved against the petitioner, but the sentence of dismissal from service, awarded to him, seems to be disproportionate. The claim petition is being dismissed on the ground that the same is barred by limitation. Limitation is for the Tribunal, but not for the Govt. There is no time limit for the State Govt. to review/revise the decision whereby the major penalty of dismissal from service has been awarded to the petitioner and, therefore, the respondent department may consider petitioner's prayer for compulsory retirement or reduction in rank to a minimum pay scale, as prayed for by him in his review application moved before the Additional Director General of Police (Admin.) (Annexure: A 16).

23. The claim petition is dismissed, as barred by limitation, with the observations as above.

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

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

*DATE: NOVEMBER 26, 2021*  
*DEHRADUN*  
*KNP*