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**High Court of Judicature at Allahabad
(Lucknow)**

Neutral Citation No. -2024:AHC-LKO:54467-DB

Reserved on:24.05.2024

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Court No. - 2

Case :- WRIT - A No. - 15076 of 2021

Petitioner :- State Of U.P. Thru. Addl. Chief Secy. Tax Lkoandanr

Respondent :- Birendra Bahadur Singh

Counsel for Petitioner :- C.S.C.

A N D

Case :- WRIT - A No. - 16773 of 2019

Petitioner :- Ram Babu Tripathi

Respondent :- State Public Services Tribunal Lucknow Thr.Chairman
And Ors.

Counsel for Petitioner :- Ravi Shanker Mishra,Rakesh Devi Prasad
Kumar,Swati Singh

Counsel for Respondent :- C.S.C.

Hon'ble Rajan Roy,J.

Hon'ble Om Prakash Shukla,J.

(Per : Rajan Roy, J.)

1. Both these writ petitions involve similar facts and common issues, therefore, they have been heard together and are being decided by a common judgment.

2. Heard Shri Rakesh Kumar along with Shri Shiv Kumar Soni and Shri Ravi Shanker Mishra, learned counsel for the petitioner and Shri Anand Kumar Singh, learned Standing Counsel for the respondent- State in Writ - A No. 16773 of 2019. In connected Writ-A No.15076 of 2021, none has appeared on behalf of the respondent while learned Standing Counsel has argued on behalf of the State.

3. As regards Writ – A No. 16773 of 2019 we find that the petitioner, who was claimant in Claim Petition No. 232 of 2014 before the Tribunal, was visited with a punishment order of 27.10.2007. He filed an Appeal which was decided on 25.10.2008. He thereafter filed a Revision on 22.12.2008. He ultimately gave a legal notice on 02.01.2014 as is referable under the proviso to Section 4(6) of the Act, 1976 and on failure to pass any order in the revision, the said Claim Petition was filed in the year 2014, which has been dismissed, albeit on merits on 29.01.2019. The petitioner- Ram Babu's counsel contended that there is no limitation prescribed for giving a legal notice under the proviso to Section 4(6) of the Act, 1976 and that the State can not take advantage of its own negligence and lapse in not passing any order in Appeal. When no limitation has been prescribed it is not open for this Court to prescribe any limitation in the matter and that in the facts of the case, the claim petition was not barred by limitation. He further contended that the dismissal of the claim petition on merits is erroneous on various grounds as taken in the writ petition, therefore, it is liable to be set-aside. The contention of respondent- State counsel in this writ petition is that the petitioner-claimant could not have slept over the matter for more than 8 years to give notice under the proviso to Section 4(6) of the Act, 1976. He should have given such notice immediately on expiry of period of six months envisaged therein and thereafter, should have filed the claim petition within one year of expiry of the period of one month which was not done, therefore, the claim petition was barred by

limitation. A specific objection in this regard was taken by the State in the written statement in para 3, 4.14 and other paragraphs of the written statement, but, the same have not even been referred much less considered by the Tribunal. He submitted that without considering the question of limitation the Tribunal, has dismissed the claim petition on merits, therefore, the State does not have any grievance with regard to the merits of the dismissal of the claim petition but has raised the said plea of limitation in response to the claim of the petitioner in this writ petition which should also be taken consideration.

4. Writ- A No. 15076 of 2021 (Writ Petition No. 15076 (S/B) of 2021) has been filed by the State of U.P. challenging the judgment and order dated 03.04.2019 passed by the U.P. Public Services Tribunal in Claim Petition No. 1714 of 2015. Claim Petition no. 1714 of 2015 was filed by the respondent-claimant in the year 2015 challenging an order of punishment dated 13.01.2006 with consequential reliefs. The respondent-claimant it appears preferred an Appeal against the said punishment order on 10.04.2006, but, the same could not be forwarded to the State Government at the relevant time and could not be decided. On 26.08.2015 the respondent-claimant gave a legal notice, referable, as claimed, to proviso to Section 4(6) of the Act, 1976 and, thereafter, as the Appeal was not decided within one month he filed Claim Petition No. 1714 of 2015 challenging the punishment order dated 13.01.2006. The claim petition was admitted on 17.03.2016 subject to point of limitation which was involved. It was ultimately allowed on 03.04.2019. The main ground of challenge by the State in this writ petition is that claim petition was hopelessly barred by limitation and a specific objection was taken in this regard in the written statement filed before the Tribunal, but, ignoring the same and without deciding the question of limitation, the merits of the claim petition has been considered and the same has been allowed which is against the provisions of the U.P. Public

