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. 52/DB/2021

Amit Kumar Saini, s/o Sri Jagpal Singh, r/o Village Bajuhedi, P.O. Mehbadkalan, Police Station-Roorkee, District Haridwar, Uttarakhand.

.....Petitioner

VS.

1. State of Uttarakhand through Secretary, Home, Govt. of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Commandant 40th Battalion, PAC , Haridwar, Uttarakhand.
3. Superintendent of Police, Tehri Garhwal.

.....Respondents.

Present: Sri M.C.Pant and Sri Abhishek Chamoli, Advocates,
for the Petitioner.
Sri V.P.Devrani, A.P.O., for the State Respondents.

JUDGMENT

DATED: MARCH 08, 2022.

Justice U.C.Dhyani (Oral)

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

i) To quash the impugned order dated 15.05.2006 along with its effect and operation after calling the entire record declaring the same as arbitrary, malafide, void and a nullity keeping in view of the facts highlighted in the body of the petition..

ii) To issue an order or direction to the respondents to reinstate the service of the petitioner from the date of passing of the impugned

order with all consequential benefits and promotional benefits as if had it been the impugned order was not in existence. Or to mould the relief appropriately including with a direction or an order to the respondents to review/ reconsider their order in view of the facts highlighted in the petition for reinstatement in service with all consequential benefits along with its effects and operation.

iii) To issue order or direction for the grant of damages and the compensation for being subjected to illegal act and malicious prosecution of the petitioner by the respondents in tune of such amount which the Tribunal deemed fit and proper in the circumstances of case in favour of the petitioner and the same may be recovered from the arraying officers.

vi)To award the cost of petition."

2. Basically, order dated 15.05.2006 (Copy: Annexure- A 1) is in the teeth of present claim petition. Petitioner was appointed as PAC Constable (temporary) *vide* order dated 10.04.2006. This was done in anticipation of Character Verification Report (CVR). When S.P., Tehri Garhwal submitted CVR, it was revealed that an F.I.R. in Case Crime No. 192/2003 under Sections 452, 323, 506, 325, 308 IPC was registered against him. Petitioner remained in Jail from 13.08.2003 to 10.09.2003. A Chargesheet No. 146-A was submitted against the petitioner (as an accused) on 30.09.2003. The criminal case was pending against the petitioner before the Sessions Court in Haridwar.

2.1 When the petitioner applied for the post of PAC Constable, he submitted an affidavit dated 26.03.2006, in which it was clearly indicated that no criminal case,, cognizable or non-cognizable, was ever registered against him, nor was he ever challaned in a criminal case by the Police. The affidavit also indicated that no Police investigation was pending against him. In this way, the petitioner has concealed the actual facts.

2.2 Commandant 40th Battalion PAC, Haridwar (appointing authority), therefore, cancelled the appointment letter dated 10.04.2006 and after holding that the services of the petitioner were no more required, dispensed with/ terminated his services.

2.3 Such an order has been assailed by the petitioner in the present claim petition.

3. At the very outset Ld. A.P.O. objected to the maintainability of the claim petition, *inter alia,* on the ground that the same is barred by limitation. Objections were filed on the delay condonation application of the petitioner. It is the submission of Ld. A.P.O. that the claim petition is highly barred by limitation in view of Section 5(1)(b)(i) of the Uttar Pradesh Public Services(Tribunal) Act, 1976(as applicable to Uttarakhand).

4. Ld. A.P.O. further submitted that no appeal/ statutory representation/ revision lies against the order of termination under the Uttarakhand Temporary Government Servant (Termination of Services) Rules, 2003, which means that the petitioner should have approached this Tribunal within a period of one year of termination of his services. Since the impugned order was passed on 15.05.2006, therefore, he should have approached this Tribunal on or before 15.05.2007.

5. 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>;".

6. 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 <u>as if a reference were a suit filed in civil court</u> so, however, that-*
>
> *(i) Notwithstanding the period of limitation prescribed in the Schedule to the said Act, <u>the period of limitation for such reference shall be one year</u>;*

(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]

7. 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.

