

**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. 01/NB/DB/2022**

Smt. Tulsi Devi w/o Late Sri Chandan Singh Adhikari, r/o Village Malla Jantra  
Post-Chamkna District Almora.

.....Petitioner

VS.

1. State of Uttarakhand through Secretary, Home, Govt. of Uttarakhand.
2. Director General of Police, Uttarakhand, Dehradun.
3. Inspector General of Police, Kumaon Mandal, Nainital.
4. Superintendent of Police, Pithoragarh.

.....Respondents

(virtual)

Present: Sri Suresh Chandra Bhatt, Advocate for the petitioner  
Sri Kishore Kumar, A.P.O., for the respondents

**JUDGMENT**

**DATED: NOVEMBER 13, 2024**

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

- 1. To set aside/quash the impugned order dated 27/11/2007 order dated 17-12-2007 passed by respondent no.4 Annexure no.1 (colly) to this claim petition.*
- 2. To direct the respondent to provide the family pension and other consequential benefits to the petitioner of the deceased husband constable 110CP Chandan Singh.*
- 3. To issue any other order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.*

*4. Award cost of the petition.*

2. The facts of the case, in brief are as follows:

2.1 The husband of the petitioner was appointed as a constable 110CP in the police department and allegation alleged upon the husband of the petitioner was that on 1/7/2007 at the duty time he was drunk and he was suspended from his service and whereas at the time if examining whether was drunk or not it was not proven drunk by the examination of witness after that respondent no.4 terminated husband of the petitioner from his service.

2.3 After the death of husband the petitioner She gave representation to the authority and she made request to the concerned officers but all was in vain and nobody took interest in that matter that due to Covid-19 petitioner could not file the petition and she has no earning source and she belongs to a very poor family and residing in inaccessible village. The petitioner has been suffering from mental agony and financial crisis since a long time.

2.3 The petitioner requested before this Hon'ble Tribunal that she may be given all recital dues of her husband constable 110CP Chandan Singh S/o Mohan Singh respondents that the family pension and the retrial dues may be given to the petitioner. The petitioner is widow of the above mentioned constable and she is more around than 62 years old and senior citizen of our country and also illiterate to know the legal remedy of the department and she had requested to the authority concern so many times but nothing has been done by the department and not replying to the respondent department is nihil adrem for the petitioner due to this intricacy petitioner has been suffering from her legal rights since a very long time this illogicality has made by respondents even the witnesses had not proved the said incidents as lococitato in the final order of the termination.

2.4 A condonation application has also been filed on behalf of the petitioner along with the claim petition stating therein that the present claim petition is within the limitation as prescribed under Rule-5 of the limitations that there is a delay in filing the claim petition of around 14 years before this claim petition husband of the petitioner/applicant (now deceased) has filed the writ petition before the Hon'ble High Court was

pleased to pass the order and stated their in petitioner has an alternative remedy before The state Public Service Tribunal and he may be relegated to avail the alternative remedy but after that the husband of the petitioner had suffered from paralysis and He was not in position to walk and stand up after that He died and the petitioner is illiterate and She has no Knowledge about the service rule of her husband after the death of husband she has inquired about the service benefits of the husband but due to Covid-19 again she could not come to Nainital and she lives in a village which is a very remote area of Almora, this is the main reason of filling the delay in filing the claim petition may kindly be pleased to condone in the interest of justice. The delay in filling the claim petition is due to the death of the petitioner husband and Covid-19 is also the one of the main reason of delay petitioner neither deliberate nor malafide best it occurred due to aforesaid reasons and prayed that in the interest of justice, the delay of around 14 years in filling the Recall/Modification Application be condoned, otherwise the petitioner will have to face irreparable loss.

3. Objections/Counter Affidavit to the delay condonation application have been filed on behalf of respondents mainly stating that-

3.1 The husband of the petitioner was dismissed from service vide order dated 17-12-2007, but in the instant claim petition the petitioner has not challenged the order dated 17-12-2007. The petitioner challenged the enquiry report dated 17-11-2007, thus the claim petition is a vague and misleading petition. It is also relevant to mention here that the husband of the petitioner has not filed any appeal against his dismissal order and approached the Hon'ble High Court of Uttarakhand by way of filing writ petition no. 1065 of 2008 S/S and the Hon'ble High court of Uttarakhand vide order dated 24-10-2008 dismissed the writ petition on ground of alternative remedy to approach Public Service Tribunal if he so desires.

