
(2015) 05 AHC CK 0258
In the Allahabad High Court
Case No : C.M.W.P. No. 444 (S/B) of 2015

State of U.P. and Others

APPELLANT

Vs

Vivekanand Singh and Others

RESPONDENT

Date of Decision : 29-05-2015

Acts Referred:

Administrative Tribunals Act, 1985 — Section 20
Constitution of India, 1950 — Article 136, 226
Evidence Act, 1872 — Section 114(f), 123, 124
Uttar Pradesh Public Services (Tribunal) Act, 1976 — Section 2, 4, 4(4), 4(5), 4(6)

Citation : (2015) 4 AWC 4130

Hon'ble Judges : Narayan Shukla and Rajan Roy, JJ.

Bench : Division Bench

Advocate : Shivesh Nath Dubey, for the Respondent

Final Decision : Allowed

Judgement

Rajan Roy, J.—Heard Sri S.K. Kalia, learned Senior Advocate, assisted by Sri Sameer Kalia, learned Advocate for opposite party No. 1, Sri Pankaj Nath, learned Additional Chief Standing Counsel for the petitioner. The question involved in this writ petition is whether the claim petition filed by opposite party No. 1 was barred by limitation prescribed under Section 5(b) of the U.P. Public Services Tribunal Act, 1976 (hereinafter referred as "the Act")? and whether the learned Tribunal has considered this issue in the right perspective?

2. If the answer to the aforesaid is in the negative, then it would not be necessary to consider the merits of the case, as decided by the Tribunal, if the answer is in the affirmative, it would be so required.

3. The Tribunal has been constituted under "the Act" to adjudicate the disputes in respect of matters relating to employment of public servants as defined thereunder. Reference or claim petitions, as they are ordinarily referred, are filed before the Tribunal under Section 4 of the Act, which reads as under:

"Section 4 . Reference of claim to Tribunal.--(1) Subject to the other provisions of this Act, 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.

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 representatives, 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 services 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 filing of such reference and by such other fees for the services 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 revision 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 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.

(7) For the purpose of sub-sections (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."

Section 5 of the Act deals with the powers and procedure of the Tribunal. Sections 5(1)(a) and 5(b) , 5(3) , 5(4) and 5(5) which are relevant for this case are being quoted hereinbelow:

"Section 5 . Powers and procedure of the Tribunal.--(1)(a) The Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 (Act 5 of 1908), or the rules of evidence contained in the Indian Evidence Act, 1872 (Act 1 of 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 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 principle of res judicata shall apply;

(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 where 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:

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

(3) The Tribunal may admit in evidence, in lieu of any original document, a copy thereof attested by a Gazetted Officer or by a notary.

(4) The Tribunal shall not ordinarily call for or allow to be adduced oral evidence, and may, if necessary, require any party to file an affidavit.

(5) The Tribunal shall, for the purpose of holding any inquiry under this Act, have, subject to the provisions of sub-section (1), the same powers are vested in civil court under the Code of Civil Procedure, 1908 (Act V of 1908), while trying a suit, in respect of the following matters--

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) subject to the provisions of Sections 123 and 124 of the Indian Evidence Act, 1872 (Act I of 1872), requisitioning any public record or copy thereof from any office;

(e) issuing commission for the examination of witnesses or documents;

(f) recording a lawful agreement, compromise or satisfaction and making an order in accordance therewith;

(g) reviewing its decision;

(h) dismissing a reference for default or deciding it ex parte;

(i) setting aside an order of dismissal for default or an order passed by it ex parte;

(j) passing interlocutory orders pending final decision of any reference on such terms, if any, as it thinks fit to impose;

(k) any other matter which may be prescribed."

4. As per Section 5(b) of the Act, the provisions of the Limitation Act, 1963 apply mutatis mutandis to a reference under Section 4, as if, a reference were a suit filed in the civil court. So, however, that notwithstanding the period of limitation prescribed in the schedule to the said Act, the period of limitation of such reference shall be one year; and 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.

