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. 43/DB/2020

Rishipal Singh, s/o Late Sri Dalip Singh, aged about 50 years, presently working and posted as Accountant at Sub Treasury, Rishikesh, District Dehradun.

……Petitioner

versus

1. State of Uttarakhand through Secretary/ Principal Secretary, Finance, Government of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Commissioner, Garhwal Mandal, Pauri, Uttarakhand.
3. Collector and District Magistrate, Dehradun, Uttarakhand.

…….. Respondents

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

Judgement

Dated: 11th April, 2022

Justice U.C. Dhyani (Oral)

By means of present claim petition, the petitioner seeks a direction to set aside the impugned reversion order dated 12.01.2015 (Annexure: A1) and order dated 13.12.2019 (Annexure: A2) along with

consequential orders flowing from the impugned orders, with their effects and operation. The petitioner also seeks a direction to the respondents to restore him in the scale of accountant Rs. 9300-34800 grade pay Rs. 4800 from the date of suspension and pay the arrears along with interest.

2. When the claim petition was taken up for the first time, learned A.P.O. objected to the maintainability of the claim petition, *inter alia,* on the ground that the same is barred by limitation. The claim petition was admitted on 24.07.2020, subject to limitation.

3. At the time of final hearing, learned A.P.O. reiterated his earlier stand by arguing that the issue of limitation be decided first, before proceeding further with the merits of the claim petition.

4. *Vide* impugned dated 12.01.2015 (Annexure: A1), the petitioner was awarded major penalty. While revoking his suspension order, he was reverted to the lowest pay scale of Rs. 9300-34800 grade pay Rs. 4600/- of the accountant.

5. It was also indicated in Annexure: A1 that separate orders will be passed on remaining pay and allowances during suspension period.

6. Learned A.P.O. submitted that the claim petition in respect of setting aside order dated 12.01.2015 (Annexure: A1), issued by District Magistrate, Dehradun, is time barred in view of Section 5(1)(b) of the U.P Public Services (Tribunal) Act, 1976, (as applicable to State of Uttarakhand).

7. Such plea has been taken in the written statement/ counter affidavit, filed on behalf of the respondents by learned A.P.O. The claim petitioner has also been assailed, on merits, in the counter affidavit filed by Dr. Ashish Srivastava, District Magistrate, Dehradun.

8. Sri L.K. Maithani, learned Counsel for the petitioner, issued a notice on 05.10.2019 (Annexure: A12) to the District Magistrate, Dehradun; Commissioner, Garhwal Division and Director, Treasury, Dehradun, requesting them to re-consider the decision taken against the petitioner. It has been indicated in paras 2 and 3 of the notice that a review application dated 19.11.2015 alongwith appeal is pending and therefore, the decision on the same be communicated to him.

9. A copy of letter dated 18.11.2019, issued by Chief Administrative Officer, Commissionerate, Pauri, has been enclosed with such notice. In letter dated 18.11.2019, it has been mentioned that the punishment order dated 12.01.2015 has not been received in the Commissionerate.

10. It may be noted here that a copy of office order dated 12.01.2015 (Annexure: A1) was sent by Sri Chandesh Kumar, IAS, District Magistrate, Dehradun, to Director, Treasury; Chief Treasury Officer, Dehradun; and Sri Rishipal Singh, petitioner. The question of receipt of office order dated 12.01.2015 (Annexure: A1) in the Commissionerate, therefore, does not arise. When the copy was not sent to the Commissionerate, it was obvious that the copy of such order will not be available in such office, at Pauri. Further, since no statutory appeal was preferred to the Commissioner, therefore, no such order was available in that office.

11. Notice dated 05.10.2019 (Annexure: A12) is not a statutory notice and has, probably, been sent only to account for the lapsed limitation period.

12. Further, no authentic copy of appeal/ review application has been filed to show that such application was ever preferred by the petitioner.

13. In the counter affidavit, it has specifically been pleaded, in para 7, that no statutory appeal has been filed by the petitioner within stipulated 90 days.

14. Rule 11(4) of the Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003, reads as below:

> **11. Appeal-** (4) The appeal shall be preferred within 90 days from the date of communication of impugned order. An appeal preferred after the said period shall be dismissed summarily.

