

A.F.R. **Neutral Citation No. - 2023:AHC-LKO:56444-DB**

Reserved On 26.05.2023

Delivered On 24.08.2023

Court No. - 9

Case :- WRIT - A No. - 8329 of 2019

Petitioner :- Ajai Kumar Singh

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

**Counsel for Petitioner :- Rama Kant Dixit,Anand Mani
Tripathi,Rekha Srivastava**

Counsel for Respondent :- C.S.C.

Hon'ble Rajan Roy,J.

Hon'ble Saurabh Lavania,J.

(C.M.Application No.54552 of 2019)

Heard.

Present review application has been filed by review-applicant under Rule 12, Chapter V of Allahabad High Court Rules, 1952 read with Section 114/151 of G.P.C. in regard to judgment and order dated 28.03.2019, whereby this Court dismissed the petition challenging the order dated 27.02.2019 passed by the U.P. State Public Services Tribunal, U.P, Lucknow, (hereinafter referred to "Tribunal"), constituted under U.P. Public Service (Tribunal) Act, 1976 (hereinafter referred to "Act of 1976").

The submission of learned counsel for the review-applicant is that from the date of order dated 25.01.2017 passed by the Appellate authority on an appeal filed by the petitioner-applicant under Rule 11 of U.P. Government Servant

(Discipline and Appeal) Rules, 1999 (hereinafter referred to "Rules of 1999") challenging the order of punishment dated 20.03.2015, the claim petition was within time, as such, it ought to have been decided on merits and the order of Tribunal dated 27.02.2019 was liable to be interfered with by this Court but this Court dismissed the writ petition, as such, the instant review application is liable to be allowed.

In support of his contentions, Sri Tripathi has placed before this Court the relevant provisions of Rules of 1999 and the Act of 1976 including Rule 11 of the Rules of 1999 and Sections 4, 5 and 6 of the Act of 1976. Except this, nothing has been argued.

By the order dated 27.02.2019, Tribunal dismissed the petition finding it to be barred by limitation under Section 5 of the Act of 1976.

Considered the submissions made by the learned counsel for the review-applicant and perused the record.

Brief facts, which are required for final disposal of present review application are that admittedly, disciplinary proceedings were initiated against the review-applicant in terms of the Rules of 1999 and the procedure, which was adopted in the disciplinary proceedings, as appears from the record, was as provided under Rule 7 of the Rules of 1999.

By the punishment order dated 20.03.2015, review-applicant was awarded censure entry and his integrity was doubted. Being aggrieved, he preferred an appeal dated

11.04.2016, which was rejected being barred by limitation vide order dated 25.01.2017.

Present matter revolves around the Rules of 1999 particularly Rule 11 and Section(s) 4, 5 and 6 of the Act of 1976, as the counsel for the review-applicant did not place any other Act or Rules before this Court in support of his case.

It would be apt to refer here that Rule 11 of the Rules of 1999 provides remedy of appeal, which being relevant on reproduction reads as under:-

"11. Appeal.-(1) Except the orders passed under these rules by the Governor, the Government servant shall be entitled to appeal to the next higher authority from an order passed by the Disciplinary Authority.

(2) The appeal shall be addressed and submitted to the Appellate Authority. A Government servant shall preferring to an appeal shall do so in his own name. The appeal shall contain all material statements and argument relied upon by the appellant.

(3) The appeal shall not contain any intemperate language. Any appeal, which contains such language may be liable to be summarily dismissed.

(4) The appeal shall be preferred within 90 days from the date of communication of impugned order. An appeal preferred after the said period shall be dismissed summarily."

A perusal of Sub-Rule 4 of Rule 11 of the Rules of 1999 shows that the appeal should be preferred within a period of 90 days' from the date of communication of an order and it further, shows that the appeal preferred after the said period shall be dismissed summarily. The power to condone the delay in filing the appeal to the Appellate authority has not been indicated in the Rule, quoted above. On the other hand, it provides that an appeal preferred after the prescribed period of limitation shall be dismissed summarily. Moreover, no provision

has been brought to the notice of this Court under which the Appellate authority has power to condone the delay in preferring the appeal.

