

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

Present: Hon'ble Mr. Rajeev Gupta
-----Vice Chairman (A)

CLAIM PETITION NO.32/NB/SB/2019

1. Yashpal Singh s/o Sri Ajit Singh Verma, presently posted as Deputy Commissioner, State Tax Headquarters, Dehradun r/o 302 Lawal Apts. Rakshapuram, Ring Road, Mussoorie Bypass, Ladpur, Dehradun.
2. Vinay Prakash Ojha s/o Sri Baikhunth Nath Ojha, presently posted as Assistant Commissioner, Mobile Squad, Kichha, District Udham Singh Nagar, r/o Gayatri Nagar, Shivalik Vihar, Phase-1, Kathgodam, District Nainital.
3. Bhuwan Chandra Pandey, s/o Late Sri G.D. Pandey, presently posted as Assistant Commissioner, State Tax, Sector 1, Rudrapur r/o Officers Colony Haldwani, District Nainital.
4. Ashish Kumar Thakur s/o late Sri Govind Narayan Thakur, presently posted as Assistant Commissioner, State Tax, Mobile Squad, Rudrapur District Nainital r/o F-88 Alliance Colony, Kashipur Road, Rudrapur, District Udham Singh Nagar.

.....Petitioners

vs.

State of Uttarakhand through the Chief Secretary, Government of Uttarakhand at Dehradun.

.....Respondent.

Present: Sri B.D.Upadhyay, Senior Advocate, assisted by
Sri Navin Chandra Tiwari, Advocate for the Petitioners
Sri Kishor Kumar, A.P.O., for the Respondent

JUDGMENT

DATED: MAY 25, 2022

This claim petition has been filed for seeking the following reliefs:

"1. To call for the record of the case and quash the order dated 20.09.2013, communicated through the order dated 09.10.2013, orders dated 04.12.2017 issued by the State Govt. contained in annexure no. 14 and 17 respectively to the petition.

2. To direct the respondent to grant grade pay of Rs. 4800 to the petitioners and accordingly fix their salary treating them to be in the grade pay of Rs. 4800 since 6th Pay Commission's Revision and pay them all consequential benefits.

3. *Any other order or direction, which this Hon'ble Tribunal may deem fit and proper on the basis of the facts and circumstances of the case.*

4. *Award the cost of the petition in favour of the petitioners."*

2. The facts of the case according to the claim petition are briefly as below:

The petitioners are Deputy/Assistant Commissioners in State Tax Department of Uttarakhand. The State Tax Officers were initially known as Sales Tax Officers and thereafter Commercial Tax Officers. The grievance of the petitioners is that earlier when they were working as Trade Tax Officers, the sanctioned pay scale of Trade Tax Officers, District Panchayat Raj officers and District Audit Officers, as per the recommendations of the Fifth Pay Commission, was Rs. 6500-10500/-. However, the State Government, vide its order No 419/XXXVII(03)/2005 dated 13.09.2005 upgraded the pay scale of District Audit Officer to Rs. 7500-12000/- and accordingly in pursuance of the recommendations of the 6th Pay Commission their pay scale was fixed in PB-2 at Rs 9300-34800 with Grade Pay Rs. 4800/-. Again the State Government vide its order No 398/XXXVII(07)/2009 dated 24.12.2009 enhanced the pay band of District Audit Officer from PB2 to PB3 i.e Rs 15000-39000/- with Grade pay Rs 5400/-. The State Government vide its order No 498/192(07) 2005 dated 05.09.2006 also upgraded the pay scale of District Panchayat Raj Officer to Rs. 8000-13500/- and accordingly in pursuance of the recommendations of the 6th Pay Commission their pay scale was fixed at Rs. 15600-39000/- Grade Pay Rs. 5400/-. Further prior to the 6th Pay Commission, the pay scale of the Forest Range Officer was Rs 5500-9000/-. Pursuant to the recommendations of the 6th Pay Commission the said pay scale was fixed at Rs. 9300-34800, Grade Pay Rs 4200. However, the State Government vide its subsequent order No 30/X-1-2011-4(7/2010 Dated 20.07.2011 further enhanced the grade pay of Forest Rangers from Rs 4200 to Rs 4800/-. It is pertinent to mention here that prior to the implementation of the recommendations of the 6th Pay Commission, the pay scale of Commercial Tax Officer was Rs. 6500-10500/-. Pursuant to the recommendations of the Sixth pay Commission, the pay scale was revised to Rs. 9300-34800 Grade Pay Rs. 4200/- and vide order No 261(1)/2011/09(100)/XXXVII(8)/09 Dated 03.11.2011 of the State Government the grade pay was enhanced to Rs. 4600/-. Further, to the Senior Administrative Officers working in the Trade Tax Department, who are junior to the Trade Tax Officers and are in

the feeding cadre for promotion to the posts of Trade Tax Officers, the grade pay of Rs. 4800/- was granted with effect from 16.01.2013. Despite several representations by the Association of the petitioners, the grade pay of Trade Tax Officers has not been enhanced to Rs. 4800/-.

