

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

Present: Hon'ble Mr. Rajeev Gupta
-----Vice Chairman (A)

CLAIM PETITION NO.43/NB/SB/2020

Vikas Kumar Chaudhary, s/o Sri Om Pal Singh, r/o Village Boodpur Jat, P.S.
Manglor, District Haridwar.

.....Petitioner

vs.

1. State of Uttarakhand through Secretary, Home, Dehradun.
2. Director General of Police, Uttarakhand, Dehradun.
3. Inspector General of Police, Kumaon Division, Nainital.
4. Superintendent of Police, Udham Singh Nagar.

.....Respondents

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

JUDGMENT

DATED: NOVEMBER 30, 2021

By way of this claim petition dated 29.07.2020, the petitioner has challenged the order dated 09.01.2018, passed by Respondent no. 4, by which he has been awarded a 'censure entry' and order dated 21.06.2018 passed by the Respondent no. 3 whereby petitioner's appeal has been dismissed.

2. The claim petition has also been accompanied with the application for condonation of delay stating that the delay in filing of the claim petition has been due to the reasons of illness of the petitioner and Covid 19 related lockdown. Copy of medical certificate is also annexed to the delay condonation application. The delay condonation application further

states that copy of the order dated 09.01.2018 of Respondent no. 4 was received by the petitioner on 29.01.2018. Thereafter, he filed appeal to Respondent no. 3 on 21.04.2018. The appellate order dated 21.06.2018 of Respondent no. 3 was received by him on 09.07.2018. Due to illness and health condition of the petitioner, he was not in a position to contact Advocate for filing claim petition. Thereafter, due to lockdown to control Covid 19, petitioner was not in a position to file claim petition before this Tribunal.

3. The claim petition was admitted before this Tribunal on 31.07.2020, observing that “the issue of delay is mixed question of facts and law, therefore, the same will remain open to be decided at the time of final hearing.”

4. During final hearing, arguments have been heard, *inter-alia*, on the point of delay condonation/limitation. Learned Counsel for the petitioner has argued that initially when the claim petition has been admitted after hearing learned A.P.O., there was no justification of the point of limitation now. Respondents have not filed any objections against the delay condonation application nor filed any writ petition against the order of admission and nor requested this Tribunal for review. In the Counter Affidavit/Written Statement, no clear objection has been made on the ground for condonation of delay. A perusal of the Counter Affidavit filed on behalf of the respondents shows that in para 5 of the same, the following has been stated:

“5. That the contents of the paragraph no. 3 of the claim petition are not admitted because the petitioner in his claim petition challenged the order dated 09.01.2018 with a delay of almost about two years and as per section 5(b)(i) of the Act of 1976 the limitation is of one year for challenging the orders. Thus the claim petition is time barred petition and liable to be rejected on this ground alone.”

5. The above shows that the respondents have clearly opposed the claim petition on the ground of limitation also and as ordered by this Tribunal on 31.07.2020, the issue of delay is open to be decided at the time of final hearing.

6. Learned Counsel for the petitioner has further argued that on this Tribunal's website, various judgments and references are available which have been considered and disposed of even after having been filed after period of limitation. He has referred to four such cases, namely C.P. No. 19/SB/2018, C.P. No. 155/DB/2019, C.P. No. 29/NB/SB/2016 and C.P. No. 13/NB/SB/2018. (*These are not part of record*). He has also argued that the provisions of limitation Act are applicable to the delay in filing the reference petition and that reference petition is in the category of an application as the Rule 4 of the Uttar Pradesh Public Services Tribunal (Procedure) Rules, 1992 (hereinafter referred to as Rules of 1992) makes it clear that reference petition is not a suit but an application. He bases this argument on the fact that the Rule 4, under which filing of reference petition has been provided, bears the heading "Procedure for filing applications". He further states that Rule 3(c) of the Uttar Pradesh State Public Services Tribunal Rules of Practice, 1997 (hereinafter referred to as Rules of Practice, 1997) defines 'application' to include claim reference also. He has further argued that the Tribunal has powers like Section 151 of CPC as Rule 24 of the Rules of 1992 provides similar powers to the Tribunal as stated in Section 151 CPC. He has also referred to the following four rulings of Hon'ble Supreme Court where delay has been held condonable:

- (i) Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and others, (2013) 12 SCC 649,
- (ii) V.D. Chavan vs. Sambaji & Smt. Chandrabai & others, (2006) 9 SCC 210.
- (iii) GMG Engineering Industries and others vs. Issa Green Power Solution and others, (2015) 15 SCC 659.

(iv) Ravi vs. Manager, Reliance General Insurance Company Limited and another, (2017) 14 SCC 853.

7. Learned A.P.O. has argued that the Tribunal in its recent judgment has examined the issue of limitation in detail and according to such examination, the delay in filing the present claim petition is not condonable.