Section 5 of the Act of 1976 was taken note of by this Court while passing the judgment dated 28.03.2019, under review. The said part of judgment, under review, reads as under:-

"Section 5 (1) (b) of the U.P. Public Services (Tribunal) Act, 1976 provides the period of limitation for filing a claim petition before the Tribunal, which reads as under:

"(1) (b). The provisions of the Limitation Act, 1963 (Act 36 of 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."

*In the case of **Karan Kumar Yadav Vs. U.P. State Public Services Tribunal and others** reported in **2008 (2) AWC 1987 All**, it has been held by the Division Bench of this Court that the application for condonation of delay in filing a claim petition would not be maintainable nor entertainable. Relevant portion of the it is reproduced below:*

"Section 5(1)(b) aforesaid lays down the applicability of Limitation Act and confines it to the reference under Section 4 of the Act, 1976 as if a reference was a suit filed in the Civil Court . This leaves no doubt that a claim petition is just like a suit filed in the Civil Court and in the suit the period of limitation cannot be extended by applying the provisions of

Section 5 of the Limitation Act. Sub clause (i) of Section 5 of the Tribunal's Act, specifically provide limitation for filing the claim petition i.e. one year and in sub clause (ii) the manner in which the period of limitation is to be computed has also been provided.

Section 5 of the Limitation Act reads as under:-

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 judgement of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this Section.

Its applicability is limited only to application/appeals and revision. It hardly requires any argument that section 5 does not apply to original suit, consequently it would not apply in the claim petition. Had the legislature intended to provide any extended period of limitation in filing the claim petition, it would not have described the claim petition as a suit filed in the Civil Court under section 5(1)(b) and/or it would have made a provision in the Act giving power to the Tribunal, to condone delay, with respect to the claim petition also.

In view of the aforesaid provision of the Act and the legal provision in respect to the applicability of Section 5 of the Act, it can safely be held that the application for condonation of delay in filing a claim petition would not be maintainable nor entertainable."

Section 5(1)(b)(ii), which form part of above quoted portion of the judgment dated 28.03.2019, says that for computing the period of limitation provided under the Act of 1976 challenging the order(s) of punishment passed in the disciplinary proceedings, which is 'one year', 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.

The expression "in accordance with rules or orders regulating his conditions of service" in the context of present case is relevant. In view of this expression, a representation/appeal/revision or any other petition for the purposes of seeking benefit of Section 5(1)(b)(ii) ought to have been filed strictly in terms of Rules or Orders, as the case may be, applicable, which in the instant case are the Rules of 1999.

To the view of this Court, Sub-section(s) 5 and 6 of Section 4 of the Act of 1976 are also relevant and being so the same are extracted hereinunder:-

"(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 purpose 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."

Sub-section 6 of Section 4 of the Act of 1976 provides 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.

Thus, if the appeal is not decided in terms of Sub-section 6 of Section 4 of the Act of 1976 challenging the order of punishment then the concerned public Servant can approach the Tribunal challenging the punishment 'order' passed by Disciplinary Authority regarding which an appeal was filed, which in the instant case was not filed strictly as per Rule 11.

From a conjoint reading of Section 4 and 5 and Sub-section(s) 5 & 6 of Section 4, it appears that an order of punishment passed by Disciplinary Authority can be challenged directly before the Tribunal, if statutory appeal or representation filed within time is not decided within a period of six months. However, for approaching the Tribunal in such a situation, there is a condition according to which a written

notice to competent/Appellate Authority is required to pass the order and if the order is not passed within one month of service of notice, then only aggrieved person can approach the Tribunal. In this case, the appeal itself was filed beyond period of 90 days prescribed under Rule 11 of the Rules of 1999.

Now, the first question is as to whether the appeal was rightly rejected by the Appellate Authority vide order dated 25.01.2017.

In the instant case, the appeal was not filed strictly in terms of Rule 11 of the Act of 1999 by the review-applicant. In other words, the appeal was filed by the review-applicant after expiry of prescribed period of limitation i.e. 90 days and the same was summarily dismissed in terms of Rule 11. At the cost of repetition, it needs to be mentioned that in the Rules there is no provision under which the Appellate Authority can condone the delay in preferring the appeal.

