

**BEFORE THE UTTARAKHAND PUBLIC SERVICES
TRIBUNAL, DEHRADUN**

Present: Sri V.K. Maheshwari

----- Vice Chairman (J)

&

Sri D.K. Kotia

----- Vice Chairman (A)

CLAIM PETITION NO. 42/SB/2014

Subodh Chandra Mathur, S/o Late Sri Mahesh Chandra Mathur, R/o
146 Vidhyapati Nagar, Near Nanakheda Bus Stand, Ujjain (Madhya
Pradesh) presently Shri Sanjay Jindal, Village- Chandmari P.O.
Doiwala, Dehradun

.....Petitioner

VERSUS

1. State of Uttarakhand through Secretary, Cane Development &
Sugar Industries, Secretariat, Uttarakhand, Dehradun,
2. Uttarakhand Sahkari Chini Mills Ltd. (Uttarakhand Sugars),
House no. S-8, Tyoner Villa, C-Block, Ganesh Vihar, Ajabpur
Khurd, Dehradun through Chief Executive Officer,
3. Doiwala Sugar Company Ltd. through Executive Director,
Doiwala, Dehradun,
4. U.P. State Sugar Corporation Ltd. through Managing Director,
Vipin Khand, Gomti Nagar, Lucknow,

.....Respondents

Present: Sri M.R.Saklani, Counsel
for the petitioner

Sri Umesh Dhaundiyal, A.P.O
for the respondent No. 1

Sri B.S.Rawat, Counsel
for the respondent no. 3

JUDGMENT**DATE: MAY 25, 2015****DELIVERED BY SRI V.K. MAHESHWARI, VICE CHAIRMAN (J)**

1. The following reliefs have been claimed by the petitioner against the respondents No. 2 & 3.

“(i) To issue direction to the Respondent No. 3 to make the payment of the arrears of the Salary and Non-practicing Allowance amounting Rs. 96,904.40

(ii) To issue direction to the respondent no. 3 to allow the interest @ Rs. 10% per annum on the aforesaid amount of Rs. 96904.40 from its due date.

(iii) To pass any other suitable order as this Hon’ble Tribunal may deem fit and proper in the circumstances of the case.

(iv) The costs of the petition.”

2. The facts in brief are that the petitioner having been joined to the post of Medical Officer in the year 1991 in the then Uttar Pradesh State Sugar Corporation had served in different unit of the corporation. The petitioner was posted in the Sugar Mill Doiwala w.e.f. 07.10.1998 to 28.10.2001 belonging to the respondent No. 4 at that time and the petitioner was relieved for the Saharanpur Unit of the Uttar Pradesh State Sugar Corporation from where the petitioner sought voluntary retirement on 15.03.2003. After creation of the State of Uttarakhand, a new corporation known as Uttarakhand Sahkari Chini Mill Sangh was formed as

respondent No. 2 and the Doiwala Unit was transferred with all assets and liabilities to the respondent no. 2, which is now known as Doiwala Sugar Company Ltd and has been added as party as respondent no 3.

3. It is further stated that the petitioner was due to cross the efficiency bar on 01.01.1993 and formal order in this respect was to be issued by the Uttar Pradesh State Sugar Corporation Ltd., respondent no. 4, which was inordinately delayed and the petitioner had to suffer financial loss, but finally the formal orders for crossing the efficiency bar were issued by the respondent no. 4 on 14.01.2003 and were made effective from the due date. As the petitioner had remained posted at Doiwala w.e.f. 07.10.1998 to 28.10.2001, the arrears of the aforesaid dues are to be paid by the respondent no 2 to the petitioner which have not been paid and this amount, which also includes the non-practicing allowance amounts to Rs. 96,904.40, which is payable by respondent no. 2, but respondent no. 2 failed to make payment of that amount. Even the Doiwala Sugar Mill requested the Uttarakhand Sahkari Chini Mills Sangh Ltd., respondent no. 2 to make payment of the aforesaid allowance, but it also went in vain. Thereafter, the petitioner also gave notice under section 80 CPC to the respondents No. 1, 2 and 3 requesting them to make payment of the aforesaid amount, but all in vain. Hence this petition.