Services (Tribunal) Act, 1976 (hereinafter referred to as 'the Act, 1976') and the law on the subject. It is alleged by the State Counsel that the Tribunal while deciding the claim petition has noticed the objections on the point of limitation and the provisions of the proviso to Section 4(6) of the Act, 1976, however, it has opined that natural justice requires a decision on merit. The submission is that the Tribunal is not a Court of extraordinary jurisdiction, but, a Tribunal of limited jurisdiction, whose powers are circumscribed by the Act, 1976. The Limitation Act, 1963 (hereinafter to as 'the Act, 1963') is applicable to its proceedings, therefore, the Tribunal was obliged to consider and decide the objection on the point of limitation which was specifically taken in the written statement filed before it. Even if, it had not been taken, the Tribunal was obliged to do so in view of Section 3 of the Act, 1963 and in not doing so, the Tribunal has usurped the Jurisdiction which it did not have, as, limitation involves a point of jurisdiction and a such objection was taken at the first opportunity. Nobody appeared to argue on behalf of respondent in this writ petition.

5. We have also heard Shri Asit Kumar Chaturvedi, learned Senior Advocate and Shri Gaurav Mehrotra, whose assistance we had requested considering the interpretation of the provisions of U.P. Public Services (Tribunal) Act, 1976 and the question of limitation involved herein.

6. We had passed a detailed order on 01.10.2021 in Writ - A No. 15076 of 2021 staying the impugned judgment and also noting the points for consideration.

7. Having heard learned counsel for the parties and having perused the records the first and foremost point is the period of limitation prescribed for filing a reference or claim petition before the Tribunal and the manner of its determination/ calculation, in a case, where, though, an appeal, revision etc. has been preferred by the public servant but no

order has been passed thereon. This issue not only has far reaching consequences in the two cases at hand, but, even otherwise, has immense importance with respect to other proceedings before the Tribunal and determination of point of limitation in the context of reference/claim petitions being filed before it.

8. The U.P. Public Services (Tribunal) Act, 1976 was enacted to provide for the constitution of Tribunals to adjudicate dispute in respect of matters relate to employment of all public servant of State.

9. Section 4 of the Act, 1976 reads as under:-

"4. Reference of claim of Tribunal.- (1) Subject to the other provision of this Act, a person who is or has been a public servant and is aggrieved by an the 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.

Explanation: For the purpose of this sub-section "order" means an order or omission or in-action of the State Government or a local authority or any other corporation or company referred to in clause (b) of section 2 or of an officer, committee or other body or agency of the State Government or such local authority or Corporation or company:

Provided that no reference shall, subject to the terms of any contract, be made in respect of a claim arising out of the transfer of a public servant;

Provided further that in the case of the death of a public servant, his legal representative and where there are two or more such representative, all of them jointly, may make a reference to the 'Tribunal for payment of salary' allowances,

gratuity, provident fund, pension and other pecuniary benefits relating to service due to such public servant.

(2) Every reference under sub-section (1) shall be in such form and be accompanied by such documents or other evidence and by such fee in respect of the filling of such reference and by such other fees for the service or execution of processes, as may be prescribed.

(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.

(4) Where a reference has been admitted by the Tribunal under sub-section (3), every proceeding under the relevant service rules or regulation or any contract as to redressal of grievances in relation to the subject matter of such reference pending immediately before such admission shall abate, and save as otherwise directed by the Tribunal, no appeal or representation in relation to such matter shall thereafter be entertained under such rules, regulations or contract.

(5) The Tribunal shall not ordinarily admit a reference unless it is satisfied that the public servant has availed of all the remedies available to him under the relevant service rules, regulations or contract as to redressal of grievances.

(6) For the purposes of sub-section (5) a public servant shall be deemed to have availed of all the remedies available to him if a final order has been made by the State Government, an authority or officer thereof or other person competent to pass such order under such rules or regulations

or contract rejecting any appeal preferred or representation made by such public servant in connection with the grievance:

Provided that where no final order is made by the State Government, authority, officer or other person competent to pass such order with regard to the appeal preferred or representation made by such public servant within six months from the date on which such appeal was preferred or representation was made, the public servant may, by a written notice by registered post, require such competent authority to pass the order and if the order is not passed within one month of the service of such notice, the public servant shall be deemed to have availed of all the remedies available to him.

(7) For the purposes of sub-section (5) and (6) any remedy available to the public servant by way of submission of a memorial to the Governor or to any other functionary shall not be deemed to be one of the remedies, which are available unless the public servant had elected to submit such memorial."

