

**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. 56/NB/DB/2021

Sri Jagdish Prasad Vishwakarma aged about 59 years s/o Late Sri R. L.Vishwakarma r/o Village Haripur Gangu, near Chaupula Chauraha, P.O. Haripur Nayak, Haldwani, District Nainital, presently posted as Additional Assistant Engineer, Provincial Division, PWD, Rudrapur, District Udham Singh Nagar.

.....Petitioner

vs.

1. State of Uttarakhand through Principal Secretary, Public Works Department, Civil Secretariat, Subhash Road, Dehradun.
2. Engineer-in-Chief, Public Works Department, Yamuna Colony, Dehradun.
3. Chief Engineer (Establishment), Public Works Department, Yamuna Colony, Dehradun.
4. Superintending Engineer, Public Works Department, 4th Circle, Rudrapur, District Udham Singh Nagar.

.....Respondents

Present: Sri Hari Mohan Bhatia, Advocate for the Petitioner
Sri Kishore Kumar, A.P.O., for the Respondents

JUDGMENT

DATED: FEBRUARY 25, 2022

Per: Sri Rajeev Gupta, Vice Chairman (A)

This claim petition has been filed seeking the following reliefs:

“(I) To issue the order and direction and set aside the order dated 19.01.2017 and 07.01.2020 (Annexure No.1).

(II) To issue the order and direction to respondents to promote the petitioner on the post of Assistant Engineer w.e.f. 24.08.2006 with all consequential benefits from 24.08.2006 for which the petitioner is entitled and with a further prayer to hold the DPC for further Promotion of the petitioner on the post of Executive Engineer and grant the notional promotion/ promotion to the petitioner from the date when his junior Dinesh Prasad Arya promoted on the post of Executive Engineer.

(III) To issue the order and direction to the respondents to provide the benefit of second ACP in grade pay of Rs. 6600/- after completion of 16 years service and third ACP in grade pay of Rs. 8700/- after completion of 26 years service to the petitioner as per the law and also direct the Respondents to grant 12% interest from the date of accrual of 2nd and 3rd ACP till its actual payment.

(IV) To issue order and direction to the respondents to pay the salary to the petitioner from 17.09.2009 till 11.06.2010.

(V) Issue any other relief, which this Hon’ble Court may deem fit and proper in the circumstances of the case.

(VI) Cost of petition may be awarded in favour of the petitioner.”

2. According to the claim petition, the brief facts of the case are as follows:

The petitioner was initially appointed in the year 1985 as Junior Engineer (*Ad hoc*) in the respondent department. He was confirmed on this post in the year 1990. The petitioner was promoted on *ad hoc* basis to the post of Assistant Engineer on 24.08.2006 and he joined his services as Assistant Engineer in the year 2006 itself. It was also mentioned in the *ad hoc* promotion order that requisition to the State Public Service Commission will be sent separately by the respondent department. The

respondent department sent the requisition to the Public Service Commission on 02.08.2010 in which the name of the petitioner for promotion to the post of regular Assistant Engineer in the selection year 2006-07 was not recommended while he was given appointment on *ad hoc* basis on the post of Assistant Engineer in the selection year 2006-07. The petitioner is senior to one Sri Dinesh Chandra Arya whose name had been recommended for promotion to the post of regular Assistant Engineer. Meaning thereby, the petitioner was also eligible and entitled to promotion to the post of regular Assistant Engineer in the selection year 2006-07.

