

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

Present: Hon'ble Mr. Rajendra Singh

-----Vice Chairman (J)

CLAIM PETITION NO. 69/NB/SB/2019

Yogesh Dutt, s/o Shri Atma Ram, presently posted as Sub-Inspector, Police Station Paati, District Champawat.

.....Petitioner

vs.

1. State of Uttarakhand through Secretary, Ministry of Home, Government of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Inspector General of Police, Kumaon Range, Nainital.
3. Senior Superintendent of Police, Rudrapur, district U.S. Nagar.
4. Superintendent of Police, District Champawat.

.....Respondents

Present: Sri Devesh Bishnoi, Advocate, for the Petitioner
Sri Kishore Kumar, A.P.O., for the Respondents

JUDGMENT

DATED: MAY 08, 2023

Present claim petition has been filed by the petitioner to set aside the order dated 21.04.2018 passed by the Senior Superintendent of Police, Udham Singh Nagar whereby, the petitioner was awarded the punishment of censure entry and the Appellate order dated 31.08.2018 passed by the Inspector General of Police, Kumaon Range, Nainital, whereby the appeal of the petitioner was dismissed.

2. The claim petition was filed by the petitioner before this Tribunal on 24.12.2019 along with delay condonation application and the same came up for hearing on admission on 07.01.2020 before the Bench. At the time of hearing on admission, learned A.P.O. had raised objections on maintainability of the claim petition on the point of delay. In the delay

application, the petitioner has stated that he was tied up in problems on his domestic front. Both his father and mother died within a gap of few months. It was further stated that petitioner was stunned on sudden emotional set back of death of his parents and it took him sometime to bear the emotional vacuum by the sad demise of his both parents and on account of which, the filing of the claim petition was delayed by 115 days.

3. However, the claim petition was admitted by this Tribunal and the question of delay was left open to be decided at the time of final disposal. Thereafter, notices were issued to the respondents for filing C.A./W.S.

4. The respondents filed the Counter Affidavit and opposed the claim petition. On delay, the respondents have stated that as per Section 5(1)(b)(i) of the U.P. Public Services Tribunal Act, 1976, as applicable in the State of Uttarakhand, the period of limitation for filing such reference is only one year from the date of order, passed against the petitioner, whereas, the present claim petition has been preferred beyond the prescribed period of limitation. The respondents further stated that the petitioner being a government servant has full knowledge of the provisions of the Service Rules in vogue and the petitioner has the knowledge that the cause of action was arose to him on 21.04.2018 when he was given censure entry and thereafter, he filed the appeal which was dismissed on 31.08.2018. The limitation for approaching this Court was upto 31.09.2019, but the petitioner failed to file the claim petition within such time. It is further stated that the petitioner in the affidavit filed alongwith delay condonation application has failed to explain the day-to-day delay in filing the claim petition and has also failed to mention any cogent reasons for condoning the delay in filing the claim petition as such the claim petition filed by the petitioner is highly time barred and same is liable to be dismissed on the ground of delay and latches.

5. R.A. has also been filed on behalf of the petitioner denying the averments made in the Counter Affidavit. In reply, it has been stated on

behalf of the petitioner that the petitioner was tied up in problems on his domestic front. Both his father & mother had died within a gap of few months only. While the father of the petitioner died on 05.06.2019, his mother died on 22.07.2019. The petitioner had signed the documents pertaining to the present Claim petition on 14.10.2019. Thereafter, a separate application praying for condonation of delay was filed. The petitioner is in the service of Police department; hence he could not come at once to sign the application & its affidavit. Therefore, there has been delay in filing the Claim petition. The delay has been on account of this reason only, which is bonafide and may be condoned by this Hon'ble Tribunal. The provisions of section 5(b)(i) of the U.P Public Services (Tribunal) Act 1976, would not apply in the present case, as the petitioner had signed the documents and the Claim petition was filed thereafter. Therefore, although, there has been delay in the Claim petition, the same has been on account of this reason only, which is bonafide and may be condoned by this Hon'ble Tribunal.

6. On 06.10.2021, during hearing, the petitioner could not explain delay with the reasons shown in the delay condonation application. The petitioner took time to file another delay condonation application with better particulars for condoning the delay. The petitioner filed another delay condonation application on 16.03.2023. In the application, he has mentioned the same facts and circumstances, which have already mentioned by him in the earlier delay condonation application filed along with the claim petition.