15. Admittedly, no such appeal has been filed.

16. It is a settled law that non-statutory notice will not extend the period of limitation for the petitioner.

17. Learned A.P.O submitted that the petitioner had knowledge of the impugned punishment order dated 12.01.2015 (Annexure: A1), which was duly communicated to him. Petitioner was fully aware that his suspension has been revoked and he has been reinstated in service.

18. 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 <u>one year</u>;".

19. Clause (b) to sub-section (1) of Section 5 of the Uttar Pradesh Public Services (Tribunal) Act, 1976 pro*vide*s 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]

20. 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.

21. 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]*

22. 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.

23. 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.

24. 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]*

25. 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.

26. 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.

26.1 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....."

26.2 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.

26.3 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.

26.4 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."

26.5 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....."

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

26.7 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".

26.8 '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."

27. 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.

28. 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.

29. 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.

30. 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

31. 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.

SUMMARY

32. 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 mater 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."

33. 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.

34. 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.

35. 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.

36. 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.

37. The view taken by this Tribunal is fortified by the following decisions of Hon'ble High Court of Judicature at Allahabad.

- Relevant paragraphs of Kaushal Kishore Shukla vs. State of U.P. and others, 2017 6 AWC 6452, are excerpted hereinbelow for convenience:

> "**10**. By order dated 30.08.2017, State Public Services Tribunal had dismissed the Claim Petition No. 1884/2015, which reads as under:
> "Petitioner has challenged order dated 24.02.2000 and 27.10.2000, since petition is barred by limitation in view of Section 5(1)(b) of U.P. Public Services (Tribunal) Act, 1976. Learned Counsel for the petitioner argued that condonation of delay is possible on the basis of the rule laid down in Hon'ble Apex Court's judgement dated December 17, 2014 in Writ Petition (Civil) No. 562/2012, "Assam Sanmilita Mahasangha and others v. Union of India and others", and Writ Petition (Civil) No. 876/2014, All Assam Ahom Association and others v. Union of India and others". He further submitted that violation of fundamental rights granted in part III of constitution of India cannot be subjected to statutory limitations.
>
> Learned P.O. objected on the ground of bar created by Section 5(1)(b) of the Act and submitted that Tribunal has no power to condone the delay as proceedings are orginal in nature. He placed before us Allahabad High Court's judgement given in the case of Karan Kumar Yadav v. U.P. State Public Services Tribunal and others, 2008(2) AWC 1987 (LB).

In view of above, we dismiss the claim petition on the ground of limitation.

…….

22. For the forgoing reasons, we do not find any illegality or infirmity on the part of the Tribunal thereby dismissing the claim petition filed by the petitioner/ claimant as being barred by limitation.

23. In the result, writ petition lacks merit and is dismissed."

- Relevant paragraph of Karan Kumar Yadav vs. U.P. State Public Services Tribunal and others, 2008 2 AWC 1987, reads as under:

> **"15.** In view of the aforesaid provision of the Act and the legal provision in respect to the applicability of Section 5 of the Act, it can safely be held that the application for condonation of delay in filing a claim petition would not be maintainable nor entertainable. The Tribunal will cease to have any jurisdiction to entertain any claim petition which is barred by limitation which limitation is to be computed in accordance with the provisions of the Tribunal's Act itself and the rules framed thereunder."

38. The claim petition is, thus, clearly barred by limitation.

39. It will also 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."

* * *

40. Petitioner was arrested in crime case no. 170/14, PS Galshaheed, Moradabad under Sections 420, 467, 468, 471, 452, 323, 504, 506 IPC. He was suspended. Charge sheet was issued to him. He was posted as Accountant. The matter was enquired. Enquiry report was submitted. Second show cause notice was given to him and after considering all the aspects, he was awarded major penalty.