The Association of the petitioners agitated the said discrepancy in pursuance of which the Commissioner, Tax, Uttarakhand submitted a proposal to the government by letter No. 5163 dated 06.03.2013 stating therein that prior to the implementation of recommendations of 6th Pay Commission the pay scale of the Senior Administrative Officer was Rs. 5500-9000. The same was merged in the pay scale of Rs. 9300-34800/- Grade Pay Rs 4200/- vide notification No. 395/XXXVII/(7)/2008 dated 17.10.2008 and later on the Grade Pay of the same has been increased to Rs. 4800/- vide G.O. No. 373/XXXVII (7) 27(2)/2013 dated 16-01-2013 and as such enhancement in the grade pay of the Trade Tax Officers was requested. The Finance Department placed the matter before the Pay Anomaly Committee. However, the Pay Anomaly Committee turned down the claim of the State Tax Officers regarding grant of grade pay of Rs. 4800/- on the ground that the Senior Administrative Officers on their promotion on the post of State Tax Officer have option to forgo the promotion. Such decision was taken vide Govt. letter dated 20.09.2013 which was conveyed to the Commissioner, Tax vide letter dated 09.10.2013 (Annexure No. 14). This ground of rejection is not sustainable in law as well, as it is against the well established norms of service jurisprudence that a higher post always carries higher pay scale.

State of U.P. increased the Grade Pay of Trade Tax Officers from Rs. 4600 to 4800 and issued G.O. dated 06.07.2016 to that effect. As the grade pay of the Trade Tax Officers in U. P was increased from Rs. 4600/- to Rs 4800/-, the Trade Tax Officers through their Association submitted representations dated 08.09.2016, 25.07.2017, 22.08.2017, 06.09.2017 and 14.09.2017 to the Finance Minister, Chairman, Pay Committee Uttarakhand and Chief Secretary of the State respectively and in view of the facts as disclosed in the said representations it was requested to remove the discrepancy in the grade pay and grant them the grade pay of Rs. 4800/-. But the Govt. turned down this request vide order dated 04.12.2017 (Annexure No. 17) on the ground that the Trade Tax Officers cannot claim parity of Grade Pay with corresponding cadre of another State stating therein the repercussions of the decision and assessing the financial conditions of the

State. The action of the State Govt. in not granting the Grade Pay of Rs. 4800 to the State Tax Officers is illegal, arbitrary, discriminatory, bad in law and in violation of Article 14 and 16 of the Constitution of India.

The petitioners through their Association submitted fresh representations to the Finance Minister and Chief Secretary, Govt. of Uttarakhand, respectively requesting therein that their matter may be considered afresh in the light of the facts as disclosed in the representations. However, even after expiry of a reasonable period no decision has been taken on such representation as yet. As such, having no option, the petitioner decided to approach the Hon'ble Court for redressal of their grievances under Article 226 of the Constitution of India. However, the writ petition, numbered as writ petition No. 168(S/B) of 2019 was dismissed by the Hon'ble High Court vide its order dated 02.5.2019 on the ground of remedy available before the Uttarakhand Public Service Tribunal.

When the writ petition filed by the Association of petitioners was dismissed on the ground of alternate remedy before the Public Service Tribunal, the Association of the petitioners filed a claim petition before the Public Service Tribunal Uttarakhand, bench at Nainital. Since the claim petition was filed through Association of the petitioners whereas, as per order of the Hon'ble High Court the same was to be filed individually, this claim petition was dismissed as withdrawn with liberty to file a fresh petition individually.

Hence the present claim petition. Delay condonation application has also been filed on behalf of the petitioners.