On 04.06.2009, when the petitioner was posted at Construction Division, Lohaghat, a small bridge (*Puliya*) of about 06.70 meters collapsed at the time of putting the slab, by the fault of the contractor. In this regard, a preliminary enquiry was conducted by the Superintending Engineer of the department. On the basis of the said enquiry, the petitioner was put under suspension on 17.09.2009. Thereafter, petitioner's suspension was revoked on 11.06.2010 by the respondent department. The charge sheet was given to the petitioner after about 06 months on 22.03.2010. As per the charge sheet dated 22.03.2010 given to the petitioner, only one charge was framed against him that at the time of placing the concrete over the small bridge (*Puliya*) by the contractor, the petitioner did not inspect the shuttering as placed by the contractor and that at the time of starting the work of placing the concrete, the petitioner was not present at that place. It was also stated that at the time of starting the work for placing the concrete, the Junior Engineer has given the information for starting the work by contractor on telephone and at that time petitioner was present in the office and he reached at the place of construction after some time and after 4 to 5 hours of starting the work of placing the concrete the small bridge (*Puliya*) collapsed and the same is fault on the part of the petitioner.

Against the chargesheet the petitioner duly replied on 18.04.2010 denying the said charges. In the reply, the petitioner also stated that since 30.05.2009 till 03.06.2009 the petitioner was out of station and his leave

was duly sanctioned for this period by the respondent department and before joining the duty at Lohaghat the petitioner was in Circle Office, Pithoragarh for the official work and later on, the Junior Engineer who was present at Lohaghat at the work site informed telephonically that the contractor is placing the concrete over the small bridge (*Puliya*). The petitioner told the Junior Engineer that he was reaching at the spot as soon as possible and thereafter the petitioner leaving behind all his official work at the Circle Office, Pithoragarh reached at the work site. When the petitioner reached at the work site, he found that the labourers of the contractor had already mixed up all the material and they were ready to place the concrete and at that time the contractor was not available at the work site. In the absence of the petitioner and in the presence of the then Junior Engineer the shuttering had been completed and reinforcement material had already been placed and all that work had been done in the presence of Junior Engineer because the petitioner was on leave.

After submission of the reply by the petitioner, the respondents on one hand revoked the suspension of the petitioner and on other hand being not satisfied with the reply of the petitioner appointed the enquiry officer for the purpose of enquiry in the matter. On 13.09.2010 the enquiry officer wrote a letter to the petitioner with regard to the enquiry being conducted by him and he asked the reply from the petitioner. The petitioner duly submitted his reply on 17.12.2010. Thereafter the enquiry officer submitted his report to the office of Engineer-In-Chief and after about 04 years, the Engineer-In-Chief, PWD, Dehradun called further explanation from the petitioner, for which the Engineer-in-Chief was not entitled as per the law because the Government of Uttarakhand appointed the Chief Engineer, Garhwal Region, PWD, Pauri as enquiry officer and he submitted his report to the Government of Uttarakhand as per law, therefore the Engineer-In Chief had no right to call any explanation on the basis of the enquiry report by the enquiry officer. Even then the petitioner submitted his reply on 03.08.2015. After about 07 years of the

appointment of the enquiry officer on 19.01.2017 the respondent no. 1 *i.e.* Government of Uttarakhand/ appointing authority punished the petitioner by a minor punishment of bad entry in the service book of the petitioner along with stoppage of one increment. The said punishment order has been passed by the respondent on the basis of the enquiry report dated 02.06.2016 as submitted by the enquiry officer.

As per the order dated 19.01.2017 the enquiry officer submitted his report to the appointing authority/Government of Uttarakhand 02.06.2016 and the respondent no. 1 passed the impugned order on 19.01.2017 but before passing the impugned order dated 19.01.2017 neither the appointing authority gave any show cause notice to the petitioner nor any explanation has been called from the petitioner before passing the impugned punishment order and as per the settled principle of law, the appointing authority is duty-bound to call explanation or to provide the opportunity of hearing to the petitioner before passing the punishment order. The said punishment order, as passed by the appointing authority is violative of principle of natural justice.