41. Petitioner committed violation of Rule 3(1) and Rule 26 of Uttarakhand Government Servants' Conduct Rules, 2002.

42. Sri L.K. Maithani, learned Counsel for the petitioner submitted that the petitioner filed a *representation*, the decision of which was never communicated to him. When notice was sent on behalf of the

petitioner, then only the petitioner came to know that his *representation* was disposed of. Learned Counsel for the petitioner also submitted that the enquiry officer was appointed before issuance of charge sheet. It is also submitted that punishment order was passed without show cause notice. Learned A.P.O. refuted the same by submitting that it was a case of deemed suspension following arrest of the petitioner in a criminal case and remaining in judicial custody for more than 48 hours, followed by enquiry. Learned A.P.O. replied that the petitioner unauthorizely went to Moradabad and no station leave or casual leave was taken by him. He obtained an *ex-parte* decree of divorce on 18.12.2006, which was subsequently set aside. Criminal case of bigamy is pending before the Magistrate's Court.

43. It is also submitted by learned A.P.O. that statutory appeal under Rule 11(1) of the Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003, was required to be filed by the petitioner within 90 days, which has not been filed and therefore, impugned order has become final.

44. It is also pointed out by learned A.P.O. that, according to service book, permanent address of the petitioner is of Moradabad. The notice sent on behalf of the petitioner is non statutory notice. *Statutory appeal* should have been preferred to the Commissioner. No such appeal was filed and therefore, commissionerate had no knowledge about the same. *Representation* does not lie against the impugned order dated 12.01.2015.

45. Learned A.P.O. submitted that petitioner's earlier non-statutory representations dated 19.11.2015 and 27.07.2017 were dismissed by District Magistrate, Dehradun, which fact may be gathered from letter dated 13.12.2019 (Annexure: A2) sent by DGC, Civil, Dehradun, to the petitioner. The petitioner was arrested in the night of 10.04.2014 by Moradabad police. He was sent to judicial custody for 14 days. Petitioner was posted in sub-treasury at Tiuni

(District Dehradun). He was having keys of almirahs. All the documents were with him in the almirah. Office work remained interrupted inasmuch as the documents and keys of almirahs were with the petitioner. Consequent upon his arrest, he was suspended. Sri Lalit Narayan Mishra, Assistant Collector, was appointed as enquiry officer. Another charge against the petitioner was that he married second woman, during the lifetime of first wife. Criminal charge of bigamy is pending adjudication before the Magistrate's court.

46. The Tribunal has noted above that no statutory appeal against the impugned punishment order dated 12.01.2015 (Annexure: A1) has been filed. The same has attained finality.

47. The petitioner has not been able to make out a case for interference in the punishment order. Therefore, claim petition is liable to be dismissed, on merits also. The Tribunal does not think it necessary to go into further details, because it has already been held above that the claim petition is barred by limitation.

* * *

48. When impugned punishment order was passed on 12.01.2015 (Annexure: A1), it was indicated therein that separate orders will be passed on the pay and allowances during the suspension period. The petitioner was suspended *w.e.f.* 11.04.2014 (Annexure: A3) and his suspension was revoked on 12.01.2015 (Annexure: A1). It appears that no orders on remaining pay and allowances, as promised in office order dated 12.01.2015, have been issued.

49. Para 54-B, Financial Handbook, Vol. II, Part 2 to 4, reads as below:

> "**54-B** (1) When a Government servant who has been suspended is reinstated or would have been so reinstated but for his retirement on superannuation while under suspension, the

> authority competent to order reinstatement shall consider and make a specific order—
>
> (a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with reinstatement or the date of his retirement on superannuation as the case may be; and
>
> (b) whether or not the said period shall be treated as a period spent on duty.
>
> (2).....

[*Emphasis supplied*]

49.1 Para 54-B Financial Handbook (*supra*), therefore, provides that when a Govt. servant, who has been suspended, is reinstated, the authority competent to order reinstatement, shall consider and make a specific order regarding pay and allowances to be paid to the Govt. servant for the period of suspension ending with reinstatement and whether or not the said period shall be treated as a period spent on duty.

50. It is, accordingly, directed that if no orders have been passed on the pay and allowances during suspension period, the competent authority shall pass such orders, in accordance with law, at an earliest possible and without unreasonable delay.

* * *

51. Claim petition thus stands disposed of. No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: 11th April, 2022
DEHRADUN
RS