

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
BENCH AT NAINITAL**

Present: Hon'ble Mr. Justice U.C.Dhyani
----- Chairman
Hon'ble Mr. Rajeev Gupta
-----Vice Chairman (A)

CLAIM PETITION NO. 34/NB/DB/2021

Lalit Mohan Arya, aged about 64 years, s/o Late Sri Joga Ram, r/o Village and post Bhanoli, Tehsil Bhanoli, district Almora.

.....Petitioner

vs.

1. State of Uttarakhand through Secretary, Department of School Education, Government of Uttarakhand, Dehradun.
2. Director, Secondary Education, Uttarakhand, Nanoorkhera, Dehradun.
3. Chief Education Officer, Almora.
4. Director, Accounts and Entitlement, Uttarakhand, Dehradun.
5. Principal, Government Inter College, Paligunaditya, Block Dhauladevi, District Almora.

.....Respondents

Present: Sri Bhagwat Mehra, Advocate for the Petitioner
Sri Kishore Kumar, A.P.O., for the Respondents

JUDGMENT

DATED: APRIL 19, 2022

Justice U.C.Dhyani (Oral)

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

"A. To direct the respondents to grant notional promotion to the petitioner as Principal, Government Inter College, from due date i.e. 26.07.2013, when various persons junior to him were promoted to the said posts.

B. To direct the Respondents to grant all consequential benefits to the petitioner including revision of pay fixations, retiral dues, pension and all other benefits after granting the promotion on the post of Principal from due date.

C. To direct the Respondents to release amount of Rs. 42,000/- withheld from the G.P.F. amount due to the petitioner, and also to

grant interest on the delayed payment of the same to the petitioner, at a rate to be specified by this Hon'ble Court.

[Note: plural relief]

D. To issue any other order or direction, which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

E. Award the cost of the Claim petition in favour of the petitioner."

[Emphasis supplied]

PETITIONER'S VERSION

2. The petitioner was initially appointed as Assistant Teacher L.T. Grade (English) on 19.11.1979. He was promoted from time to time. When he was posted in Govt. Higher Secondary School, Kalnu Daholi, Almora, District Magistrate *vide* order dated 28.02.2008 sanctioned some construction work in the said school. A sum of Rs. 5 lakh was sanctioned by the State Govt. Out of the said amount, Incharge Head Master, Sri Dinesh Chandra Sharma released Rs. 1 lakh to the contractor Sri Gopal Singh, before joining of the petitioner in such institution on 08.07.2008. There was no occasion for the petitioner to stop the construction work.

The petitioner was thereafter posted on the next higher post of Principal, Govt. Inter College *vide* order dated 28.05.2010. One Sri P.N.Singh, who was posted as Head Master in the Govt. Higher Secondary School, Kalnu, Deholi directed local Patwari to lodge FIR regarding low quality construction work, which was carried out in the financial year 2007-08. An FIR under sections 406 and 409 IPC was registered. Sri Gopal Singh, Sri Nirmal Chandra Mungali and petitioner were arrested. *Vide* order dated 30.04.2012, the petitioner was placed under suspension on the ground of remaining in judicial custody for more than 48 hours.

Respondent no. 3 conducted an inquiry through a Committee of two senior most officers of Education Department. Petitioner was exonerated from all the charges levelled against him. Revocation of the petitioner's suspension was recommended. A meeting of Departmental Promotion Committee (DPC) for promotion to the next higher post of Principal, Govt. Inter College, was held on 02.07.2013 and on the basis of the said DPC, 96 persons were promoted *vide* order dated 26.07.2013. The petitioner was left out in the said DPC. Various Principals, junior to the petitioner were promoted. The details of such

persons have been given in para 16 of the claim petition. The suspension of the petitioner was revoked vide order dated 15.10.2013. He was reinstated with all back wages from the date of release from the judicial custody *i.e.* 28.03.2012, subject to final outcome of criminal case. Another DPC was convened in November, 2014 and on the basis of the same, 120 persons were promoted to the post of Principal, Government Inter College. This time also, petitioner was left out.

Petitioner retired from service on 30.06.2017 from the post of Principal, Govt. Inter College, Palgunaditya, district Almora. After a period of 7 years, that too, after retirement, respondent no. 3 sent a letter on 24.05.2018 to the respondent no. 2 for seeking permission for prosecution of the petitioner. No such permission (to prosecute) was granted. When retiral dues of the petitioner were not released for a considerable period, the petitioner submitted various representations to the respondents. The information sought under RTI Act revealed that 'sealed cover procedure' was adopted in respect of the petitioner on the ground that charge sheet has been issued against the petitioner and disciplinary proceedings are pending. It was observed that the matter will be considered after completion of the departmental proceedings. No departmental proceedings were ever initiated against the petitioner.