On one hand, the name of the petitioner was not recommended for regular promotion on the post of Assistant Engineer on 02.08.2010 to the Public Service Commission but one more office memorandum dated 02.08.2010 has been issued by the respondents on the basis of the DPC dated 01.08.2010 stating that the envelope of the petitioner has been kept in sealed cover. As yet the recommendation of the petitioner is kept in sealed cover and not recommended for regular promotion on the post of Assistant Engineer for the selection year 2006-07. *Vide* O.M. dated 02.08.2010, the petitioner has been reverted back on the post of Junior Engineer. Thereafter, petitioner was given charge of officiating Assistant Engineer on 26.08.2010 by the respondent and the petitioner worked as officiating Assistant Engineer from 26.08.2010 till 06.01.2020. Thereafter in view of the order dated 07.01.2020, the petitioner was reverted back on the post of Additional Assistant Engineer.

Immediately after the incident in year 2009, the contractor took the responsibility of negligence over himself and he constructed the small bridge (*Puliya*) immediately thereafter. In this regard, the Executive Engineer sent the report on 24.07.2009 to the Chief Engineer, Level-I, PWD, Dehradun stating therein that on 04.06.2019 due to accident, the under construction small bridge (*Puliya*) collapsed and same was reconstructed by the contractor on its own expenses and for which no payment has been made by the department, therefore, in reconstruction of small bridge there is no loss to the Government and there is no casualty due to the incident. But the respondents did not take any cognizance of this letter dated 24.07.2009 and passed the impugned order against the petitioner. The punishment order as passed in the year 2017 relates to the year 2009-10 and effect of the same will continue only for 05 years *i.e.*, upto the year 2014-15. If the petitioner is considered in between this period for promotion, the said order will be read by the Departmental Promotion Committee (DPC) but the respondent failed to consider this aspect of the matter and reverted back the petitioner from the post of officiating Assistant Engineer to Additional Assistant Engineer on 07.01.2020 in view of the punishment order dated 19.01.2017. The action on the part of the respondent is bad in law and liable to be set aside.

The petitioner was eligible for promotion in the year 2006 itself after completing the requisite services as per the service rules on the post of Assistant Engineer. Therefore, the respondent looking into the service record as well as considering the seniority of the petitioner passed the order for promotion of the petitioner on the post of Assistant Engineer on *ad hoc* basis *vide* its order dated 24.08.2006. Other employees, whose names were sent by office memorandum dated 02.08.2010 to the Public Service Commission for promotion on the post of Assistant Engineer, have been promoted after the approval by the Public Service Commission from the date of their initial promotion *i.e.* 24.08.2006, and the petitioner was denied promotion on the post of Assistant Engineer.

The petitioner is entitled for Assured Career Progression (ACP) firstly, after completion of 10 years of service, secondly 16 years and thirdly after 26 years of service but the respondents have given the benefit of ACP to the petitioner only after 10 years of service and two other ACPs for which the petitioner was entitled after completion of 16 years of service and 26 years of service have not been given to the petitioner. The petitioner was put under suspension on 17.09.2009 and his suspension was revoked on 11.06.2010 but the petitioner was not paid any money for the period from 17.09.2009 till 11.06.2010 for which the petitioner is legally entitled and for that also the petitioner requested so many times to the respondent but as per the information of the petitioner only the bills are being prepared but no disbursement has been made to the petitioner. With regard to his grievances, petitioner raised his voice time to time and submitted his representations to the respondents on 23.01.2020 and 01.04.2021 but the respondents did not pay any heed to the same and both the representations of the petitioner are still pending for consideration with the respondents.

Hence this petition.

3. The claim petition was accompanied with delay condonation application, which was not objected to by learned A.P.O. The claim petition was admitted after condoning the delay. The Tribunal also passed an interim order on 26.10.2021 directing the competent authority to consider and make a specific order regarding pay and allowances to be paid to the petitioner during his suspension at an earliest, in terms of Para 54-B of the Financial Handbook, Vol-II to IV.

