

**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)

CLAIM PETITION NO. 98/DB/2019

Sri Sundru Bharti, s/o Late Sri Bakhtawar Lal, aged about 61 years, Retd.,
Area Rationing Officer, r/o G-24, Mehunwala Mafi Rishi Vihar,
Dehradun, Uttarakhand.

.....Petitioner

VS.

1. State of Uttarakhand through Secretary, Food and Civil Supplies,
Government of Uttarakhand, Secretariat, Subhash Road, Dehradun
2. Commissioner, Food and Civil Supplies, Government of Uttarakhand,
Secretariat, Subhash Road, Dehradun.
3. Joint Commissioner, Food and Civil Supplies, Government of
Uttarakhand, Secretariat, Subhash Road, Dehradun.
4. District Supply Officer, Dehradun.

.....Respondents.

Present: Sri L.K.Maithani, Advocate, for the Petitioner.
Sri V.P.Devrani, A.P.O., for the State Respondents.

JUDGMENT

DATED: MARCH 04, 2022.

Justice U.C.Dhyani (Oral)

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

- i) To quash the impugned order dated 05.04.2019 (Annexure: A-7)
with its effects and operation as it relates to denial of ACP to the

petitioner and issue an order or direction to the concerned respondents to pay the benefit of third ACP since 01.09.2008 to the petitioner and further grant interest on the delayed payment of arrears of the third ACP since 01.09.2008 up to the date of actual payment at the rate of 12% per annum.

ii) To issue any other order or direction which this Court may deem fit and proper in the circumstances of the case in favour of the petitioner.

iii) To award the cost of petition."

2. The claim petition has been filed on 07.08.2019. Annexure: A-7 is an order dated 05.04.2019, which was passed on non statutory representations of the petitioner which were filed on 21.05.2018, 09.07.2018 and 22.10.2018.

3. Petitioner joined the respondent department as Clerk on 20.08.1976. He was promoted to the post of Supply Inspector in the year 2005. He was promoted as Area Rationing Officer in the year 2014. He retired as ARO after attaining the age of superannuation on 28.02.2018.

4 Respondent State *vide* G.O. dated 08.03.2011 introduced Assured Career Progression Scheme *w.e.f.* 01,09.2008, which was further modified by G.Os. on 07.04.2011, 30.10.2012, 01.07.2013, 06.11.2013 and 25.02.2014 (Copies: Annexure- A 1 *colly*). As per G.O. dated 08.03.2011, the benefit of 1st, 2nd and 3rd ACP is given to an employee after completing 10, 18 and 26 years of service from the date of regular appointment. The petitioner, in his claim petition, has pleaded that he was entitled to the benefit of 3rd ACP on 01.09.2008, as he had completed 26 years of service on such date.

5. When the petitioner was working and posted as Supply Inspector, an enquiry was conducted against him. Four charges were levelled against the petitioner. He replied to those charges. Petitioner has pleaded that the whole enquiry was conducted against the petitioner in violation of the Discipline and Appeal Rules, 2003 and principles of natural justice. No order of punishment was communicated to him, according to

petitioner. *Vide* order dated 21.10.2011, punishment of withholding of increment with cumulative effect and special adverse entry for the year 2010-11 was awarded to the petitioner, but the same was revoked by Respondent No. 1 *vide* order dated 01.04.2013. When the petitioner prayed for 3rd ACP on completion of 26 years of continuous and regular service, the respondents orally informed him that his service was not satisfactory, inasmuch as an adverse entry was awarded to him *vide* order dated 07.02.2009. Petitioner made a representation to Respondent No.2 on 06.12.2017 (Copy: Annexure- A 3), mentioning therein that copy of the order dated 07.02.2009, by which adverse entry was awarded, has not been given to him.

6. Respondent No. 3 *vide* letter dated 28.12.2017 made a query to the D.S.O., Tehri Garhwal, in respect of communication of punishment order dated 07.02.2009. The petitioner, in the meanwhile, retired from service on 28.02.2018. Thereafter, impugned punishment order dated 07.02.2009 was received by the petitioner. He made representations on 21.05.2018, 09.07.2018 and 22.10.2018 to Respondent No.1 (Copies of representations: Annexure-A5 *Colly*) and prayed for ACP and pensionary dues.

