

**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. 75/NB/DB/2021**

Smt. Urmila Devi, aged about 52 years w/o Late Sri Naresh Giri  
(Patwari, Revenue Inspector), r/o Village- Lelu (Sann), Post Office-  
Wadda, Tehsil and District Pithoragarh

.....Petitioner

versus

1. State of Uttarakhand through Secretary Revenue Department,  
Government of Uttarakhand, Dehradun
2. District Magistrate/ Collector, District Pithoragarh
3. Assistant Collector, Didihat (Inquiry Officer), District Pithoragarh
4. Accountant General (Pension & Entitlements), Government of  
Uttarakhand, Dehradun

Present: Sri P.S. Bora, Advocate for the Petitioner  
Sri Kishore Kumar, A.P.O. for the Respondent Nos. 1 to 3  
Sri Rajesh Sharma, Advocate for Respondent No. 4

**JUDGEMENT**

**Dated: 27<sup>th</sup> December, 2021**

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

**RELIEFS CLAIMED**

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

- “(i) To issue appropriate order or direction calling for the records and the impugned dismissal order dated 27.06.2010 be declared null and void being an unreasoned, illegal, inconsistent with the fundamental rights and principles of natural justice and without legal force or binding effect, be set aside and the husband of the petitioner be notionally reinstated on his post.
- (ii) To issue appropriate order or direction to quash the charge sheet dated 04.11.2009 being framed without element of any substantial charge levelled against the delinquent employee now deceased and never proved.
- (iii) To issue appropriate order or direction in nature of certiorari calling for the records and to quash the impugned rejection order dated 13.05.2021 being cryptic and derogatory against the law and evidence available on record.
- (iv) To issue appropriate order or direction calling for the records and to quash the order of recovery for Rs. 18,249/- (Eighteen Thousand and Two Hundred Forty-Nine) *vide* dated 29.07.2021.
- (v) To issue appropriate order or direction in nature of mandamus for fixation of pay for her husband in the revised pay scale with effect from reinstatement till his age of superannuation and further the petitioner be sanctioned the family pension benefits following the death of the Government Employee i.e. 16.07.2019 along with all consequential and terminal benefits along with the 12% interest and arrear applicable to the petitioner.
- (vi) To issue appropriate order or direction for damages against the State of Uttarakhand for compensation for Rs. 2,00,00,000/- (two crores) by causing psychological trauma in aggravated form to the deceased who suffered an adverse experience as he was reattacked and victimized against life and liberty and violated his fundamental rights to live with pride and dignity.
- (vii) To issue appropriate order or direction in nature of mandamus/ order or direction any other relief, which this Hon’ble Tribunal may deem fit and proper on the facts and circumstances of the case, be passed in favour of the petitioner.
- (viii) Cost of the petition be awarded in favour of the petitioner.”

**BRIEF FACTS**

2. The petitioner has filed various documents with the claim petition. Brief summary of such documents, highlighting the facts of the claim petition, are as follows:

(a) Petitioner's husband, who was a Patwari, was dismissed from service *vide* order dated 27.06.2010 (Annexure: A1).

(b) He was married to the petitioner on 26.12.1988. Sri Naresh Giri (husband) died on 16.07.2019 (Annexure: A2).

(c) A copy of family register has also been enclosed as Annexure: A2 *colly*.

(d) Sri Naresh Giri joined as Patwari on 03.03.1986 in district Pithoragrah (Annexure: A3).

(e) A copy of medical certificate has been filed to show that Sri Naresh Giri was suffering from headache with depression. He was granted medical leave from 12.05.1999 to 03.06.1999 for 24 days (Anexure: A4).

(f) Another medical certificate has been filed to show that Sri Naresh Giri was suffering from Schizophrenia from 03.09.2004 to 30.09.2004 (Annexure: A4 *colly*).

(g) Sri Naresh Giri was granted extraordinary leave without pay from 03.12.1999 to 31.07.2003 (Annexure: A5).

(h) After medical examination of Sri Naresh Giri, Patwari by State Medical Council, he was found fit and was directed to be posted as Patwari in Tehsil Dharchula (Annexure: A6).