This Court finds that the Appellate Authority rightly rejected the appeal summarily being barred by limitation because the Appellate Authority under Rule 11 of the Rules of 1999, as observed hereinabove, has no power to condone the delay in preferring the appeal, which should be filed within the prescribed period of limitation i.e. 90 days.

The next question to be dealt with by this Court is whether the Tribunal, despite the claim petition being filed within limitation from the date of order of Appellate Authority dated 25.01.2017, rightly rejected the claim petition being barred by limitation. In this regard, this Court is of the view

that the Tribunal has rightly rejected the claim petition being barred by limitation for the following reasons:-

(i) In this case, the appeal was filed after about more than one year from the date of order of Disciplinary Authority dated 20.03.2015 i.e. on 11.04.2016 which was in violation of Rule 11 of Rules of 1999. Appellate authority does not have any power to condone such delay.

(ii) Vide order dated 25.01.2017, the appeal was rejected being barred by limitation, rightly so.

(iii) According to Section 5(1)(b)(ii) of the Act of 1976, if a statutory representation or appeal or revision or any other petition is preferred strictly in accordance with the applicable Rules/Government Orders, then in that eventuality alone, the period during which the said representation/appeal/revision was pending can be excluded for the purposes of computing the limitation to approach the Tribunal, which as per Section 5(1)(b)(i) is one year and the Division Bench of this Court has already observed that no application for condonation of delay would be maintainable to condone the delay in approaching the Tribunal challenging the order of punishment passed by the Disciplinary Authority or Revisional Authority under the Rules and as such, in view of limitation i.e. one year provided under Section 5(1)(b)(i), the claim petition challenging the main order dated 20.03.2015 which was not affirmed on merits by the appellate order dated 25.01.2017 was neither entertainable nor maintainable in the year 2017 before the Tribunal.

(iv) It is trite that once the limitation period starts it cannot be stopped by any force except by the force of law. In

the instant case, the limitation to approach the Appellate authority concerned started on 20.03.2015 (date of order passed by the Disciplinary Authority) and the appeal under the law (Rule 11) was filed after about more than one year, beyond the prescribed period i.e. 90 days from the date of order which was dismissed on 25.01.2017 being barred by limitation, as such, the period between 20.03.2015 and 25.01.2017 cannot be considered excluded in terms of Section 5(1)(b)(ii) for approaching the Tribunal so far as challenge to the punishment order dated 23.03.2015 is concerned. Thus the claim petition so far as it challenged the punishment order dated 20.03.2015 was clearly barred by limitation. It is not a case where the punishment order on being challenged in appeal under Rule 11 of the Rules of 1999 was affirmed partially or wholly in which case the period of pendency of appeal would have to be excluded for computing limitation for fresh claim petition, but, it was a case where the appeal was not filed within the limitation prescribed under Rule 11 thus it was not in accordance with Rules, consequently, the period of pendency of appeal would neither stop nor extend the limitation and it will not be excluded from such computation and limitation will have to be calculated from the date of the punishment order i.e. 20.03.2015.

So far as challenge to the said order is concerned. It being so the claim petition filed in the year 2017 was clearly barred by limitation which was one year from 20.03.2015, so far as challenge to the appellate order dated 25.01.2017 is concerned the claim petition was within limitation but its scope was confined only to the validity of the appellate order which

was not on merits but only on the point of limitation. Thus, the Tribunal at best could have gone into the question as to whether the appeal was rightly dismissed as barred by limitation or not, nothing more.

We have already held that the appellate order did not suffer from any error and the tribunal rightly held the appeal to be barred by limitation. Thus, it rightly did not interfere with the appellate order.

Thus, the Tribunal, in the opinion of this Court, upon due consideration rightly declined to entertain the claim petition preferred by review-applicant so far as challenge to order dated 20.03.2015 is concerned and thereafter, this Court dismissed the petition upholding the view of the Tribunal. Now, this review application has been filed, which, to the view of this Court, for the reasons aforesaid, is completely misconceived as there is no error apparent on the face of the record nor any valid ground for review of judgment dated 28.03.2019 and it is accordingly **dismissed**. Costs made easy.

Order Date :-24.08.2023

Vinay/-

(Saurabh Lavania,J.) (Rajan Roy,J.)