

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. 18/DB/2021

Rajendra Kumar s/o Sri Phool Singh, presently posted as Senior Assistant in office of Addl. Commissioner, State Tax, Haridwar

.....Petitioner

versus

1. State of Uttarakhand through Secretary, State Tax, Civil Secretariat, Dehradun
2. Commissioner, State Tax, Government of Uttarakhand, Dehradun
3. Addl. Commissioner, State Tax, Garhwal Zone, Haridwar, Government of Uttarakhand, Dehradun

..... Respondents

Present : Sri Shashank Pandey, Advocate, for the petitioner
Sri V.P. Devrani, A.P.O., for the respondents

Judgement

Dated: 07th January, 2022

Justice U.C. Dhyani (Oral)

RELIEFS SOUGHT

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

“(i) To direct the respondents to issue order or direction quashing the rejection orders dated 30.03.2011, 09.10.2013, 29.03.2014, 30.11.2015 and 24.10.2019.

(ii) To direct the respondents to grant promotion to the petitioner w.e.f. 03.02.2005 i.e. the date when his juniors were promoted to the post of Junior Assistant/ Clerk along with consequential benefits.

(iii) To give any other relief fit and proper in the circumstances of the case.

(iv) To give cost to the petitioner.”

PETITIONER'S VERSION

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

(a) Petitioner was appointed as Class IV employee in the respondent department on 02.08.1989.

(b) After creation of State of Uttarakhand, the petitioner was discharging his duties in Haridwar. He passed High School, even before joining the service.

(c) Petitioner never opted for State of Uttar Pradesh. A letter was sent along with the list by the Commissioner, Trade Tax, Uttar Pradesh, Lucknow on 16.07.2003 of the persons who were being finally allocated to the State of Uttarakhand. The list was circulated and the representations were invited. The petitioner immediately objected against non-inclusion of his name in the list of employees who were allocated to the State of Uttarakhand.

(d) In the year 2005, names were sought in order of seniority for the persons to be promoted in Class III cadre. A list was sought by the respondent department of Class IV employees who had either passed High School or

Intermediate. When the list was sent of such employees, petitioner's name figured at Serial No. 40.

(e) Total 31 Class IV employees were promoted out of which Smt. Madhvi Karki, Sri Jawahar Singh, Sri Daulat Ram and Sri Krishna Kumar Yadav, who were junior to the petitioner were promoted on the basis of their seniority without any typing test or any examination.

(f) Legitimate right of the petitioner to be promoted before his juniors (were promoted) was overlooked on the ground that he was an optee for State of Uttar Pradesh and thus he would be given promotion in State of Uttar Pradesh, whereas in fact, he never opted for State of Uttar Pradesh and therefore his services remained in the State of Uttarakhand.

(g) The petitioner made various representations for being given promotion from the date other Class IV employees, who were junior to him, were promoted. The petitioner was, however, finally promoted to the post of Junior Assistant *vide* order dated 23.01.2013. To his surprise, he was not promoted from a previous date, but was promoted from the date of order.

(h) The petitioner was finally confirmed in service *vide* order dated 25.07.2015 *w.e.f.* 22.01.2015.

(i) Petitioner made a number of representations to respondent no. 2 for being notionally promoted to the post of Junior Assistant from the date his juniors were promoted (since the year 2005). Petitioner's representations were although decided but without application of mind.

(j) Respondent No. 3 *vide* letter dated 24.10.2019 reiterated that the petitioner was an employee of State of Uttar Pradesh and was allocated to the State of Uttarakhand

only in the year 2006. Hence, he could not be promoted along with his juniors in the year 2004-05.

(k) Petitioner made a fresh representation/ revision dated 11.05.2020, which was summarily rejected by the Joint Commissioner, State Tax, Garhwal zone, Roorkee.

(l) Faced with no other alternative, the petitioner has filed the present claim petition.

RESPONDENTS' VERSION

3. Learned A.P.O opposed the maintainability of the present claim petition, *inter alia*, on the ground that the same is barred by limitation. Objections were filed on behalf of the respondents by learned A.P.O. on 15.03.2021.

4. Learned A.P.O. submitted that the claim petition for quashing the rejection orders dated 30.03.2011, 09.10.2013, 29.03.2014 and 30.11.2015 (Annexure: A1 to Annexure: A4) is beyond limitation.

5. Learned A.P.O. also submitted that the second prayer of the petitioner to grant promotion to him *w.e.f.* 03.02.2005 is also beyond limitation.

6. According to learned A.P.O, order dated 24.10.2019 (Annexure: A5) was passed on non-statutory representation of the petitioner and therefore the same is also beyond limitation in view of the decision rendered by the Hon'ble Supreme Court in State of Uttarakhand & another vs. Shiv Charan Singh Bhandari & others, (2013) 12 SCC 179.

