**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL**

**AT DEHRADUN**

Present: Hon'ble Mr. Justice U.C. Dhyani

------ Chairman

Hon'ble Mr. Rajeev Gupta

-------Vice Chairman (A)

**REVIEW APPLICATION NO. 01/DB/2022**

**(Arising out of order dated 27.12.2021, passed in claim petition no. 149/DB/2019)**

S.S. Yadav, aged about 54 years s/o Late G.L. Yadav, at present working and posted as Officiating Superintending Engineer, Public Works Department, Head Quarters, Dehradun, Uttarakhand

…….……Petitioner-Review Applicant

versus

1. State of Uttarakhand through Secretary P.W.D., Government of Uttarakhand, Secretariat, Subhash Road, Dehradun
2. Engineer in Chief and Head of the Department, Public Works Department, Yamuna Colony, Dehradun

…….. Respondents

Present : Sri L.K. Maithani, Advocate for the petitioner
Sri V.P. Devrani, A.P.O. for the respondents

**JUDGEMENT**

**Dated: 13th January, 2022**

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

Present Review Application has been filed by the petitioner-review applicant for reviewing the order dated

27.12.2021 passed by this Tribunal in claim petition no. 149/DB/2018, S.S. Yadav vs. State of Uttarakhand and others.

2. While deciding the claim petition, it was found that the claim petition is barred by limitation. The claim petition was also discussed at some length on merits and it was found that had the claim petition been filed on time, the same would have been allowed. But since the claim petition was held, as barred by limitation, therefore, the Tribunal refrained from issuing any direction (to the respondents), leaving it open to the Govt. to review/ revise its decision, if considered appropriate, as per law.

3. Reliefs claimed and the facts of the claim petition were mentioned in the judgement under review, a fortnight ago, and are being reproduced herein below for convenience:

> "By means of present claim petition, petitioner seeks following reliefs:
>
> "(i) To quash the impugned office order dated 13.01.2016 and office order dated 03.04.2018 (Annexures No. A-1 & A-2) along with its operation and effect, declaring the same are in violation of the Discipline and Appeal Rules, 2003 as amended in 2010 and also against the Rules of 2015, thus null & void in the eyes of law.
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> (ii) To issue an order or direction to the respondents to delete the special adverse entry from the service records of the petitioner and grant all the consequential benefits of service to the petitioner i.e. benefit of A.C.P. and promotion etc.
>
> (iii) To issue any other suitable order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.
>
> (iv) To award the cost of the petition to the petitioner."
>
> 2. Facts necessary for the adjudication of present claim petition are as follows:

At the time of filing the claim petition, the petitioner was working and posted as Officiating Superintending Engineer (Civil) at Headquarters under the Respondent Department.

In the year 2007, for the construction of Nauli Suspension Bridge at river Pinder, Karanprayag, tender was invited by the then Executive Engineer without getting any technical approval. At that time, the petitioner was posted as Executive Engineer, Berinag. There was no role of the petitioner while recommending and inviting tender for the said project.

He was transferred from Berinag to Provincial Division, P.W.D., Karanprayag in October, 2007. After joining in Provincial Division, P.W.D., Karanprayag, the tender was opened by the petitioner on 20.12.2007. The work was started.

At the level of Superintending Engineer, the estimate was kept pending for two months. The Chief Engineer, Garhwal, after 23 days, made objections in the estimate and returned the same to Superintending Engineer on 17.05.2008. The petitioner removed the objections and thereafter sent the same to the Chief Engineer *vide* letter dated 23.05.2008, on which the Chief Engineer, Pauri gave his technical approval *vide* letter dated 03.06.2008.

According to the petitioner, there was no delay on his part in seeking technical approval. The delay was on the part of higher authority, due to which the first tender holder denied to extend the validity of tender beyond 20.03.2008. There was no fault or negligence on the part of the petitioner, but the respondents initiated departmental proceedings against the petitioner.

A charge sheet was issued to him, details of which have been given in para 4(iii) of the claim petition. Petitioner submitted his reply to the enquiry officer and denied the charges levelled against him. After enquiry, respondent No.1, *vide* impugned order dated 13.01.2016, punished the petitioner by awarding special adverse entry (Annexure No. A-1).

