BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL AT DEHRADUN

CLAIM PETITION NO. 19/SB/2020

Umesh Kumar, Sub Inspector, Civil Police, Uttarakhand at Present working and posted as Sub Inspector in Uttarakhand Police at Special Task Force, Uttarakhand, Dehradun.

.

……Petitioner

vs.

1. State of Uttarakhand through Secretary, Home, Govt. of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Inspector General of Police, Garhwal Range, Dehradun,Uttarakhand.
3. Senior Superintendent of Police, Dehradun,Uttarakhand.

..….Respondents

Present: Sri Abhishek Chamoli, Advocate, for the petitioner.
Sri V.P.Devrani, A.P.O., for the Respondents.

JUDGMENT

DATED: AUGUST 17, 2022

Justice U.C.Dhyani (Oral)

PRAYER

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

> "a. To declare that the punishment of censure entry has the same effect as of major punishment hence cannot be awarded to the petitioner without following the procedure prescribed for the major punishment.
>
> b. To issue an order or direction to set aside the impugned punishment order No. D-44/15 dated 18.01.2016 (Annexure: A-1) and impugned order No. N-223/15 dated 18.01.2016 (Annexure: A-2)

and appellate order dated 03.08.2016 (Annexure: A-3), passed by the respondents no. 3 and 2 respectively, declaring the same as null and void along with all consequential benefits.

c. Issue any other suitable order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

d. Award the cost of the petition to the petitioner."

FACTS

2. Facts giving rise to present claim petition are as follows:

2.1 When petitioner was posted as Chowki In-charge , Nalapani, P.S. Dalanwala, then on 18.09.2015, he along with fellow Police Officials, namely Constable 917 (C.P.) Vijay Singh and Constable 614 (C.P.) Amit Kumar, travelled in his personal vehicle and chased three persons namely, (1) Ashok s/o Babu Ram r/o Jivaya Gagalhedi, Saharanpur; (2) Mahendra s/o Sri Jagpal r/oJalalpur, Bhagwanpur, Roorkee, Haridwar; and (3) Pankaj s/o Jaichand r/o Chakrari, Janakpuri Chowk, Saharanpur (UP) and came to Roorkee, Haridwar. Petitioner brought the above named accused persons to Chowki Nalapani in their Vehicle No. UA07B0841 Indica with a Snake, as specified in the Schedule to the Wile Life (Protection) Act, 1992 (hereinafter referred to as 'Scheduled Snake') (*Do Munha Saanp*). The petitioner did not inform the Inspector In-charge, Dalanwala to this effect. The petitioner, in order to apprehend the accused persons of the Wildlife Protection Act, travelled outside the district, whereas the Police Officers of District Haridwar and Dehradun were making inquiries about the same from P.S. Dalanwala.

2.2 The imputation against the petitioner was that he travelled outside the district, arrested three persons, brought them along with their vehicle to Chowki Nalapani, but did not inform the higher Police Officers. The accusation against him was that he ought to have informed the senior Police Officers before apprehending the accused persons. Since the petitioner did not do so, therefore, notice was given to him under Rule 14(2) of the Police Officers of Subordinate Ranks (Punishment and Appeal) Rule,1991 (henceforth referred to as Rules of 1991), to show cause within 15 days as to why 'censure entry' be not recorded in his character roll under Clause (b) of

sub-rule (1) of Rule 4 of the Rules of 1991. Show cause notice dated 02.12.2015 (Annexure: A-6) was, accordingly, issued to the petitioner with a 'draft censure entry' for submitting explanation. The petitioner submitted reply to such show cause notice on 18.12.2015 (Copy: Annexure- A 9).

2.3 The SSP, Dehradun, was not satisfied with such explanation of the petitioner. According to him, the petitioner was careless and indifferent towards his duties. 'Censure entry' was, therefore, awarded in the character roll of the petitioner for the year 2016 *vide* order dated 18.01.2016 (Annexure: A-1). Feeling aggrieved with the same, the petitioner preferred departmental appeal, citing the reasons as to why the censure entry awarded to the petitioner should be set aside. The appellate authority, *vide* order dated 03.08.2016 (Annexure: A-3), dismissed the departmental appeal of the petitioner. Hence, present claim petition.

3. W.S./C.A. has been filed on behalf of the respondents. Material facts, as given in the claim petition, have been denied except to the extent of specific admission in the C.A./W.S.

4. In contemplation of departmental enquiry, petitioner's services were put under suspension *vide* order dated 19.09.2015 (Annexure: A-4). Petitioner's suspension order was, however revoked *vide* order dated 06.10.2015 (Annexure: A-5). In this way, the petitioner remained suspended from 19.09.2015 to 06.10.2015. It was indicated in order dated 06.10.2015 that separate order will be passed regarding remaining pay and allowances of the suspension period. It has been informed to the Tribunal that no separate orders were passed by the Police Authorities for remaining salary and allowances during the suspension period.