10. Section 4-A deals with hearing of reference by the Tribunal which is not very relevant for our purpose.

11. Section 5 deals with powers and procedure of the Tribunal. Some of its provisions are relevant which are Section 5(1) and (2) which read as under:-

"(1) (a) The Tribunal shall not be bound by the procedure laid down in the code of civil procedure, 1908, or the rules of evidence contained in the Indian Evidence Act, 1872, but shall be guided by the principles of natural justice, and subject to the provisions of this section and of any rules made under

section 7, the Tribunal shall have power to regulate its own procedure (including the fixing of places and times of its sittings and deciding whether to sit in public or in private :

[Provided that where, in respect of the subject matter of a reference, a competent court has already passed a decree or order or issued a writ or direction, and such decree, order, writ or direction has become final, the principal of res judicial shall apply;

(b) The provisions of the Limitation Act, 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;

(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, shall affect any reference made before and pending at the commencement of the said Act.

Provided further that nothing in this clause as substituted by the Uttar Pradesh Public Service (Tribunals) (Amendment) Act, 1985, Shall affect any reference made before and pending at the commencement of the said Act.

(2) The Tribunal shall decide every reference expeditiously and ordinarily, every case shall be decided by it on the basis of perusal of documents and representations, and of [oral or written argument]³, if any."

12. Section 4 deals with reference of a claim to Tribunal. The reference is in respect of an order pertaining to a service matter within the jurisdiction of the Tribunal, for the redressal of grievance by a public servant. The word "order" used in Section 4(1) has been explained in its Explanation to mean - an order or omission or inaction of the State Government or a local authority etc.

13. Sub-section (5) of Section 4 provides that the Tribunal shall not ordinarily admit a reference unless it is satisfied that the public servant has availed of all the remedies available to him under the relevant service rules, regulations or contract as to redressal of grievance. The word "ordinarily" used therein is indicative of the fact that in given circumstances for valid and justifiable reason a reference can be admitted, even if, the remedies referred therein have not been availed, which may be in cases requiring immediate intervention, especially, at the interim stage.

14. Sub-Section (6) of Section 4 says that for the purpose of Sub-section (5) of Section 4 a public servant shall be deemed to have availed all the remedies available to him if a final order has been made by the

State Government, an authority or officer thereof or person competent to pass such order under the rules etc. rejecting any appeal preferred or representation made by a public servant in connection with the grievance.

15. Proviso to Sub-section 6 of Section 4 is relevant for our purposes, as, it deals with a situation where no final order is made by the State Government etc. within six months from the date on which such appeal was preferred or representation was made. In such a situation the public servant **may** by written notice by registered post require such competent authority to pass the order and if the order is not passed within one month of such notice, the public servant shall be deemed to have availed all the remedies available to him. In the main provision contained in Sub-section (5) of Section 4, the words "**shall** be deemed to have availed all the remedies if a final order has been made" have been used whereas in the proviso to the word "**may** by written notice by registered post" has been used in the context of expiry of a period of six months from the date of preferring such appeal or representation where no orders have been passed.

16. As is evident from Section 5(1)(b), the provisions of the Limitation Act, 1963 are applicable mutatis mutandis to a reference under Section 4 of the Act, 1976, as if, it was a suit filed in a Civil Court, meaning thereby, the Limitation Act, 1963 is applicable, as it applies to a Suit. This of course is subject to Clause (i) and (ii) and the proviso to Section 5(1)(b). The period of limitation for filing such reference is one year and as a period of limitation has been prescribed for the said purpose, therefore, Article 137 of the Schedule to the Act, 1963, does not apply for determining limitation in filing a claim or reference. Clause (ii) of Section 5(1)(b) excludes 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 memorial to the Governor), in

accordance with the rules and orders regulating his conditions of service, and ending on the date on which knowledge of any such final order passed on such representation, appeal, revision or petition, as the case may be, was acquired by the public servant, in computing the period of limitation for filing reference, which is one year.

17. A Co-ordinate Bench of this Court has rendered a decision reported in **2006 (3) AWC 2750 in Writ Petition No. 942 (S/B) of 2002; Samarjeet Singh Vs. State of U.P. and Ors.**, on 09.09.2005 which is relevant. It was a case where an order of punishment was passed against the petitioner- Samarjeet Singh on 05.06.1987. Against which he preferred a statutory appeal on 30.06.1987. The appeal remained pending despite several reminders being made i.e. no final orders were passed. He filed a claim petition in the year 2000 claiming it to be within limitation on the ground that the appeal had not been decided. The State took a defence that the claim petition was barred by limitation which was one year. The Tribunal vide order dated 14.03.2002 dismissed the claim petition at the admission stage as being barred by limitation. The Tribunal noticed the fact that though the appeal had been preferred on 15.06.1987 reminders were sent up to 21.08.2000 and legal notice of 30 days was given on 30.06.2000 i.e. notice envisaged in the proviso to Section 4(6) of the Act, 1976. In spite of it, no final orders were passed. The Tribunal while rejecting the claim petition was persuaded by the fact that even if the petitioner had filed appeal on 30.06.1987 the limitation expired after 12 months while the petitioner sent a reminder dated 21.08.2000 which itself was given after 13 years. It relied upon a decision of a learned Single Judge of this Court rendered in the case of **Mahendra Pratap Rai Vs. State of U.P. and Ors.** reported in **(1986) 4 LCD 209** to dismiss the claim petition as barred by limitation.