In para 4(v) of the claim petition, it has been indicated that the impugned order dated 13.01.2016 was never

communicated to the petitioner and came to his knowledge only in June, 2016, when he received a copy of minutes of D.P.C.

Aggrieved by the said order, petitioner submitted his detailed representation to respondent No. 1 on 16.07.2016, with all documentary proof in support, but the respondent No. 1 did not pay heed to such representation of petitioner. The petitioner again moved reminders on 20.02.2017, 21.04.2017 and 21.08.2017 to respondent No. 1. Respondent No.1, *vide* office order dated 03.04.2018, rejected his representation.

According to the petitioner, charge sheet was issued to him by inquiry officer and not by the disciplinary authority and as such, the inquiry officer was appointed even before issuing the charge sheet, which is against rules. The petitioner was never called in the inquiry. No show-cause notice was given to him before passing impugned punishment-order. The whole proceedings have been conducted in violation of principles of natural justice. Special adverse entry has not been mentioned, as penalty, in Rule 3 of the Discipline and Appeal Rules, 2003. Even on merits, the impugned punishment-order is liable to be set aside, for the reason that the petitioner was not guilty of misconduct levelled against him. According to the petitioner, he is entitled to the reliefs claimed.

3. Counter affidavit has been filed on behalf of respondents No. 1 & 2 denying material averments mentioned in the claim petition.

4. Rejoinder affidavit has been filed against the counter-affidavit filed on behalf of respondent No. 1 & 2. In the rejoinder affidavit, the facts mentioned in the claim petition have been reiterated."

4. The claim petition was found to be barred by limitation. Relevant material paragraphs are excerpted herein below for ready reference:

"5. Regarding limitation, it has been mentioned in the claim petition that the copy of order dated 13.01.2016, awarding

special adverse entry to the petitioner, was received by him only in June, 2016. He made a representation to respondent No. 1 on 16.07.2016, but since no action was taken by the said respondent, therefore, the petitioner submitted reminders on 20.02.2017, 21.04.2017 and 21.08.2017. The representation was rejected by respondent No. 1 *vide* order dated 03.04.2018. Present claim petition has been filed on 25.11.2019.

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 a claim petition in which the petitioner filed a statutory representation, which was decided on 30.04.2018. The claim petition has been filed on 25.11.2019, hence the same has been filed beyond limitation of one year.

The petitioner is not entitled to the benefit of the Rules of 2015. The Tribunal has already taken cognizance of the fact that representation was filed by the petitioner, to respondent No. 1, against the impugned order dated 13.01.2016, which statutory representation has been decided by the said respondent on 03.04.2018. The period between 16.07.2016 and 03.04.2018 has already been excluded in view of Section 5(1)(b)(ii) of the Act, which says that "in computing the period of limitation, the period beginning with the date on which the public servant makes a representation ….. in accordance with the rules ….. 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 ….. shall be excluded."

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

*"(b) The provisions of the Limitation Act, ....., that-*
*(i) Notwithstanding ..... 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. 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 such sufficient cause, therefore, this Tribunal cannot condone the delay in filing a claim petition, howsoever reasonable petitioner'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. One may argue, on the strength of Section 2(b) of the Limitation Act, 1963, that 'application' includes a 'petition', but the Tribunal has noticed, at the same time, that the word 'Suit' does not include an 'appeal' or 'application', as has been mentioned in Section 2(l) of the Limitation Act, 1963.

18. 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.

19. 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.

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

.....

19.8 ....."

20. 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."

21. In the instant case, office order dated 13.01.2016 and office order dated 03.04.2018 (Annexures A-1 & A-2) have been put to challenge. The claim petition has been filed on 25.11.2019. The same, in any case, ought to have been filed on or before 03.04.2019. There is delay of more than seven months while assailing office order dated 03.04.2018."

5. As has been mentioned above, the claim petition was also discussed, at some length, on merits also. It was found that the claim petition has substance, on merits, but since it was found that the claim petition is barred by limitation, therefore, no useful purpose would have been served by increasing the volume of the judgement by expanding the pages and, therefore, after quoting Rule 14 of the Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003, instead of giving any direction, the matter was left to the discretion of the Govt. to review or revise its own decision, if considered appropriate, as per law.

