BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL AT DEHRADUN

Present: Hon'ble Mr. Justice U.C.Dhyani

------ Chairman

Hon'ble Mr. Rajeev Gupta

-------Vice Chairman (A)

CLAIM PETITION NO. 81/SB/2022

Ved Prakash Dhuliya, aged about 61 years, s/o Sri J.P.Dhuliya, r/o Haridwar Byepass Road, near Nirankari Satsang Bhawan, Kunj Vihar, Dehradun, District Dehradun.

……Petitioner

vs.

1. State of Uttarakhand through Secretary, Food & Civil Supplies Department, Dehradun.
2. Commissioner, Food & Civil Supplies Department, Dehradun.
3. Finance Controller, Food & Civil Supplies Department Dehradun.

……..Respondents.

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

JUDGMENT

DATED: JULY 14, 2022

Justice U.C.Dhyani (Oral)

RELIEFS

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

> *"i. Be pleased to quash the impugned order No. 750/Aa.Vi.Sha./Adhi./2022-23 dated 17th June 2022 by which the respondent no. 2 has rejected the representation of the petitioner (Annexure no. 1 to this petition).*
>
> *ii. Be pleased to direct the respondents to correct the pay anomaly of the petitioner and pay the entire arrears as per the correction, as the similarly situated employees have been paid alongwith 12% interest, else the petitioner shall suffer irreparable loss and injury and the same cannot be compensated by any means.*

iii. To award the cost of the petition in favour of the petitioner."

BACKGROUND FACTS

2. In the first round of litigation, the petitioner filed claim petition No.33/SB/2022, with the following reliefs:

"(i) Be pleased to direct the respondents to correct the pay anomaly of the petitioner and further the order dated 24.02.2010, by which the petitioner has been granted the first ACP/ First Promotional Pay Scale of Rs.5000-150-8000/- from 01.03.2001 and the second Financial Upgradation of grade pay of Rs.4600.00/- was sanctioned from 01.09.2008, however as per the Government Order No. 3875/29-2-36/89 Food And Civil Supplies Section-2 Lucknow dated 23rd of August, 1989 and as per the G.O. No. 2079/29-2-95-36/89 T.C. food and Civil Supplies Section-2 Lucknow dated 04th April, 1997, the revised pay scale of the stenographer i.e. the petitioner was 1400-2600 and subsequently vide G.O. No. P.Ma.Ni-356/Das-22(M)/97 finance (Post Measurement Fixation) Section dated 23.12.1997 by which the aforesaid pay was revised from 01.01.1996 as Rs.5000-8000/-, which was again revised vide G.O. No. 395/XXVII(7)/2008 Vitta (Ve.Aa.- Sa.Ni) Section-7 Dehradun dated 17.10.2008 by which the pay scale was revised from 01.01.2006 by which the pay scale of Rs.5000-8000/- was revised as Rs.9300-34800/- (Grade pay of Rs.4200/-) and the same was again revised/ amended as Rs.9300-34800?- (Grade Pay of Rs.4600/-) w.e.f. 14.09.2006 vide G.O. No. 88/15-XIX-2/39 Khadya/2013 Food and Civil Supplies Section-2 Dehradun dated 24.04.2015, which indicates that the petitioner is entitled to get the pay scale of Senior Market Inspector as Rs.1400-2600/- (from 01.01.1986 to 31.12.1995) and after 01.01.1996 to 31.12.2000 as Rs.5000-8000/-, which was subsequently Rs.9300-34800/- grade pay Rs.4200/- on 17.10.2008 with effect from 01.01.2006 and the same was revised as Rs.9300-34800/- grade pay of Rs.4600/- vide G.O. No. 88/15-XIX-2/39 Khadya/2013 Food and Civil Supplies Section-2 Dehradun dated 24.04.2015, hence the petitioner was getting the pay scale of Senior Marketing Inspector from 01.01.1986 to 01.01.2001 and from 01.01.2001 after completing 14 years of service the promotional post of Senior marketing Inspector was Deputy Regional Marketing Officer (Rs. 2000-32000/-), which was revised on 23.12.1997 as Rs.6500- 10500/- from 01.01.1996, which was again revised on 17.10.2008 as Rs.9300-34800/- (Grade Pay of Rs.4200/-) but the petitioner was already getting the grade pay of Rs.4200/- from 01.01.1986 (as amended from time to time), the promotional grade pay of Rs.4600/- on the pay scale of Rs.9300-34800/- and the same was revised from 24.04.2015 as Rs.15600-39100/- (Grade Pay of Rs.5400/-), hence the petitioner is entitled for promotional pay scale of Rs.6500-10500/- till 31.12.2005 and after 01.01.2006 to 14.09.2006 Rs. 9300-34800/- (Grade Pay of Rs.4600/-) and after 14.09.2006 to 31.12.2006, Rs.15600-39100/- (Grade Pay of