18. The Division of the High Court did not find the reasoning given by the Tribunal, sustainable. It opined that in the case at hand, the appeal

had been filed within time, therefore, the dictum in *Mahendra Pratap Rai's case* (supra) did not apply. Moreover, according to it, for computing the period of limitation for filing a claim petition the Tribunal had to see the date when the cause of action first accrued and all such subsequent dates when the cause of action again accrued. This was simply for computing the period of limitation i.e. whether the claim petition is within time or not. Section 5 of the Limitation Act prescribed period of limitation and also the manner or procedure when an employee could approach the Tribunal without actually exhausting the departmental remedy. The Division Bench considered the provisions of Section 4(5) and (6) as also its proviso and held that the proviso to Sub-section 6 of Section 4 of the Act, 1976 would not be relevant for extending the period of limitation as the proviso has been made for giving liberty to an employee/public servant to approach the Service Tribunal even without awaiting for decision on the statutory appeal or representation and thus, removes the bar as imposed by Sub-section 5 of Section 4 of the Act, 1976. The period of limitation would start right from the date when the cause of action first accrued that is the date of order of dismissal and it would again accrue when statutory appeal or representation, under the Rules, are decided. If the appeal or representation are decided after 2, 3, 4 and 5 years etc. the limitation for filing the claim petition shall be computed from the date of passing of the order in such appeal or representation. It can not be said that if the appeal or representation had been decided after one year or more, the claim petition will stand barred by limitation, merely because the claimant did not avail the liberty of coming to the Tribunal in terms of proviso to Sub-section 4 of Section 6 of the Act, 1976. According to the Co-ordinate Bench, Sub-section 5 and proviso to Sub-section 6 of Section 4 of the Act, 1976 did not control the provisions of Section 5(1) (b)(i) and (ii) of the Act, 1976.

19. Para 10 to 22 of the judgment rendered in the case of ***Samarjeet Singh Vs. State of U.P. and Ors.*** reported in **2006 (3) AWC 2750** read as under:-

"10. For computing the period of limitation for filing a claim petition the Tribunal has to see the date when the cause of action first accrued and all such subsequent dates when the cause of action again accrued. This is simply for computing the period of limitation, i.e., whether the petition is within time or not. Section 5 of the Act prescribes period of limitation and also the manner or procedure when an employee could approach the Tribunal without actually exhausting the departmental remedy.

11. Sub-section (5) of Section 4 of the Act provides that the Tribunal shall not ordinarily admit a reference unless it is satisfied that the public servant has availed of all the remedies available to him under the relevant service rules, regulations or contract as to redressal of grievance. Subsection (6) of Section 4 of the Act says that for the purposes of Sub-section (5) a public servant shall be deemed to have availed of all the remedies available to him if a final order has been made by the State Government, an authority or officer thereof or other person competent to pass such order under such rules or regulations or contract rejecting any appeal preferred or representation made by such public servant in connection with the grievance.

12. Proviso to Sub-section (6) of Section 4 of the Act says that where no final order is made by the State Government, authority, officer or other person competent to pass such order with regard to the appeal preferred or representation made by such public servant within six months from the

date on which such appeal was preferred or representation was made, the public servant may, by a written notice by registered post, require such competent authority to pass the order and if the order is not passed within one month of the service of such notice, the public servant shall be deemed to have availed of all the remedies available to him.

13. Aforesaid Sub-section (5) of Section 4 of the Act requires exhaustion of all departmental remedies available to public servant before approaching the Tribunal and for giving effect to the said provision the Tribunal is supposed to examine, for entertaining the claim petition, whether the employee has availed of or not all available departmental remedies. Even then discretion lies with the Tribunal to entertain the petition though public servant might have not exhausted departmental remedies. It is clear that Sub-section (5) of Section 4 of the Act puts restriction upon the Tribunal by saying that it shall not 'ordinarily' admit a reference unless it is satisfied that the public servant has availed of all the remedies available to him under the relevant service rules, regulations or contract as to redressal of grievances.