5. The claim petition of the opposite party No. 1 was allowed vide impugned judgment dated 11.8.2014. The Tribunal held that the disciplinary proceedings suffered from procedural irregularities. After it held as above, the Tribunal also considered the objection on limitation raised by the State and held that as his representation was pending on the date of filing of the claim petition, therefore, it was not time-barred. It quashed the punishment order dated 28.12.2012 by which punishment of stoppage of one increment for a period of three years temporarily and a censure was imposed upon him. Consequently, it also quashed the order dated 18.12.2013 passed on the alleged second Review application filed under Rule 14 of the U.P. Government Servants (Discipline and Appeal) Rules, 1999 (hereinafter referred to as "the Rules").

6. The contention of Sri Pankaj Nath, learned counsel for the petitioners herein is that the claimant (opposite party No. 1 herein) played a fraud upon the Tribunal by making an incorrect averment in para 4.12 of the claim petition about filing of a review application dated 6.2.2012 for reviewing the punishment order dated 28.12.2011 which was alleged to be still pending and thereby mislead the Tribunal into believing that the claim petition filed before it in July, 2013 challenging the said punishment order was not time-barred. He submitted that a categorical averment was made in para 14 of the written statement rebutting the averments made in para 4.12 of the claim-petition and denying the receipt of any such review application as also the alleged legal notice dated 13.6.2013. This rebuttal was based on records. The opposite party No. 1 herein did not deny the averments made in para 14 of the written statement, yet, the learned Tribunal held the claim petition to be within limitation. This finding of the Tribunal was not sustainable on facts and in law.

7. Sri Nath further contended that the submission of the representation dated 22.7.2013 subsequent to the filing of the claim petition and decision thereon dated 18.12.2013 would not bring the claim petition within the limitation prescribed. This representation for review of the punishment order itself was filed about more than one-and-a-half years after passing of the punishment order.

8. Learned Additional Chief Standing Counsel also sought to defend the punishment order on merits and on the procedure adopted.

9. In the alternative, he also submitted that the claim petition having been allowed on the ground of procedural lapses in the disciplinary proceedings, it was incumbent upon the Tribunal to have granted liberty to the State to proceed against the delinquent employee afresh, and in not doing so it had clearly erred in law.

10. Per contra, Sri S.K. Kalia, submitted that an application for review of the

punishment order was firstly filed on 6.2.2012, thereafter, when no decision was taken thereon, a legal notice was sent on 13.6.2013 for taking a decision thereon, failing which, the claim petition was filed, which was within limitation as per the provisions of Section 5(b) of the Act. The learned senior counsel placed heavy reliance upon various paragraphs of the judgment of the Hon"ble Supreme Court of India in S.S. Rathore Vs. State of Madhya Pradesh, , to drive home the point that limitation in matters pertaining to disciplinary proceedings does not start from the date of passing of the original order of punishment, but it starts from the date of the order passed on the statutory remedy availed against such order. He submitted, as, in this case his client had availed the statutory remedy of review under Section 14 of the Act therefore, the claim petition filed in July, 2013 was within limitation, not only as per Section 5(b) of the Act, but also according to the second part of para 20 of the judgment in S.S. Rathore's case (supra). He further submitted that once the second review application dated 22.7.2013 was decided by the competent authority on merits vide order dated 18.12.2013, the limitation would be counted from the date of such order which gave a fresh cause of action. Therefore, irrespective of controversy regarding the first review application the claim petition could not be said to be time-barred and was protected by the first part of paragraph 20 of the said judgment of the Hon"ble Supreme Court of India as also Section 5(b) of the Act. He laid great emphasis upon the fact that the remedy availed by his client was statutory and, therefore, limitation is to be counted from the date of order passed in respect to such statutory remedy. It was also asserted that in view of the judgment in S.S. Rathore's case (supra), the original order of punishment dated 28.12.2011 merged in the subsequent order dated 18.12.2013 passed on the review application, thereby giving rise to a fresh cause of action. In view of the above, he submitted that the Tribunal has rightly decided this issue of limitation.

11. Sri Kalia further submitted that challenge to the order dated 18.12.2013 could have been made by filing a separate claim petition or by amending the pending claim petition. His client adopted the latter course, which was permissible in law and in this regard he placed reliance upon the judgment of the Hon"ble Supreme Court in Sampath Kumar Vs. Ayyakannu and Another, .