4. Counter Affidavit has been filed by learned A.P.O. on 10.12.2021 on behalf of the respondents No. 2, 3 and 4 stating about the preliminary enquiry in the matter of collapse of *Puliya*, subsequent suspension of the petitioner under the provisions of Uttarakhand Government Servants (Discipline and Appeal) Rules, 2003 (hereinafter referred to as 'the Rules of

2003'), issuance of charge sheet to the petitioner, appointment of Chief Engineer Level-II, PWD, Garhwal Region, Pauri, as enquiry officer and reminders to the enquiry officer to submit enquiry report. The Chief Engineer Level-I, Dehradun *vide* his letter dated 28.08.2014, sent the enquiry report to Engineer-in-Chief and HOD, PWD, Dehradun, who *vide* his letter dated 04.09.2014 pointed out that with the enquiry report, the representation of the petitioner, in reply to the charge has not been enclosed and directed the same to be provided. *Vide* letter dated 11.09.2014, the representation of the petitioner and photocopy of other records related to the enquiry were sent to the Engineer-in-Chief and HOD, PWD, who further sent the enquiry report and other relevant documents to the Govt. *vide* his letter dated 02.06.2016. *Vide* Govt. Office Memorandum dated 19.01.2017, the minor penalty of adverse entry and stoppage of one increment was imposed upon the petitioner and disciplinary proceedings were concluded. *Vide* Govt. Office Memorandum dated 07.01.2020, the petitioner was deputed on his original post of Additional Assistant Engineer in view of the penalty imposed upon him in the disciplinary proceedings.

The Counter Affidavit further states that the 2nd ACP has been provided to the petitioner *vide* Office Memorandum dated 20.11.2021 of the Engineer-in-Chief and HOD, PWD, Dehradun. The date of applicability of the 3rd ACP after attaining 26 years of service is 13.03.2011, when disciplinary proceedings were going on. According to the provisions mentioned in the point No. 6 of the G.O. No.872 dated 08.03.2011 and the provisions of the Rules of 2003 and the recommendation of the Screening Committee not being there, the benefit of 3rd ACP cannot be given to the petitioner.

The Counter Affidavit also states that it has been informed *vide* letter dated 23.08.2021 of the Executive Engineer, Provincial Division, PWD, Rudrapur that the bill for the arrears of balance pay of the petitioner for suspension period was sent to the Treasury which has been paid by the Treasury on 23.08.2021. It has also been contended in the Counter

Affidavit that the relief claimed by the petitioner is time barred and the petition deserves to be dismissed with cost.

The Counter Affidavit further states that *vide* Office Memorandum dated 24.08.2006, the petitioner was given *ad hoc* promotion on the post of Assistant Engineer and it was clarified in this order that it is absolutely temporary and can be terminated without prior information. It was also mentioned in this order that for regular promotion, the requisition shall be sent to the Public Service Commission separately. In case of non-selection of any personnel due to otherwise recommendation of the Public Service Commission, he shall be reverted to his original post.

The Counter Affidavit states that the proposal for promotion of the petitioner of selection year 2006-07 was sent to the Public Service Commission. In the meeting of the DPC held on 01.07.2010, recommendation regarding the petitioner was kept in a sealed envelope because of disciplinary proceeding against him and for the same reason, the recommendation in the sealed envelope was continued in the meetings of DPC on 11.11.2010 and 23.11.2011. After this, the provision of reservation in promotions in the State public service was done with. Even after that, the proposals have been made for promotion of the petitioner under the promotional quota for diploma holders but the petitioner has not been selected. The name of the petitioner has been again proposed for promotion *vide* letter dated 09.04.2021 of the Engineer-in-Chief and HOD, PWD, Dehradun at sl. No. 4 of the eligibility list.

The Counter Affidavit *inter-alia* states that the punishment of adverse entry and stoppage of one increment comes under minor penalty specified in Rule 3(Ka) of the Rules of 2003.