8. The following extract of the Tribunal's judgment dated 27.10.2021, in Claim Petition No. 123/DB/2019, Rakesh Chandra Deoli vs. State of Uttarakhand & others, is reproduced as below:

"3. Since there was delay in filing the claim petition, therefore, petitioner moved an application for delay condonation for condoning the same. On 22.10.2019, when the claim petition was taken up, for the first time by the Tribunal, learned A.P.O. objected to the maintainability to the claim petition *inter-alia* on the ground that there is delay of five months and therefore, he was granted time to file objections to the delay condonation application. *Vide* order dated 23.12.2019, claim petition was admitted and the issue of delay was left open to be decided at the final stage.

4. In the application for condonation of delay, it has been mentioned that although the applicant approached his Advocate on time, but it took lot of time for the applicant to collect papers for filing the present claim petition, due to work pressure. It was also mentioned that the delay is unintentional and applicant does not stand to gain anything because of this delay and no third party right has been created in favour of applicant because of this delay.

5. Learned Counsel for the petitioner submitted, and has mentioned in his written arguments also, that the claim petitioner has filed present claim petition against the seniority list dated 10.05.2018. The limitation period for filing the claim petition expired on 10.5.2019. Admittedly, the petition has been filed after expiry of period of limitation. A delay condonation application has been filed along with the claim petition stating that the petitioner has approached his lawyer within time but the delay was caused in collecting necessary papers.

6. Learned Counsel for the petitioner submitted that if there is any lacuna on the part of the Advocate for which petitioner is not responsible and the application for condoning the delay is rejected for the fault of his Advocate, the same would tantamount to punishing a litigant who remains supremely confident after entrusting his case to an Advocate.

7. Learned Counsel for the petitioner placed a catena of decisions in support of his arguments, which decisions are as follows:

- (i) Rafiq and another vs. Munshilal and another, (1981) 2SCC 788.
- (ii) Delhi Development Authority vs. Bhol Nath Sharma, AIR 2011 SC 428.
- (iii) Ramchandra Shankar Deodhar vs. State of Maharashtra, 1974 SCC 259.
- (iv) Dehri Rohtas Light Railway Company Limited vs. District Board Bhojpur and others (1992) 2 SCC 598.
- (v) Ex.Capt.Harish Uppal vs. Union of India (1994 SCC, Supl.(2)).
- (vi) Collector, Land Acquisition, Anantnag & another vs. Mst. Katiji & others (AIR 1987 SC 1353).

8. All the above noted decisions, in the humble opinion of this Tribunal, relate either to the writ petitions or the appeals or applications. 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 a 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).

9. The issue of limitation shall now be dealt with in detail, as below:

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 provisions.

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. The petitioner, in his claim petition, has attributed reasons for condoning the delay in filing claim petition. 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 sufficient cause, therefore, this Tribunal is unable to condone the delay in filing present claim petition, howsoever reasonable petitioner'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."

9. The detailed observations of this Tribunal on the question of delay are mentioned in the above extract. It is possible that the Tribunal might have condoned the delay in certain cases earlier contrary to the above observations either because delay was not pointed out or opposed by respondents or for any other reason, but the above observations are later in point of time and better on point of law. It may also be mentioned that any Act has overriding effect and Rules are always subordinate to the Statute. Therefore, it cannot be inferred that a reference to the Tribunal is an application, as argued by learned Counsel for the petitioner, on the basis of the heading of the Rule 24 of Rules of 1992 or the definition of application in Rule 3(c) of the Rules of Practice, 1997 in transgression of the Uttarakhand Public Services Tribunal Act. To say that Rule 24 of the Rules of 1992 gives the similar powers of Section 151 CPC to the Tribunal is highly preposterous as Rules made under any Act cannot confer any power beyond the powers provided in the Act itself. The rulings of the Hon'ble Supreme Court quoted by learned Counsel for the petitioner in support of his arguments, are also about the condonation of delay in appeal/ revision or about the condonation of delay in filing of petition to vacate ex-parte decree. They are not applicable to a reference filed in this Tribunal.

10. It is observed that in the present claim petition, the appellate order of Respondent no. 3 was received by the petitioner on 09.07.2018. The period of limitation for the same, according to Section 5(1) (b) (i) was one year *i.e.* upto 09.07.2019. Had this limitation period expired after 15.03.2020, further delay in filing claim petition would have been condonable in view of the orders of Hon'ble Supreme Court passed in *Suo Moto Writ Petition (Civil) No. 03 of 2020*.

11. In the present case, the period of limitation has expired on 09.07.2019 and there is no provision to further extend the same as

discussed in detail by this Tribunal in its judgment and order dated 27.10.2021 in *Rakesh Chandra Deoli vs. State of Uttarakhand & others*, the extract of which has been reproduced earlier.

12. In view of the above, the delay in filing the claim petition cannot be condoned and the claim petition is hereby dismissed as barred by limitation. This Tribunal feels no need to go into the merits of the claim petition and express any opinion on the same. No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

DATED: NOVEMBER 30, 2021
DEHRADUN.
KNP