14. An employee cannot be prohibited from approaching the Court/Tribunal for any indefinite period because of the administrative or otherwise inaction on the part of authority/officer concerned in deciding the statutory appeal or revision, and, therefore, proviso to Sub-section (6) of Section 4 was added. Thus, proviso to Subsection (6) of Section 4 of the Act allows to entertain the claim petition, where no final order is made by the State Government, authority, officer or other person competent to pass such order with regard to the appeal preferred or

representation made by such public servant within six months from the date on which such appeal was preferred or representation was made, where the public servant, by a written notice by registered post, requires such competent authority to pass the order and if the order is not passed within one month of the service of such notice also by the appointing authority, the employee gets a liberty to approach the Tribunal, with the legal presumption that he had' availed of all departmental remedies in terms of Subsection (5) of Section 4 of the Act, and, therefore, his claim petition can be entertained.

15. This proviso to Sub-section (6) of Section 4 would not be relevant for extending the period of limitation as the proviso has been made for giving liberty to an employee/public servant to approach the service Tribunal even without awaiting for a decision on the statutory appeal or representation and thus it removes the bar as imposed by Sub-section (5) of Section 4 of the Act.

16. The period of limitation would start right from the date when the cause of action first accrued, i.e., the date of order of dismissal and it would again accrue when statutory appeal or representation, under the rules, are decided. If the appeal or representation are decided after two, three, four and five years, etc. the limitation for filing the claim petition shall be computed from the date of passing of the order in such appeal or representation. It cannot be said that if the appeal or revision has been decided after one year or more, the claim petition will stand barred by limitation, merely because the claimant did not avail the liberty of coming to the Tribunal in terms of proviso to Sub-section (4) of Section 6.

17. Sub-section (5) and proviso to Sub-section (6) of Section 4 of the Act do not control the provisions of Section 5(1)(b) (i) and (ii) of the Act. Sub-clause (b)(i) and (ii) of Section 5(1) of the Act says that the provisions of the Limitation Act, 1963 shall mutatis mutandis apply to reference under Section 4 of the Act 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 and (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.

18. The aforesaid provision provides 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 of the Act may be made within the period prescribed by that Act, or within one year next after the commencement of the U.P. Public Services (Tribunals) (Amendment) Act, 1985 whichever period expires earlier. The aforesaid provisions make it clear that while computing the period of limitation, the period of limitation starts from the date on which the public servant makes a representation or prefers an appeal, revision or any other petition and comes to an end when he acquires knowledge of the final order passed. All such period thus has to be excluded while computing limitation. In case final order is passed after one year or two years or so on and so forth, the

limitation would be counted from the date of passing of the original order and by excluding the entire period commencing from the date of making the appeal or representation, if provided under rules, and the date when the final orders passed on such appeal or representation come within his knowledge.

19. In the instant case, the Tribunal was swayed by the provisions of Sub-section (5) of Section 4 and proviso to Sub-section (6) of Section 4 where the right to approach the Tribunal has been given after availing all the remedies available to a public servant under the relevant service rules and the circumstances and the procedure when a public servant can approach the Tribunal, during the pendency of the appeal or revision.

20. In the absence of a final order having been passed by the appellate authority it cannot be said that the claim petition would be barred by limitation if the claimant does not avail the liberty given in the provision aforesaid. If statutory appeals or representations are kept pending for years together and no order is passed within six months from the date on which such appeal was preferred or representation was made, the Tribunal ought not to reject the claim petition, on the ground that the public servant should have given a written notice by registered post, requiring such competent authority to pass the order within 30 days, and thus has not filed the claim petition within the limitation prescribed.

21. In a case wherein the appeal or revision remains unattended for any period beyond six months or one year, the only requirement could be that such a claimant gives the required notice as given in proviso to Sub-section (6) of

Section 4 and thereafter to approach the Tribunal whether thereafter, the appeal or revision is decided or not, but this requirement of giving notice in a matter which has been kept pending for years together by the appellate authority, if is not complied with by the complainant, the Tribunal may not dismiss the claim petition summarily but may give an opportunity to the claimant to give a notice as required within a given time and defer the hearing for such period or the Tribunal, or as per the facts of the case, may entertain the petition even without any such notice being given by the public servant as the rule of exhaustion of departmental remedies is itself discretionary in terms of subsection (5) of Section 4, wherein it has been said that 'ordinarily' the Tribunal would not entertain the petition, unless departmental remedy stands exhausted.

22. Failure on the part of the appellate authority or the authority who is to decide the representation, in discharging their statutory legal obligations cannot defeat the right of a claimant to vindicate his rights by approaching the Tribunal nor can be frustrated."

20. Of course it was a case where a final order had been passed in the appeal after several years, therefore, giving a second cause of action to the public servant to approach the Court and the case at hand and the issue before us is slightly different on facts in the sense that no final orders have been passed even after 8 or 9 years, but, the reasoning given by the Co-ordinate Bench in ***Samarjeet singh's case*** (supra) is relevant and applies to the case at hand also.