5. Responding to this Counter Affidavit, Rejoinder Affidavit has been filed on behalf of the petitioner mainly submitting that the respondents passed the order and punished the petitioner for adverse entry in his service record and stoppage of one increment. While passing the impugned

order, the respondents did not state about the time period of stoppage of one increment in the said order therefore, the said punishment of stoppage of one increment cannot come under the purview of Rule 3(a)(ii) of the Rules of 2003 and the said punishment will come under the purview of Rule 3(b)(i) of 2003 of the Rules of 2003, which is for major penalties and as per the settled principle of law, the respondents cannot punish the petitioner by both minor and major penalties simultaneously. Therefore, the impugned order is bad in law and liable to be set aside. Rejoinder Affidavit further states that as per the Rules of 2003, the respondent ought to have provided the opportunity of hearing to the petitioner, either before passing the order of minor penalty in view of Rule 10(2) of the Rules of 2003 or before passing the order of major penalty in view of Rule 9(4) but the respondents failed to do so before passing the impugned punishment order against the petitioner.

The Rejoinder affidavit further states that the respondents have admitted that the second ACP to the petitioner in grade pay of Rs. 6600/- has been sanctioned *vide* order dated 20.11.2021 but as on date, the petitioner has not got the benefit of second ACP and even after sanction of second ACP, the respondents have not paid any heed for making payment of arrears of second ACP, as sanctioned by them on 20.11.2021, which would be required to be given to the petitioner as per law. The petitioner has completed 16 years of service on 13.03.2001 and 26 years of service on 13.03.2011 and as per the law he would be entitled the benefit of second w.e.f. 01.09.2008 and third ACP w.e.f. 13.03.2011 after completion of 26 years of service in the department. Regarding 3rd ACP, the Rejoinder Affidavit states that even if the minor punishment awarded to the petitioner is presumed to be correct, it will affect the ACR of the petitioner only for five years as per law. The punishment which relates to the year 2009 can have the effect till the year 2014. Therefore, even then the petitioner is entitled for benefit of third ACP from 2015 itself but the respondents failed to grant benefit of third ACP to the petitioner from 2015

also. It is also relevant to submit here that the impugned order passed on 19.01.2017 is bad in law and therefore, the petitioner is entitled for the benefit of third ACP *w.e.f.* 13.03.2011 after completion of 26 years of service in the department.

Regarding delay in filing the claim petition, Rejoinder affidavit states that by present claim petition the petitioner has challenged the orders dated 19.01.2017 and 07.01.2020 and while filing the present claim petition, the petitioner also filed the delay condonation application under the Limitation Act for condoning the delay and after hearing Counsel for the parties, the Hon'ble Court condoned the delay in filing the claim petition. Therefore, the present claim petition is well within time. Rejoinder Affidavit further states that the respondents on one hand denied the second and third ACP to the petitioner after completion of 16 and 26 years of service in the department and on the other hand, they have passed the impugned order dated 07.01.2020 in view of the order dated 19.01.2017 to give effect to the punishment order which was passed on 19.01.2017. Therefore, the order dated 07.01.2020 as passed by the respondent after 03 years is bad in law and liable to be set aside.

Rejoinder affidavit also states that the arrears of salary for his suspension period have been paid to him after more than 10 years and the petitioner is entitled to 12% simple interest on these arrears, as these arrears have been paid to the petitioner after interim order passed by this Tribunal on 26.10.2021.

6. After hearing learned Counsel for the parties and perusing the record, we observe the following:

7. At the admission stage, the delay in filing the claim petition was condoned, in view of no objection to the delay condonation application by learned A.P.O. and keeping in view that the second impugned order was dated 07.01.2020, the delay in challenging which was condonable according to the judgment dated 08.03.2021 of the Hon'ble Supreme Court

rendered in *Suo-Moto* Civil Writ Petition No.03/2020 on account of Pandemic Covid-19. At that time, it was projected before the Tribunal that the punishment order dated 19.01.2017 and the Office Memorandum dated 07.01.2020 are in one continuum and both were filed together as Annexure No. 1 to the claim petition. However, this Tribunal now, finds that the punishment order dated 19.01.2017 is a distinct order *vide* which the disciplinary proceedings against the petitioner have been concluded and penalty has been imposed against him. The office memorandum dated 07.01.2020 is another distinct order *vide* which the petitioner has been posted to his original post of Additional Assistant Engineer with immediate effect in view of the punishment imposed upon him. The limitation to approach the Tribunal against the punishment order dated 19.01.2017 was only upto one year while the claim petition has been filed on 26.07.2021. Only the time spent on statutory appeal or representation against this order can be excluded from the delay as far as the limitation of making reference before this Tribunal is concerned.