8. 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]

9. 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.

10. 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.

11. 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]*

12. 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.

13. 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.

13.1 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....."

13.2 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.

13.3 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.

13.4 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."

13.5 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.....”

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

13.7 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”.

13.8 ‘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.”

14. 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.

15. 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.

16. 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.

17. 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

18. 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 ON LIMITATION

19. 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."

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

* * *

26. It is the submission of Sri Abhishek Chamoli, Ld. Counsel for the petitioner that petitioner has been exonerated of the charges levelled against him in Criminal Case No. 844/2007 *vide* order dated 15.01.2021, passed by Hon'ble High Court of Uttarakhand in Criminal Revision No. 197/2013. Such criminal case was instituted by Sri Bhagat Sharan Azad at Police Station, New Tehri, that the posts of Police Constables and PAC Constables were advertized. Against this advertisement, petitioner applied. he qualified for the physical and written examination. After completion of his selection process, the department asked the candidate to file an affidavit. Petitioner submitted his affidavit, but concealed the fact that the Case Crime No. 192/2003 under Sections 452, 323, 406, 325 and 308 IPC was registered against him. The matter was investigated by the Circle Officer, who found that the petitioner concealed the registration of case against him.

27. Ld. Counsel for the petitioner also placed reliance upon the judgment rendered by Hon'ble High Court on 05.03.2014 in WPSB No. 53 of 2014, Mahendra Singh Karayat vs. State of Uttarakhand and others. It will be appropriate to reproduce the entire judgment herein below for convenience:

> "The reason for dismissal from service is filing of incorrect affidavit. A look at the affidavit will show that the same was a printed one supplied by the Department. In Paragraph 4 of the said affidavit, it was to be stated that no police case has been registered against the person giving the affidavit. In Paragraph 6, it was stated that if any police case has been registered, particulars thereof have to be furnished and, if not, the word 'NIL' has to be indicated. After having had stated in Paragraph 4 of the affidavit that no police case has been registered, in Paragraph 6, it could not be stated that a police case has been registered. The affidavit was so confusing and meaningless that the same really did never permit the person concerned to speak out the truth. Paragraph 7 of the said affidavit requires furnishing of particulars in respect of matters, where the person had been accused and, thereupon, had been found guilty, punished or discharged. For the reasons as above, having had stated what was required to be stated in Paragraph 4, no information, in terms of Paragraph 7 could be supplied. Paragraphs 4 and 7 are contrary to each other and totally misleading. The fact remains that the application was made on 19th September, 2011, whereafter selection process continued and the said process continued until 30th April, 2012, when the said affidavit was submitted. Subsequent to submission of the said affidavit, on appointment of the petitioner, it transpired that a police case was registered against the petitioner on 8th October, 2009 for offences punishable under Sections 323, 504 and 506 IPC. In relation

> thereto, ultimately, a charge sheet was filed and the petitioner was arraigned as one of the accused persons. It was depicted that it was a case inter se Football players. The trial was conducted and the petitioner was exonerated of the charge as no prosecution witness deposed against the petitioner. This order acquitting the petitioner was passed on 27th September, 2010 and the matter was not taken up in Appeal. While applying on 19th September, 2011, petitioner had to fill up a form. In the last Paragraph thereof, it was stated that against the applicant, no criminal case has been registered in India and the applicant is not wanted or convicted in any case in India. Petitioner, while filling up the form in those printed lines, in the background of what has been stated above, did not commit such a mistake that, on the basis thereof, his appointment could be interfered with for he had been accused once and that accusation was rejected.
>
> 2. We, accordingly, allow the writ petition and quash the order impugned."

28. Sri Abhishek Chamoli, Ld. Counsel for the petitioner also placed reliance upon the judgment rendered by this Tribunal on 26.11.2008, Vinay Kumar vs. State and others and argued that the service of Police Constable is not governed by the Rules of 1975.