3.2 Thereafter the husband of the petitioner had not filed any proceedings before the competent authority and this Hon'ble Tribunal and now after death of her husband filed the present claim petition after a lapse of almost more than 14 years. Since as per section 5(b)(i) of the, The U.P. Public Services (Tribunal) Act 1976 the limitation is one year. Thus the present claim petition is highly belated and is time barred. Since

the petitioner and her husband (Now deceased) has not avail the statutory remedy of appeal thus the claim petition is liable to be dismissed on this ground alone. Apart from this the cause of the action arose to the petitioner on 17-12-2007 when the services of the husband of the petitioner were terminated. But the petitioner or his husband has deliberately not filed any proceedings before any court of law. Thus the claim petition is highly time barred. Apart from this, the petitioner has not approached this Hon'ble Tribunal within the limitation as prescribed in the section 5(b)(i) of the, The U.P. Public Services (Tribunal) Act 1976, The limitation for challenging any order or proceeding before the Hon'ble Tribunal is one year from the date of cause of action. Section 5(b)(i) is quoted below:

5(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.

3.3 After perusal of the aforesaid section, it is clear that under the 1976 Act the Claim petition is to be filed within one year from the date of cause of action. The petitioner has filed the present claim petition in the month of January 2022 after a lapse of almost 14 years and has not explained the delay day-by-day and no reasoned explanation for delay has been given in the delay condonation application. Thus the claim petition is liable to be dismissed on the ground of the limitation alone. The petitioner in the delay condonation application and in claim petition has failed to explain the day to day delay in filing the claim petition and only mentioned the reason of Covid-19 in this regard it is stated that the Covid-19 was effective from March 2020 but the services of the husband of the petitioner was dismissed in the year of 2007 thus the ground of Covid-19 is not applicable in the present case. The petitioner 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.

4. The petitioner has also replied to the objections filed by the respondents, and it has been stated that the petitioner is challenging the termination order dated 17-12-2007 by the amendment it is being filed before the Hon'ble Tribunal because deponent was not having the termination order because she is poor illiterate lady who is residing inaccessible place/very remote of village area and during life time of her husband she has no knowledge about the departmental proceedings, even she does not know about the Tribunal and Court proceeding after the death of her husband she has been advised by her well-wishers to contact for legal proceeding even she was not having the termination order of her husband, when it came to her knowledge through this objection filed by the respondents then she is filing the order dated 27-11-2007 and now it is available to her for assailing/challenge before this Hon'ble Bench, so the delay in filing of the termination order is neither deliberate nor intentional. The petitioner is an old age poor widow lady who is facing her starvation stage of life, the all facts, condition and circumstances of Uttarakhand Hilly remote village area and where she is residing and circumstances of the natural calamity and Covid-19, she could not approach the Hon'ble Tribunal for which the delay may be condoned in the interest of Justice.

5. 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.

6. 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;".

7. 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]*

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 (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.

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 *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]

13. **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.**

14. 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.

15. 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.

16. In the instant petition, the husband of the petitioner was terminated and removed from service on 17.12.2007. The husband of the petitioner had approached the Hon'ble High Court of Uttarakhand by way of filing writ petition no. 1065 of 2008 S/S against the dismissal order and the Hon'ble High Court of Uttarakhand vide order dated 24-10-2008 dismissed the writ petition on ground



of alternative remedy to approach Public Service Tribunal, if he so desires. As per death certificate enclosed with the claim petition, the husband of the petitioner was died on 24.05.2018. Despite order of the Hon'ble High Court dated 24.10.2008, the husband of the petitioner did not file any claim petition before the Tribunal challenging the impugned order from 2008 to 2018 during, he was alive. Now, the present petition has been filed by the petitioner (w/o Late Sri Chandan Singh Adhikari) in the year 2022 with long delay of 14 years, without giving any sufficient reason, which is beyond the period of limitation.

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

18. 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: NOVEMBER 13, 2024*  
*DEHRADUN.*  
*KNP*