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. In view of the above, we hold that the claim against the impugned punishment order dated 19.01.2017 is time barred. However, the limitation is for the Tribunal and not for the Government. We also observe that the disciplinary authority has made a mistake by not providing the opportunity of representation against the report of the inquiry officer to the delinquent-petitioner before making its mind on the punishment to be awarded to the petitioner. We also observe that under the Rules of 2003, 'withholding of increments for a specified period' is a minor penalty. The impugned order dated 19.01.2017 states that along with the adverse entry, one increment has been stopped but it has not been specified as to for how much time this increment has been stopped. If it has been stopped for good, it falls under the definition of 'major penalty'. We cannot order this order to be quashed as the challenge to the same is beyond the limitation period. We can only advise that it shall be fair on the part of the Govt. to provide an opportunity of representation against the inquiry report to the petitioner and after due consideration of the same, in addition to the enquiry report and other relevant documents, disciplinary authority may make its mind on the punishment to be awarded to the

petitioner. The punishment, if any, should also be unambiguous and not vague like stoppage of one increment given as minor punishment in the impugned order.

22. We also observe that if the requisition to the Public Service Commission for promotion of the petitioner to the post of Assistant Engineer had been sent shortly after the *ad hoc* promotion and the promotion process completed before disciplinary proceedings were started against him, recommendation in his respect would not have gone in sealed cover. We are not aware whether the incident of collapse of the '*Puliya*' and further disciplinary proceedings against the petitioner have influenced the decision of the DPC held in 2010 by the Public Service Commission as respective broadsheet and recommendations have not been placed before us. Ideally, only his Character Roll and other relevant documents upto the year 2006-07, should have been seen by the DPC for making their recommendation and keeping the same in sealed cover as disciplinary proceedings were going on against him.

23. The Counter Affidavit does not clearly state whether the earlier sealed envelope has been opened or not. It simply states that his selection could not be done and that *vide* letter dated 09.04.2021 of the Engineer-in-Chief and HOD, PWD, he is again being proposed for promotion.

24. We also observe that the benefit of 3rd ACP cannot be denied to the petitioner for all time but can be delayed depending upon effect of the punishment imposed upon him. If the Govt. acts upon our advice and after giving an opportunity of representation to the petitioner takes a fresh decision about the punishment imposed upon him, accordingly his 3rd ACP can be sanctioned. For example, if the petitioner is exonerated, then his 3rd ACP should be sanctioned from due date *i.e.*, after completion of 26 years' of service and in case of punishment of adverse entry, it can be sanctioned after such period, when the adverse entry, which should be treated to be for the year 2009-10, does not come in the way of such sanction.

25. As far as the impugned order dated 07.01.2020 is concerned, the same cannot be quashed without setting aside the order dated 19.01.2017. It is upto the Government again, to review the punishment awarded to the petitioner and accordingly take its decision about posting him as Additional Assistant Engineer or as In-charge Assistant Engineer.

26. We also observe that the disciplinary proceedings against the petitioner continued for a very long time for which the petitioner cannot be held responsible. The delay has been mainly on the part of the inquiry officer, the Engineer-in-Chief and HOD, PWD and the Govt., due to which the petitioner has undergone unnecessary harassment. In view of the same, we order that interest at the rate of 6% per annum for the delays in payment of the suspension period pay and arrears of 2nd ACP be paid to the petitioner. The interest rate of 6% per annum shall also be payable on the arrears of 3rd ACP from the date it is sanctioned to the petitioner.

27. With the above observations/directions, the claim petition is disposed of. No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: FEBRUARY 25, 2022
DEHRADUN
KNP