DISCUSSION ON LIMITATION

5. The appellate authority passed the order on 03.08.2016. The claim petition has been filed on 11.03.2020. When the claim petition was first taken up for admission, Ld. A.P.O. submitted that there is delay of two years and eight months in filing the claim petition. He, accordingly, sought and was granted time to file objections to the delay condonation

application. The Tribunal will firstly deal with the aspect of limitation as follows:

6. 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;".

7. 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]*

8. 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.

9. 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]*

10. 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.

11. 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.

12. 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 *parimateria* 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]*

13. 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.

14. 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.

14.1 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....."

14.2 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.

14.3 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.

14.4 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."

14.5 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....."

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

14.7 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".

14.8 '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 thereinset forth (4) that which is requested or supplicated."

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. 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 reipublicaeut sit finislitium*-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.

20. 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."

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

25. 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 *GulamRasul Lone vs. State of J & K and others, (2009) 15 SCC 321,* which has not been done.

26. 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.

27. 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. RamchandraDeodhar'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 KapilaHingorani 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 SantLal 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. RatilalMotilal Patel and ors. AIR 1968 SC 372).

21. So far as the reliance placed by the petitioner in the case of Assam SanmilitaMahasangha&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]*.

28. 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.'

29. 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.

30. 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.

31. 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."

DISCUSSION ON MERITS

32. Petitioner has, however, a case on merits. When the show cause notice was given to the petitioner under Rule 14(2) of the Uttar Pradesh Police Officers of Subordinate Ranks (Punishment and Appeal)

Rules, 1991, the petitioner submitted his reply. The imputation against the petitioner, in a nutshell, is as follows:

The petitioner travelled outside the district, arrested three persons, brought them along with their vehicle to Chowki Nalapani, but did not inform the higher Police Officers. The accusation against him was that he ought to have informed the senior Police Officers before apprehending the accused persons.

33. The petitioner gave his reply on 18.12.2015 (Copy: Annexure-A 9). In his reply to the show cause notice, the petitioner stated that he came to know through an informer that some smugglers, dealing in wildlife, proceeded towards Saharanpur with a Snake which might be the 'Scheduled Snake'. If the Police Officials do not apprehend them promptly, they might flee away. The petitioner, along with Constable Amit Kumar and Constable Vijay Singh, who were busy in checking, proceeded towards Saharanpur Road without further loss of time in their personal vehicle. While chasing the suspects, when they reached RTO Check-Post, Saharanpur Road, the Informer pointed out towards an Indica Car, which was going to Saharanpur. The informer suggested that the persons sitting in the Indica Car might be smugglers, dealing in wildlife. The S.I. (petitioner) tried to contact the Control Room through his personal phone and tried to inform the senior Officers, but he could not do because of non-connectivity of network, as the same was a forest area. The Police Officials chased the vehicle, reached near Daat Kali Temple, which is the boundary of District Dehradun (Uttarakhand) and District Saharanpur (U.P.). The petitioner, along with the Police Constables were conscious of the fact that they were travelling towards U.P., but they continued to chase the suspects, because their duty was foremost for them. After the chase, the culprits were apprehended in Indica Car in Roorkee, Haridwar. The accused persons, who were apprehended, disclosed their identity as Ashok s/o Babu Ram r/o Jivaya

Gagalhedi, Saharanpur; Mahendra s/o Sri Jagpal r/o Jalalpur, Bhagwanpur, Roorkee, Haridwar and Pankaj s/o Jaichand r/o Chakrari, Janakpuri Chowk, Saharanpur (U.P.). Upon search of Indica Car No. UA 07B 0841, the 'Scheduled Snake' was recovered. Upon an enquiry, three accused persons disclosed that the snake was found in the house of their relative Sri Pawan Kumar, r/o Nalapani, Dehradun. The accused persons told the petitioner and Constables that they were not aware of the fact that the snake was the 'Scheduled Snake'. The same can be revealed only by Sri Pawan Kumar. Consequently, the three accused persons along with the snake were taken to Nalapani Chowki, P.S. Dalanwala in their Indica Car.

34 Since the petitioner was not sure whether the accused persons have committed offence under the Wildlife Protection Act or not, therefore, the senior Police Officers were not informed promptly.

35. The accused persons disclosed to the Sr. Police Officers that they were carrying the 'Scheduled Snake'. The petitioner, thereafter handed over the snake and three culprits to the Officers of Forest Department.

36. Information was not given to the senior Officers promptly because no case was registered and it was only on the information given by the informer that some persons were smuggling snake in a car, petitioner along with two Constables chased them. When the culprits were chased, the petitioner was not anticipating that they will have to cross the boundary of their district. Nothing was concealed from anybody.

37. A reasonable prudent person would believe that whatever the petitioner has stated in his explanation to the show cause notice, is trustworthy and correct. A sincere Police Officer would always chase the culprits, when he has been informed by the informer that some smugglers, dealing in wildlife, are about to cross the border at Daat Kali

Temple, a place in between Dehradun (Uttarakhand) and Saharanpur (U.P.).