Rs.5400/-) and on 01.01.2007, the petitioner is entitled for 2nd ACP i.e. after completion of 20 years i.e. the next promotional pay scale of Rs.15600-39100 (Grade Pay of Rs.6600/-) as the same was revised from 24.04.2015 which is of Regional Marketing Officer and after completion of 26 years of service i.e. from 01.01.2013, the petitioner was entitled for pay scale of Chief Marketing Officer i.e. pay scale of Rs.15600-39100/- (Grade Pay of Rs.8700/-) till his retirement i.e. till 31.05.2021 and after the aforesaid correction, the actual financial benefits including the pensionary benefits (after recalculation) along with 12% annual interest may be given to the petitioner, else the petitioner shall suffer irreparable loss and injury and the same cannot be compensated by any means.

(ii) To award the cost of the petition in favour of the petitioner."

3. In compliance of the Tribunal's directions, the petitioner's non-statutory representation dated 11.03.2021 (Annexure No. 9) was disposed of by the Commissioner, Food & Civil Supplies (Respondent no. 2) *vide* Office Order dated 17.06.2022 (Copy Annexure No. 1). It was found that the pay scales, as claimed by the petitioner, are not admissible to him.

4. Aggrieved with the same, the petitioner has filed present claim petition.

OBJECTIONS ON THE MAINTAINABILITY OF CLAIM PETITION

5. Learned A.P.O. has vehemently opposed the claim petition, *inter-alia*, on the ground that:

(i) the State of Uttarakhand has no jurisdiction to grant the desired reliefs to the petitioner and,

(ii) the claim petition is highly time barred.

JURISDICTION

6. The petitioner is claiming pay scale since 01.01.1986 and thereafter, promotional pay scales on completion of 14, 20 and 26 years of services respectively. The claim for first such pay scale is, *w.e.f.* 01.01.1986.

7. Hon'ble Apex Court, in the decision of Umakant Joshi, 2012 (1) UD 583, has observed as below:

"1. Whether the Uttarakhand High Court could ordain promotion of respondent No.1 – Umakant Joshi to the post of General Manager with effect from 16.11.1989, i.e., prior to formation of the State of Uttaranchal (now known as the State of Uttarakhand) with the direction that he shall be considered for promotion to the higher posts with effect from the dates persons junior to him were promoted is the question which arises for consideration in these appeals, one of which has been filed by the State of Uttarakhand and the Director of Industries, Dehradun and the other two have been filed by Sudhir Chandra Nautiyal (hereinafter described as, 'Appellant No.1') and Surendra Singh Rawat (hereinafter described as, 'Appellant No.2') respectively against order dated 4.6.2010 passed by the Division Bench of that High Court in Writ Petition No.324 of 2008.