6. Paras 30, 31, 32 and 34 of the judgement under review are also reproduced herein below for ready reference:

"30. Rule 14 of Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003, reads as below:

> "The Governor may, at any time, either on his own motion or on the representation of the concerned Government Servant review any order passed by him under these rules, if it has brought to his notice that any new material or evidence which could not be produced or was not available at the time of passing the impugned order or any material error of law occurred which has the effect of changing the nature of the case."

31. Limitation is for the Tribunal, not for the Govt. We have observed that the impugned punishment ought not to have been given to the petitioner, for various reasons, enumerated herein above. The Govt. can always review or revise its own order. No time limit has been prescribed for the Govt. to do the same. Although the claim petition has substance on merits, but since the same has been filed beyond limitation period, therefore, no direction can be issued to the respondent authorities.

32. Before parting with, 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."

34. The Tribunal also refrains from issuing any direction, leaving it open to the Govt. to review/ revise its own decision, if considered appropriate, as per law."

7. Hardly had the ink of the judgement dried, the petitioner filed this Review Application, the main grounds of which shall be discussed, now, in the following paragraphs.

8. It has been indicated in ground (b) of the Review Application that, after challenging the order dated 03.04.2018 before this Tribunal, the petitioner received a copy of noting of respondent no. 1 in the file relating to disposal of representation of the petitioner. Such information, according to the petitioner-review applicant, was obtained under R.T.I. In ground (b), it has been mentioned that the proceedings in respect of his representation against special adverse entry continued on 03.05.2018 (and not on 03.04.2018). The noting has been filed by the petitioner as 'Annexure: A16' to the rejoinder affidavit.

9. For a moment, the Tribunal accepts such argument of learned Counsel for the petitioner that the proceedings in respect of his representation continued upto 03.05.2018, still the limitation expired on 03.05.2019. The claim petition has admittedly been filed on 25.11.2018, which is beyond time.

10. It may be noted here that the petitioner himself has challenged the order dated 03.04.2018 in his claim petition. He is now estopped from arguing that no such order was passed.

11. It is the submission of learned Counsel for the petitioner that it was not possible to pass the order on 03.04.2018 (*But then, how has it been passed?)*. The Tribunal has not said that such order was passed on 03.04.2018, it is the petitioner- review applicant himself who stated, in the

claim petition, that an order was passed against him on such date. How can this Tribunal help him?

12. It has further been indicated in ground (b) of the Review Application that the petitioner demanded the attested copy of impugned order dated 03.04.2018 under R.T.I. The respondent communicated order dated 03.05.2018 to the petitioner for the first time in September 2020, under R.T.I. We are unable to subscribe to the contention of learned Counsel for the petitioner that the petitioner would be entitled to extension of limitation in such conditions.

13. Firstly, contents wise order dated 03.04.2018 (Annexure: A2) and order dated 03.05.2018 (Annexure: A16) are the same. Secondly, the petitioner himself has challenged the order in his claim petition, stating that it was dated 03.04.2018, which was put to challenge in his claim petition. Thirdly, the respondents did not 'communicate' the order dated 03.05.2018 to the petitioner in September, 2020, for a copy of the same was 'received' by him under R.T.I. Fourthly, order dated 03.05.2018 was not put to challenge by the petitioner, presumably because, contents wise the same was *verbatim* order dated 03.04.2018. Fifthly, even if there was a cutting in the letter, substituting the month May in place of April, the limitation to file the claim petition expired in 03.05.2019, as this Tribunal has noted earlier that the claim petition has been filed on 25.11.2019.

14. Another fact has been mentioned by the petitioner in ground (b) of the Review Application that order dated 03.05.2018 (Annexure: A16) and information dated 07.09.2020 (Annexure: A28) were enclosed by the petitioner along with his rejoinder affidavit, informing the Tribunal that his claim petition is within time. The Tribunal notices that the 'relief clause' was not amended by the petitioner. Rejoinder affidavit is no doubt, part of the pleadings, but did the

petitioner- review applicant amend his claim petition in the light of new facts thus brought on record? The reply is in the negative. It does not lie in the mouth of the petitioner to say that the order dated 03.05.2018 was 'communicated' to him for the first time in September, 2020. It may be stated, at the cost of repetition, that the 'information' received by the petitioner in September, 2020, was not, 'communication' of order dated 03.04.2018 or 03.05.2018. It amounts to 'procuring information'. 'Communication' is different from 'procurement of information' or 'obtaining information'. 'Communication' is routine in official business. Procurement is 'discovery' of certain facts on 'excavation', which purely depends upon the sweet-will of the person involved in invention or discovery. Limitation starts from 'normal communication' and not on 'discovery' of certain facts, on the volition of discoverer or inventor.