7 I have heard learned Counsel for the parties on the point of delay.

8. The petitioner has challenged the impugned punishment order dated 21.04.2018 passed by the respondent no. 3 by which the petitioner was awarded the punishment of censure entry. He filed appeal against the punishment order dated 21.04.2018 before the Inspector General of Police, Kumaon Range, Nainital (respondent no.2), who vide order dated

31.08.2018 rejected the same and confirmed the order passed by the respondent no.3. As per Section 5(1)(b)(i) of the U.P. Public Services Tribunal Act, 1976, as applicable in the State of Uttarakhand, the period of limitation for filing such reference is only one year from the date of order, passed against the petitioner. The limitation for approaching this Court was upto 31.09.2019. The petitioner has challenged the orders passed by the respondent authorities beyond that period. In the delay condonation application, the petitioner stated the reasons for not filing the petition within time that the petitioner was tied up in problems on his domestic front. Both his father & mother had died within a gap of few months only. While the father of the applicant died on 05.06.2019, his mother died on 22.07.2019. The applicant had signed the documents pertaining to the present Claim petition on 14.10.2019. It is also stated by the petitioner that he is in the service of Police department, hence he could not come at once to sign the application & its affidavit. Therefore, there has been delay in filing the Claim petition. The delay has been on account of this reason only, which is bonafide and prayed the delay may be condoned. While, the respondents have stated that as per Section 5(1)(b)(i) of the U.P. Public Services Tribunal Act, 1976, as applicable in the State of Uttarakhand, the period of limitation for filing such reference is only one year from the date of order, passed against the petitioner, whereas, the present claim petition has been preferred beyond the prescribed period of limitation. The respondents further stated that the petitioner being a government servant has full knowledge of the provisions of the Service Rules in vogue and the petitioner has the knowledge that the cause of action was arose to him on 21.04.2018 when he was given censure entry and thereafter, he filed the appeal which was dismissed on 31.08.2018. The limitation for approaching this Court was upto 31.09.2019, but the petitioner failed to file the claim petition within such time.

9. This Tribunal has dealt with the issue of limitation at great length in number of cases. The following extract of this Tribunal's judgment,

passed in Claim Petition no. 188/SB/2022, Jyoti Prakash Mishra vs. State of Uttarakhand & others is reproduced hereunder:

“5. 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;”.

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

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

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

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

Provided that any reference for which the period of limitation prescribed by the Limitation Act, 1963 is more than one year, a reference under Section 4 may be made within the period prescribed by that Act, or within one year next after the commencement of the Uttar Pradesh Public Services (Tribunals) (Amendment) Act, 1985 whichever period expires earlier:

.....”

[Emphasis supplied]

7.

8.

9.

10. 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.

11. 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]

12. 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.

13. 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".

.....

16. A Division Bench of Hon'ble High Court of Allahabad has held 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 form the foundation of the administration of justice under our system. Therefore, it has always been insisted that the decision of a coordinate bench must be followed. (Vide Tribhovandas Purshottamdas Thakkar v. Ratilal Motilal Patel and ors. AIR 1968 SC 372).

21. So far as the reliance placed by the petitioner in the case of Assam Sanmilita Mahasangha & Ors.(Supra) as well as S. S. Rathore are concerned, the said case are entirely different from the facts which is involved in the present case. As in the present case Act itself has prescribed for a period of limitation for challenging the order before the State Public Services Tribunal, Lucknow and the said situation does not exist in the said case, so the petitioner cannot derive any benefit from the aforesaid judgment. Moreover, the Tribunal has given a liberty to the petitioner to approach court/forum in accordance with law.

22. For the foregoing reasons, we do not find any illegality or infirmity on the part of the Tribunal thereby dismissing the claim petition filed by the petitioner/claimant as being barred by limitation.

23. In the result, writ petition lacks merit and is dismissed.”

[Emphasis supplied].

27. 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.’

28. 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.

29. 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.”

10. The petitioner approached this Court on 24.12.2019 and the cause of action had arisen on 31.08.2018. After this, the petitioner should have challenged the orders before this Tribunal within one year i.e. till 31.09.2019, but he failed to approach the Tribunal within this period. In the delay condonation application, the petitioner has not shown any cogent

reason to justify the delay and has failed to explain the delay in filing present petition.

11. In view of the above, the petition is time barred and the delay condonation application deserves to be dismissed. Consequently, without going into merits, the claim petition also deserves to be dismissed, being time barred.

12. The delay condonation application is hereby rejected and the claim petition, being time barred, is also dismissed.

(RAJENDRA SINGH)
VICE CHAIRMAN (J)

DATE: MAY 08, 2023
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KNP