9. S/Shri J.L. Gupta and Subodh Markandeya, learned senior counsel appearing for appellant Nos. 1 and 2 and Ms. Rachana Srivastava, learned counsel appearing for the State of Uttarakhand argued that the impugned order is liable to be set aside because while granting relief to respondent No.1, the High Court completely ignored that he was guilty of laches and that the persons who were going to be adversely affected by retrospective promotion of respondent No.1 had not been impleaded as party respondents. Learned counsel further argued that the Uttarakhand High Court did not have the jurisdiction to direct promotion of respondent No.1 to Class-I post with effect from a date prior to formation of the new State and even the Allahabad High Court could not have issued a mandamus for promotion of respondent No.1 de hors his service record. Learned counsel emphasized that in exercise of power under Article 226 of the Constitution, the High Court cannot, except in exceptional circumstances, issue direction for promotion of an officer/official and the case of respondent No.1 did not fall in that category. Ms. Srivastava pointed out that even though Shri R.K. Khare was junior to respondent No.1 in the seniority list of Class-II officers, his promotion to Class-I post with effect from 16.11.1989 did not give a cause to respondent No.1 to seek intervention of the Uttarakhand High Court for promotion with effect from that date because till then, he continued to be an employee of the State of Uttar Pradesh.

11. We have considered the respective submissions. It is not in dispute that at the time of promotion of Class-II officers including Shri R.K. Khare to Class-I posts with effect from 16.11.1989 by the Government of Uttar Pradesh, the case of respondent No.1 was not considered because of the adverse remarks recorded in his Annual Confidential Report and the punishment imposed vide order dated 23.1.1999. Once the order of punishment was set aside, respondent No.1 became entitled to be considered for promotion to Class-I post ***with effect from 16.11.1989. That exercise could have been undertaken only by the Government of Uttar Pradesh and not by the State of Uttaranchal (now the State of Uttarakhand), which was formed on 9.11.2000. Therefore, the High Court of Uttarakhand, which too came into existence with effect from 9.11.2000 did not have the jurisdiction to entertain the writ petition filed by respondent No.1 for issue of a mandamus to the State Government to promote him to Class-I post with effect from 16.11.1989, more so because the issues raised in the writ petition involved examination of the legality of the decision taken by the Government of Uttar Pradesh to promote Shri R.K. Khare with effect from 16.11.1989 and other officers****, who were promoted to Class-I post vide order dated 22.1.2001 with retrospective effect. It appears to us*

that the counsel, who appeared on behalf of the State of Uttarakhand and the Director of Industries did not draw the attention of the High Court that it was not competent to issue direction for promotion of respondent No.1 with effect from a date prior to formation of the new State, and that too, without hearing the State of Uttar Pradesh and this is the reason why the High Court did not examine the issue of its jurisdiction to entertain the prayer made by respondent No.1.

12. In view of the above, ***we hold that the writ petition filed by respondent No.1 in 2008 in the Uttarakhand High Court claiming retrospective promotion to Class-I post with effect from 16.11.1989 was misconceived and the High Court committed jurisdictional error by issuing direction for his promotion to the post of General Manager with effect from 16.11.1989 and for consideration of his case for promotion to the higher posts with effect from the date of promotion of his so called juniors****.*

14. However, it is made clear that this Court has not expressed any opinion on the merits of the entitlement of respondent No.1 to claim promotion to Class-I post with retrospective effect and, if so advised, he may avail appropriate remedy by filing a petition in the Allahabad High Court. It is also made clear that we have not expressed any opinion on the legality or otherwise of order dated 17.1.2005 issued by the Government of Uttarakhand regarding the order of punishment passed against respondent No.1 and the writ petition, if any, pending before the Uttarakhand High Court against that order shall be decided without being influenced by the proceedings of these appeals.*"*

[Emphasis supplied]

8. In **Writ Petition No. (S/B) No. 102 of 2017, Dr. Kamaljeet Singh and another versus State of Uttarakhand and others,** decided by the Hon'ble High Court at Nainital on 08.03.2018, the order of the State of Uttarakhand to absorb a Homeopathic Doctor (who was respondent No. 3 in the Writ Petition) *w.e.f.* 28.10.1992 was challenged. Relevant paragraphs No. 11,12,18, 19 and 20 of the judgment are quoted herein below for convenience:-