21. We agree with the enunciation of law by a Co-ordinate Bench in the case of ***Samarjeet Singh*** (supra) in the context of Section 5(1)(b) and the proviso to Section 4(6) of the Act, 1976 where it has been held

that the proviso to Section 4(6) of the Act, 1976 does not qualify the prescription of limitation in Section 5(1)(b) clause (i) and (ii) thereof.

22. The provision of limitation for filing a reference is contained in Section 5(1)(b) and not Section 4(6). Section 5(1)(b) clause (i) and (ii) provide a limitation for filing a reference in a case where a final order has been passed in an appeal, revision or representation prescribed in the relevant service rules i.e. the remedies prescribed under the relevant services rules. No limitation has been prescribed for a case where, though, the remedy has been availed in accordance with law/Rules no final orders have been passed. The language of Clause (ii) of Section 5(1)(b) itself suggests that as long as the appeal or representation etc., which has been filed as per Rules/orders, remains pending, limitation does not start/commence nor does it expire. It starts/commences when an order is passed on such appeal etc. and will expire on completion of one year from the date of knowledge to the public servant regarding such order.

23. As regards the proviso to Section 4(6) of the Act, 1976 the said proviso is relevant only in the context of Section 4(5) which provides that ordinarily the tribunal shall not entertain a reference unless all the remedies prescribed in the service rules have been availed, therefore, envisaging a situation, where, though, the remedy has been availed no final order has been passed, the proviso to Section 4(6) has been added, according to which, in the event no final order has been passed on such appeal or representation etc., a discretion/liberty has been given to the public servant to approach the tribunal after giving one month notice in writing by registered post. Such notice has to be after expiry of the period of six months from the date of filing such appeal, revision or representation as may be prescribed in the service rules. The use of the word 'may' in the proviso to Sub-section (5) of Section 4, as distinct from the use of the word 'shall' in Sub-section (6) of Section 4 of the

Act, 1976, makes it clear that the Legislature's intention is to confer a discretion upon the public servant under the proviso, if he so chooses, to approach the Tribunal on expiry of a period of six months after giving one month notice, in the event, even thereafter, no final order is passed, but, this proviso can not be understood and interpreted to qualify the provisions contained in Section 5 (1)(b) Clause (i) and (ii), which do not prescribe any such limitation for filing a reference in a case where no final orders are passed in an appeal, representation, revision etc. preferred before the competent authority in accordance with the Rules wherein such remedy is prescribed, nor can it be construed as providing any limitation for filing a claim before the Tribunal.

24. There is nothing in Section 5(1)(b) to even suggest that proviso to Section 4(6) prescribes any such limitation for the said purpose and the latter should be read into Section 5(1)(b). We see no reason to do so. We see no reason to prescribe a limitation in a case where no final orders are passed, firstly for the reason, the Legislature has not provided any such limitation. If at all, Clause (iii) of Section 5(1)(b) is indicative that if appeal etc. is filed as per Rules/under, then, limitation will start only on an order being passed thereon. If no orders have been passed and such appeal etc. remains pending, then, it can not be said that limitation has started. If the Legislature intended that proviso to Section 4(6) should come into play and it should prescribe a limitation for such cases, then, it would have specifically mentioned it, which it has not. The purpose and scope of the proviso to Sub-section 6 of Section 4 has already been discussed above. Secondly, why should the State or its Authorities who function as Appellate, revisional or competent authority to pass a final order in such appellate, revisional or other proceedings, should be allowed to take advantage and raise such objections when they have themselves not decided the appeal, revision etc. within a reasonable time. In the aforesaid scenario, it is not open for the State to raise such

objections before the Tribunal. There is another reason which persuades us, as was considered in the case of *Samarjeet Singh* (supra). What if, the appeal, revision etc. remains pending for more than a year may be several years and no notice is given by the public servant under the proviso to Sub-section 6 of Section 4 but, ultimately, final orders are passed therein. In that eventuality, the said final order will give a cause of action to the public servant aggrieved by such order to file a reference and limitation will have to be calculated on the basis of the date the said final order came to his knowledge. This will be in view of Clause (ii) of Section 5(1)(b) of the Act, 1976, therefore, proviso to Sub-section 6 of Section 4 can not be understood as laying down any limitation for filing a claim petition where no orders have been passed on the appeal etc. referred above.

25. Further, the Legislature has not prescribed any limitation for giving of such notice as envisaged in the proviso to Sub-section 6 of Section 4, after expiry of six months of filing appeal etc. It merely says that written notice may be given by registered post by a public servant if no final orders have been passed within six months of submission of appeal etc. by him. It does not prescribe any outer time limit for giving such notice. Moreover, we have already held, as has the Co-ordinate Bench, that the said provision merely gives a choice to the Public Servant to give such notice which is not mandatory nor does this provisions prescribe a limitation for filing a Claim Petition. We have already discussed the object of the said provisions earlier.

