

**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. 71/NB/DB/2021

Govind Singh Sijwali, aged about 60 years, s/o Sri B.S. Sijwali, r/o
Mohalla Talla Chinakhan, Almora, District Almora

.....Petitioner

vs.

1. State of Uttarakhand through Secretary, Medical Health and Family Welfare, Uttarakhand, Dehradun.
2. Director General, Medical Health and Family Welfare, Uttarakhand, Dehradun.
3. Chief Medical Officer, Almora.
4. Chief Medical Superintendent, Female Hospital, Almora.

.....Respondents

Present: Sri Tarun Prakash Singh Takuli, Advocate for the Petitioner
Sri Kishore Kumar, A.P.O., for the Respondents.

JUDGMENT

DATED: 28TH DECEMBER, 2021

Justice U.C.Dhyani (Oral)

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

- “i. Be pleased to direct the respondents to give the additional pay increment on the post of Junior Clerk after completing 8 years of service on the pay scale of Junior Clerk and to give the selection grade of senior clerk after completing 14 years of service on the pay scale of Junior Clerk and further to give the selection grade of next higher post as the Head Assistant after completing 24 years on the pay scale of Junior clerk along with 12% annual interest/ ACP and further be pleased to direct the respondents to give the actual promotional benefit to the petitioner on the post of Senior Clerk/ Senior Assistant from 14.09.2009 and further the actual promotional benefits to the petitioner on the post of Head Assistant from 09.05.2013 along with 12% annual interest as from the said dates the juniors to the petitioner were given the actual benefits, else the petitioner shall suffer irreparable loss and injury and the same cannot be compensated by any means
- ii. To award the cost of the petition in favour of the petitioner.”

[*Emphasis Supplied*]

2. It is very easy to understand the case of the petitioner once we peruse the reliefs (*supra*) sought by the claim petitioner. The Tribunal, therefore, does not feel it necessary to reproduce detailed facts of the claim petition.

3. When the claim petition was presented and listed for admission before this Tribunal, Ld. A.P.O. vehemently opposed the maintainability of the claim petition, *inter alia*, on the ground that the same is barred by limitation.

4. Ld. A.P.O. submitted that the claim petition is clearly barred by limitation and, therefore, should not be admitted. Ld. Counsel for the petitioner, on the other hand, submitted that petitioner has filed Delay Condonation application supported by an affidavit, stating therein that the petitioner has regularly been demanding the additional pay increment after completing 08 years on the pay scale of Junior Clerk, selection grade after completing 14 years on the pay scale of Junior Clerk, promotional pay scale/ ACP after completing 24 years on the pay scale of Junior Clerk and has also

been demanding the actual promotional benefits on the post of Senior Clerk and Head Assistant from the date, since when junior to the petitioner has been getting the actual benefit. According to Ld. Counsel for the petitioner, continuous cause of action accrues to him, for claiming such service benefits from the respondents. The petitioner has retired from service from the post of Administrative Officer on 31.07.2021 from Female Hospital, Almora.

5. Ld. Counsel for the petitioner drew attention of this Court to the judgment dated 30.08.2018 rendered by Division Bench of Hon'ble High Court of Uttarakhand in SPA No. 231 of 2015, Govind Singh Sijwali vs. State of Uttarakhand & others. It will be useful to reproduce the contents of judgment dated 30.08.2018, as below:

“..... ‘Key facts’ , necessary for adjudication of this appeal are that the appellant was appointed to Class IV post in Medical Health and Family Welfare Services at Almora in the year 1979. According to him, between 05.07.1985 to 21.06.1996, he has worked on Class III post, in addition to his normal duties. Subsequently, the appellant was regularly promoted to Class III post and since then, he is getting salary of Class III post. The limited claim of the appellant in the writ petition was for salary of Class III post since 1985 to 1996.

The appellant has placed reliance upon the certificate issued by the Chief Medical Officer from time to time.

Since the Chief Medical Officer is high ranking Officer, there was no occasion for him to give false certificate to the appellant. The appellant has established on the basis of the certificate issued to him by the Chief Medical Officer that he has discharged the duties of the Clerk between 05.07.1985 to 21.06.1996. Thus, appellant is entitled to the salary on the principle of “equal pay for equal work”.

Accordingly, the appeal is allowed. Judgment passed by Ld. Single Judge, dated 06.04.2015 in WPSS No. 353 of 2009 is quashed and set aside. The respondents are directed to pay the appellant, the difference of the salary between 05.07.1985 to 21.06.1996 within a period of ten weeks from today.”

[Emphasis supplied]

6. Ld. Counsel for the petitioner further submitted that in compliance of order of Hon'ble Court, the petitioner was given notional promotion *w.e.f.* 2009 and further notional promotion *w.e.f.* 2013, but the monetary benefit, which was given to his junior, was not given to him. Ld. Counsel for the petitioner, therefore, submitted that the petitioner is claiming these reliefs in present claim petition.

7. Limited claim of the petitioner in writ petition, before the Hon'ble Court, was for salary of class III post since 1985 to 1996. He was, entitled to the salary on the principle of 'equal pay for equal work'. Respondents were directed to pay the appellant-petitioner, the difference of the salary between 05.07.1985 to 21.06.1996.

8. Learned A.P.O. submitted, *inter alia*, that if the petitioner's junior Sri Dhan Singh Bisht was granted actual promotion in the year 2009, the petitioner should have approached this Tribunal well within time and in any case on or before 2010. Learned A.P.O. also submitted that the claim petition filed in the year 2021 cannot be entertained, as the same is barred by limitation. Present claim petition has been filed on 25.08.2021. The judgement of the Hon'ble Court will not give the petitioner extension of limitation for filing present claim petition.

9. We find substance in the arguments of Id. A.P.O. that the petitioner woke up from deep slumber only when he got relief from the Hon'ble Court. Learned A.P.O. also submitted that even a Writ Court would have dismissed present petition on the grounds of delay and latches.

10. Learned A.P.O. also submitted that, even on merits, the petitioner is not entitled to the reliefs sought for in present claim petition. What prevented the petitioner from pressing these reliefs on time and more so before the Hon'ble Writ Court? We agree to the submission of Id. A.P.O. that if judgement dated 31.08.2018 (*supra*) rendered by Hon'ble High Court has not been fully complied with, it would have been proper for the petitioner to seek appropriate remedy before the Hon'ble Court for securing full compliance of such order.

11. Since the Tribunal is of the view that the claim petition is barred by limitation, therefore, it will not be proper for us to comment upon the merits of the claim petition.

12. It will be appropriate to quote the following observations of Hon'ble Apex Court in State of Uttarakhand & another vs. Shiv Charan Singh Bhandari & others, (2013) 12 SCC 179, as below:

“Not for nothing, it has been said that everything may stop
but not the time, for all are in a way slaves of time.”

13. Now, this Tribunal will deal with the issue of limitation in detail:

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;”.

14. 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]

15. 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.

16. 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]

17. 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.

18. 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.

19. 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]

20. 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.

21. 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.

21.1 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.....”

21.2 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.

21.3 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.

21.4 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.”

21.5 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.....”

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

21.7 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".

21.8 '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."

22. 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.

23. 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.

24. 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.

25. 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.

26. Delay Condonation Application in filing the claim petition is dismissed. As a consequence thereof, claim petition is dismissed, as barred by limitation, at the admission stage.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: DECEMBER 28, 2021

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