29. Ld. Counsel for the petitioner also relied upon the provisions of Order VII Rule 6 CPC, which reads as below:

> "Ground of exemption from limitation law: Where the suit is instituted after the expiration of period prescribed by the law of limitation, the plaint shall show the ground upon which exemption from such law is claimed:
>
> *Provided* that the court may permit the plaintiff to claim exemption from the law of limitation on any ground not set out in the plaint, if such ground is not inconsistent with the grounds set out in the plaint."

30. The *proviso* empowers the Court to permit the plaintiff to rely on any new ground for exemption from the law of limitation, if such ground is not inconsistent with the grounds specified in the plaint. General rule is that exemption must be pleaded in the plaint and the burden of proof regarding limitation is on the plaintiff. The rule is that, if the plaint does not state exemption from limitation, the Court should allow the plaint to be amended save under very exceptional circumstances. If one ground of exemption has been pleaded in the plaint, amendment seeking to add another ground or to substitute one ground for another, may also be allowed at any stage. But even without amendment another ground of exemption, which is not

inconsistent with the grounds already stated in the plaint, may be allowed to be set out at the hearing, as the *proviso* inserted by the Amendment Act has made it clear. Thus, the rule permits the plaintiff to claim exemption from law of limitation on any ground not set out in the plaint. But, the rule nowhere empowers the Court/ Tribunal to grant exemption from the law of limitation, if no such provision exists in the Act. This Tribunal has already observed earlier that there is no provision in the Uttar Pradesh Public Services (Tribunal) Act, 1976, for condoning the delay in filing the claim petition.

31. The Uttar Pradesh Public Services (Tribunal) Act, 1976 is a special Act. CPC, 1908 is general Act, provisions of which are not strictly applicable to the Tribunal. This Tribunal has already noticed above that Section 5 of the Uttar Pradesh Public Services (Tribunal) Act, 1976 (as applicable to Uttarakhand) is the sole repository of limitation in respect of references filed before this Tribunal.

32. There is no provision for condoning the delay in filing the claim petition. Further, Order VII Rule 6 CPC provides a leverage to the petitioner to show the ground upon which the limitation law is claimed, but the provision nowhere provides that if exemption is claimed by the petitioner, the Court or Tribunal shall accept it, ignoring the provisions of the special law governing the field [*in the instant case, the Uttar Pradesh Public Services (Tribunal) Act, 1976*].

* * *

33. It will be useful to reproduce para 10 to 23 of the judgment rendered by Hon'ble Allahabad High Court on 03.11.2017, in Civil Misc. WPSB No. 24044 of 2017, Kaushal Kishore Shukla (C.P. No. 464) vs. State of U.P. and others [2017 6 AWC 6452] herein below for convenience:

> "10.By order dated 30.08.2017, State Public Services Tribunal had dismissed the Claim Petition No.1884 of 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 rule laid down in Hon'ble Apex Court judgment December 17, 2014 in Writ Petition (Civil) No.562/2012, "Assam Sanmilita Mahasangha & Ors. Vs. Union of India & Ors.", and Writ Petition (Civil) No.876/2014 "All Assam Ahom Association & Ors. Vs. Union of India & Ors.". 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 Act and submitted that Tribunal has no power to condone the delay as proceedings are original in nature. He placed before us Allahabad High Court's Judgment given in the case of Karan Kumar Yadav Vs. U. P. State Public Services Tribunal and others 2008 (2) AWC 1987 (LB).

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

Learned counsel for petitioner is free to approach appropriate court/forum in accordance with law."