7 Petitioner filed a Claim Petition No. 74/SB/2019. Relief No. 4 was deleted [Plural relief] with liberty to file fresh claim petition in respect of 3rd ACP. Thus, punishment order dated 07.02.2009 and order dated 05.04.2019 have already been challenged by the petitioner. *Vide* letter dated 07.09.2018, D.S.O., Tehri Garhwal made a query to Sub Post Master, Dharcot, Dharmandal, Tehri Garhwal, who informed the respondents that letter No. 2401 dated 24.02.2009, by which impugned order was sent to the petitioner, was returned due to incomplete address (Copy: Annexure-A6 *colly*). Thus, impugned punishment order dated 07.02.2009 was never communicated to the petitioner. It was received by the petitioner, for the first time, only in May, 2018, when *vide* letter dated 10.05.2018, copy of impugned order dated 07.02.2009 was sent to the petitioner. The representation of the petitioner was rejected.

8. Petitioner has pleaded in Para 4.xvi of the petition, that a sum of Rs.2408.30/- was never deposited by the petitioner in the Government exchequer [*which is incorrect on the face of copy of Treasury challan dated 29.07.2009, (Annexure: CA-5)*]. *Vide* impugned order dated 05.04.2019, the respondents denied pensionary benefits, which is not permissible in the eyes of law. [In claim petition No.74/SB/2019, pensionary benefits were already released during the pendency of Claim Petition No. 74/SB/2019. The interest on delayed payment of gratuity and pension has been ordered *vide* judgment dated 04.04.2022 in the said claim petition].

9. It has been pleaded in Para 4.vii and subsequent paragraphs of the claim petition that withholding of integrity and adverse entry have not been prescribed in the penalty mentioned in the Discipline and Appeal Rules, 2003, hence, those (penalties) could not be given to the petitioner. Punishment order dated 07.02.2009 was passed without following the due process and was not communicated to him.

10. It has also been submitted by the petitioner that any adverse entry, which has not been communicated to an employee, cannot be read against that Govt. servant at the time of considering service benefits. In a nutshell, the petitioner has claimed benefit of 3rd ACP since 01.09.2008, along with interest on delayed payment of arrears of such ACP, in present claim petition. It may be mentioned here, at the cost of repetition, that the pensionary benefits have already been ordered in favour of the petitioner, along with interest in Claim Petition No. 74/SB/2019 and, therefore, only the matter relating to 3rd ACP is left to be dealt with in present claim petition.

11. Before this Tribunal proceeds further, it will be worthwhile to point out that *vide* G.O. dated 08.03.2011 (Annexure: A-1), 10 years', 18 years' and 26 years' regular, continuous and satisfactory service is required for grant of 1st, 2nd and 3rd ACP.

12. The petitioner has been given adverse entry. His integrity was withheld and there is an order of recovery against the petitioner for the

loss caused to the government. Will this amount to satisfactory service? It will not, if the petitioner is able to establish that such orders were bad in the eyes of law.

13. Written Statement has been filed on behalf of the respondents. Counter Affidavit has been filed by Sri B.S.Pangti, Joint Commissioner, Food and Civil Supplies Department, Dehradun.

13.1. It has been mentioned in the C. A. that an employee is entitled to 3rd ACP only on completion of 26 years of continuous, regular and satisfactory service. Petitioner is not entitled to 3rd ACP, inasmuch as his integrity was withheld in the year 2003-04. Petitioner's representation has rightly been rejected on 05.04.2019. He was granted Time Pay Scale on 21.08.1986, according to his service book. He was given promotional pay scale after completing 14 years of service on 21.08.1992. Petitioner was also given promotional pay scale after 19 years on 01.08.1996. He was also given 2nd promotional pay scale on completion of 24 years of service on 20.08.2000. Besides the same, petitioner was given promotion as Supply Inspector on 21.04.2005 and promotion as Area Rationing Officer in August, 2014.

13.2. Petitioner's integrity in the year 2003-04 was not certified. Recovery of Rs.2408.30/- was ordered from the petitioner for the loss caused to the Government by him, therefore, it is not possible to give him benefit of 3rd ACP *w.e.f.* 01.09.2008.

13.3. It has also been mentioned in the C.A. that the loss caused to the Govt. (Rs.2408.30/-) was deposited by the petitioner in Treasury through Challan on 29.07.2009 (Copy: Annexure- CA 5). According to the C.A., the petitioner is not entitled to any relief. Guidance has been sought from the Govt. *vide* letter dated 10.06.2019 (Copy: Annexure- CA 11) of the D.S.O. office regarding stoppage of one increment in reference to adverse entry given to the petitioner. Supporting documents have been filed with the C.A./W.S.