DISCUSSION

7. This Tribunal has held, in various 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.”.

8. Clause (b) to 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]

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.”

[Emphasis supplied]

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 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.

12. 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.

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 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]

14. Section 5(1)(b) provides that (although) the provisions of the Limitation Act, 1963, *mutatis mutandis* apply to reference under Section 4 as a reference were a suit filed in civil court, but continues to say, in the same vein, that notwithstanding the period of limitation prescribed in the Schedule to the said Act, the period of limitation for such reference shall be one year. Section 5(1)(b) is

therefore, specific in the context of limitation before this Tribunal.

15. Sub-section (1) of Section 4 of the Act 1976 has used the language “.....a person who is or has been a public servant and is aggrieved by an order pertaining to a service matter within the jurisdiction of the Tribunal, may make a reference of claim to the Tribunal for the redressal of his grievance.

15.1 Statement of Objects and Reasons (SOR) reads as below:

“.....Section 4 of the said Act provides that a person who is or has been a public servant and is aggrieved by an order pertaining to a service matter within the jurisdiction of the Tribunal may make reference of claim to the Tribunal for redressal of his grievance.....”

15.2 Section 4-A of the Act has also used the words “references of claims” and “reference of claim” in Sub-section (1) and Clauses (a) & (b) to Sub-section (5) of such Section.

15.3 Clause (b) to Sub-section (1) of Section 5 of the Act has used the word “reference” in such clause. Sub-section (2) of Section 5 of the Act has also used the word “reference”. Sub Section (5-A) to Section 5 of the Act has also used the word ‘reference’ in its text.

15.4 Section 7 of the Act provides for power to make Rules. Clause (c) to Sub-section (2) of Section 7 of the Act provides for “the form in which a reference of claim may be made.”

15.5 Furthermore, the Schedule appended to the Act has also used the words “reference of claim” or “references

of claims”. Rule 4 of the Uttar Pradesh Public Services Tribunal (Procedure) Rules, 1992, provides for the following “(1) Every reference under Section 4 shall be addressed to the Tribunal and shall be made through a ‘petition’ presented in the Form-I by the petitioner.....(2) The petition under sub-rule (1) shall be presented.....”

15.6 The heading of Rule 5 is Presentation and scrutiny of petition.

15.7 Rules 4, 5, 6, 8, 16 etc. use the word ‘petition’, which, in fact, is a “reference”. The petition is only a medium of presentation. The Rules are always subordinate to the Act. The Rules are always supplementary. They are always read with the provisions of the Act. In a nutshell, a petition which is filed before this Tribunal is, in fact, a “reference of claim”.

15.8 ‘Petition’ According to New International Webster’s Comprehensive Dictionary, means “(1) a request, supplication, or prayer; a solemn or formal supplication (2) A formal request, written or printed, addressed to a person in authority and asking for some grant or benefit, the redress of a grievance, etc. (3) *Law* a formal application in writing made to a court, requesting judicial action concerning some matter therein set forth (4) that which is requested or supplicated.”

16. According to Section 9 of the Limitation Act, 1963, “where once time has begun to run, no subsequent disability or inability to institute a suit or make an application stops it.” Section 9 of the Limitation Act, therefore, runs contrary to the interest of the petitioner.

17. 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.

18. 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 may be 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.

19. 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 were (is) a suit. 'Suit' according to Section 2(I) 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.

UNDERLYING PHILOSOPHY

20. Philosophy underlying the Law of Limitation may, briefly, be stated thus:

(i) One of the considerations on which the doctrine of limitation and prescription is based upon is that there is a presumption that a right not exercised for a long time is non-existent [Salmond's Jurisprudence, eighth edition, pages 468,469].

(ii) The object of the law of limitation is to prevent disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by party's own inaction, negligence or laches [AIR 1973 SC 2537(2542)].

(iii) The object of law of limitation is in accordance with the maxim, *interest reipublicae ut sit finis litium*- which means that the interest of the state requires that there should be an end to litigation.

(iv) Statutes of limitation and prescription are statutes of peace and repose.

(v) Rule of vigilance, which is foundation of statute of limitation, rests on principles of public policy.

(vi) The purpose of Rules of Limitation is to induce the claimants to be prompt in claiming relief.

(vii) Parties who seek to uphold their legal rights should be vigilant and should consult their legal experts as quickly as possible. They cannot sleep over the matter and at a later stage seek to enforce their rights, which is likely to cause prejudice to other parties. This is precisely the reason why periods of limitation are prescribed in many statutes.

(viii) The Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy within a time fixed by the legislature [AIR 1958 Allahabad 149(153)].

(ix) Law of limitation is procedural. It would apply to proceedings *i.e.* law in force on the date of institution of proceedings irrespective of date of action- Object of statute of limitation is not to create a right but to prescribe periods within which proceedings can be instituted.

