

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

Present: Hon'ble Mr. Capt. Alok Shekhar Tiwari

----- Member (A)

**Claim Petition No. 154/NB/SB/2022**

Maya Devi (Female), aged about 47 years, W/o Shri Ajay Kumar, presently posted at Head Constable 230 (Female), office of Senior Superintendent of Police, Almora, District Almora

..... Petitioner

Versus

1. State of Uttarakhand, through Principal Secretary, Department of Home, Govt. of Uttarakhand, Dehradun.
2. Director General of Police, Uttarakhand Police Headquarters, Dehradun.
3. Deputy Inspector General of Police, Kumaon Range, Nainital.
4. Senior Superintendent of Police, District Nainital

..... Respondents

Present: None for the petitioner

Sri Kishore Kumar, A.P.O. for the respondents.

**JUDGMENT**

DATED : **28.08.2024**

This claim petition has been filed seeking the following reliefs:-

- “(i) To quash the impugned punishment order dated 26.07.2019 passed by the Senior Superintendent of Police, Nainital whereby the claimant has been awarded censure entry in her character roll for the year 2019 (Annexure No. 1)

- (ii). To quash the impugned appellate order dated 03.12.2019 passed by the Deputy Inspector General of Police, Kumaon Range, Nainital whereby the departmental appeal filed by the claimant has been rejected and the punishment order dated 26.07.2019 passed by the Senior Superintendent of Police, Nainital (Annexure No. 2), has been affirmed.
- (iii). To issue directions in the nature of mandamus commanding the directing the respondents to grant all consequential service benefits.
- (iv). To award the cost of the petition or to pass such order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case.”

2. The present claim petition was filed before this Tribunal on 03.12.2022, beyond the period of limitation. Learned A.P.O. objected to the maintainability of the claim petition, *inter alia*, on the ground of delay. He filed the objections to the delay condonation application stating therein that petitioner filed the present claim petition on 03.12.2022 after a lapse of almost two years and has not explained the day-by-day delay in filing the petition and no specific reason for delay has been given in the delay condonation application. Hence, the present claim petition filed by the petitioner is liable to be dismissed on the ground of the limitation alone. The petitioner was given opportunity to file reply to the same, which has not been filed despite giving several opportunities till date.

3. Today, i.e. 28.08.2024, the matter is listed for hearing on delay condonation and objections thereon. Sri Vinay Kumar, learned Counsel for the petitioner was tried to be contacted on his given mobile number, but he did not respond to the calls.

4. In brief, the facts of the case are that in the year 2019, when the petitioner was posted as Constable at Police Outpost Bhotia Parav, Police Station Kotwali Haldwani, District Nainital, on 12.03.2019 the Disciplinary Authority issued a show-cause notice (Annexure No. 3 to the claim petition) to the petitioner in exercise of powers provided under the Discipline and Appeal Rules, 1991 as applicable in the State of Uttarakhand requiring the petitioner to show-cause as to why a censure entry be not recorded in the service record of the petitioner for being causal and negligent in discharging the duties of the post. Thereafter, the petitioner has submitted her reply (Annexure No. 4 to the claim petition) to the show-cause notice on 04.05.2019 and her reply it has been stated that the petitioner also relied on the G.D. entry dated 24.01.2018 and 25.01.2018 (Annexure No. 5 to the claim petition). The appointing authority sought the parawise reply from the CID Haldwani Sector, Haldwani and rejected the reply of the petitioner in a cryptic manner vide order dated 26.07.2019 by holding that the explanation given by the petitioner does not have any force and therefore, a censure entry be recorded in the service record of the petitioner. Against the punishment order dated 26.07.2019, the petitioner preferred a departmental appeal on 22.08.2019 (Annexure No. 6 to the claim petition) before the respondent No. 3, which was rejected by the departmental appellate authority on 03.12.2019 (Annexure No. 2 to the claim petition). The impugned orders dated 26.07.2019 (Annexure No. 1) and 03.12.2019 (Annexure No. 2) are not sustainable in the eyes of law. Hence, this present claim petition.

5. I have heard argument on behalf of learned A.P.O. on the maintainability of the claim petition.

6. At the very outset Ld. A.P.O. objected to the maintainability of the present claim petition *inter alia* on the ground that the same is barred by limitation.

7. Issue of limitation, therefore, assumes significance in the backdrop of the facts of the claim petition.

8. Clause (b) of sub-section (1) of Section 5 of the Uttar Pradesh Public Services (Tribunal) Act, 1976 (for short, 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 4 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]

9. 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.

10. 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.”

11. 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, 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.

12. The Tribunal is, therefore, strictly required to adhere to the provisions of Section 5 of the Act of 1976.

13. 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 subsection (2), an application may be 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]

14 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.

15. In view of above discussion, this claim petition is clearly barred by limitation and is liable to be dismissed. No order as to costs.

(Capt. Alok Shekhar Tiwari)  
Member (A)

*DATE: AUGUST 28<sup>th</sup>, 2024*

*NAINITAL*

*BK*