(i) Sri Naresh Giri, Patwari, joined in Tehsil, Pithoragarh on 02.09.2004. He was, *vide* office order dated 02.09.2004, transferred to Gunji (Annexure: A7).

(j) Sri Naresh Giri, *vide* order dated 04.11.2009, was put under suspension. S.D.M., Didihat, was appointed as Inquiry Officer (Annexure: A9).

(k) Charge sheet was issued to Sri Naresh Giri on 04.11.2009 (Annexure: A10).

(l) Sri Naresh Giri remained absent without information, as per letter dated 25.07.2009 issued by Tehsildar, Dharchula (Annexure: A11).

(m) On 12.08.2009, Sri Naresh Giri wrote a letter to Tehsildar, Dharchula, informing him that he was not keeping well (Annexure: A11 *colly*).

(n) Sri Naresh Giri wrote a letter to Inquiry Officer on 26.11.2009 for reinstating him in the service (Annexure: A12).

(o) Other documents have also been filed as Annexure 12 *colly* to the claim petition. One such document is statement of Sri Naresh Giri that he was not keeping well and that his mental condition was not good. His family is suffering and therefore he should be granted leave without pay [Annexure:12(vi)].

(p) Inquiry Officer, S.D.M., Didihat, recommended the case of Sri Naresh Giri for Voluntary Retirement Scheme (VRS) on 20.01.2010 to District Magistrate, Pithoragarh (Annexure: A13).

(q) On 17.04.2010, a show cause notice was given to Sri Naresh Giri, Patwari (Annexure: A14), as to why he should not be dismissed from service. He replied to the same *vide* letter dated 06.05.2010 (Annexure: A15).

(r) Various other documents have been brought on record as Annexures A16 to A21.

3. Objections to the Delay Condonation Application have been filed by Sri Kishore Kumar, Id. A.P.O., on behalf of the respondents. Sri Rajesh Sharma, Id. Counsel for respondent No. 4 also objected to the maintainability of present claim petition on the ground that there is inordinate delay in filing the claim petition.

4. Learned A.P.O. submitted that the Cause of Action arose on 28.06.2010, when petitioner's husband was dismissed from service.

5. The petitioner deliberately did not approach any forum under the law, despite having knowledge of limitation. [Reference: Para 3 of counter affidavit of Bhagat Singh Phonia, S.D.M., Didihat)

6. Learned A.P.O. also submitted that claim petition is to be filed within one year from the date of Cause of Action, but the petitioner filed the claim petition in the month of September, 2021, after a lapse of almost 10 years. The limitation to approach the Tribunal was upto 28.06.2011.

7. Regarding the plea of the petitioner for condoning the delay on account of pandemic Covid-19, Id. A.P.O. submitted that the nationwide lockdown started in March, 2020, but the limitation for filing the claim petition expired much earlier in June, 2011. Learned A.P.O. also submitted that the petitioner, being his legal representative has the right to challenge the dismissal order on behalf of her husband, on his medical condition, but the petitioner has approached the Tribunal after the death of her husband on 16.07.2019. Learned A.P.O. also argued that even if the husband of the petitioner was suffering from depression and anxiety on account of Schizophrenia for a brief interval, the claim petition ought to have been filed on time.

8. This Tribunal has held, in various 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”.

9. Clause (b) to 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]

10. 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.

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.”*

*[Emphasis supplied]*

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 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.

13. 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.

14. 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]

15. Section 5(1)(b) provides that (although) the provisions of the Limitation Act, 1963, *mutatis mutandis* apply to reference under Section 4 as a reference were a suit filed in civil court, but continues to say, in the same vein, that notwithstanding the period of limitation prescribed in the Schedule to the said Act, the period of limitation for such reference shall be one year. Section 5(1)(b) is therefore, specific in the context of limitation before this Tribunal.

16. Sub-section (1) of Section 4 of the Act 1976 has used the language “.....a person who is or has been a public servant and is aggrieved by an order pertaining to a service matter within the jurisdiction of the Tribunal, may make a reference of claim to the Tribunal for the redressal of his grievance.

16.1 Statement of Objects and Reasons (SOR) reads as below:

“.....Section 4 of the said Act provides that a person who is or has been a public servant and is aggrieved by an order pertaining to a service matter within the jurisdiction of the Tribunal may make reference of claim to the Tribunal for redressal of his grievance.....”