26. Moreover, we can not prescribe a limitation for giving a written notice and treat it as starting point of limitation for filing a claim petition, as, the Legislature in its wisdom has not provided the same in the proviso to Section 4(6). We can not supply a *causus omissus*. The law is settled in this regard.

27. Even if we prescribe a reasonable period within which the notice envisaged in the proviso to Sub-section 6 of Section 4 is to be given it will not serve any purpose and the said provision does not qualify Section 5(1)(b). We can not possibly treat such reasonable period as a limitation for filing a claim petition, non adherence to which would lead to a claim being barred by limitation as, firstly it would be beyond the scope and object of the said proviso as discussed, secondly it would be against the scheme of the act and would amount to prescribing a limitation period which the legislature has not provided and would amount to doing injury to section 5(1)(b) which in fact is the provision containing a prescription for filing a claim petition. We can not read into the provision something which is not mentioned therein by the legislature.

28. It would also be highly incongruous to say that if a final order is passed in an appeal etc. after several years it will give a cause of action to a public servant to approach the Tribunal by filing a reference/claim petition by computing the limitation from the date of knowledge of such final order, but, in the event no final order is passed, then, in view of the proviso to Section 4(6) if the written notice is not given or it is given after say one year or some other reasonable period, then, the reference/claim petition would be barred by limitation.

29. The legal position is as discussed hereinabove, meaning thereby, if an appeal, revision etc. i.e. a remedy prescribed in the Rules has been preferred by the public servant before the competent authority as per Rules, as long as no final orders have been passed in such remedies/proceedings, the said period will have to be excluded while computing limitation for filing a reference under Section 5(1)(b) of the Act, 1976. This is in keeping with the intent of the Legislature and the Scheme of the Act, 1976 existing as of now. We answer the question

framed by us earlier, accordingly to avoid or prevent such a situation as discussed above.

30. To avoid or prevent such a situation as has arisen in this case in our opinion the Appellate or Revisional or such other Authorities as may have been empowered to take a decision on appeal etc. prescribed in the Service Rules should do so expeditiously. If any time period is prescribed in the service rules itself, the same should be adhered. If it is not prescribed, then, the period mentioned in the proviso to Section 4(6) of the Act, 1976 should be taken as a guiding principle and final order should be passed in all such proceedings within six months of its initiation by the public servant. This will allay a situation of complication where a public servant may approach the Tribunal several years after passing of the final order of punishment etc. by giving a notice as referred in the proviso to Section 4(6) claiming pendency of the appellate/revisional etc. proceedings, and limitation based thereon.

31. Another possible solution is that the Executive and the Legislature should look into this aspect and make appropriate provisions in the Act, 1976 making it mandatory for the Appellate or Revisional Authorities etc. to pass final orders in such proceedings within the reasonable time say six months, unless there are exceptional circumstances, such as, any legal impediment in the form of stay of proceedings by the orders of any Court or higher forum and in the event final orders are not passed in proceedings within six months and, a further a prescription can be made by the Legislature requiring the public servant to give notice in writing as envisaged in the proviso to Section 4(6) within a specified time to decide the appeal and if the same is not decided, then, on expiry of the period of one month's notice or such period as may be deemed fit by the Legislature, the period of limitation for filing a reference would start, meaning thereby, the public servant would, thereafter, be obliged to file the reference/claim petition before the Tribunal within the limitation

prescribed from such date, the limitation at present being one year. This will remove any scope for stale litigation and avoid the complications referred hereinabove. It is, however, for the Executive and the Legislature to look into this aspect of the matter and to do the needful. After all, it is the State which may in given cases suffer more than the public servant on account of filing of claims after several years. Therefore, we expect the State and through it the Legislature to take a call in the matter at the earliest and address the malady appropriately and effectively. We expect that the Executive shall look into the matter at the earliest say within six months and needful shall be done.