(x) The limitation for institution of a legal action is a limitation on the availability of a legal remedy during a certain period of time. Different periods are prescribed for various remedies. The idea is that every legal action must be kept alive for a legislatively fixed period of time. The object of legal remedy is to repair a damage caused by reason of a legal injury suffered by the suitor. A legal remedy, therefore, can never come into existence before a legal injury occurs. It is the legal injury that calls legal remedy to life and action. Limitation fixes the life span of a legal remedy for the redressal of a legal injury. It is not considerable that the

legislature would fix the limitation to run from a point earlier than the occurrence of a legal injury, after which only a legal remedy can come into existence. Jurisprudentially, therefore, a period of limitation can only start running after an injury has occurred. Then an appropriate legal remedy springs into action.

(xi) When the language of statute is clear, the court is bound to give effect to its plain meaning uninfluenced by extraneous considerations but where the language of the enactment is not itself precise or is ambiguous or of doubtful import, recourse may be had to extraneous consideration. No exception can be recognized in these rules of construction in the case of Limitation Act [AIR 1941 PC 6 (9)].

(xii) The Rules of Limitation are, *prima facie*, rules of procedure [AIR 1953 Allahabad 747 (748) (FB)].

(xiii) When the Act prescribes a period of limitation for the institution of a particular suit, it does not create any right in favour of person or define or create cause of action, but simply prescribes that the remedy can be exercised only within a limitation period and not subsequently.

(xiv) Section 3 of the Limitation Act puts an embargo on the Court to entertain a suit, if it is found to be barred by limitation.

(xv) The Court cannot grant any exemption from limitation on equitable considerations or on grounds of hardships [AIR 1935 PC 85].

(xvi) Section 5 of Limitation Act does not apply to the suit, as the word 'suit' is omitted by the legislature in the language of the said section and therefore delay in filing suit cannot be condoned while invoking Section 5 [2010 (168) DLT 723].

(xvii) Section 5 deals only with the admission of appeals and applications after time [1952 All LJ (Rev.) 110 112 (DB)].

(xviii) Courts have no power to extend the period of limitation on equitable ground and equity cannot be the basis for extending the period of limitation.

(xix) Provisions of Section 5 of Limitation Act will be applicable not only to an appeal but will also apply to an application.

(xx) The practical effect of Section 21 of the Administrative Tribunals Act, 1985 is the same as that under Section 5 of the Limitation Act 1962, which also enables a person to apply to the Court even after the period specified for making the application is over, leaving the discretion in the Court to condone or not to condone the delay.

(xxi) Section 5 is not applicable to proceedings under the Contempt of Courts Act [1988 All LJ 1279].

(xxii) In cases covered by statutory period of limitation, the limitation sets in by automatic operation of law.

(xxiii) If suit for specific performance of contract has not been filed within prescribed period of limitation, then the same cannot be entertained and the delay cannot be condoned by taking recourse to Section 5, since said provision is for extension of time prescribed in law only in matter of appeals and applications and not in matter of delay in filing of suit resulting in legal bar [AIR 2008 (NOC) Page 2085 (Patna)].

(xxiv) Where an application under Section 9 of the Administrative Tribunals Act was filed after about 4 years from the limitation, the fact that the employee's representation against impugned order of dismissal was pending or that he was making repeated representation

would not save the limitation and said delay could not be condoned on that ground.

INFERENCE

21. To conclude Office Memorandum dated 30.03.2011 (Annexure: A1), Office Memorandum dated 09.10.2013 (Annexure: A2), Office Memorandum dated 29.03.2014 (Annexure: A3), Office Memorandum dated 30.11.2015 (Annexure: A4) were passed on the representations of the petitioner. If the petitioner wanted such orders to be quashed, the claim petition ought to have been filed within one year of rejection of such representation(s). The same has not been done. Petitioner has also made a prayer for his promotion *w.e.f.* 03.02.2005, which is also time barred, inasmuch as, he should have filed the claim petition on or before 03.02.2006. The same has not been done. Further, representation and rejection of such representation *vide* order dated 24.10.2019 (Annexure: A5) will not extend the limitation, inasmuch as the representation which was forwarded along with letter dated 26.09.2019 to Commissioner, State Tax and which was rejected on 24.10.2019 (copy Annexure: A5) by Commissioner, State Tax, was a non-statutory representation. The Tribunal agrees with the submission of learned A.P.O. that non-statutory representation will not extend the limitation, in view of the decision rendered by the Hon'ble Supreme Court in State of Uttarakhand & another vs. Shiv Charan Singh Bhandari & others, (2013) 12 SCC 179, in which, *inter alia*, the following was observed:

“Not for nothing, it has been said that everything may stop but not the time, for all are in a way slaves of time.”

ORDER

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

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: 07th January, 2022
DEHRADUN
RS