3. Counter Affidavit has been filed on behalf of the respondents mainly stating the following:

The petitioners have challenged the order dated 20.09.2013 communicated to them on 09.10.2013 and order dated 04.12.2017 before this Hon'ble Tribunal after expiry of almost 02 years and filed the present delay condonation application for condoning the delay in filing the present claim petition but have not explained the day-to-day delay. Thus, on this ground the claim

petition as well as delay condonation application of the claim petitioners are liable to be dismissed. The petitioners have stated that they have received the impugned order dated 20.09.2013 on 09.10.2013, but they have not challenged the order before any forum or court and for the first time made representation through Union on 08.09.2016. Thus, it is clear that the petitioners themselves did not take interest in the matter and after rejection of their representation on 04.12.2017 they challenged the same before the Hon'ble High Court in the year 2019 after a delay of almost 02 years and after dismissal of writ petition on the ground of alternative remedy they have filed the present claim petition. The petitioners in approaching this Hon'ble Court have failed to explain the day to day delay in filing the claim petition. As such, the claim petition filed by the petitioners is highly time barred and same is liable to be dismissed on the ground of delay and laches. The rejection of the writ petition by the Hon'ble High Court on the ground of alternative remedy does not give any right to the petitioners for approaching this Hon'ble Tribunal without giving reasons for condonation of delay and without giving proper and satisfactory day to day explanation of delay.

Uttarakhand Commercial Tax Officers Service Rules, 2009 prescribe that for the recruitment to the posts of Commercial Tax Officer,

1. 50% posts are filled by way of direct recruitment by the Public Service Commission.
2. 42% posts are filled by way of promotion from Ministerial Cadre in the following manner:
 - (i) From Senior Administrative Officer with pay scale of 9,300-34,800 grade pay Rs. 4,200/ which has been amended to Rs 4600/4800;
 - (ii) From Administrative Officer Grade 1 and Grade 2 with pay scale of 5,200-20,200 grade pay Rs. 2,800/- which has been amended to pay scale 9,300-34,800 grade pay Rs. 4,200/4,600;
 - (iii) Chief Assistant with pay scale of 5,200 20,200 grade pay Rs. 2,800/- which has been amended to pay scale 9,300-34,800 grade pay Rs. 4,200/-.

3. 1% posts are filled from Statistic Assistant pay scale 9,300-34,800 grade pay Rs. 42,00/-
4. 4.7% posts are filled from Personal Assistant pay scale Rs. 9,300-34,800/- Grade Pay Rs. 4,200/- which falls under Stenographer Cadre.

Initially the pay scale of Senior Administrative officer, which is a post of Ministerial Cadre and is also a source of promotion for the post of Commercial Tax Officer, was 9,300-34,800/- grade pay Rs. 4,200/-, however later the said grade pay was upgraded to Rs.4,600/-. Although by the said upgradation the pay scale and grade pay of both the promotional post (Commercial Tax Officer) and the post from which promotion was made (Senior Administrative officer) had become same i.e, pay scale of 9.300-34,800 grade pay Rs. 4,600/- but no objection was ever raised by the Commercial Tax Officers against the said up-gradation. Thereafter vide G.O bearing No. 373 dated 16.01.2013 the grade pay of Senior Administrative officer, which is distinct and separate from Commercial Tax Cadre, was further upgraded from Rs.4,600/- to Rs. 4,800/-. As soon as the said upgradation was done, a representation was filed by the Commercial Tax Officers (which included the petitioners) through the Directorate before the State, requesting therein to upgrade their pay scale from 9,300-34,800 grade pay Rs. 4,600/- to pay scale of 9,300-34,800 grade pay of Rs. 4,800/-. The main contention of the Commercial Tax Officers was that the pay scale of the feeding cadre has become much higher than the promotional post.

The said proposal was duly considered by the Pay Anomaly Committee, constituted at the State level in their 20th meeting held on 22.08.2013. The facts which came before the Pay Anomaly Committee were, firstly Senior Administrative officer is a post of Ministerial Cadre which initially with the grade pay of Rs. 4,600/- was the highest post of promotion placed at serial no.5, however after the upgradation of the pay scale of Ministerial Cadre wherein the grade pay of Senior Administrative Officer became Rs. 4,800/- it further had one more promotional post i.e. Chief Administrative Officer with pay scale of Rs. 15,600-39,100/- grade pay of Rs. 5,400/- in the Ministerial

