

**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. 22/NB/DB/2024

Constable 23 N.P. Ganesh Prasad, aged about 37 years, s/o Late Hardaya, r/o Village Nadehi, P.S. Jaspur, District Udham Singh Nagar.

.....Petitioner

VS.

1. State of Uttarakhand through Secretary, Home Government of Uttarakhand, Secretariat Complex, Subhash Road, Dehradun.
2. Deputy Inspector General of Police, Kumaun Region, Nainital.
3. Superintendent of Police, Pithoragarh.

.....Respondents

(virtual)

Present: Sri Ankush Tyagi, Advocate for the petitioner
Sri Kishore Kumar, A.P.O., for the respondents

JUDGMENT

DATED: OCTOBER 16, 2024

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

- (a) *To quash the impugned final order no. P.F.-02/2022 dated 27.08.2022 passed by respondent no. 3 (Annexure No.2 to this claim petition).*
- (b) *To quash the impugned final order dated 31.12.2022 by respondent no. 2 in appeal no. 31/2022(Annexure No.3 to this claim petition).*
- (c) *To direct the respondents to reinstate the services of petitioner with the respondent department as constable.*
- (d) *To issue any other suitable order or direction in favour of petitioner, which this Hon'ble Tribunal may deem fit and proper in the present facts and circumstances of the case.*
- (e) *To award cost of claim petition in favour of petitioner.*

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

2.1 The petitioner was appointed on the post of Constable in the year 2007 in the respondent department and he joined his services on 14.12.2007. After

rendering a long service in the respondent department, immediately on 11-5-2022, the Deputy Superintendent of Police, Pithoragarh issued a notice against the petitioner with regard to absence of 209 days without any permission or sanction by the competent authority. A departmental inquiry has been initiated against him by Deputy Superintendent of Police, Pithoragarh under the provisions of the Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment & Appeal) Rules, 1991 (Adaptation & Modification Order), 2002 and further, directed the petitioner to be present on 23-5-2022 at 11:00 a.m. before the office of Presiding Officer/Deputy Superintendent of Police, Pithoragarh for argue and cross-examination of the witness, namely Shri Naresh Kumar Arya.

2.2 A show cause notice dated 27-7-2022 with regard to giving clarification within 15 days as to whether under the provisions of the Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment & Appeal) Rules, 1991 (Adaptation & Modification Order), 2002 and under section 23((1)(d) of Uttarakhand Police Act, 2007, his services from police force may be terminated.

2.3 The aforesaid show cause notice was served upon the petitioner only on 16-8-2022, and the clarification, against the aforesaid show cause notice dated 27-7-2022, was duly submitted before the Deputy Superintendent of Police, Pithoragarh on 20-9-2022 with clear facts and circumstances, which was happened with the petitioner, for which the petitioner has unauthorisedly absent from the duties, which are beyond the control of petitioner.

2.4. Thereafter, vide impugned final order no. P.F.- 02/2022 dated 27-8-2022, the respondent no. 3 wrongly and in arbitrary manner, illegally, after dissatisfying the written clarification dated 24-8-2022 submitted by petitioner against the show cause notice dated 27-7-2022 issued by Presiding Officer/Deputy Superintendent of Police, Pithoragarh, which was received to the petitioner only on 16-8-2022, under the provisions of the Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment & Appeal) Rules, 1991 (Adaptation & Modification Order), 2002 and under section 23(d) of Uttarakhand Police Act, 2007, immediately dismissed the petitioner from his active services.

2.5. The petitioner on 20-9-2022 preferred an appeal before the respondent no. 2 against the aforesaid impugned final order dated 27-8-2022 passed by respondent no. 2 with various grounds. Vide impugned order dated 31-12-2022, the respondent no. 2 wrongly and in arbitrary manner, illegally dismissed the

appeal preferred by petitioner. Both the impugned orders passed by respondent nos. 3 & 2 are illegal, arbitrary and such are not sustainable in the eyes of law; hence, the impugned orders passed by respondent no. 3 & 2 are liable to be quashed by this Hon'ble Court.