12. The amendment application filed by his client in February, 2014 for challenging the order dated 18.12.2013 passed in the review application was allowed un-opposed and no additional written statement was filed in rebuttal of the averments made in the newly added paragraphs, therefore, it was now not open for the petitioners herein to raise the plea based on the alleged bar of limitation.

13. He further submitted that this Court was not sitting in appeal over the judgment of the Tribunal, but was exercising extraordinary powers of judicial review under Article 226 of the Constitution of India, therefore. even if there was some error on the part of the Tribunal on the issue of limitation, as, substantial justice has been done by it in the matter, therefore, this Court should not

interfere in the matter.

14. In rejoinder, Sri Nath asserted that the reliance placed by Sri Kalia, upon the judgment of the Supreme Court in S.S. Rathore's case was misconceived and misplaced, as, the review application alleged to have been filed on 6.2.2012, was, in fact, never submitted and the claimant mislead the Tribunal by making incorrect statement in paragraph 4.12 of the claim petition. The filing of the second review application on 22.7.2013, i.e., after filing the claim petition, was inconsequential. Moreover, the alleged subsequent review application did not confirm to the requirements of Rule 14 of the Rules.

15. We have heard the contentions of the learned counsel for the parties and perused the record.

16. As per Section 4(5) and 4(6) of the Act, ordinarily, a public servant is required to exhaust the remedies available to him under the relevant service rules. On the remedy being availed of, if a final order is made by the concerned authority rejecting any appeal or representation, as the case may be, the remedy stands exhausted by the public servant. If he avails the remedy, but no final order is passed thereon within six months from the date of availing such remedy (appeal or representation), he may send a written notice by registered post to the competent authority to pass the final order and if such order is not passed within one month of the service of such notice, it shall be deemed that the public servant has availed all the remedies available to him.

17. As per Section 5(1)(b)(i) of the Act, the period of limitation prescribed for filing of a reference under Section 4 is one year. As per Clause (ii) of Section 5(1)(b), 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. Thus, on a conjoint reading of Sections 4 and 5(1)(b) of the Act it is evident that if a remedy has been availed under the statutory service rules and final orders are passed therein, the limitation will be counted from the date of passing of final order, and not from the date of passing of the original order. If the remedy has been availed, but no final order has been passed and a period of six months has expired from the date of availing such remedy, a one month's written notice may be given and on expiry of the said period it is to be deemed that the remedy as provided under the Rules had been availed by the public servant and a claim petition would be maintainable and the same would be treated within the limitation prescribed under Section 5(1)(b)(i), subject of course to the remedy having been availed within the period of limitation prescribed, if any, for the said purpose, prior to filing of the claim petition.

19. The pendency of the matter before the appellate or revisional or other authority will not work to the disadvantage of the public servant in computing the limitation, subject of course to the above. The aforesaid provisions are in tune with the law laid down by the Seven Judge Bench of the Supreme Court in the case of S.S. Rathore (supra).

Relevant extracts of paras 14, 15, 16, 17, 18, 19, 20, 22 and 23 of S.S. Rathore's case (supra) are quoted hereinbelow.

"14. The distinction adopted in The State of Uttar Pradesh Vs. Mohammad Nooh, , between a court and a Tribunal being the appellate or the revisional authority is one without any legal justification.....

15. In several States the Conduct Rules for Government servants require the administrative remedies to be exhausted before the disciplinary orders can be challenged in court.....

16. The Rules relating to disciplinary proceedings do provide for an appeal against the orders of punishment imposed on public servants. Some Rules provide even a second appeal or a revision. The purport of Section 20 of the Administrative Tribunals Act is to give effect to the Disciplinary Rules and the exhaustion of the remedies available thereunder is a condition precedent to maintaining of claims under the Administrative Tribunals Act. Administrative Tribunals have been set up for Government servants of the Centre and several States have already set up such Tribunals under the Act for the employees of the respective States. The law is soon going to get crystallised on the line laid down under Section 20 of the Administrative Tribunals Act.