38. Judicial notice can be taken of the fact that there is no mobile network at that place. It is very difficult to connect to anybody through mobile, if one is travelling towards Daak Kali Temple and Mohand. (Govt. of India is taking the initiative to remove the issue of mobile non-connectivity). If the petitioner wanted to contact the Senior Police Officers and take their permission for crossing the border and chasing the culprits, but could not inform because of mobile non-connectivity, the explanation seems to be sufficient. The Tribunal finds sense in it. It will, therefore, not be reasonable to hold the petitioner guilty of misconduct when he is chasing some smugglers, dealing in wildlife and is crossing the border, without informing Senior Officers, where there is no connectivity of mobile network.

39. Hon'ble Supreme Court, in a catena of decisions has dealt with the issue of judicial interference of the Court on administrative action. What is the extent of Court's power of judicial review on administrative action? This question has been replied in Para 24 of the decision of in *Nirmala J. Jhala vs. State of Gujrat and others, (2013) 4 SCC 301,* as follows:

> "24.The decisions referred to hereinabove highlight clearly, the parameter of the Court's power of judicial review of administrative action or decision. An order can be set aside if it is based on extraneous grounds, or when there are no grounds at all for passing it or when the grounds are such that, no one can reasonably arrive at the opinion. The Court does not sit as a Court of appeal but, it merely reviews the manner in which the decision was made. The Court will not normally exercise its power of judicial review unless it is found that formation of belief by the statutory authority suffers from mala fides, dishonest/ corrupt practice. In other words, the authority must act in good faith. Neither the question as to whether there was sufficient evidence before the authority can be raised/ examined, nor the question of re-appreciating the evidence to examine the correctness of the order under challenge. If there are sufficient grounds for passing an order, then even if one of them is found to be correct, and on its basis the order impugned can be passed, there is no occasion for the Court to interfere. The jurisdiction is circumscribed and confined to correct errors of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of principles of natural justice. This apart, even when some defect is found in the decision making process, the Court must

> exercise its discretionary power with great caution keeping in mind the larger public interest and only when it comes to the conclusion that overwhelming public interest requires interference, the Court should intervene."
>
> [*Emphasis supplied*]

40. The limited scope of judicial review has also been assigned by Hon'ble Supreme Court in JohriMal's case, (1974) 4 SCC 3, as follows:

> "28. The scope and extent of power of the judicial review of the High Court contained in Article 226 of the Constitution would vary from case to case, the nature of the order, the relevant statute as also the other relevant fact ors including the nature of power exercised by the public authorities, namely, whether the power is statutory, quasi-judicial or administrative. The power of judicial review is not intended to assume a supervisory role or don the robes of the omnipresent. The power is not intended either to review governance under the rule of law nor do the courts step into the areas exclusively reserved by the supremalex to the other organs of the State. Decisions and actions which do not have adjudicative disposition may not strictly fall for consideration before a judicial review court. The limited scope of judicial review, succinctly put, is:
>
> (i) Courts, while exercising the power of judicial review, do not sit in appeal over the decisions of administrative bodies.
> (ii) A petition for a judicial review would lie only on certain well-defined grounds.
> (iii) <u>An order passed by an administrative authority exercising discretion vested in it, cannot be interfered in judicial review unless it is shown that exercise of discretion itself is perverse or illegal</u>.
> (iv) A mere wrong decision without anything more is not enough to attract the power of judicial review; the supervisory jurisdiction conferred on a court is limited to seeing that the Tribunal functions within the limits of its authority and that its decisions do not occasion miscarriage of justice.
> (v) The courts cannot be called upon to undertake the government duties and functions. The court shall not ordinarily interfere with a policy decision of the State. Social and economic belief of a Judge should not be invoked as a substitute for the judgment of the legislative bodies.
>
> [*Emphasis supplied*]

CONCLUSION

41. Had the petition been within limitation, the Tribunal would have interfered and set aside both the orders impugned. It would have been a case of interference by the Tribunal in the orders impugned, but the Tribunal is afraid that it cannot do so, as the claim petition is barred by limitation.

42. The limitation is for the Tribunal and not for the Government or Executive or Police Authorities. The Respondents No. 1 & 3 are, therefore,

requested to reconsider their decision which culminated in awarding 'censure entry' (dated 18.01.2016) to the petitioner.

43. In the light of the above, the Tribunal is unable to give directions, inasmuch as it has already been held above that the claim petition is barred by limitation.

SALARY FOR THE SUSPENSION PERIOD

44. So far as the determination of salary for the period of suspension is concerned, this Tribunal is of the view that this prayer of the petitioner should be considered in terms of Para 54-B, Financial Handbook, Vol. 2 to 4, which reads as below:

> "**54-B** (1) When a Government servant who has been suspended is reinstated or would have been so reinstated but for his retirement on superannuation while under suspension, the authority competent to order reinstatement shall consider and make a specific order—
>
> (a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with reinstatement or the date of his retirement on superannuation as the case may be; and
> (b) whether or not the said period shall be treated as a period spent on duty.
> (2).....

The above noted provision of Financial Handbook provides for a situation which the petitioner is faced with in present claim petition. The competent authority may, therefore, consider and make a specific order regarding pay and allowances to be paid to the petitioner for the suspension period.

45. The claim petition thus stands disposed of. However, in the circumstances, there shall be no order as to costs.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: AUGUST 17, 2022
DEHRADUN

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