"11. From the aforesaid statements of law contained in paragraph nos. 11 and 12 of the judgment of the Hon'ble Apex Court (Umakant Joshi case), ***we can deduce two principles, as laid down by the Hon'ble Apex Court****. Firstly, in respect to any rights that the persons, who are allocated or working after the creation of the State of Uttarakhand is concerned, which relates to the period anterior to the date of the creation of the State of Uttarakhand, the proper and competent authority would be the State of Uttar Pradesh. The State of Uttarakhand could not have the authority to deal with such a matter.* ***Secondly, in relation to any such complaint, the proper forum to ventilate the grievance would be the High Court of Allahabad or the Tribunal created under the law passed by the State of Uttar Pradesh****.*

12. Noticing this as the state of the law and applying it to the facts of this case, without going into any other aspect, which is projected by Mr. Rajendra Dobhal, learned senior counsel for the petitioners, we would

> *think that the impugned order cannot be sustained. By the impugned order, the State of Uttarakhand has purported to give the benefit of absorption to the third respondent with reference to a date, which is clearly anterior to the date of the creation of the State of Uttarakhand. If at all this could have been done, it could have been done only by the State of Uttar Pradesh. On this short ground, the writ petition is only to be allowed.*
>
> *18. Therefore, we find no merit in the contentions of Mr. B.N. Molakhi, learned counsel for the third respondent or of Mr. Pradeep Joshi, learned Standing Counsel for the State/respondent nos. 1 and 2. Accordingly, the conclusion is inevitable that sans authority, the impugned order has been passed by the State of Uttarakhand. On this short ground only, we interfere with the impugned order.*
>
> *19. Accordingly, the writ petition is allowed. The impugned order dated 20.01.2017 giving benefit of absorption to the third respondent and that too with financial benefits cannot be sustained and the same will stand quashed. There will be no order as to cost.*
>
> *20. We, however, make it clear that we have not gone into various other contentions, which have been raised by the parties."*

INFERENCE

9. The first pay scale *w.e.f.* 01.01.1986 cannot be granted by this Tribunal (in Uttarakhand) in view of the aforesaid decision of the Hon'ble Apex Court. If the first pay scale of Rs. 1400-2600/- (revised pay scale of Rs.5000-8000) cannot be given with effect from 01.01.1986, the question of giving further promotional pay scale after completing 14, 20 and 26 years of service therefore, does not arise. In other words, State of Uttarakhand has no jurisdiction to grant pay scales when the petitioner was serving in erstwhile State of U.P.

LIMITATION

10. The petitioner is claiming promotional pay scales on completion of 14, 20 and 26 years' of services respectively. First pay scale w.e.f. 01.01.1986, thereafter, promotional pay scales *w.e.f.* 2000 after completion of 14 years of service; in 2007, on completion of 20 years of service and in 2013, on completion of 26 years of service.

11. The claim petition was filed earlier (in the first round of litigation) on 25.03.2022 and present claim petition has been filed on 13.07.2022. The same is highly belated and therefore, barred by limitation, in view of the following:

12. 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;".

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

> *"(b) The provisions of the Limitation Act, 1963 (Act 36 of 1963) shall mutatis mutandis apply to the reference under Section 4 as if a reference were a suit filed in civil court so, however, that-*
>
> *(i) Notwithstanding the period of limitation prescribed in the Schedule to the said Act, the period of limitation for such reference shall be one year;*
> *(ii) In computing the period of limitation the period beginning with the date on which the public servant makes a representation or prefers an appeal, revision or any other petition (not being a memorial to the Governor), in accordance with the rules or orders regulating his conditions of service, and ending with the date on which such public servant has knowledge of the final order passed on such representation, appeal, revision or petition, as the case may be, shall be excluded:*
>
> *Provided that any reference for which the period of limitation prescribed by the Limitation Act, 1963 is more than one year, a reference under Section 4 may be made within the period prescribed by that Act, or within one year next after the commencement of the Uttar Pradesh Public Services (Tribunals) (Amendment) Act, 1985 whichever period expires earlier:*
>
> *……."*
>
> *[Emphasis supplied]*

14. 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.

