

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

Present: Hon'ble Mr. Rajendra Singh
.....Vice Chairman (J)
&
Hon'ble Mr. A.S.Rawat
.....Vice Chairman (A)

CLAIM PETITION NO. 107/NB/DB/2023

Sher Singh Rawat, aged about 55 years, s/o Darban Singh Rawat, Friends Colony, Bhotia Parao, P.S. Haldwani, Nainital.

.....Petitioner

VS.

1. State of Uttarakhand through Secretary, Finance, Secretariat, Dehradun.
2. Superintendent of Police, Vigilance Department, Dehradun.
3. Commissioner, Commercial Tax, Dalanwala, Dehradun.

.....Respondents

(virtual)

Present: Sri Shalabh Pandey, in brief of
Sri Dharmendra Barthwal, Advocate for the petitioner
Sri Kishore Kumar, A.P.O., for the respondents

JUDGMENT

DATED: OCTOBER 04, 2024

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

"a) In view of the facts and ground, as mentioned above the applicant prays that this Hon'ble Tribunal may graciously be pleased to quash and set aside the impugned termination order dated 13.11.2020 passed by respondents (contained as Annexure No. 1 to this petition) by which the respondents has terminated the services of the petitioner and removed from service and further claim sought in the present claim petition is that to direct the respondents to reinstate him in service on the ground that his conviction and sentence has been stayed by the Hon'ble High Court and grant him up to date salary and other benefits (including the period when his termination continued).

b) To issue any other order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

c) *Award cost of the petition.* ”

2. Facts, necessary for adjudication of present claim petition, are as follows:

2.1 The petitioner was initially appointed as Stenographer on October, 1990 in the Sales Tax Department of the erstwhile State of Uttar Pradesh. Subsequently, the petitioner was promoted to the post of Trade Tax Officer in the year 2006. The petitioner subsequently promoted to the post of Assistant Commissioner, Commercial Tax in the year May, 2011 and was serving on the said post on the date of alleged illegal trapping by the Vigilance Department on 12.06.2012.

2.2 On 14.06.2012, one complainant Irshad Ahmad R/o Sitarganj had preferred a motivated complaint against the petitioner and subsequently the Vigilance Department without applying its mind had arrested the petitioner after registering offences under Section 7, 12(1)(d) read with Section 13(2) of Prevention of Corruption Act, 1988. Meanwhile, the petitioner had remained in judicial custody for 6 months i.e. from 14.06.2012 to 14.12.2012 and was released on bail on 14.12.2012. The petitioner was suspended from service on the charge of registration of a Criminal Case and subsequently as per the direction contained in Government Order no. 1626 dated 23.01.2003, the petitioner was reinstated in service w.e.f. 11.02.2014.

2.3 The Investigation Officer concerned had submitted charge sheet on 30.08.2019 before the competent court and the said court in Trial had convicted the petitioner vide order dated 30.08.2019 and petitioner was awarded 5 years imprisonment and Rs 5000/- as fine. The respondent no. 1, however, vide order no. 1088, dated 19-12-2019 had suspended the services of the petitioner retrospectively w.e.f. 30- 08-2019.

2.4 The petitioner has preferred an appeal on 19.09.2019 against the conviction order (being Criminal Appeal no. 431 of 2019 Sher Singh Rawat Vs. State of Uttarakhand') before this Hon'ble Court whereupon this Hon'ble court by dated 19.09.2019 has granted bail to the petitioner. Meanwhile, the petitioner was mechanically terminated and removed from service on 13.11.2020.

2.5 The Hon'ble High Court, vide order dated 15-03-2021 has been pleased to stay the conviction in appellant's Criminal Appeal no. 431 of 2019 'Sher Singh Rawat Vs. State of Uttarakhand'. Thus, the said Government Order

does not provide for an automatic termination and/or removal from service and rather in the second last clause, provides a scenario where the incumbent is on bail and there is a conviction order and such incumbent files an appeal but the same is decided against him then in such case the departmental punishment would still stand due to conviction in the appeal. Thus, in every case of conviction, the removal/termination is not automatic. Thus, there is total non-application of mind on the part of the respondents in passing the impugned order of termination/removal order dated 13.11.2020 and such order is liable to be set aside. The said stay on petitioner's conviction has further been extended by this Hon'ble Court vide order dated 29.03.2023. The petitioner then preferred a representation on 23.03.2021 before the Secretary, Finance, Govt. of Uttarakhand, to reinstate him in service on the ground that his conviction and sentence has been stayed by the Hon'ble High Court. The petitioner had further submitted that some other incumbents of other departments who were also terminated and removed from service on the ground of their conviction in a Criminal Case had been reinstated in service. Meanwhile, when respondent did not consider petitioner's reinstatement, the petitioner has again preferred his representation on 12.4.2023 before the respondent no. 1 for reinstatement of his service. After the stay of his conviction and sentence, the entire basis of the order of dismissal has been taken away and as such, the petitioner entitled for reinstatement.