Cadre itself. Therefore, the concerned personnel always has an option to forgo his promotion to the post of Commercial Tax Officer in Commercial Tax Cadre and avail the option of being promoted in the same cadre. Secondly the Pay Anomaly Committee considered that since the post of Senior Administrative Officer is also a feeding cadre for the post of Commercial Tax Officer in the Commercial Tax Cadre, therefore, in case the Senior Administrative Officer avails the option of promotion in the Commercial Tax Cadre, then in such a situation the concerned personnel will be given the same pay scale to which he was previously entitled (which in the instant case is pay scale Rs. 9,300-34,800 grade pay Rs. 4,800/-) instead of pay scale and the grade pay of the promotional post which is less (which in the instant case is pay scale Rs. 9,300-34,800 grade pay Rs. 4,600/-) after due approval from the Finance Department. Based on the aforesaid considerations, the Pay Anomaly Committee recommended not to upgrade the pay scale and the grade pay of the Commercial Tax Officers from 9,300-34,800/- grade pay Rs.4,600/- to pay scale 9,300-34,800 grade pay Rs. 4,800/-.

Thereafter the matter again came up for consideration before the Pay Anomaly Committee in its 24th meeting held on 03.06.2014. However, the Pay Anomaly Committee was of the same opinion as expressed by it in its 20th meeting and therefore the Pay Anomaly Committee recommended not to upgrade the pay scale and the grade pay of the Commercial Tax Officers from pay scale of Rs. 9,300-34,800 grade pay Rs. 4,600/- to pay scale Rs. 9,300-34,800/- grade pay Rs. 4,800/-. The matter again came for the consideration before the Pay Committee in its meeting held on 14.01.2016. In the claim raised before the Pay Committee the Commercial Tax Officers claimed parity not only with Senior Administrative Officer but also with Commercial Tax Officers of U.P. who were granted grade pay of Rs. 4,800/- vide G.O dated 06.07.2016. The Commercial Tax Officers claimed parity with the officials of other cadres as well like DPRO, Sub-Registrar, Forest Officials etc. The Pay Committee considered the matter and on the basis of the principles pronounced by the Samata Samiti and implemented by the State Government, expressed its opinion that the Commercial Tax Officers cannot

claim parity with the officials of different cadres. Further the recommendation of the Pay Anomaly Committee dated 14.01.2016 clearly provided that the Official of one State cannot claim parity with the officials of other State. Hence based on the above two reasons the representation of the Commercial Tax officers was duly rejected and they were not granted the benefit of upgraded grade pay of Rs. 4,800/-.

4. Rejoinder Affidavit has been filed on behalf of the petitioners mainly stating the following:

The claim petition of the State Tax Officers was turned down by the government on 20.09.2013 and at that time the grade pay of the State Tax Officers in the State of U.P. was also same as it was in the State of Uttarakhand but vide order dated 06.07.2016, the State of U.P. revised the grade pay of the State Trade Tax Officers from Rs. 4600 to Rs. 4800/-. As such the Association of the petitioners submitted representation dated 08.09.2016, 25.07.2017, 22.08.2017, 09.09.2017 and 14.09.2017 on which the State Govt. took a decision on 04.12.2017 in a cryptic manner by saying that they cannot claim parity with officers of the other State. In this respect, it is submitted that under the provisions of the U.P. State Reorganization Act, 2000, the service conditions of the employees of the successor State cannot be in detriment of the employees.

The decision of the government dated 20.09.2013 cannot be considered as the disposal of the said representation of the Uttarakhand State Tax Service Association as it never addressed the pay discrepancy issue and plea of the Association. The prayer in this regard was to remove the pay discrepancy of whole Commercial Tax Officer cadre, irrespective of the source of its recruitment, either promotees or direct recruitees, and to bring it at par with some other comparable cadres. State Government never considered the case of Commercial Tax Officers holistically. The order dated 04.12.2017 of the State Govt. was communicated to the Association on 15.12.2017. The delay is liable to be condoned since whole Commercial Tax Officer cadre was affected by the decision and hence the decision to

approach the Hon'ble Court was not be made by any individual but a collective decision was required at the level of the Uttarakhand State Tax Service Association. Decision to move court on behalf of all the affected members of the association took time due to funding and other procedural issues. In the matter of public or general interest a liberal approach is required to be adopted otherwise public interest will suffer. Hon'ble Supreme Court in the case of University of Delhi vs. Union of India, decided on 17th December 2019, while explaining the term "sufficient cause" enunciated certain principles regarding condonation of delay. Hon'ble Supreme Court in the case of I.T.C. Ltd. Workers Welfare Association vs. The Management of I.T.C. Ltd. decided on 29 January, 2002 condoned delay of 460 days in a petition filed by I.T.C. Ltd. Workers Welfare Association & Anr. On the ground that matter pertains to grievance of retired employees. Similar is the case which pertains to the grievance of Commercial Tax Officer cadre and thus is of general interest.