13.4. While holding that the charges levelled against the delinquent petitioner have been proved, he was awarded 'censure' with warning for future, as also special adverse entry in the character roll of the petitioner (Copy: Annexure-CA 8).

14. Rejoinder Affidavit has been filed by the petitioner reiterating the facts which have been mentioned in the claim petition.

15. It may be noted here that the present claim petition was filed when objections were raised by Ld. A.P.O. in claim Petition No. 74/SB/2019 Sundru Bharti vs. State and others. In Claim Petition No. 74/SB/2019, following order was passed on 28.06.2019:

"Dated: 28.06.2019

..... Ld. A.P.O., raised objection that in clause-(i) of the relief clause, petitioner is seeking quashing of the punishment order, passed in 2009, hence, their petition is time barred. Whereas, petitioner has submitted that the said order was communicated to him very late in time, against which representation was moved, which was decided by the respondents in 2019. Hence, the petition is within time.

As the issue of limitation is mixed question of law and fact, hence, it can be decided after hearing both the parties on merits of the petition, hence, keeping the question of limitation open for the parties, the petition is admitted.

....."

16. 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;"

17. 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]

18. 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.

19. 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]

20. 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.

21. 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.

22. 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]

23. 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.

24. 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.

24.1 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.....”

24.2 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.

24.3 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.

24.4 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.”

24.5 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.....”

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

24.7 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”.

24.8 ‘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.”

25. 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.

26. 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.

27. 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.

28. 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.

UNDERLYING PHILOSOPHY

29. 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 laches [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.

SUMMARY ON LIMITATION

30. Original Section 5(1)(b), as it stood substituted by U.P. Act No. 13 of 1985 (*w.e.f.* 28.01.1985), was as follows:

“5(1)(b): The provisions of the Limitation Act, 1963, shall apply to all references under Section 4, as if a reference were a suit or application filed in the Civil Court:

Provided that where any court subordinate to the High Court has before the appointed date passed a decree in respect of any matter mentioned in Section 4, or passed an order dismissing a suit or appeal for non-prosecution and that decree or order has not become final, any public servant or his employer aggrieved by the decision of such court may make a reference to the Tribunal within 60 days from the appointed date, and the Tribunal may affirm, modify or set aside such decree (but may not remand the case to any such court), and such decision of the Tribunal shall be final.”

31. Earlier, the words ‘suit or application’ were existing before the amendment. After the amendment, the word ‘application’ was omitted. The period of limitation of one year was introduced. Further, the mode of computation of period of limitation was also prescribed.

32. The intention of the legislature by substituting Section 5(1)(b) is clear. Earlier, the provisions of the Limitation Act, 1963, were applicable to all references under Section 4, as if the reference were a ‘suit’ or ‘application’ filed in the Civil Court. After amendment, the provisions of the Limitation Act, 1963, are applicable to reference under Section 4, as if a reference were a ‘suit’ filed in Civil Court. The word ‘application’ was omitted. The period of limitation for reference has been prescribed as one year. How the period of limitation shall be computed, has been prescribed in Section 5(1)(b)(ii) of the Act.

33. It may be noted here that such amendment in the U.P. Public Services (Tribunal) Act, 1976, was introduced in the year 1985, the year in which the Administrative Tribunals Act, 1985, was enacted by the central legislature. Although the word ‘application’ has been used in Section 21 of the Administrative Tribunals Act, 1985, still, the limitation for admitting such application is one year from the date on which final order has been made. As per sub section (3) of Section 21 of the Administrative Tribunals Act, 1985, an application may be admitted after the period of one year, if

the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period.

34. The delay in filing application before the Tribunal (created under the Administrative Tribunals Act, 1985) can, therefore, be condoned under Section 5 of the Limitation Act, 1963, which is not the case in respect of a reference (a suit) filed before the Tribunal created under U.P. Public Services (Tribunal) Act, 1976.

35. The petitioner was required to press for his claim within a reasonable time, as per the principle enunciated by the Hon'ble Apex Court in *Gulam Rasul Lone vs. State of J & K and others*, (2009) 15 SCC 321, which has not been done.