11. Learned counsel for the petitioner while challenging the impugned order dated 30.08.2017 passed by the Tribunal submits that the sole case of the petitioner before the Tribunal was that his source of livelihood has been taken away without following the procedure established by law guaranteed under Article 21 of the Constitution, as right to livelihood is also included under right to life in view of various decisions of Honble Supreme Court, as such, his claim petition cannot be dismissed on the ground of delay and laches in view of law laid down by Hon'ble the Apex Court in the case of Assam Sanmilita Mahasangha & Ors. vs. Union of India & Ors. AIR 2015 SC 783 wherein it has been held as under :-

"Given the contentions raised specifically with regard to pleas under Articles 21 and 29, of a whole class of people, namely, the tribal and non-tribal citizens of Assam and given the fact that agitations on this core are ongoing, we do not feel that petitions of this kind can be dismissed at the threshold on the ground of delay/laches. Indeed, if we were to do so, we would be guilty of shirking our Constitutional duty to protect the lives of our own citizens and their culture. In fact, the time has come to have a relook at the doctrine of laches altogether when it comes to violations of Articles 21 and 29.

Tilokchand Motichand is a judgment involving property rights of individuals. Ramchandra Deodhar's case, also of a Constitution Bench of five judges has held that the fundamental right under Article 16 cannot be wished away solely on the "jejune' ground of delay. Since Tilokchand Motichand's case was decided, there have been important strides made in the law. Property Rights have been removed from part III of the Constitution altogether by the Constitution 44th Amendment Act. The same amendment made it clear that even during an emergency, the fundamental right under Article 21 can never be suspended, and amended Article 359 (1) to give effect to this. In Maneka Gandhi v. Union of India, (1978) 1 SCC 248 decided nine years after Tilokchand Motichand, Article 21 has been given its new dimension, and pursuant to the new dimension a huge number of rights have come under the

umbrella of Article 21 (for an enumeration of these rights, see Kapila Hingorani v. State of Bihar, (2003) 6 SCC 1 at para 57). Further, in Olga Tellis & Ors. v. Bombay Municipal Corporation, (1985) 3 SCC 545, it has now been conclusively held that all fundamental rights cannot be waived (at para 29). Given these important developments in the law, the time has come for this Court to say that at least when it comes to violations of the fundamental right to life and personal liberty, delay or laches by itself without more would not be sufficient to shut the doors of the court on any petitioner."

12. Learned counsel for the petitioner has also placed reliance on the judgment given by Hon'ble the Apex Court in the case of S. S. Rathore vs. State of Madhya Pradesh (1989) 4 SCC 582 wherein it has been held as under :-

" We are of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of, a six months' period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen. We, however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsuccessful representations not provided by law are not governed by this principle.

It is appropriate to notice the provision regarding limitation under s. 21 of the Administrative Tribunals Act. Sub-section (1) has prescribed a period of one year for making of the application and power of condonation of delay of a total period of six months has been vested under subsection (3). The Civil Court's jurisdiction has been taken away by the Act and, therefore, as far as Government servants are concerned, Article' 58 may not be invocable in view of the special limitation. Yet, suits outside the purview of the Administrative Tribunals Act shall continue to be governed by Article 58.

It is proper that the position in such cases should be uniform. Therefore, in every such case only when the appeal or representation provided by law is disposed of, cause of action shall first accrue and where such order is not made, on the expiry of six months from the date when the appeal was-filed or representation was made, the right to sue shall first accrue. Submission of just a memorial or representation to the Head of the establishment shall not be taken into consideration in the matter of fixing limitation."

13. Accordingly, Shri R. C. Saxena, learned counsel for the petitioner submits that the impugned order passed by the State Public Services Tribunal thereby dismissing the claim petition on the ground of delay and laches is liable to be set aside keeping in view the law laid down by Hon'ble the Apex Court as stated above as well as Article 21 of the Constitution of India.

14. We have heard learned counsel for the parties and gone through the records.

15. Period of limitation for filing the claim petition is provided under Section 5 (1) (b) of the U. P. Public Services (Tribunal) Act, 1976, which reads as under :-

"(1) (b). The provisions of the Limitation Act, 1963 (Act 36 of 1963) shall mutatis mutandis apply to 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.