Petitioner filed a writ petition No. 05 (S/B) of 2020 before the Hon'ble High Court of Uttarakhand. The said writ petition was allowed *vide* order dated 29.07.2020. A direction was given to the respondents to work out and release all the retiral dues of the petitioner within a period of three months. Respondent no. 4 issued Pension Payment Order (PPO) on 05.02.2021 whereby pension, gratuity and commutation were sanctioned to him. However, an amount of Rs. 42000/- withheld from GPF has not been released to him. Till date, petitioner's claim for notional promotion w.e.f. 26.07.2013 on the post of Principal, Govt. Inter College has not been considered. According to the petitioner, action of the respondents in not granting him promotion on the post of Principal, Govt. Inter College, from the date juniors to him were promoted, *i.e.* 26.07.2013, is arbitrary and illegal.

It has further been pleaded that in the inquiry report dated 21.05.2013, the petitioner was exonerated from all the charges, but the respondents withheld the retiral dues as well as service benefits to the petitioner till 2020, including promotion on the post of Principal, Govt. Inter College from 26.07.2013 on the ground that criminal proceedings are pending against him.

According to the petitioner, it was obligatory on the part of the respondents to promote the petitioner on the post of Principal, Govt. Inter College, *w.e.f.* 26.07.2013, after judgment dated 29.07.2020 was passed by Hon'ble High Court. Relevant documents have been filed along with the claim petition.

RESPONDENTS' VERSION

3. Counter Affidavit on behalf of Respondents No. 2 & 3 by Sri H.B. Chand, In-charge Chief Education Officer has been filed. It has been pleaded in the Counter Affidavit that the petitioner was put under suspension, as he remained in judicial custody for more than 48 hours. It has been admitted in the Counter Affidavit that no prosecution sanction was given to prosecute the petitioner. Retiral dues were paid to him in compliance of the judgment dated 29.07.2020, passed by Hon'ble High Court of Uttarakhand. It has further been admitted that petitioner's matter has been kept in a sealed cover. No orders have been passed in case crime no. 01/2011. The petitioner has since retired from service.

4. Above noted facts have been reiterated in the written statement of Sri Naveen Chand Sorari, In-charge Principal, Govt. Inter College, Paligunaditya, Almora, on behalf of respondent No. 5. A separate Affidavit has been filed by Smt. Seema Jaunsari, Director, Intermediate Education, Uttarakhand, Dehradun, on the lines of Counter Affidavit filed on behalf of co-respondents.

PRELIMINARY OBJECTION ON LIMITATION

5. Learned A.P.O. objected to maintainability of the claim petition, *inter alia*, on the ground that same is barred by limitation in view of Section 5(b)(i) of the U.P. Public Services (Tribunal) Act, 1976.

6. While admitting the claim petition on 19.07.2021, the issue of limitation was left open to be decided at the time of final hearing.

DISCUSSION ON PRELIMINARY ISSUE

7. 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.”

Amended provision [Section 5 of the U.P. Public Services (Tribunal) Act, 1976] reads as below:

“5. Powers and procedure of the Tribunal-

(1)(a).....

“(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]

8. 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.

9. 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.

10. 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.

11. 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 the U.P. Public Services (Tribunal) Act, 1976.

12. The view taken by this Tribunal is fortified by the decision of Hon'ble High Court of Allahabad 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] on 03.11.2017, the relevant paragraphs of which are excerpted 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 'jejeune' 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 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.

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 form 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."

[Emphasis supplied]

13. The claim petition in respect of reliefs no. A & B is, therefore, clearly barred by limitation.

LIMITATION IS NOT FOR THE GOVT.

14. The limitation is for the Tribunal and not for the Government. It is within the competence of the Govt. to consider notional promotion to the petitioner from the date his junior was promoted. The same may be done after DPC is convened and sealed envelope is opened. The reasons for doing so are not far to seek. Although, 'sealed cover procedure' has been adopted in case of the petitioner, but the fact remains that no criminal case is pending against him. This fact is under no dispute that prosecution sanction was not given, therefore, the petitioner could not be prosecuted (and has not been prosecuted). In other words, the criminal proceedings are not pending against the petitioner. Departmental proceedings are also not pending against him.

