

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
BENCH AT NAINITAL**

Present: Hon'ble Mr. Justice U.C.Dhyani

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

CLAIM PETITION NO.108/NB/DB/2021

Madan Lal, aged about 58 years, s/o Late Sri Gurdeen Lal, presently serving as Assistant Engineer/ Sub-Divisional Officer, Electricity Distribution Division, Uttarakhand Power Corporation Ltd., Kashipur, District Udham Singh Nagar.

.....Petitioner

vs.

1. State of Uttarakhand through Secretary, Energy Department, Govt. of Uttarakhand, Dehradun.
2. Uttarakhand Power Corporation Ltd., Urja Bhawan, Kanwali Road, Dehradun, through its Managing Director.
3. Chief Engineer (Distribution), Uttarakhand Power Corporation Ltd., Kumaon Region, Kathgodam, District Nainital.
4. Superintending Engineer, Uttarakhand Power Corporation Ltd., Electricity distribution Circle, Kashipur, District Udham Singh Nagar.
5. Executive Engineer, Uttarakhand Power Corporation Ltd., Electricity Distribution Division, Jalpur, District Udham Singh Nagar.
6. Sri M.L.Arya, presently serving as Superintending Engineer, Uttarakhand Power Corporation Ltd., Electricity Distribution Circle, Bageshwar, District Bageshwar.

.....Respondents

Present: Sri Sanjay Bhatt & Sri P.P.Bhatt, Advocates, for the petitioner.
Sri Kishore Kumar, A.P.O., for the Respondent No.1.
Sri Bhagwat Mehra, Advocate, for Respondents No. 2 to 6.

JUDGMENT

DATED: JANUARY 21, 2022

Justice U.C.Dhyani (Oral)

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

“A. To set aside the impugned order dated 16.02.2017, passed by Respondent No.4 (Annexure: A 1 to Compilation-I).

B. To set aside the impugned order dated 27.09.2021, passed by Respondent No.3 (Annexure: A 2 to Compilation-I).

C. To issue any other order of direction, which this Hon’ble Tribunal deems fit and proper in the circumstances of the case.

D. Award the cost of the claim petition in favour of the petitioner.”

2. A recovery of Rs.15,12,900/- was ordered against the petitioner *vide* impugned order dated 16.02.2017, for the Govt. loss on account of theft of ACSR Dog Conductor and Pin Insulator.

2.1 Feeling aggrieved, the petitioner submitted a detailed representation to Respondent No.4, against the aforesaid punishment order, on 29.03.2017 and requested him to quash the same, as the same has been passed against him without any enquiry and without any evidence. When no action was taken on the same, petitioner submitted another representation to Respondent No. 4 on 20.09.2017. No decision was taken on his representations dated 29.03.2017 and 20.09.2017. The petitioner, then submitted departmental appeal to Respondent No.3 on 04.09.2021, through proper channel, which was forwarded by the Executive Engineer, Kashipur, to Respondent No.4 and then the same was also forwarded by Respondent No. 4 to Respondent No.3 for decision, along with covering letter dated 13.09.2021.

2.2 Respondent No.3, *vide* impugned order dated 27.09.2021 rejected the departmental appeal of the petitioner on the ground that the departmental appeal is time barred. Faced with no other alternative,

petitioner has filed present claim petition, citing various grounds, as to why the impugned punishment order should be set aside.

3. Sri Kishore Kumar, Ld. A.P.O., on behalf of Respondent No.1 and Sri Bhagwat Mehra, Ld. Counsel for Respondents No. 2 to 6, submitted that since there is delay in filing the claim petition, therefore, respondents have objection on the maintainability of the claim petition.

- 3.1 The Tribunal has noticed that there might be delay in filing the departmental appeal, but there is no delay in filing the claim petition, which has been filed within a year of the appellate order.

4. At the very outset, Ld. Counsel for the petitioner prayed that a direction be given to the official respondents to decide the departmental appeal of the petitioner, on merits, in accordance with law.

5. The Tribunal has noticed that the Chief Engineer (Distribution) has written a letter to the Superintending Engineer, UPCL, Electricity Distribution Division, Kashipur on 27.09.2021 (Copy: Annexure- A 2). It has been mentioned in such letter that the (departmental) appeal appears to be barred by limitation. Departmental appeal has not been decided on merits.

6. Impugned order was passed on 16.02.2017, against which petitioner, after making representations, filed the departmental appeal, which was received in the office of Chief Engineer (Distribution), Respondent No.3, along with letter dated 13.09.2021 of the Superintending Engineer (Respondent No.4). Even if the departmental appeal against the impugned order dated 16.02.2017 was filed by the petitioner, after moving representations, on 04.09.2021, the fact remains that Section 5 of the Limitation Act, 1963 is always applicable to the Appeals and Applications (and not the Suits). Such provision reads as below:

“Extension of prescribed period in certain cases- Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period, if the appellant or the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.”

7. Although filing of representation will not extend the limitation in filing a claim petition, as has been held by Hon'ble Supreme Court in the decision of State of Uttarakhand & another vs. *Shiv Charan Singh Bhandari & others*, (2013) 12 SCC 179, but one should not forget that the delay in filing the appeal can always be condoned, on showing sufficient cause and the appeal should, as far as possible, be decided, on merits, as per law.
8. Considering the sufficiency of reasons thus furnished in this behalf, and in the interest of justice, the Tribunal is inclined to condone the delay in filing the appeal, for, after all, the appellate authorities also perform quasi-judicial functions.
9. It may be noted here that Hon'ble Supreme Court has held in a catena of decisions, as below,

"1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

.....

Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 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 praying for condonation of delay. The Courts,

therefore, have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even handed justice on merits in preference to the approach which scuttles a decision on merits. Turning to the facts of the matter giving rise to the present appeal, we are satisfied that sufficient cause exists for the delay.”

10. Howsoever grave the allegations against the petitioner might be, it is settled law of the land that every *lis*, as far as possible, should be decided on its merits, unless a person sleeps over his rights. As has been stated above, Section 5 of the Limitation Act, 1963 is always applicable to the Appeals and Applications (and not the Suits). Departmental appeal, in the instant case, has been held to be barred by limitation. Propriety demands that same should be heard on merits.
11. This Tribunal, therefore, in the peculiar facts of the case, deems it appropriate to relegate the matter to the appellate authority for deciding the departmental appeal of the petitioner, on merits, in accordance with law, as per the scheme of Rule 12 of the Uttarakhand Government Servants (Discipline and Appeal) Rules, 2003.
12. The delay in filing the departmental appeal is, therefore, condoned, in the interest of justice, as the petitioner was not sleeping over his case.
13. Letter dated 27.09.2021, which was written by Respondent No.3 to Respondent No.4, whereby Respondent No.3 informed that the appeal of the petitioner appears to be barred by limitation, is set aside.
14. The claim petition is, accordingly, disposed of at the admission stage by directing the appellate authority (Respondent No.3) to decide the departmental appeal of the petitioner, which is against the impugned order dated 16.02.2017 (Annexure: A 1 to Compilation-I), on merits, at an earliest possible, without unreasonable delay, in accordance with law.

15. It is made clear that the Tribunal has not expressed any opinion on the merits of the case.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: JANUARY 21, 2022
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