17. In this background if the original order of punishment is taken as the date when cause of action first accrues for purposes of Article 58 of the Limitation Act, great hardship is bound to result. On one side, the claim would not be maintainable if laid before exhaustion of the remedies; on the other, if the departmental remedy though availed is not finalised within the period of limitation, the cause of action would no more be justiciable having become barred by limitation. Redressal of grievances in the hands of the departmental authorities take an unduly long time. That is so on account of the fact that no attention is ordinarily bestowed over these matters and they are not considered to be Governmental business of substance. This approach has to be deprecated and authorities on whom power is vested to dispose of appeals and revisions under the Service Rules must dispose of such matters as expeditiously as possible. Ordinarily, a period of three to six months should be the outer limit. That would discipline the system and keep the public servant away from a protracted period of litigation.

18. We are satisfied that to meet the situation as has arisen here, it would be appropriate to hold that the cause of action first arises when the remedies available to the public servant under the relevant service Rules as to redressal are disposed of.

19. The question for consideration is whether it should be disposal of one appeal or the entire hierarchy of reliefs as may have been provided. Statutory guidance is available from the provisions of sub-sections (2) and (3) of Section 20 of the Administrative Tribunals Act.....

20. We are of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of, a six months" period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen. We, however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsuccessful representations not provided by law are not governed by this principle.

22. It is proper that the position in such cases should be uniform. Therefore, in every such case only when the appeal or representation provided by law is disposed of, cause of action shall first accrue and where such order is not made, on the expiry of six months from the date when the appeal was filed or representation was made, the right to sue shall first accrue. Submission of just a memorial or representation to the Head of the establishment shall not be taken into consideration in the matter of fixing limitation.

23. In view of what we have said above, Goel's case must be taken to have not been correctly decided."

20. Now, let us examine the validity of the impugned judgment as also the question of limitation involved therein against the aforesaid legal backdrop.

21. The order of punishment was passed against the opposite party on 28.12.2011 imposing a punishment of stoppage of one increment temporarily for a period of three years as also an order of censure.

22. As per Section 5(b) of the Act and paragraph 20 of S.S. Rathore's case the right to sue, in case of pendency of an appeal or revision, arises firstly on expiry of a period of six months from the date the statutory remedy is availed and the claimant was entitled to give a notice to the concerned authority for passing final orders thereon, failing which, he could maintain a claim petition before the Tribunal.

23. The claimant filed the claim petition before the Tribunal challenging the said order dated 28.12.2011 prior to 22.7.2013 by asserting in para 4.12 thereof that he had preferred a review petition against the said order on 6.2.2012 before the Principal Secretary, Avas Avak Shahri Niyojan through registered post which had not been decided. Considering these averments the Tribunal entertained the claim petition on 22.7.2013.

24. On 22.7.2013, as the meeting of Departmental Promotion Committee was

going to be held, therefore, the petitioner submitted a representation (alleged review application) before the Principal Secretary (Housing and Shahri Niyojan Department) for having a re-look at the punishment order. This was done after filing of the claim petition. There is no mention of the application dated 6.2.2012 therein.

25. On 18.12.2013, this representation/alleged review application was rejected by the Principal Secretary of the Government stating that no new facts/evidence had been mentioned which could form the basis for interference with the original order of punishment.

26. In February, 2014 a written statement was filed by the opposite parties (petitioners herein) before the Tribunal categorically denying vide paragraph 14 thereof the receipt of any review application and legal notice, as alleged to have been sent by the claimant (opposite party No. 1 herein) in para 4.12 of the claim petition. This denial was based on the records available in the office.

27. The claimant filed a rejoinder-affidavit to the written statement filed by the State before the Tribunal. While replying to paragraph 14 of the written statement the claimant did not give any categorical and specific reply, much less a denial. The claimant did not file even a copy of the registry receipt to prove that he had in fact submitted any such review application dated 6.2.2012.

28. On the date of filing of the claim petition, the only ground for treating it within limitation was the pendency of the alleged review application dated 6.2.2012. Once the averments made in para 4.12 were categorically and specifically denied by the State and its authorities in para 14 of their written statement based on their records, the presumption regarding such an application having been sent stood rebutted and the burden shifted back to the claimant to prove that he had, in fact, submitted such a review application by registered post. Reference in this regard may be made to the pronouncement of the Supreme Court in the case in V.N. Bharat Vs. D.D.A. and Another, , wherein their Lordships held as under:

"In our view, the Commission also erred in placing the onus of proof of service of the demand notice on the appellant, since except for denial there is nothing else that the appellant could have produced to prove a negative fact. As we have indicated hereinbefore, the presumption under Section 114(f) of the Evidence Act is a rebuttable presumption and on denial of receipt of the Registered letter from D.D.A. the appellant discharged his onus and the onus reverted back to the respondent to prove such service by either examining the postal authorities or obtaining a certificate from them showing that the registered article had been delivered to and had been received by the appellant. It is on a mistaken understanding of the provisions of Section 114(f) of the Evidence Act that the Commission came to the erroneous conclusion that the allegation of unfair trade practice on the part of the respondent authority had not been proved. In our view, from the material on record it is quite clear that the respondent authority

was unable to prove that service of the demand notice for the fifth and final installment had been effected on the appellant."