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. 1301 of 2024. The Hon'ble High Court vide its order dated 23.07.2024 dismissed the writ petition on the ground that petitioner has alternative remedy to challenge both the orders before the Public services Tribunal created under the U.P. Public Services (Tribunal) Act, 1976. The petitioner may resort to the remedy, available to him under the Public Services Tribunal Act.

2.7 Delay condonation application has also been filed on behalf of the petitioner along with the claim petition stating therein that vide impugned final order no. P.F.- 02/2022 dated 27-8-2022, the respondent no. 3, after dissatisfying the written clarification dated 24-8-2022 submitted by petitioner against the show cause notice dated 27-7-2022 issued by Presiding Officer/Deputy Superintendent of Police, Pithoragarh, which was received to the petitioner only on 16-8-2022, under the provisions of Uttar Pradesh/Uttarakhand (Punishment & Appeal) Rules, 1991 under rule 4(1)(a)(1) (Adaptation & Modification Order), 2002 and under section 23(d) of Uttarakhand Police Act, 2007, immediately dismissed the petitioner from his active services. Further, vide impugned order dated 31-12-2022, the respondent no. 2, in appeal no. 31/2022', whereby the appeal preferred by petitioner against the impugned final order dated 27-8-2022 passed by respondent no. 3, wherein the petitioner has been dismissed from his active services, has been dismissed; and further, confirmed the dismissal order dated 27-8-2022 passed by respondent no. 3 against the petitioner. Hence, delay has been caused in filing the present claim petition before this Hon'ble Tribunal. It is submitted the limitation to file the present claim petition was upto 31/12/23), hence, there is 195 days delay in filing the present claim petition, which is not deliberate or intentional; but the same has been occurred due to non-availability of money with the petitioner, because the petitioner is out of service since his dismissal order dated 27-8-2022 passed by respondent no. 3. The petitioner is out of service since his dismissal order dated 27-8-2022 passed by respondent no.3 hence, there is no means of income to

the petitioner, so that, the petitioner could not approach before this Hon'ble Tribunal earlier. The father of petitioner was a patient of cancer, who died on 21-10-2022, since a long treatment from 13-1-2022.

2.8 The petitioner, through Right to Information Act, 2005 supplied by Public Information Officer/Superintendent of Police, Pithoragarh on 19-6-2024 on the R.T.I. Application dated 3-6-2024, got knowledge about the fact that in a similar case, like the petitioner, the respondent no. 2 reinstated the employee with the respondent department, while the case of petitioner is better footing of the said employee. Hence, the petitioner, after collecting the money from his relatives and friends, contacted the counsel and got prepared the present claim petition, and the same is filed before this Hon'ble Tribunal without any further delay. It is submitted that the financial condition of the petitioner is very poor. It is respectfully submitted here that prior to the filing the present claim petition before this Hon'ble Court, the petitioner filed a writ petition no. 1301/2024 (S/S) 'Constable 23 N.P. Ganesh Prasad V/s State of Uttarakhand & others' before the Hon'ble High Court of Uttarakhand at Nainital, seeking the relief for quashing the final order no. P.F.-02/2022 dated 27-8-2022 passed by respondent no. 3, whereby after dissatisfying the written clarification dated 24-8-2022 submitted by petitioner against the show cause notice dated 27-7-2022 issued by Presiding Officer/Deputy Superintendent of Police, Pithoragarh, which was received to the petitioner only on 16-8-2022, under the provisions of Uttar Pradesh/Uttarakhand (Punishment & Appeal) Rules, 1991 under rule 4(1)(a) (1) (Adaptation & Modification Order), 2002 and under section 23(d) of Uttarakhand Police Act, 2007, immediately dismissed the petitioner from his active services; further, quashing the order dated 31-12-2022 passed by respondent no. 2 in appeal no. 31/2022, whereby the appeal preferred by petitioner against the final order dated 27-8-2022 passed by respondent no. 3, wherein the petitioner has been dismissed from his active services, has been dismissed; and further, confirmed the dismissal order dated 27-8-2022 passed by respondent no. 3 against the petitioner, also seeking issuance of mandamus, directing the respondents to reinstate the services of petitioner with the respondent department as constable, in which this Hon'ble Court, vide judgement & order dated 23-7-2022, was pleased to dismiss the said writ petition with the observation that "petitioner has alternative remedy to challenge both the orders before Public Service Tribunal created under The U.P. Public Services (Tribunal) Act, 1976 (for short Public Service Tribunal Act).

