

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

Present: Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

CLAIM PETITION NO. 04/NB/SB/2021

Balwant Singh s/o Sri Nandan Singh aged about 35 years, presently posted as Constable at P.S. ITI District Udham Singh Nagar.

.....Petitioner

vs.

1. State of Uttarakhand through Secretary, Home, Civil Secretariat, Dehradun.
2. Senior Superintendent of Police, Udham Singh Nagar.
3. Inspector General of Police, Kumaon Region, Nainital.

.....Respondents

Present: Sri Shashank Pandey, Advocate, for the Petitioner
Sri Kishore Kumar, A.P.O., for the Respondents

JUDGMENT

DATED: DECEMBER 16, 2021

This claim petition has been filed seeking the following reliefs:

"a. To issue order or direction to quash order dated 16.10.2017 vide which the petitioner has been punished with a censure entry (Annexure A1).

b. To issue order or direction to quash order of February 2018 vide which the appeal of the petitioner has been rejected (Annexure A2).

c. To give the cost of the petition to the petitioner.

d. To give any other relief this Hon'ble Court may deem fit and proper in the circumstances of the case."

2. Brief facts of the claim petition are as below:

The petitioner is working as Constable with Civil Police in State of Uttarakhand. On 26.02.2017, one Hamid Ali approached police station and complained about abduction of his 15 years old minor daughter by one

Jiyauddin. The petitioner after obtaining number of Jiyauddin from Hamid Ali, called Jiyauddin from his own phone and enquired about the missing girl. It is admitted that the petitioner spoke strictly with Jiyauddin to extract information about the whereabouts of the missing girl. An FIR was lodged about the missing person on 28.02.2017 and Jiyauddin was called for interrogation where he committed suicide in police lockup in the night of 28.02.2017. An FIR no. 130/2017 u/s 302, 342 and 201 IPC was lodged against the petitioner and Sub Inspector Praveen Singh for the death of Jiyauddin in Police Station, Kashipur, District Udham Singh Nagar on 01.03.2017.

Respondent No. 2 passed the impugned order dated 16.10.2017 after giving a show cause notice. By this order, the respondent no. 2 awarded censure entry to the petitioner. The petitioner appealed against this order. However, the appeal was also rejected by Respondent no. 3 vide order passed in February 2018.

3. Regarding the delay of 1 year and 11 months in filing the claim petition, it has been submitted by the petitioner that he was under lot of pressure with the investigation under way before CBI originating from same cause of action and thus could not approach Hon'ble Court, challenging the censure entry in time. He was also under the impression that if he wins the Criminal Trial, the censure entry would automatically go. It was only in the Month of January, 2021 that petitioner approached his lawyer to be informed that he had to challenge the impugned order of censure entry separately.

4. Learned A.P.O. on behalf of the respondents has vehemently opposed the claim petition on the ground of limitation stating that the claim petition should have been filed latest within one year of the date of communication of the appellate order to the petitioner.

5. After hearing learned Counsel for the petitioner and learned A.P.O. on the point of delay condonation at the admission stage itself, this Tribunal's observations are in the ongoing paragraphs.

6. 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;”.

7. 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]

8. 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.

9. 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]

10. 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.

11. 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.

12. 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]

13. **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.**

14. 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 condone the delay in filing a claim petition, howsoever reasonable one’s plight may appear to be.

15. 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.

16. In view of the above, the delay in filing the present claim petition cannot be condoned.

17. The claim petition is accordingly, dismissed at the admission stage, as barred by limitation. No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

DATE: DECEMBER 16, 2021
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KNP