29. No attempt was made by him to prove the aforesaid material fact. He did not move any application for summoning of the relevant documents including the Dak register, if any, from the office of the concerned opposite party or to examine any witness to prove his assertion. He did not even offer any explanation as to why he had not filed the proof of such an application having been sent by registered post. Even if he had filed the registry receipt, once its receipt was denied, the onus shifted on the claimant to prove his assertions.

30. In this context it is relevant to mention that, subject to the provisions of sub-section (1) of Section 5, the provisions of Section 5(5) of the Act of 1976 empower the Tribunal with the same powers as are vested in civil court under the Code of Civil Procedure, 1908 while trying a suit for the purpose of holding any inquiry under the said Act in respect to matters, inter alia, requiring discovery and production of documents; summoning and enforcing the attendance of any person and examining him on oath; issuing commissions for the examination of witnesses and documents etc. No doubt, under sub-section (1) of Section 5 the Tribunal is not bound by the procedure laid down in the Code of Civil Procedure, 1908 or the Rules of Evidence contained in Indian Evidence Act, 1872 but is to be guided by the principles of Natural Justice, but, in view of sub-section (5) it does have the requisite powers for production of documents, summoning of persons and examining them on oath. The claimant could have very well taken recourse to the said provision for proving the assertions made in para 4.12 of the claim petition, but he did not do so.

31. The submission of the review application on 6.2.2012 was not proved by the claimant. The original act of submission of the review application dated 6.2.2012 itself having not been proved, the subsequent legal notice dated 13.6.2013 is rendered inconsequential and meaningless.

32. Once the averments made in para 4.12 of the claim petition were not proved the point of limitation was to be calculated from the date of original order dated 28.12.2011 and, the benefit of sub-section 5(1)(b)(ii) read with Section 4(5) and (6) as also paragraph 20 of the judgment of the Supreme Court in S.S. Rathore's case (supra), was not available to the claimant.

33. The original order having been passed on 28.12.2012, no statutory remedy having been preferred against it, the period of limitation for filing a claim petition under the Act, if at all maintainable in view of Section 4(5) of the Act, was one year therefore, it was barred by limitation when it was filed in July, 2013.

34. The ratio of paragraph 20 of the judgment in S.S. Rathore is applicable only upon a statutory remedy having been followed/availed, not otherwise. This is evident from the use of the following words "though the remedy has been followed". In paragraph 22 of the said judgment also the Supreme Court has used the words "on the expiry of six months from the date when the appeal was

filed or representation was made the right to sue shall first accrue".

35. The point of limitation goes to the root of the matter. It involves a jurisdictional issue. The Limitation Act has been made applicable to the Tribunal, as it was applicable to a suit, thus, Section 5 thereof has no application to a reference filed under Section 4 of the Act. If a claim petition is barred by limitation, then irrespective of its merits, the Tribunal has no other option but to decline to entertain it. It does not have the power to condone the delay.

36. In view of this, the entire edifice of the arguments advanced by Sri Kalia, based on pendency of the review application dated 6.2.2012 falls to the ground, as it has no foundation to sustain the same.

37. Now, let us examine another aspect of the matter, upon which Sri Kalia laid great emphasis.

38. He submitted that irrespective of the fact whether the review application dated 6.2.2012 was submitted or not, but without conceding to the stand of the petitioners herein, the fact remains that subsequent review application was filed on 22.7.2013, which was entertained and decided on merits vide order dated 18.12.2013. It being so, there was a final order passed in the statutory departmental remedy availed by the claimant, as such, in view of the dictum in S.S. Rathore's case (supra), the original order merged into the final order dated 18.12.2013 and the point of limitation was to be counted from the date of passing of the order dated 18.12.2013.