5. This R.A. admits that the cause of action arose in December 2017 when the Govt. categorically rejected the plea of the association. Since the issue of Grade Pay discrepancy is related to general interest and not to any individual, in such a case requiring day-to-day explanation for delay will amount to injustice with regard to public interest.

6. The petitioners approached the Hon'ble High Court only in the year 2019. Even if they had approached this Tribunal at that time, the statutory period of limitation of one year for filing claim petitions before this Tribunal would have lapsed. At the time of admission of the claim petition, the question of delay was kept open. The Tribunal's detailed observations in this regard are as follows:

7. This Tribunal has held, in various recent decisions that the petition filed by the petitioner before this Tribunal is neither a writ petition, nor appeal, nor application. It is just like a suit, as is evident from a bare reading of Section 5(1)(b) of the U.P. Public Services (Tribunal) Act, 1976 (for short, the Act). The words used in Section 5(1)(b) of the Act are-".....as if a

reference were a suit filed in Civil Court so, however, that- (i) notwithstanding the period of limitation prescribed in the Schedule to the Act (Limitation Act, 1963), the period of limitation for such reference shall be one year;

8. Clause (b) to sub-section (1) of Section 5 of the Uttar Pradesh Public Services (Tribunal) Act, 1976 provides for limitation in respect of claim petitions filed before the Tribunal, which reads as below:

“(b) The provisions of the Limitation Act, 1963 (Act 36 of 1963) shall mutatis mutandis apply to the reference under Section 4 as if a reference were a suit filed in civil court so, however, that-

(i) Notwithstanding the period of limitation prescribed in the Schedule to the said Act, the period of limitation for such reference shall be one year;

(ii) In computing the period of limitation the period beginning with the date on which the public servant makes a representation or prefers an appeal, revision or any other petition (not being a memorial to the Governor), in accordance with the rules or orders regulating his conditions of service, and ending with the date on which such public servant has knowledge of the final order passed on such representation, appeal, revision or petition, as the case may be, shall be excluded: Provided that any reference for which the period of limitation prescribed by the Limitation Act, 1963 is more than one year, a reference under Section 4 may be made within the period prescribed by that Act, or within one year next after the commencement of the Uttar Pradesh Public Services (Tribunals) (Amendment) Act, 1985 whichever period expires earlier:

.....
.....”

[Emphasis supplied]

9. 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.

10. 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]

11. 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.

12. 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.

13. 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]

14. 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.

15. 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.

15.1 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.....”

15.2 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.

15.3 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.

15.4 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.”

15.5 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.....”

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

15.7 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”.

15.8 ‘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.”

16. 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.

17. 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.

18. 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.

19. 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.

20. Original Section 5(1)(b) of the U.P. Public Services (Tribunal) Act, 1976 before amendment made in 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]

21. 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.

22. 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.

23. 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.

24. 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.

25. The above view 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 '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 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]

26. It was observed by Hon'ble Supreme Court in the case of Basavraj and another vs. Special Land Acquisition Officer, reported in (2013) 14 SCC, 81, that the Court has no power to extend the period of limitation on equitable grounds. 'A result flowing from a statutory provision is not an evil'. The statutory provision may cause hardship or inconvenience to a particular party but the Court has no choice but to enforce it giving full

effect to the same. 'The law is hard but it is the law'. 'Inconvenience is not a decisive factor to be considered while interpreting a statute.'

27. In M/S Shanti Conductors (P) Ltd. vs. Assam State Electricity Board and others, (2020) 2 SCC 677, it was observed by Hon'ble Apex Court that, in the event, a suit is instituted after the prescribed period, it shall be dismissed although limitation has not been set up as a defence. The Court, by mandate of law, is obliged to dismiss the suit, which is filed beyond limitation even though no pleading or arguments are raised to that effect.

28. In view of the above, the present claim petition is time barred and is accordingly dismissed. No order as to costs.

29. However, the limitation is for the Tribunal and not for the Government. The Government is free to consider the demand of the petitioners even now. It may be stated that this Tribunal has not expressed any opinion on the merits of the case.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

DATED: MAY 25, 2022
DEHRADUN.
KNP