15. Another attempt has been made by the petitioner-review applicant to bring the claim petition within limitation, by taking ground (c) in the Review Application that the responded no. 1 has rejected his representation dated 21.08.2017 and not the representation dated 16.07.2016 and 21.04.2017, which, according to Review Applicant, was a statutory representation. In ground (c), it has been pleaded that till date his representation has not been decided by respondent no. 1. The Tribunal is also unable to accept such contention of learned Counsel for the petitioner. Did the petitioner state, in his claim petition, that a direction be given to the respondent no. 1 to decide his (undecided) representation? The petitioner did not do so.

16. The Courts or the Tribunals decide *lis* on the basis of pleadings and not on the basis of extraneous material.

17. Another attempt has been made to extend the period of limitation by taking ground (d) by stating that no guilt of the

petitioner was found (Annexure: A30), which amounts to acknowledgement of the respondent. In all humility, we are again unable to agree to such contention of learned Counsel for the petitioner-review applicant that 'Annexure: A30' partakes the nature of 'acknowledgment' and thereby a fresh cause of limitation shall begin to run in view of Section 18 of the Limitation Act, 1963 read with Indian Evidence Act, 1872. The Tribunal does not find it difficult to reject such argument of learned Counsel for the petitioner-review applicant summarily, for Section 18 of Limitation Act, 1963 and Indian Evidence Act, 1872 operate in different fields.

18. Of late, when nothing substantial is found, there is growing tendency of impeaching the action of the other party, by proclaiming that the same as 'fraud'. There is no gainsaying the fact that fraud vitiates all the proceedings, but the question is- what 'fraud' has been committed on behalf of respondents with the petitioner? Is it fraud, if the word 'April' has been substituted by the word 'May'? Even by substituting the date 03.05.2018 for 03.04.2018, the claim petition which was filed on 25.11.2019 is beyond limitation. The allegation of fraud has been levelled by the petitioner in ground (e) of the Review Application. The Tribunal is unable to accept that 'fraud' was committed upon the petitioner.

19. According to ground (i), if the claim petition has been dismissed on the ground of delay, substantial justice has not been done to the petitioner. Again, in all humility, this Tribunal does not find force in such contention, inasmuch as the limitation clauses have been introduced in the enactments to ensure that the litigant should come to Tribunal/ Court promptly. Limitation of one year has been prescribed in the U.P. Public Services (Tribunal) Act, 1976 (as applicable to Uttarakhand) for filing references.

20. Philosophy underlying the Law of Limitation may, briefly, be stated thus:

(i) One of the considerations on which the doctrine of limitation and prescription is based upon is that there is a presumption that a right not exercised for a long time is non-existent [Salmond's Jurisprudence, eighth edition, pages 468,469].

(ii) The object of the law of limitation is to prevent disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by party's own inaction, negligence or latches [AIR 1973 SC 2537(2542)].

(iii) The object of law of limitation is in accordance with the maxim, *interest reipublicae ut sit finis litium*-which means that the interest of the state requires that there should be an end to litigation.

(iv) Statutes of limitation and prescription are statutes of peace and repose.

(v) Rule of vigilance, which is foundation of statute of limitation, rests on principles of public policy.

(vi) The purpose of Rules of Limitation is to induce the claimants to be prompt in claiming relief.

(vii) Parties who seek to uphold their legal rights should be vigilant and should consult their legal experts as quickly as possible. They cannot sleep over the matter and at a later stage seek to enforce their rights, which is likely to cause prejudice to other parties. This is precisely the reason why periods of limitation are prescribed in many statutes.

(viii) The Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do

not resort to dilatory tactics but seek their remedy within a time fixed by the legislature [AIR 1958 Allahabad 149(153)].

(ix) Law of limitation is procedural. It would apply to proceedings *i.e.* law in force on the date of institution of proceedings irrespective of date of action- Object of statute of limitation is not to create a right but to prescribe periods within which proceedings can be instituted.

