

Reserved

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

Present : Hon'ble Mr. Rajendra Singh

..... Vice-Chairman (J)

Claim Petition No. 10/NB/SB/2022

Surendra Singh Kathayat (Male), aged about 39 years, S/o Sh. Bhupendra Singh, Sub Inspector of Police, Presently posted as Station House Officer, P.S.-Rithasahib, District Champawat.

..... Petitioner

Versus

1. State of Uttarakhand through Secretary, Home, Government of Uttarakhand, Dehradun.
2. Deputy Inspector General of Police, Kumaon Range, Nainital.
3. Superintendent of Police, District Champawat.

..... Respondents

Present : Sri Tarun Prakash Singh Takuli, Advocate for
the petitioner.
Sri Kishore Kumar, A.P.O. for the respondents.

JUDGMENT

DATED: May 26, 2022

By means of this petition, the petitioner seeks the following reliefs:

- “i. Be pleased to quash the impugned order dated 11-09-2018 passed by the respondent no. 2, Inspector General of Police, Kumaon Region, Nainital whereby, the appeal preferred against the order dated 21-05-2018 passed by the respondent no. 3 has been rejected and further be pleased to quash the order dated 21-05-2018 passed by the respondent no. 3, whereby, the adverse entry has been awarded to the petitioner for the year 2017, else the petitioner shall suffer irreparable loss and injury and the same cannot be compensated by any means (Annexure no. 1 to the petition) with cost.”

2. Delay Condonation Application was moved by the petitioner when the claim petition was filed on 14.03.2022. Prayer of delay condonation application is as under:-

“To allow the present delay condonation application by granting the benefits of section 14 of the Limitation Act and further by condoning the delay of 7 days in filing the present claim petition after proper deduction of the benefits of section 14 of the Limitation Act, else the petitioner shall suffer irreparable loss and injury and the same cannot be compensated by any means.”

3. In brief, the facts of the delay condonation application is the order impugned was passed on 21-05-2018 by the respondent no. 3, by which the petitioner has been awarded adverse entry and the petitioner has filed the appeal before the appellate authority i.e. the respondent no. 2 and the learned Appellate Authority has dismissed the appeal vide it's order dated 11-09-2018. The order impugned was communicated to the petitioner through registered post and the same could be received by the petitioner only in one week.
4. The petitioner has took the legal advice and found that the petition has to be filed before the Hon'ble High Court and on 18-09-2019, the petition could be filed before the Hon'ble High Court, which is beyond 7 days from one year, the prescribed period for filing claim petition before this Hon'ble Tribunal. The petitioner has withdrawn the aforesaid writ petition with liberty to approach before this Hon'ble Tribunal and liberty for claiming the benefits under section 14 of the Limitation Act has granted to the petitioner by the Hon'ble High Court.
5. Objections were filed by Ld. A.P.O. on behalf of the respondents, on such delay condonation application, in which it has been stated that-

(1) The petitioner has challenged the order dated 21-05-2018 and also challenged the order dated 11-09-2018 by which his statutory appeal was rejected by the appellate authority. As per the U.P. Public Services (Tribunal) Act, 1976 the limitation to challenge the orders or proceeding or inaction is one year, thus the petitioner has the limitation upto 11-09-2019 as per the Act of 1976 and the petitioner has filed the claim petition on 14-03-2022 after lapse of almost two years and 8

months. Since as per section 5 (b) (i) of the, The U.P. Public Services (Tribunal) Act, 1976 the limitation is one year. Thus, the present claim petition is highly belated and is time barred.

Apart from this, the petitioner has not approached this Hon'ble Tribunal within the limitation as prescribed in the section 5 (b) (i) of the, The U.P. Public Services (Tribunal) Act, 1976, the limitation for challenging any order or proceeding before the Hon'ble Tribunal is one year from the date of cause of action. Section 5 (b) (i) is quoted below:

“5 (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.”

After perusal of the aforesaid section, it is clear that under the 1976 Act the claim petition is to be filed within one year from the date of cause of action.

(2) It has further been stated by the respondents that the petitioner himself admitted that he has filed the writ petition before Hon'ble High Court on 18-09-2019 i.e. after lapse of one year and thereafter on 09-03-2022 withdrawn the writ petition on ground of availability of alternative remedy before this Hon'ble Tribunal. The petitioner received the certified copy of the order dated 09-03-2022, on 10-03-2022 and filed the claim petition on 14-03-2022 before this Hon'ble Tribunal and the petitioner himself admitted that there is delay of 7 days in filing the present claim petition. Apart from that, the petitioner also failed to mention any cogent reasons for condoning the delay in filing the claim petition as such the claim petition filed by the petitioner is highly time barred and the same is liable to be dismissed on the ground of delay and laches.

6. I have heard the learned counsel for the parties on delay condonation application and perused the record.

7. The focal point of hearing/discussion was, whether the delay in filing the claim petition could be condoned by this Tribunal or not. The reply is as follows:
8. 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;”.
9. 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]

10. 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.
11. 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]

12. 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.

13. 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. 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. 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.
16. 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.

17. 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.
18. 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.

19. In my opinion, it is clear that the petitioner has not explained day-by-day delay about the 07 days' delay beyond one year, in filing the claim petition. The petitioner filed a writ petition before the Hon'ble High Court of Uttarakhand at Nainital and after sometime the petitioner wants to withdraw this writ petition with liberty to approach the Public Services Tribunal and the request of the learned Counsel for the petitioner, Hon'ble High Court is allowed his request and the writ petition is dismissed as withdrawn with the liberty to claim benefit of Section 14 of Limitation Act to petitioner to approach the Public Services Tribunal. After that, the petitioner filed this delay condonation application without giving any reason for 07 days' delay. It shows that the petitioner neither given any reason for delay nor any justification.
20. 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.'
21. It was observed by Hon'ble Supreme Court in the case of Balwant Singh vs. Jagdish Singh & others, reported in (2010) 8 SCC 685, that the law of limitation is a specific law and has definite consequences on the right and obligation of a party to arise. Liberal construction cannot be equated with doing injustice to the other party.
22. 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.

23. On the basis of above discussion, the Tribunal finds that delay condonation application is liable to be dismissed, as barred by limitation.
24. The claim petition is, accordingly, dismissed, as barred by limitation, at the admission stage. No order as to costs.
25. It is made clear that the Tribunal has not expressed any opinion on the merits of the case.

RAJENDRA SINGH
VICE-CHAIRMAN (J)

DATED: MAY 26, 2022
NAINITAL.

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