2.9 The limitation to file the present claim petition before this Hon'ble Tribunal was upto 31/12/2023 hence, there is 195 days delay in filing the present claim petition, which is not deliberate or intentional, but the same has been occurred due to non availability of fund with the petitioner for filing the present claim petition. Anyhow the petitioner collected the funds from his relatives, and is filing the present claim petition before this Hon'ble Tribunal without any further delay. That in view of aforesaid facts and circumstances, it is expedient and necessary in the interest of justice that this Hon'ble Court may, graciously be pleased to condone 195 days delay in filing the present claim petition before this Hon'ble Tribunal, otherwise the applicant/petitioner will suffer irreparable loss and injury, which cannot be compensated in any manner.

3. Objections/Counter Affidavit to the delay condonation application have been filed on behalf of respondents mainly stating that the appeal of the petitioner was dismissed on 31.12.2022 by respondent no. 02, Deputy Inspector General of Police, Kumaon Range Nainital, the time limit for challenging the same is 01 year, which has expired on 31.12.2023. The petition in question has been filed by the petitioner very late. The application for condonation of delay is not acceptable. Therefore, the petition of the petitioner is liable to be dismissed as being time barred. The petitioner was dismissed from his post from 27.08.2022, against which the appeal filed by the petitioner was dismissed by respondent no. 02 Deputy Inspector General of Police, Kumaon Range Nainital on 31.12.2022, as far as the petitioner has mentioned about his father suffering from cancer and his death, it is not commentable due to lack of information, apart from this it is to be stated that the petitioner's father had died on 21.10.2022, so the petitioner had sufficient time to file the petition because the petitioner's appeal was dismissed on 31.12.2022, the time limit of which was till 31.12.2023. Therefore, the petitioner deliberately did not file the petition within time, on the basis of which the application for exemption from delay is liable to be dismissed. The petitioner does not get any right by reinstating another employee in service. Every case is based on different grounds, apart from this it has to be stated that the petitioner who has served in the police force was aware of the service rules and other legal rights, the petitioner deliberately filed the petition first in the Hon'ble High Court, Uttarakhand Nainital, but the petition was rejected. The time limit available to the petitioner for filing the petition was till 31.12.2023. No clear grounds have been presented by the petitioner to get condonation of delay nor has the day-to-day delay been explained, on the basis

of which the application and petition for condonation of delay are liable to be dismissed. 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.P.C (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 from service on 27.08.2022. The appeal filed by the petitioner against dismissal order was dismissed on 31.12.2022. The cause of action arose to the petitioner on 31.12.2022. Thereafter, the petitioner should have challenged the order within one-year upto 31.12.2023. The petitioner was well aware of cause of action, which arose on 31.12.2022 after dismissal of his appeal and thereafter, the limitation for challenging the impugned orders before this Tribunal was one year, upto 31.12.2023. When the petitioner got knowledge through RTI about the fact of similar case like petitioner, in which respondent no. 2 reinstated the employee with the respondent department, only then, to cover the limitation period, he approached the Hon'ble High Court by filing a writ petition no. 1301 of 2024 (S/S), which was dismissed by the Hon'ble High Court on 23.07.2024 on the ground that petitioner has alternative remedy to challenge both the orders before the Public Services Tribunal. In the aforesaid writ petition, the Hon'ble High Court has not condoned the delay. Hence, the present petition filed by the petitioner is beyond the period of limitation. The grounds taken by the petitioner to condone the delay are not justified.

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 16, 2024
DEHRADUN.
KNP