2.6 Feeling aggrieved by the illegal inaction at the hands of respondents authorities, the petitioner approached the Hon'ble High Court of Uttarakhand at Nainital by filing a Writ Petition No. 216 of 2023 (S/B). The Hon'ble High Court vide its order dated 25.05.2023 dismissed the writ petition with liberty to the petitioner to approach this Tribunal.

2.7 Delay condonation application has also been filed on behalf of the petitioner along with the claim petition stating therein that after passing of the order dated 13.11.2020 passed by the respondents authority whereby the services of the petitioner were terminated, but due to Covid-19 pandemic, the petitioner could not approach this Tribunal. Thereafter, in the month of April, 2023, the petitioner contacted the present counsel and the counsel advised to him for entire paper book of aforesaid case and thereafter, the petitioner handed over the same to the present counsel in the last week of April 2023. Thereafter, petitioner filed writ petition before the Hon'ble High Court which was dismissed

on 25.05.2023 with liberty to approach this Tribunal. After dismissal of the aforesaid writ petition, the petitioner approached this Tribunal without any further delay and filed the present claim petition. Therefore, the delay in filing the claim petition may kindly be condoned in the interest of justice.

3. Objections/Counter Affidavit to the delay condonation application have been filed on behalf of respondents mainly stating that the petitioner has challenged the order dated 13.11.2020 passed by the respondents, which was challenged before this Tribunal in the month of July, 2023. Learned Counsel for the petitioner submitted that due to Covid-19 Pandemic, the petitioner could not approach this Tribunal. Learned A.P.O. replied that the limitation in view of the Hon'ble Supreme Court judgment passed in Suo Motu writ petition No. 03 of 2020, the limitation period from 15.03.2020 till 28.02.2022 was excluded. Since the limitation to seek such prayer was available to the petitioner before this Tribunal upto March 2023 as per Section 5(b)(i) of the U.P. Public Services (Tribunal) Act, 1976, the present claim petition is highly belated and is time barred.

4. After hearing learned Counsel for the petitioner and learned A.P.O. on the point of delay condonation at the admission stage itself, this Tribunal's observations are in the ongoing paragraphs.

5. This Tribunal has held, in various other 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) of sub-section (1) of Section 5 of the Uttar Pradesh Public Services (Tribunal) Act, 1976 provides for limitation in respect of claim petitions filed before the Tribunal, which reads as below:

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

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

(ii) In computing the period of limitation the period beginning with the date on which the public servant makes a representation or prefers an appeal,

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

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

.....”

[Emphasis supplied]

7. 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.

8. 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]

9. It is apparent that Section 5 of the Limitation Act applies to appeals or applications (but not to applications under Order 21 CPC, i.e., Execution of Decrees and Orders). 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.

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 *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]

12. **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.**

13. 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 is 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.

14. 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 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.

15. In the instant petition, the petitioner was terminated and removed from service on 13.11.2020. The petitioner has submitted that due to Covid-19 Pandemic, he could not approach the Tribunal within the limitation period. Thereafter, he approached the Hon'ble High Court by filing a writ petition being no.216 of 2023 (S/B) and the Hon'ble High Court vide order dated 26.05.2023 dismissed the said writ petition on the request of learned Counsel for the petitioner who sought leave to withdraw the writ petition with liberty to approach the Uttarakhand Public Services Tribunal. The cause of action arose to the petitioner on 13.11.2020. Thereafter, the petitioner should have challenged the order within one-year upto 13.11.2021. As per the decision of the Hon'ble Supreme Court in Suo Motu writ petition No. 03 of 2020, the limitation period from 15.03.2020 till 28.02.2022 was excluded. Thereafter, also, the petitioner

should have approached the Tribunal within one-year upto 01.03.2022 to 28.02.2023. The present petition has been filed by the petitioner on 10.07.2023, which is beyond the period of limitation.

16. In view of the above, the delay in filing the present claim petition cannot be condoned.

17. The claim petition is accordingly, dismissed at the admission stage, as barred by limitation. No order as to costs.

(A.S.RAWAT)
VICE CHAIRMAN (A)

(RAJENDRA SINGH)
VICE CHAIRMAN (J)

DATE: OCTOBER 04, 2024
DEHRADUN.
KNP