15. 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]*

16. 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.

17. 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.

18. 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]*

19. 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.

20. 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.

20.1 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....."

20.2 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.

20.3 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.

20.4 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.”

20.5 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.....”

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

20.7 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”.

20.8 ‘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.”

21. 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.

22. 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.

23. 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.

24. 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.

25. Philosophy underlying the Law of Limitation may, briefly, be stated thus:

(i) One of the considerations on which the doctrine of limitation and prescription is based upon is that there is a presumption that a right not exercised for a long time is non-existent [Salmond's Jurisprudence, eighth edition, pages 468,469].

(ii) The object of the law of limitation is to prevent disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by party's own inaction, negligence or latches [AIR 1973 SC 2537(2542)].

(iii) The object of law of limitation is in accordance with the maxim, *interest reipublicae ut sit finis litium*-which means that the interest of the state requires that there should be an end to litigation.

(iv) Statutes of limitation and prescription are statutes of peace and repose.

(v) Rule of vigilance, which is foundation of statute of limitation, rests on principles of public policy.

(vi) The purpose of Rules of Limitation is to induce the claimants to be prompt in claiming relief.

(vii) Parties who seek to uphold their legal rights should be vigilant and should consult their legal experts as quickly as possible. They cannot sleep over the matter and at a later stage seek to enforce their rights, which is likely to cause prejudice to other parties. This is precisely the reason why periods of limitation are prescribed in many statutes.

(viii) The Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy within a time fixed by the legislature [AIR 1958 Allahabad 149(153)].

(ix) Law of limitation is procedural. It would apply to proceedings *i.e.* law in force on the date of institution of proceedings irrespective of date of action-Object of statute of limitation is not to create a right but to prescribe periods within which proceedings can be instituted.

(x) The limitation for institution of a legal action is a limitation on the availability of a legal remedy during a certain period of time. Different periods are prescribed for various remedies. The idea is that every legal action must be kept alive for a legislatively fixed period of time. The object of legal remedy is to repair a damage caused by reason of a legal injury suffered by the suitor. A legal remedy, therefore, can never come into existence before a legal injury occurs. It is the legal injury that calls legal remedy to life and action. Limitation fixes the life span of a legal remedy for the redressal of a legal injury. It is not considerable that the legislature would fix the limitation to run from a point earlier than the occurrence of a legal injury, after which only a legal remedy can come into existence. Jurisprudentially, therefore, a period of limitation can only start running after an injury has occurred. Then an appropriate legal remedy springs into action.

(xi) When the language of statute is clear, the court is bound to give effect to its plain meaning uninfluenced by extraneous considerations but where the language of the enactment is not itself precise or is ambiguous or of doubtful import, recourse may be had to extraneous consideration. No exception can be recognized in these rules of construction in the case of Limitation Act [AIR 1941 PC 6 (9)].

(xii) The Rules of Limitation are, *prima facie*, rules of procedure [AIR 1953 Allahabad 747 (748) (FB)].

(xiii) When the Act prescribes a period of limitation for the institution of a particular suit, it does not create any right in favour of person or define or create

cause of action, but simply prescribes that the remedy can be exercised only within a limitation period and not subsequently.

(xiv) Section 3 of the Limitation Act puts an embargo on the Court to entertain a suit, if it is found to be barred by limitation.

(xv) The Court cannot grant any exemption from limitation on equitable considerations or on grounds of hardships [AIR 1935 PC 85].

(xvi) Section 5 of Limitation Act does not apply to the suit, as the word 'suit' is omitted by the legislature in the language of the said section and therefore delay in filing suit cannot be condoned while invoking Section 5 [2010 (168) DLT 723].

(xvii) Section 5 deals only with the admission of appeals and applications after time [1952 All LJ (Rev.) 110 112 (DB)].

(xviii) Courts have no power to extend the period of limitation on equitable ground and equity cannot be the basis for extending the period of limitation.

(xix) Provisions of Section 5 of Limitation Act will be applicable not only to an appeal but will also apply to an application.