(x) The limitation for institution of a legal action is a limitation on the availability of a legal remedy during a certain period of time. Different periods are prescribed for various remedies. The idea is that every legal action must be kept alive for a legislatively fixed period of time. The object of legal remedy is to repair a damage caused by reason of a legal injury suffered by the suitor. A legal remedy, therefore, can never come into existence before a legal injury occurs. It is the legal injury that calls legal remedy to life and action. Limitation fixes the life span of a legal remedy for the redressal of a legal injury. It is not considerable that the legislature would fix the limitation to run from a point earlier than the occurrence of a legal injury, after which only a legal remedy can come into existence. Jurisprudentially, therefore, a period of limitation can only start running after an injury has occurred. Then an appropriate legal remedy springs into action.

(xi) When the language of statute is clear, the court is bound to give effect to its plain meaning uninfluenced by extraneous considerations but where the language of the enactment is not itself precise or is ambiguous or of doubtful import, recourse may be had to extraneous consideration. No exception can be recognized in these rules of construction in the case of Limitation Act [AIR 1941 PC 6 (9)].

(xii) The Rules of Limitation are, *prima facie*, rules of procedure [AIR 1953 Allahabad 747 (748) (FB)].

(xiii) When the Act prescribes a period of limitation for the institution of a particular suit, it does not create any right in favour of person or define or create cause of action, but simply prescribes that the remedy can be exercised only within a limitation period and not subsequently.

(xiv) Section 3 of the Limitation Act puts an embargo on the Court to entertain a suit, if it is found to be barred by limitation.

(xv) The Court cannot grant any exemption from limitation on equitable considerations or on grounds of hardships [AIR 1935 PC 85].

(xvi) Section 5 of Limitation Act does not apply to the suit, as the word 'suit' is omitted by the legislature in the language of the said section and therefore delay in filing suit cannot be condoned while invoking Section 5 [2010 (168) DLT 723].

(xvii) Section 5 deals only with the admission of appeals and applications after time [1952 All LJ (Rev.) 110 112 (DB)].

(xviii) Courts have no power to extend the period of limitation on equitable ground and equity cannot be the basis for extending the period of limitation.

(xix) Provisions of Section 5 of Limitation Act will be applicable not only to an appeal but will also apply to an application.

(xx) The practical effect of Section 21 of the Administrative Tribunals Act, 1985 is the same as that under Section 5 of the Limitation Act 1962, which also enables a

person to apply to the Court even after the period specified for making the application is over, leaving the discretion in the Court to condone or not to condone the delay.

(xxi) Section 5 is not applicable to proceedings under the Contempt of Courts Act [1988 All LJ 1279].

(xxii) In cases covered by statutory period of limitation, the limitation sets in by automatic operation of law.

(xxiii) If suit for specific performance of contract has not been filed within prescribed period of limitation, then the same cannot be entertained and the delay cannot be condoned by taking recourse to Section 5, since said provision is for extension of time prescribed in law only in matter of appeals and applications and not in matter of delay in filing of suit resulting in legal bar [AIR 2008 (NOC) Page 2085 (Patna)].

(xxiv) Where an application under Section 9 of the Administrative Tribunals Act was filed after about 4 years from the limitation, the fact that the employee's representation against impugned order of dismissal was pending or that he was making repeated representation would not save the limitation and said delay could not be condoned on that ground.

21. In ground (j), it has been mentioned that by not taking the approval of Hon'ble Chief Minister, the respondent department has fraudulently concealed the impugned order from the top executive. This Tribunal, while discussing the merits of the claim petition, has itself observed that the representation ought to have been sent to the Hon'ble Chief Minister for decision and that is why the Tribunal, found substance in the claim petition of the petitioner on merits. Not sending the file to Hon'ble Chief Minister for approval does not amount to 'fraud'.

22. In a nutshell, the petitioner has tried to make a mountain out of molehill, by introducing those facts which have no bearing on the merits of the Review Application.

23. Review jurisdiction has very limited scope. There is no error apparent on the face of judgement under review.

24. Review Application thus fails and is dismissed.

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

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

*DATE: 13th January, 2022*
*DEHRADUN*
*RS*