SEALED COVER PROCEDURE

15. The sealed cover procedure has been dealt with by Hon'ble Apex Court in *Union of India and others vs. K.V.Jankiraman and others, (1991)4 SCC 109*. The relevant paragraphs no. 16,17,25 and 26 of the judgment are reproduced herein below for convenience:

*"On the first question, viz., as to when for the purposes of the sealed cover procedure the disciplinary/criminal proceedings can be said to have commenced, the Full Bench of the Tribunal has held that **it is only when a charge-memo in a disciplinary proceedings or a chargesheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be resorted to only after the charge-memo/charge-sheet is issued.** The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. We are in agreement with the Tribunal on this point. The contention advanced by the learned counsel for the appellant-authorities that when there are serious allegations and it takes time to collect necessary evidence to prepare and issue charge-memo/charge-sheet, it would not be in the interest of the purity of administration to reward the employee with a promotion, increment etc. does not impress us. The acceptance of this contention would result in injustice to the employees in many-cases. As has been the experience so far, the preliminary investigations take an inordinately long time and particularly when they are initiated at the instance of the interested persons, they are kept pending deliberately. Many times they never result in the issue of any charge-memo/chargesheet. If the allegations are serious and the authorities are keen in investigating them, ordinarily it should not take much time to collect the relevant evidence and finalise the charges. What is further, if the charges are that serious, the authorities have the power to suspend the employee under the relevant rules, and the **suspension by itself permits a***

resort to the sealed cover procedure. The authorities thus are not without a remedy. It was then contended on behalf of the authorities that conclusions nos. 1 and 4 of the Full Bench of the Tribunal are inconsistent with each other. Those conclusions are as follows:

"(1) consideration for promotion, selection grade, crossing the efficiency bar or higher scale of pay cannot be withheld merely on the ground of pendency of a disciplinary or criminal proceedings against an official;

(2).....

(3).....

(4) **the sealed cover procedure can be resorted only after a charge memo is served on the concerned official or the charge sheet filed before the criminal court and not before.**"

17. There is no doubt that there is a seeming contradiction between the two conclusions. But read harmoniously, and that is what the Full Bench has intended, the two conclusions can be reconciled with each other. The conclusion no. 1 should be read to mean that the promotion etc. cannot be withheld merely because some disciplinary/criminal proceedings are pending against the employee. To deny the said benefit, they must be at the relevant time pending at the stage when charge-memo/charge-sheet has already been issued to the employee. Thus read, there is no inconsistency in the two conclusions.

25. We are not much impressed by the contentions advanced on behalf of the authorities. The normal rule of "no work no pay" is not applicable to cases such as the present one where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him. It is for this reason that F.R. 17(1) will also be inapplicable to such cases.

26. We are, therefore, broadly in agreement with the finding of the Tribunal that when an employee is completely exonerated meaning thereby that he is not 'found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which he would have normally been promoted but for the disciplinary/ criminal proceedings. However, there may be cases' where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. In such circumstances, the concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does, the extent to which he deserves it. **Life being complex, it is not possible to anticipate and enumerate exhaustively all the circumstances under which such consideration may become necessary.** To ignore however, such circumstances when they exist and lay down' an inflexible rule that in every case when an employee is exonerated in disciplinary/ criminal proceedings he should be entitled to all salary for the intervening period is to undermine discipline in the administration and jeopardise public interests. We are, therefore, unable to agree with the Tribunal that to deny the salary to an employee would in all circumstances be illegal. While, therefore, we do not ap- prove of the said last sentence in the first sub-paragraph after clause (iii) of paragraph 3 of the said Memorandum, viz.. "but no arrears of pay shall be payable to him for the period of notional promotion preceding the date of actual promotion", we direct that in place of the said sentence the following sentence be read in the Memorandum:

"However, whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion, and if so to what extent, will be decided by the concerned authority by taking into consideration all the facts and circumstances of the disciplinary proceeding/criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so."

[Emphasis supplied]

16. In the instant case, since there is no prosecution sanction and there is no charge sheet, therefore, criminal proceedings are not pending against him. Departmental proceedings are also not pending against him. In such a situation, respondents are requested that DPC be convened and sealed envelope be opened. If petitioner is found suitable, he be given notional promotion from the date (any one of) his junior was promoted.

17. Petitioner has also sought direction to release an amount of Rs. 42,000/- withheld from the GPF and also interest on delayed payment of the same.

18. Although, plural reliefs are not permissible before this Tribunal in view of Rule 10 of the U.P. Public Services (Tribunal)(Procedure) Rules, 1992, but relief no. 'C', as claimed in the claim petition is not time barred (*other reliefs are time barred*), in the sense that petitioner approached Hon'ble High Court by filing writ petition bearing No. WP(S/B) 05 of 2020 for grant of retiral dues, his writ petition was allowed on 29.07.2020, respondents were directed to work out and release all the retiral dues of the petitioner within a period three months and present claim petition has been filed on 01.06.2021, therefore, the respondents are directed to release the amount withheld from the GPF (*on the ground that criminal proceedings are pending*) along with admissible interest as per G.O. dated 10.08.2004, according to which petitioner should be paid interest on arrears of retiral dues after three months of the date of retirement till the date of actual payment.

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

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: APRIL 19, 2022
DEHRADUN
KNP