36. It may be pointed out, at the cost of repetition, that non-statutory representation shall not extend the period of limitation. Otherwise also, the claim petition may be dismissed on the ground of delay and laches.

37. Petitioner, in the instant claim petition, is praying for benefit of 3rd ACP along with interest *w.e.f.* 01.09.2008, Claim Petition No. 74/SB/2019 was filed on 25.06.2019 and Claim Petition No. 98/DB/2019 was filed on 07.08.2019, after a gap of more than a decade. In Claim Petition No. 74/SB/2019, respondents were ordered to release the retiral dues, along with interest on delayed payment of pension and gratuity, inasmuch as the same was petitioner's legal entitlement and the delay in filing the claim petition will not come into the way of petitioner in securing the same. Contrary to it, since the claim of the petitioner for 3rd ACP *w.e.f.* 01.09.2008 seems to be unfounded, therefore, the law of limitation will come in the way of petitioner in securing the same, apart from legal grounds on merits. The claim petition is liable to be dismissed.

38. Three punishments were awarded to the petitioner by a common order dated 07.02.2009 (Annexure: A 4/ CA: R2). They are- (i) Adverse Entry, (ii) withholding of integrity for the year 2003-04, effect of

which is for 05 years, and (iii) Recovery of Rs. 2408.30/-. Two actual promotions and four promotional scales were given to the petitioner. This Tribunal has noted above that order passed in 2009 has been challenged belatedly in 2019.

39. Petitioner is praying for 3rd ACP on completion of 26 years of service, which (service) is not satisfactory in view of the G.O. dated 08.03.2011. For grant of ACP, regular, continuous and satisfactory service is required, which is lacking in petitioner's case. The documents, which have been filed on behalf of the parties and the grounds, which have been taken by the petitioner in his pleadings, do not make out a case for expunction of adverse entry and withholding of integrity. Petitioner has already deposited a sum of Rs.2409/- in the Govt. exchequer.

40. Office order dated 22.06.2009, issued by D.S.O., Tehri Garhwal (Copy: Annexure- CA 4 *colly*) is a recovery order for the loss caused to the Govt., against the petitioner. A sum of Rs.2409/- was deposited in the Govt. exchequer through Treasury Challan on 30.07.2009. Such money was received by S.I. HQ. It appears that the signatures at the bottom of copy of the office order dated 22.06.2009 are of the petitioner, whose signatures can be compared with his short signatures/ signatures made on various pages of the present claim petition and claim petition no. 74/SB/2019. *Vide* office order dated 07.02.2009 (Annexure: A 4), Commissioner, Food and Civil Supplies, Dehradun, had directed recovery of Rs.2408.30/- from the petitioner. By the selfsame order, the integrity of the petitioner for the year 2003-04 was withheld. As has been noted above, sum of Rs.2409/- has been deposited by the petitioner through Treasury Challan in the Govt. exchequer on 30.07.2009. How can he, therefore, take a plea that the order dated 07.02.2009 (Annexure: A-4) issued by Commissioner, Food and Civil Supplies, Dehradun was not in his knowledge or was not communicated to him? Not only the order was in his knowledge, he complied with the same by depositing a sum of Rs.2409/- in the Govt. exchequer. Therefore, his argument that the order was not communicated to him, cannot be

accepted. Now, after delay of almost 10 years, he is claiming 3rd ACP on the ground that the order dated 07.02.2009 issued by the Commissioner, Food and Civil Supplies, Dehradun, whereby his integrity was withheld, was not in his knowledge. The same is contrary to the facts brought on record.

41. Since the petitioner did not file any statutory appeal against the punishment order dated 07.02.2009, therefore, the said order has attained finality. Recovery for the loss caused to the Govt. and the other punishment given to the petitioner could have been challenged in statutory appeal. No statutory appeal has been filed. Rather, the money has been deposited in the Govt. exchequer. There is no provision of statutory representation against special adverse entry given by way of punishment in disciplinary proceedings. Even if it is assumed for the sake of arguments, that the petitioner came to know about the punishment order only in 2018, he had the time to file statutory appeal against the same within 90 days and such time has also expired long ago.

42. In view of the discussion made above, the claim petition is liable to be dismissed. The same is, accordingly, dismissed. No order as to costs.

RAJEEV GUPTA
VICE CHAIRMAN (A)

JUSTICE U.C.DHYANI
CHAIRMAN

DATED: MARCH 04, 2022
DEHRADUN.

VM