4. The petition was delayed, but the delay was condoned vide Tribunal's order dated 01.09.2014.

5. The petition has been opposed on behalf of the respondent no. 3 and it has been stated that the petitioner got voluntary retirement from the service on 15.03.2003 while serving at U.P. State Sugar Corporation, Unit Saharanpur, which is an undertaking of the Govt. of U.P. Therefore, the respondent no. 4, Uttar Pradesh State Sugar Corporation is liable to make payment of the amount claimed by the petitioner. It is also stated that while serving at Doiwala Sugar Mill, the petitioner was under the service of U.P. Sugar Corporation as the Doiwala Sugar Mill than was under the control of U.P. State Sugar Corporation. The petitioner had never been an employee of the respondents No.1, 2 and 3, therefore, the respondents No. 1, 2 and 3 are not liable to make payment of the amount claimed by the petitioner. It is further stated that in case the petitioner is found entitled for any amount against the respondents No.1, 2 and 3, the said amount will be deposited in the account of U.P. State Sugar Corporation from where the petitioner can make the claim. The jurisdiction of the Tribunal has also been questioned and according to the respondents, the petition is liable to be dismissed.

6. Despite sufficient service upon the respondents' no. 1, 2 and 4, no counter or written statement has been filed.

7. The petitioner has submitted the rejoinder affidavit against the counter of respondent no. 3 on 16.02.2015 and apart from reiterating the facts stated in the main petition, it is further stated that the respondent no. 3 while sending his credit note to U.P. State Sugar Corporation Saharanpur Unit on 31.03.2003 has admitted their liability to make payment of

arrears of salary to the petitioner, but the respondent no. 4 did not accept the aforesaid credit note and returned it to the respondent no. 3 intimating them to make payment of arrears of the salary to the petitioner on their own.

8. We have heard both the parties at length and perused the material available on record carefully.

9. First of all, the petition has been opposed on behalf of respondent no. 3 on the ground of delay and it has been stated that there is a delay of about 11 years and 6 months, therefore, the petition is liable to be dismissed on this ground alone. The para 3 of the Counter reads as under:

“That para (3) of claim petition is not admitted. The petition is beyond the period of 1 year as mentioned in Sec. 5(i) (b) (i) of the U.P.S.T Act, 1976. U.P. State Sugar Corporation released the EB on 11.2.2002 and the petitioner had been informed vide order dated 14.01.2003. Thus there is a delay of about 11 year 6 months, and on this sole basis of delay the petition ought to be rejected.”

But this ground is not tenable as the matter of delay has been decided at the stage of admission. It has been observed by this Tribunal in its order dated 01.09.2014 that;

“Thus, the delay has been sufficiently explained by the Ld. Counsel for the petitioner. Apart from that the

relief claimed in this petition is a direction of alike a mandamus and the cause of action is a continuing one. In view of the above, the delay condonation application is allowed. Let the claim petition be listed for admission on 05.09.2014.”

10. In view of the above order, it becomes clear that the matter of delay has already been decided, therefore, the contention of respondent no. 3 has no force.

11. It has further been contended on behalf of respondent no. 3 that the petitioner had never been an employee of State of Uttarakhand as he had served in the State of U.P. and had never been an employee of Govt. of Uttarakhand. It has been opposed on behalf of the petitioner on the ground that the petitioner had served in Doiwala Sugar Company Ltd. and at present, the above Doiwala Sugar Company is owned and managed by the Govt. of Uttarakhand as under the provisions of the U.P. Reorganization Act, 2000, the Doiwala Sugar Mills has been transferred to the State of Uttarakhand with all assets and liabilities. There is no dispute regarding the fact that the claim of the petitioner pertains to the period when he was serving in Doiwala Sugar Mill. It is further admitted that the Doiwala Sugar Mill had been transferred from U.P. State Sugar Corporation to the Govt. of Uttarakhand with all assets and liabilities and to substantiate this fact, a copy of the resolution dated 09.05.2002 has been filed as Annexure No. 2. As, it is admitted to both the parties that Doiwala Sugar Mill has been transferred to Uttarakhand with all assets and liabilities and claim of the petitioner pertains to Doiwala