16.2 Section 4-A of the Act has also used the words “references of claims” and “reference of claim” in Sub-section (1) and Clauses (a) & (b) to Sub-section (5) of such Section.

16.3 Clause (b) to Sub-section (1) of Section 5 of the Act has used the word “reference” in such clause. Sub-section (2) of Section 5 of the Act has also used the word “reference”. Sub Section (5-A) to Section 5 of the Act has also used the word ‘reference’ in its text.

16.4 Section 7 of the Act provides for power to make Rules. Clause (c) to Sub-section (2) of Section 7 of the Act provides for “the form in which a reference of claim may be made.”



16.5 Furthermore, the Schedule appended to the Act has also used the words “reference of claim” or “references of claims”. Rule 4 of the Uttar Pradesh Public Services Tribunal (Procedure) Rules, 1992, provides for the following “(1) Every reference under Section 4 shall be addressed to the Tribunal and shall be made through a ‘petition’ presented in the Form-I by the petitioner.....(2) The petition under sub-rule (1) shall be presented.....”

16.6 The heading of Rule 5 is Presentation and scrutiny of petition.

16.7 Rules 4, 5, 6, 8, 16 etc. use the word ‘petition’, which, in fact, is a “reference”. The petition is only a medium of presentation. The Rules are always subordinate to the Act. The Rules are always supplementary. They are always read with the provisions of the Act. In a nutshell, a petition which is filed before this Tribunal is, in fact, a “reference of claim”.

16.8 ‘Petition’ According to New International Webster’s Comprehensive Dictionary, means “(1) a request, supplication, or prayer; a solemn or formal supplication (2) A formal request, written or printed, addressed to a person in authority and asking for some grant or benefit, the redress of a grievance, etc. (3) *Law* a formal application in writing made to a court, requesting judicial action concerning some matter therein set forth (4) that which is requested or supplicated.”

17. According to Section 9 of the Limitation Act, 1963, “where once time has begun to run, no subsequent disability or inability to institute a suit or make an application stops it.” Section 9 of the Limitation Act, therefore, runs contrary to the interest of the petitioner.

**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. 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 may be 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.

20. 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 were (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.

21. Learned Counsel for the petitioner placed reliance upon Section 6 of the Limitation Act, 1963, which reads as under:

**Legal Disability:** (1). Where a person entitled to institute a suit or make an application for the execution of a decree is, at the time from which the prescribed period is to be reckoned, a minor or insane, or an idiot, he may institute the suit or make the application within the same period after the disability has ceased, as would otherwise have been allowed from the time specified therefore in the third column of the Schedule.

2. Where such person is, at the time from which the prescribed period is to be reckoned, affected by two such disabilities, or where, before his disability has ceased, he is affected by another disability, he may institute the suit or make the application within the same period after both disabilities have ceased, as would otherwise have been allowed from the time so specified.

3. Where the disability continues up to the death of that person, his legal representative may institute the suit or make the application within the same period after the death, as would otherwise have been allowed from the time so specified.

4. Where the legal representative referred to in sub-section (3) is, at the date of the death of the person whom he represents, affected by any such disability, the rules contained sub-sections (1) and (2) shall apply.

5. Where a person under disability dies after the disability ceases but within the period allowed to him under this section, his legal representative may institute the suit or make the application within the same period after the death, as would otherwise have been available to that person had he not died.

Explanation.— For the purposes of this section, "minor" includes a child in the womb.

22. No document has been offered to show that Late Sri Naresh Giri was insane. Medical certificates do not reveal that he

was suffering from insanity. No document has been offered to show that such insanity continued upto the death of Sri Naresh Giri.

23. Plea of legal disability on account of Schizophrenia may not be available to the petitioner inasmuch as the medical certificate showing "Anxiety Neurosis" to the patient was restricted only for a period of 23 days from 12.05.1999 to 31.06.1999. (Annexure: A4) and medical certificate dated 03.09.2004 also mentioned the period of absence from duty, on account of Schizophrenia for 28 days only with effect from 03.09.2004 to 30.09.2004 (Annexure: A 4 *colly*).