32. Till this is done the legal position is as discussed earlier.

33. In view of the above discussions so far as the contention of State counsel in **Writ - A No. 16773 of 2019** that plea of limitation was not seen by the Tribunal and it erred in deciding the claim petition on merits, no doubt it ought to have considered the point of limitation but, as we have ourselves considered this issue, we do not find the plea of limitation to be tenable in this case, as, admittedly, after passing of the appellate order by the Appellate Authority on 25.10.2008 the petitioner/claimant filed a revision before the Revisional Authority on 22.12.2008 which is referable to the provision of punishment and Appeal Rules, 1991 and it is not the case of the State Authorities that said revision had not been preferred or was barred by any limitation prescribed in the Service Rules. In view of the discussion on the legal position referred earlier and our consideration thereon, as the revision filed by the petitioner/claimant in Writ- A No. 16773 of 2019, as, prescribed in Service Rules, 1991, remained pending, he gave one month's notice on 02.01.2014 and even thereafter, the Revisional Authority did not pass any final order, therefore, he filed the petition within one year of expiry of such period of one month, as such, it can not be said that the claim petition was barred by limitation prescribed

under Section 5 of the Act, 1976. The plea of the State is thus rejected. On merits of the issues involved in the said writ petition we do not find any substance in the grounds raised by the petitioner while challenging the judgment of the Tribunal. The Tribunal has categorically noticed the statement of the petitioner- claimant rather his admission that he was absent from duty from 10.30 to 01.46 on the fateful day on the pretext of having lunch albeit as claimed by the petitioner after informing his superior Shri Ram Tirath Tripathi. The Tribunal has held that on account of absence of the petitioner-claimant, the accused Sonu was able to escape from the jail premises. We have perused the statement of the petitioner-claimant as recorded in the inquiry proceedings, extract of which is annexed as CA-1 which has not been denied, wherein, he has admitted the said fact. We have also perused the response of Ram Tirath Tripathi to the question posed by the petitioner-claimant, wherein, Shri Tripathi has denied that the petitioner-claimant had left the premises after seeking permission from him. Even otherwise, it is highly unacceptable and unreasonable that a person would go to have lunch from 10.30 to 01.46. In these circumstances, looking into the gravity of the charge which has been found to be proved, the punishment order did not require any interference and the Tribunal has rightly dismissed the claim petition of the petitioner on merits. No such procedural irregularity/ illegality has been pointed out which could persuade us to interfere with the punishment order nor for that matter with the order dated 26.11.2008 passed by the Disciplinary Authority regarding forfeiture of remaining salary for the period the petitioner-claimant remained under suspension. Neither the punishment order nor the appellate order can be said to be an unseasoned or non speaking order. We do not find any error in the judgment of the Tribunal, therefore, we **dismiss** the writ petition on merits.

Writ- A No. 15076 of 2021

34. As regards **Writ- A No. 15076 of 2021** filed by the State we have gone through our earlier order dated 01.10.2021 on the question of limitation. We have already discussed this issue in the preceding paragraphs and the reasoning given will apply in this case also. In view of the discussion already made, this is not a fit case for interference on the point of limitation as it is the Appellate Authority who did not pass an order in the appeal within a reasonable time, therefore, after giving a legal notice the claim petition was filed as already referred while discussing the facts of this case. In view of the earlier discussion the claim petition of the respondent can not be said to be beyond limitation. The Tribunal has decided the claim petition on merits. The contention of the State in this regard is rejected. This apart, we find that the Tribunal while passing the impugned judgment has referred to a Division Bench judgment of this Court delivered on 04.03.2011 in Writ Petition No. 11921(S/B) of 2009. On merits of the case, the Tribunal has allowed the claim petition on the ground that the charge sheet was issued to the respondent-claimant for imposition of major punishment i.e. a regular inquiry was initiated under Rule 7 of the Rules, 1999, therefore, merely because ultimately a minor punishment has been imposed does not mean that non furnishing of inquiry report to the respondent-claimant could be condoned or justified. We are in agreement with the reasoning given by the Tribunal. The proceedings having been initiated for imposition of a major punishment, a regular inquiry for imposition of such punishment having been held, and an inquiry report having been submitted, it was incumbent upon the Disciplinary Authority to have confronted the respondent-claimant with the finding in the inquiry report and with an opportunity to him to challenge the same, but, this was not done and ultimately punishment of censure was awarded based on such report. We can not loose sight of the fact that the punishment order was passed way back on 13.01.2006. We are now in 2024. The claim petition reveals that the respondent- claimant was about 58 years of age at the time of filing

of the claim petition in 2015, therefore, he must have retired in 2017. The claim petition was decided on 03.04.2019. Thus, the writ petition itself was filed after almost two and half years of passing of the judgment by the Tribunal, a fact which escaped notice of this Bench while entertaining the writ petition on 01.10.2021 and staying the operation of the impugned judgment of the Tribunal. Considering the aforesaid we do not find it a fit case for interference in exercise of our extraordinary jurisdiction under Article 226 of the Constitution of India. We, accordingly, **dismiss** the writ petition.

35. Let a copy of this judgment be sent by Shri Nishant Shukla, learned Additional Chief Standing Counsel to Legal Remembrancer, U.P. for necessary and appropriate action.

(Om Prakash Shukla,J.) (Rajan Roy,J.)

Order Date :- 08.08.2024

R.K.P.