16. A Division Bench of this Court in the case of Karan Kumar Yadav vs. U. P. State Public Services Tribunal and Ors., 2008 2 AWC 1987 All while interpreting the Section 5 (1) (b) of U. P. Public Services (Tribunal) Act, 1976 held as under :-

"Section 5(1)(b) aforesaid lays down the applicability of Limitation Act and confines it to the reference under Section 4 of the Act, 1976 as if a reference was a suit filed in the civil court. This leaves no doubt that a claim petition is just like a suit filed in the civil court and in the suit the period of limitation cannot be extended by applying the provisions of Section 5 of the Limitation Act. Sub-clause (i) of Section 5 of the Tribunal's Act, specifically provide limitation for filing the claim petition, i.e., one year and in Sub-clause (ii) the manner in which the period of limitation is to be computed has also been provided.

Section 5 of the Limitation Act, reads as under:

Extension of prescribed period in certain case.--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 case 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.

Its applicability is limited only to application/appeals and revision. It hardly requires any argument that Section 5 does not apply to original suit, consequently it would not apply in the claim petition. Had the Legislature intended to provide any extended period of limitation in filing the claim petition, it would not have described the claim petition as a suit, filed in the civil court in Section 5(1)(b) and/or it would have made a provision in the Act giving power to the Tribunal, to condone delay, with respect to the claim petition also.

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."

17. Thus, as per law laid down by a Division Bench of this Court in the case of Karan Kumar Yadav (Supra), the period of limitation for filing the claim petition before the State Public Services Tribunal is of one year.

18. In the instant matter, petitioner has challenged the impugned order dated 24.02.2000 passed by opposite party no.4/Senior Superintendent of Police, Kanpur as well as appellate order dated 27.10.2000 passed by opposite party no.3/Dy. Inspector General of Police, Kanpur Region, Kanpur before the State Public Services Tribunal, Lucknow by filing the claim petition after passing a decade, as such, the same is barred by limitation. Hence, the Tribunal had rightly dismissed the claim petition filed by the claimant after placing the reliance on the judgment given by a Division Bench of this Court in the case of Karan Kumar Yadav (Supra).

19. Hon'ble the Apex Court in the case of Rajasthan Public Service Commission and anr. vs. Harish Kumar Purohit and ors. (2003) 5 SCC 480 held that a bench must follow the decision of a coordinate bench and take the same view as has been taken earlier. The earlier decision of the coordinate bench is binding upon any latter coordinate bench deciding the same or similar issues.

20. Hon'ble the Apex Court in the case of Sant Lal Gupta and ors. vs. Modern Co-operative Group Housing Society Ltd. and ors. (2010) 13 SCC 336 held that a coordinate bench cannot comment upon the discretion exercised or judgment rendered by another coordinate bench of the same court. The rule of precedent is binding for the reason that there is a desire to secure uniformity and certainty in law. Thus, in judicial administration precedents which enunciate rules of law forum the foundation of the administration of justice under our system. Therefore, it has always been insisted that the decision of a coordinate bench must be followed. (Vide Tribhovandas Purshottamdas Thakkar v. Ratilal Motilal Patel and ors. AIR 1968 SC 372).

21. So far as the reliance placed by the petitioner in the case of Assam Sanmilita Mahasangha & Ors.(Supra) as well as S. S. Rathore are concerned, the said case are entirely different from the facts which is involved in the present case. As in the present case Act itself has prescribed for a period of limitation for challenging the order before the State Public Services Tribunal, Lucknow and the said situation does not exist in the said case, so the petitioner cannot derive any benefit from the aforesaid judgment. Moreover, the Tribunal has given a liberty to the petitioner to approach court/forum in accordance with law.

22. For the foregoing 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.”

34. The claim petition is dismissed, as barred by limitation, at the admission stage.

35. It is made clear that the Tribunal has not expressed any opinion on the merits of the case.

36. Dismissal of the claim petition on the ground of limitation will not come in the way of the petitioner from availing appropriate remedy (ies) available to him in law. No order as to costs.

RAJEEV GUPTA
VICE CHAIRMAN (A)

JUSTICE U.C.DHYANI
CHAIRMAN

DATED: MARCH 08, 2022
DEHRADUN.

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