39. We are unable to accept this contention also.

40. The ratio of S.S. Rathore's case applies where the departmental remedy has been availed, prior to initiation of the legal proceedings before the court/Tribunal, and not thereafter. This is for two reasons firstly, the issue of limitation is to be considered with reference to the date of entry into the portals of court/Tribunal, secondly, as, only in such an eventuality, the pendency of the appeal etc. or passing of an order therein could be relevant for determination of limitation as per paragraph 20 of the said judgment. Further, such remedy should have been availed within the limitation prescribed in the relevant Rules or where no limitation is prescribed within a reasonable time. Merely because no limitation is prescribed for availing a statutory remedy does not mean it can be availed after lapse of an unreasonably long period.

41. In the instant case, though no limitation is provided under Rule 14, the alleged Review application dated 22.7.2013 was filed almost 19 months after passing of the punishment order dated 28.12.2011, that too after the filing of the claim petition.

42. The issue of limitation is to be considered with reference to the date of institution of the proceedings, therefore, a subsequent event is inconsequential, as, limitation once it starts running does not stop, except, may be, when the claim itself is acknowledged or where the remedy had been availed prior to the

initiation of legal proceedings but remained pending and decision thereon is rendered subsequently, which is not the case here.

43. S.S. Rathore's case is an authority laying down the proposition that there is no justification for the distinction between courts and Tribunals being appellate and revisional authority in regard to the principle of merger meaning thereby the doctrine of merger applies not only to judgments and orders of court but also to those of Administrative Authorities and Tribunals rendered in exercise of statutory powers, but, it does not lay down any such proposition of law that whenever there are two orders, one passed by an inferior authority and another by a superior authority, the former necessarily merges in the latter and loses its identity completely. In fact this aspect of the matter was not considered in the said case. This aspect of the matter was considered by the Supreme Court in subsequent decisions, as, in the case of Commissioner of Central Excise, Delhi Vs. Pearl Drinks Ltd., .

44. Apart from the applicability of the doctrine of merger to orders of Tribunals being appellate or revisional authorities discussed in the earlier part of the judgment in S.S. Rathore, the basis for the proposition laid down in paragraph 20 thereof is the existence of a statutory remedy against the original order of punishment and the invariable requirement in the service rules to avail such remedy, as is evident from a reading of the preceding paragraphs 15 to 18 thereof.

45. In Pearl Drinks Ltd. their lordships considered the earlier judgment rendered in S.S. Rathore's case (supra), and held as under:

"13. The doctrine of merger has its origin in common law. It has its application not only in the realm of judicial orders but also in the realm of estates. In its application to orders passed by judicial and quasi-judicial courts and authorities it implies that the order passed by a lower authority would lose its finality and efficacy in favour of an order passed by a higher authority before whom correctness of such an order may have been assailed in appeal or revision. The doctrine applies regardless whether the higher court or authority affirms or modifies the order passed by the lower court or authority.

"14. The juristic basis of the doctrine has been examined by this Court in a long line of decisions. One of the earliest of the said decisions was rendered in Commissioner of Income Tax, Bombay Vs. Amritlal Bhogilal and Co., . The court in that case declared that as a result of the confirmation or affirmation of the decision of the Tribunal by the appellate authority, the original decision merges in appellate decision whereupon it is only the appellate decision which subsists and is operative and capable of enforcement.

15. In State of Madras Vs. Madurai Mills Co., Ltd., , this Court had another occasion to examine the true scope and purport of the doctrine of merger. The court declared that the doctrine of merger was not a doctrine of rigid and universal application nor could it be said that where there are two orders one by

the inferior authority and the other by a superior authority they must necessarily merge irrespective of the subject-matter of the appeal or the revision or the scope of the proceedings in which such orders are passed. Subsequent decisions of this Court in *Gojer Bros. (Pvt.) Ltd. Vs. Shri Ratan Lal Singh, and S.S. Rathore Vs. State of Madhya Pradesh*, , have reiterated and explained that position.

