

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL  
AT DEHRADUN**

Present: Hon'ble Mr. Justice U.C.Dhyani

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

**CLAIM PETITION NO. 98/DB/2020**

Ved Pal Singh s/o Late Sri Ram Lal, aged about 54 years, presently working as Sub-Inspector (Special category), posted at Police Station Ranipur, District Haridwar.

**.....Petitioner**

**vs.**

1. State of Uttarakhand through Secretary (Home) Government of Uttarakhand, Secretariat, Dehradun.
2. Senior Superintendent of Police, Haridwar.
3. Inspector General of Police , Garhwal Region, Uttarakhand, Dehradun.

**.....Respondents.**

Present: Sri Shashank Pandey, Advocate for the Petitioner.  
Sri V.P.Devrani, A.P.O., for the Respondents.

**JUDGMENT**

**DATED: NOVEMBER 29, 2021**

**Justice U.C.Dhyani (Oral)**

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

- a. To issue order or direction to quash order dated 05.09.2018 *vide* which the petitioner has been punished with censure entry (Annexure: A-1).
- b. To issue order or direction to quash order dated 03.02.2019 *vide* which the appeal of the petitioner has been rejected (Annexure: A-2).
- c. To issue order or direction, directing the respondent to give to the petitioner amount withheld as difference of salary and suspension allowance.
- d. To give cost of the petition to the petitioner.
- e. To give any other relief this Hon'ble Court may deem fit and proper in the circumstances of the case."

2. Brief facts, giving rise to the present claim petition, are as follows:

In the year 2017, when the petitioner was working as Sub-Inspector (Special Category) at P.S. SIDCUL, District Haridwar he was appointed as Investigating Officer in Case Crime No. 353/2017 under Sections 147, 342, 323, 504, 506 IPC to probe into the matter. An allegation was made against the petitioner for not conducting the investigation as per the defined provisions, misusing his defined powers and also showing negligence towards his duty. Petitioner was suspended *vide* order dated 20.01.2018, passed by SSP, Haridwar. He was issued show cause notice *vide* letter No. 14/2017 dated 06.06.2018, by SSP, Haridwar (Copy: Annexure- A 8). Petitioner filed his reply to the show cause notice on 20.08.2018 (Copy: Annexure- A 9). Petitioner was awarded censure entry *vide* order dated 05.09.2018 (Copy: Annexure- A 1). Appeal filed by the petitioner before I.G. Police against order dated 05.09.2018 was also dismissed *vide* order dated 04.02.2019 (Copy: Annexure- A 2). Present claim petition has been filed before this Tribunal on 06.11.2020.

3. At the very outset, Ld. A.P.O. vehemently opposed the maintainability of the claim petition *inter alia*, on the ground that the same is barred by limitation.
4. Relevant provision for admitting a claim petition by this Tribunal, under the U.P. Public Services (Tribunal) Act, 1976, is as follows:

“Section 4(3): On receipt of a reference under sub-section (1), the Tribunal shall, if satisfied after such inquiry as it may deem necessary that the reference is fit for adjudication or trial by it, admit such reference and where the Tribunal is not so satisfied, it shall summarily reject the reference after recording its reasons.”

5. The claim petition has been listed for hearing on maintainability of the claim petition. We, therefore, proceed to discuss whether the claim petition is within time, or, is barred by limitation?

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 provisions.
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. The petitioner, in delay condonation application, has attributed reasons for condoning the delay in filing claim petition. 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 sufficient cause, therefore, this Tribunal is unable to condone the delay in filing present claim petition, howsoever reasonable petitioner'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 case, the disciplinary authority passed an order on 05.09.2018 (Annexure: A1). Petitioner preferred a departmental appeal against the same. Departmental appeal was dismissed *vide* order dated 04.02.2019 (Annexure: A2). The claim petition ought to have been filed on or before 04.02.2020. Instead, the same has been filed on 06.11.2020. Benefit of order passed by Hon'ble Supreme Court in SUO MOTU WRIT PETITION (CIVIL) No(s) 3/2020 could be given to the petitioner only if period of limitation was going to expire after

15.03.2020, during pandemic, and not before that. If period of limitation expired before 15.03.2020, the Tribunal cannot help the petitioner. Claim petition is time barred.

16. Claim petition is, therefore, dismissed at the admission stage, as barred by limitation.

**(RAJEEV GUPTA)**  
VICE CHAIRMAN (A)

**(JUSTICE U.C.DHYANI)**  
CHAIRMAN

*DATE: NOVEMBER 29, 2021*  
*DEHRADUN*  
*VM*