Sugar Mill, therefore, we are of the considered view that this Tribunal has jurisdiction to adjudicate the matter in controversy.

12. As regards the claim of the petitioner for Rs. 96,904.40 as arrears of salary and non-practice allowance are concerned it is admitted to both the parties and there is no dispute regarding this amount.

13. The only dispute is as to by whom this amount is payable to the petitioner. The petitioner had claimed this amount from respondents no. 2 and 3 i.e. Uttarakhand Sahkari Chini Mills Ltd. and Doiwala Sugar Mills Ltd., whereas, the respondent no. 3 contends that the respondent no. 4, U.P. Sugar Corporation Ltd. is liable to make payment of the aforesaid amount. It is further contended that a credit note had also been issued by the respondent no. 3 to the respondent no. 4. In view of the rival contentions of the parties, as it is admitted that the aforesaid amount pertains to the period during which the petitioner had served in Doiwala Sugar Mills we are of the opinion that this should be paid by the respondent no 3 the Doiwala Sugar Company Ltd. It is further stated that the respondent no. 3, Doiwala Sugar Mills had also issued a credit note which also establish the liability of the respondent no 3. Apart from it, it is also pertinent that the Doiwala Sugar Mill has been transferred with all assets and liabilities to the respondent no 2. Under the above circumstances, we are of the clear view that respondent no. 2 and 3 are liable to make payment of the amount claimed by the petitioner. The respondent no. 4 is not liable for making

any payment to the petitioner. . Thus, we are of the considered opinion that the petitioner is entitled to get Rs. 96,904.40 from the respondent no. 2 and 3.

14. The petitioner has also claimed interest @10% per annum, though no provision has been mentioned as to how the petitioner is entitled for interest, but the amount had become due before 2000 and despite the best efforts and requests on behalf of the petitioner, the amount has not been paid to him so he had to suffer due to the fault of the respondents. It is also pertinent to mention that the petitioner had taken voluntary retirement in the year 2003. It is also pertinent to mention that a credit note was also issued by the respondent no. 3 on 31.03.2003. A period of more than 12 years has elapsed even after issuance of the credit note. The above circumstances reveal that there is an inordinate delay in making the payment of the aforesaid amount, which has not been properly explained by the respondent no. 2 and 3. Keeping in view of the aforesaid delay, we are of the view that the interest @ 9% per annum be also awarded to the petitioner to compensate him for the delay in making payment of the amount due to him even in absence of any specific provision of interest.

15. Under the above circumstances, the petition deserves to be allowed as against the respondents no. 2 and 3 and the petitioner is entitled to recover the amount of Rs. 96,904.40 along with a simple interest @ 9% per annum, but only from the date on credit note dated 31.03.2003 till the actual payment is made. Keeping in view the red-tapping on the part

of the respondents for a considerable period of time, we think it to be a fit case where the petitioner is entitled for the cost of petition also, which is quantified at Rs. 5000/-

ORDER

The petition is allowed with costs. The respondents no. 2 and 3 are directed to make payment of Rs. 96,904.40 along with simple interest @ 9% per annum w.e.f. 31.03.2003 till actual payment to the petitioner. The payment should be made of whole of the amount including costs within a period of three months from today.

Sd/-

D.K.KOTIA
VICE CHAIRMAN (A)

Sd/-

V.K.MAHESHWARI
VICE CHAIRMAN (J)

DATE: MAY 25, 2015
DEHRADUN

KNP