16. No reference to the pronouncements of this Court on the subject can be complete without a reference to the decision of this Court in *Kunhayammed's case (supra)* and *Mauria's case, (supra)*. In *Kunhayammed's case, (supra)*, a three-Judge Bench of this Court reviewed the decisions rendered on the subject and summed up its conclusions in para 44 of this decision. One of the said conclusions apposite to the case at hand is in the following words (SCC p. 384):

"44. To sum up, our conclusions are:....

(iii) The doctrine of merger is not a doctrine of universal or unlimited application. It will depend on the nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or capable of being laid shall be determinative of the applicability of merger. The superior Jurisdiction should be capable of reversing, modifying or affirming the order put in issue before it. Under Article 136 of the Constitution the Supreme Court may reverse, modify or affirm the Judgment-decree or order appealed against while exercising its appellate jurisdiction and not while exercising the discretionary jurisdiction disposing of petition for special leave to appeal. The doctrine of merger can therefore, be applied to the former and not to the latter...."

17. There is in the light of the above pronouncements no gainsaying that the doctrine of merger will depend largely on the nature of the jurisdiction exercised by the superior court and the content or the subject-matter of challenge laid or capable of being laid before it."

46. Thus, the legal position which emerges is that the "doctrine of merger" is not a "doctrine of universal or unlimited application. It is not that in every case where there are two orders, one by the inferior authority and the other by a superior authority, it is to be deemed that former had merged in the latter thereby losing its identity completely. The applicability of the doctrine of merger will depend on the nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or capable of being laid. It will depend upon the subject-matter of the appeal or revision or the scope of proceedings in which final orders are passed.

47. The same legal position has been laid down in the case of *Kunhayammed and Others Vs. State of Kerala and Another*, . The court referred to another decision of the Hon'ble Supreme Court in *State of Madras Vs. Madurai Mills Co., Ltd.*, , wherein it had held that the doctrine of merger is not a doctrine of rigid and universal application and the applicability of the same are dependent upon the scope of the appeal or revision contemplated by the particular statute, the nature

of the appeal or revisional order and the scope of the statutory provisions conferring the appellate or revisional jurisdiction. S.S. Rathore's case (supra), was considered in Kunhay Ammed's case (supra). Kunhay Ammed's case (supra), has been relied upon in Pearl Drinks Limited, referred earlier.

Rule 14 of the Rules of 1999 reads as under:

"14. The Governor may at any time, either on his own motion or on the representation of the concerned Government servant, review any order passed by him under these rules, if it has brought to his notice that any new material or evidence which could not be produced or was not available at the time of passing the impugned order or any material error of law occurred which has the effect of changing the nature of the case."

48. The contents of the alleged review application dated 22.7.2013, read as under:

49. The operative portion of the order dated 18.12.2013 passed on the application dated 22.7.2013 reads as under:

50. A conjoint reading of Rule 14 and the contents of the review application dated 22.7.2013 makes it apparent that the same did not by any stretch of imagination confirm to the requirements of the said Rule. No new material or evidence, which was not available earlier, was filed nor any material error of law which had the effect of changing the nature of the case was mentioned. None of the ingredients of Rule 14 were satisfied. The claimant merely annexed a copy of the reply submitted by him to the show-cause notice/inquiry report earlier and prayed to the competent authority to have a re-look. In our considered view such an application was not a review application in terms of Section 14. The State Government rejected the application by saying no new fact/evidence, which may have not been considered earlier, had been filed, therefore, there was no occasion to review the decision. It was veritably a rejection of the application as not maintainable in terms of Rule 14. The validity of the original order of punishment was not considered.

51. Considering the nature of the said application filed by the claimant on 22.7.2013, the scope of Rule 14 of the Rules 1999 and the contents/nature of the order dated 18.12.13 passed thereon, it cannot be said that the original punishment order dated 28.12.2011 merged in it and lost its independent identity. The scope of Review under Rule 14 of the Rules 1999 is very limited vis-a-vis. an appeal under the same Rules.

52. However, as we are concerned with the question of limitation with reference to disciplinary proceedings and as there is a departmental remedy available against the punishment order, therefore, irrespective of the applicability of the doctrine of merger, the point of limitation will have to be calculated as per the law laid down in S.S. Rathore's case (supra), based on the factual position as existing in the case at hand, in the light of the discussion already made in the

earlier part of the judgment, meaning thereby, even if in a given fact situation the original order of punishment does not merge with the appeal or revisional order or an order passed in the exercise of review jurisdiction, yet the point of limitation will be calculated from the date of passing of the final order in the departmental remedy, if the remedy has been availed/followed and decided prior to the initiation of the proceedings in question.