24. Although Late Sri Naresh Giri had highlighted his medical condition in his representations, but this Tribunal feels sorry to note that the plea of legal disability, as provided in Section 6 of Limitation Act, 1963 will not be available to the petitioner, in the given circumstances.

25. Learned Counsel for the petitioner also relied upon the decision of Hon'ble Apex Court in *Krushnakant B. Parmar vs. Union of India and another*, (2006) 5 SCC 88. A copy of the judgement is enclosed as Annexure: A8 with the claim petition.

26. Learned Counsel for the petitioner argued that since Sri Naresh Giri suffered a lot and the proceedings were drawn against him for absence from duty, therefore the relief which was granted by Hon'ble Apex Court in *Krushnakant B. Parmar's case (supra)* be also given to Late Sri Naresh Giri and petitioner in the instant case. In all humility, this Tribunal is of the view that, at present, it is not deciding the claim petition on merits but is hearing the parties only on Delay Condonation Application and objections thereon, therefore, there is no occasion to see whether the decision of *Parmar's case* is applicable to the present petitioner or not

27. Learned Counsel for the petitioner also placed reliance upon, *Kashinath Dikshita vs. Union of India & others*, (1986) 3 SCC 229 (Annexure: A16).

28. It is also argued that Late Sri Naresh Giri was denied reasonable opportunity to defend his case and therefore impugned order of his dismissal from service is liable to be set aside. Again, we feel

sorry for the petitioner to observe that, at present, this Tribunal is not deciding claim petition on its merits but is disposing of the Delay Condonation Application along with its objections only and therefore, there is no occasion to see the applicability of Kashinath's case (*supra*) to the facts of present claim petition.

29. The Tribunal also takes cognizance of Annexure: A18, which is a legal notice to the District Magistrate, Pithoragarh for granting lawful benefits of V.R.S. or consequential reliefs of service to the dependents of the deceased.

30. It may be noted here that legal notice dated 26.02.2021 (Annexure: A18) is a non statutory representation, therefore, the delay in filing the claim petition, on account of non statutory representation, cannot be condoned in view of the decision rendered by the Hon'ble Supreme Court in State of Uttarakhand & another vs. Shiv Charan Singh Bhandari & others, (2013) 12 SCC 179.

31. Legal notice dated 26.02.2021 (Annexure: A18) was replied by S.D.M., Dharchula on 13.05.2021. The relief claimed through such legal notice was rejected (Annexure: A:18 *colly*).

32. Certain information was sought for under R.T.I. on 16.06.2021 (Annexure: A19). Replies were given by the department on 11.05.2021 (Annexure: A19 *colly*).

33. A letter was issued by S.D.M., Dharchula on 15.06.2021 for depositing excess payment of Rs. 18,249/- (Annexure: A20), which was followed by another legal notice dated 29.06.2021 (Annexure: A20 *colly*). On 29.07.2021, a letter was sent by Senior Treasury Officer to S.D.M., Dharchula for realising excess payment of Rs. 18,249/- (Annexure: A21 *colly*), which the petitioner seeks to quash.

34. It is not a consequential relief to the main relief of setting aside dismissal order. It gives the petitioner a different Cause of Action. Moreover, plural reliefs are not permissible in this Tribunal, in view of Rule 10 of the U.P. Public Services (Tribunal)(Procedure) Rules, 1992, which states that " every petition shall be based upon the single Cause

of Action and may seek one or more reliefs provided that they are consequential to one another.”

35. In Miscellaneous Application No. 665/2021 in SMW (C) No. 03/2020, the Hon'ble Supreme Court has held that the period from 15.03.2020 till 02.10.2021 shall stand excluded in computing the limitation period. In the instant case, the impugned order was passed way back on 28.06.2010 and the claim petition has been filed by the wife of Govt. Servant (since deceased) on 06.09.2021. Sri Naresh Giri died on 16.07.2019. Cause of Action arose to the petitioner on 28.06.2010. Limitation began to run on such date. Limitation expired on 28.06.2011.

36. Delay Condonation Application in filing the claim petition is dismissed. The objections filed against the same are allowed. As a consequence thereof, claim petition is dismissed, as barred by limitation.

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

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

*DATE: 27<sup>th</sup> December, 2021*  
*DEHRADUN*  
*RS*