(xx) The practical effect of Section 21 of the Administrative Tribunals Act, 1985 is the same as that under Section 5 of the Limitation Act 1962, which also enables a person to apply to the Court even after the period specified for making the application is over, leaving the discretion in the Court to condone or not to condone the delay.

(xxi) Section 5 is not applicable to proceedings under the Contempt of Courts Act [1988 All LJ 1279].

(xxii) In cases covered by statutory period of limitation, the limitation sets in by automatic operation of law.

(xxiii) If suit for specific performance of contract has not been filed within prescribed period of limitation, then the same cannot be entertained and the delay cannot be condoned by taking recourse to Section 5, since said provision is for extension of time prescribed in law only in matter of appeals and applications and not in matter of delay in filing of suit resulting in legal bar [AIR 2008 (NOC) Page 2085 (Patna)].

(xxiv) Where an application under Section 9 of the Administrative Tribunals Act was filed after about 4 years from the limitation, the fact that the employee's representation against impugned order of dismissal was pending or that he was

making repeated representation would not save the limitation and said delay could not be condoned on that ground.

26. Original Section 5(1)(b), as it stood substituted by U.P. Act No. 13 of 1985 (*w.e.f.* 28.01.1985), was as follows:

> "5(1)(b): The provisions of the Limitation Act, 1963, shall apply to all references under Section 4, as if a reference were a suit or application filed in the Civil Court:
>
> Provided that where any court subordinate to the High Court has before the appointed date passed a decree in respect of any mater mentioned in Section 4, or passed an order dismissing a suit or appeal for non-prosecution and that decree or order has not become final, any public servant or his employer aggrieved by the decision of such court may make a reference to the Tribunal within 60 days from the appointed date, and the Tribunal may affirm, modify or set aside such decree (but may not remand the case to any such court), and such decision of the Tribunal shall be final."

27. 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.

28. 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.

29. 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.

30. The delay in filing application before the Tribunal (created under the Administrative Tribunals Act, 1985) can, therefore, be condoned under Section 5 of the Limitation Act, 1963, which is not the case in respect of a reference (a suit) filed before the Tribunal created under U.P. Public Services (Tribunal) Act, 1976.

31. The petitioner was required to press for his claim within a reasonable time, as per the principle enunciated by the Hon'ble Apex Court in *Gulam Rasul Lone vs. State of J & K and others, (2009) 15 SCC 321,* which has not been done.

32. It may be pointed out, at the cost of repetition, that non-statutory representation shall not extend the period of limitation. Otherwise also, the claim petition may be dismissed on the ground of delay and laches.

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

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

> " We are of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of, a six months' period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen. We, however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsuccessful representations not provided by law are not governed by this principle.
>
> It is appropriate to notice the provision regarding limitation under s. 21 of the Administrative Tribunals Act. Sub-section (1) has prescribed a period

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

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

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

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

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

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

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

(ii) in computing the period of limitation, the period beginning with the date on which the public servant makes a representation or prefers an appeal, revision or any other petition (not being a memorial to the Governor) in accordance with the rules or orders regulating his conditions of service, and ending with the date on which such public servant has knowledge of the final order passed on such representation, appeal, revision or petition, as the case may be, shall be excluded.

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

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

Section 5 of the Limitation Act, reads as under:

Extension of prescribed period in certain case.--Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period, if the appellant or the applicant satisfies the Court that he had sufficient case for not preferring the appeal or making the application within such period.

Explanation.--The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this Section.

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

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

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

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

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

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

34. 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.'

35. 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.

36. 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.

37. It will be appropriate to quote the following observations of Hon'ble Apex Court in State of Uttarakhand & another vs. Shiv Charan Singh Bhandari & others, (2013) 12 SCC 179, as below:

> "Not for nothing, it has been said that everything may stop but not the time, for all are in a way slaves of time."

38. The claim petition is, therefore, not maintainable. The same is, accordingly, dismissed, as not maintainable at the admission stage. No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: JULY 14, 2022
DEHRADUN
KNP