

**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. 104/DB/2021**

A.K.Dinkar s/o Sri Bharat Singh, retired Engineer in Chief of Irrigation Department, 30/9B, Rajpur Road, Dehradun, Uttarakhand.

**.....Petitioner**

**VS.**

1. State of Uttarakhand through its Secretary, Irrigation Department, Govt. of Uttarakhand, Dehradun.
2. Chief Engineer, Irrigation Department, Dehradun, Uttarakhand.

**.....Respondents.**

Present: Dr. N.K.Pant, Advocate, for the Petitioner

Sri V.P.Devrani, A.P.O., for the Respondents

**JUDGMENT**

**DATED: OCTOBER 27, 2021**

**Rajeev Gupta, Vice Chairman(A) (Oral)**

This claim petition has been filed seeking the following reliefs:

*“(i) Issue an order or direction calling for the record and grant the regular promotion on the post of Chief Engineer Level-I from the date 01.05.2016 as per recommendation of DPC dated 29.07.2015.*

*“(ii) Issue an order or direction calling for the record and to review the DPC dated 29.06.2017 for the post of Engineer in Chief and promote the petitioner on the post of Engineer in Chief from the date 30.06.2017.*

*“(iii) To issue an order or direction calling for record and to grant arrears of pay with 9% interest from the date of 01.05.2016.*

*“(iv) To issue an order or direction to grant for unruly and irresponsible behavior of the respondent and sought such sum as the Hon'ble Tribunal think fit for causing mental harassment and pain.*

*“(v) To issue any suitable claim, order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.*

*“(vi) Award the cost of claim petition to the petitioner.”*

2. At the time of hearing on admission of the claim petition, learned A.P.O. has raised the objection that the claim petition is highly time barred as the reliefs no. (i) and (ii) relate to the regular promotion on the post of Chief Engineer Level-I from the date 01.05.2016 as per recommendation of DPC dated 29.07.2015 and reviewing the DPC dated 29.06.2017 for the post of Engineer-in-Chief and promoting the petitioner on this post from 30.06.2017.

3. Learned Counsel for the petitioner agrees that he has not approached any other Court or Tribunal for these two reliefs and that relief No. (iii) is contingent on the first two [(i) and (ii)] reliefs. Learned Counsel for the petitioner further prays that he has made representations to the Secretary, Irrigation Department, Govt. of Uttarakhand on 06.07.2021 and 17.08.2021 (Annexures: A2 and A3) respectively, which may kindly be ordered to be decided at an early date. Learned A.P.O. replied that these representations are not statutory in nature.

4. The issue of limitation is dealt with in detail, as below:

5. 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]*

6. 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.

7. 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]*

8. 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.

9. 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.

10. 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]*

11. **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.**

12. The petitioner, in his claim petition, 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 statutory 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.

13. In view of the above, this claim petition is clearly barred by limitation. However, when representations dated 06.07.2021 and 17.08.2021 have been made to the Govt., they should be decided expeditiously. Respondent no. 1 may decide these representations of the petitioner at an early date by a reasoned and speaking order.

14. It is made clear that we have not expressed any opinion on the merits of the case.

15. Claim petition is, accordingly, disposed of at the admission stage.

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

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

*DATE: OCTOBER 27, 2021*  
*DEHRADUN*  
*KNP*