53. Let us look at it from this angle. The proceedings in question were initiated before the Tribunal prior to 22.7.2013. The claim petition was filed prior to 22.7.2013 on the strength of pendency of the review application dated 6.2.2012. It was admitted on 22.7.2013. Unless, the submission of the said review application dated 6.2.2012 and its pendency on the date of filing of the claim petition, was proved, the same was clearly barred by limitation and no subsequent event, certainly not the order dated 18.12.2013, could allow the claimant to jump the bar of limitation subsequently nor revive a claim or cause of action which became barred long ago. On the date of initiation, neither the alleged review application dated 22.7.2013 nor the order dated 18.12.2013 were in existence.

54. Even at the cost of repetition it must be stated that the question of limitation was to be seen with reference to the date of institution of the proceedings only, and not with reference to any subsequent date. Limitation once it starts running does not stop. Once, it is found that no such review application was filed on 6.2.2012, then by no stretch of imagination can it be said that the claim petition on the date of its filing was within limitation. A subsequent application for review (alleged), which was not even existing on the date of filing of the claim petition and a subsequent order passed thereon, were/are inconsequential and irrelevant for the purposes of deciding the issue of limitation and it does not revive a claim once barred by limitation. Reference may be made in this regard to the pronouncement of the Supreme Court in *State of Punjab and Another Vs. Balkaran Singh*, .

55. But for the averments made in para 4.12 of the claim petition, it would have been dismissed at the very threshold as being time barred. The claimant misled the Tribunal in entertaining his claim petition on the basis of incorrect averments made by him in para 4.12 thereof. It was clearly an abuse of the process of the court. The claimant cannot be permitted to draw mileage out of his illegal act. If this is permitted it would render the provision of limitation as also the object behind it meaningless and will provide a flip to unscrupulous elements to abuse the process of the law.

56. Moreover we have already held that in fact the application dated 22.7.2013 was not at all an application for review in terms of Rule 14 and it was virtually rejected as not maintainable without considering the merits of the case, therefore, no benefit could accrue to the claimant on the point of limitation, based thereon. The validity of the original order dated 28.12.2011 was not considered while deciding the aforesaid application vide order dated 28.12.2013.

57. The Tribunal wrongly assumed that the order dated 18.12.2013 was passed on the first review application dated 6.2.2012, which was alleged to be pending on the date of filing of the claim petition, and under this misconception proceeded to hold that as the review application was dismissed on 18.12.2013 as lacking in force, therefore, the contention of the opposite parties in the written statement that they had not received the review application, was clearly incorrect. This observation of the Tribunal is utterly perverse. The order dated 18.12.2013 had not been passed on the first review application dated 6.2.2012, it was passed on the subsequent review application dated 22.7.2013, as is evident from a bare reading of the said order, which does not even refer to the earlier review application, therefore, the Tribunal clearly fell into error.

58. The Tribunal did not bother to consider these aspects of the matter.

59. On a perusal of the alleged review application dated 22.7.2013 and the order passed thereon in the light of the provisions contained in Rule 14 of the Rules 1999, we see absolutely no infirmity in the order dated 18.12.2013, whatsoever. The application of the opposite party No. 1 did not confirm to any of the requirements mentioned in Rule 14, therefore, the competent authority rightly rejected the said application and the learned Tribunal committed a manifest error in interfering with the same. In fact, the subsequent application dated 22.7.2013 was not maintainable in view of Section 4(4) of the Act of 1976. Even if it was, the order passed thereon did not suffer from any error.

60. Thus, in the facts of the present case, S.S. Rathore does not help the cause of the opposite party No. 1-claimant.

61. In view of the above discussion, the impugned judgment is quashed. Claim Petition No. 922 of 2013 Vivekanand Singh v. State of U.P., is dismissed.

62. The writ petition is, accordingly, allowed. Let a certified copy of this judgment be sent to the Chairman of U.P. Public Service Tribunal, Lucknow for information and circulation amongst its Members including the Vice-Chairman, by the Senior Registrar of this Court.