

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

Present: Hon'ble Mr. Rajendra Singh

----- Vice Chairman (J)

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

CLAIM PETITION NO. 35/NB/DB/2022

Madan Lal (Male), aged about 59 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

Versus

1. State of Uttarakhand through Secretary, Energy Department, Government 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, Jaspur, District Udham Singh Nagar.
6. Sri M. L. Arya (Male), S/o Not Known, presently serving as Superintending Engineer, Uttarakhand Power Corporation Ltd., Electricity Distribution Circle, Srinagar, District Pauri Garhwal.

.....Respondents

Present: Sri Sanjay Bhatt, Advocate, 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: MARCH 22, 2023

Per: Mr. Rajeev Gupta, Vice Chairman (A)

This claim petition has been filed seeking the following reliefs:-

“A. To set aside the impugned order dated 16.02.2017 passed

by the Respondent No. 4 (Annexure No 1 to Compilation-I).

- B. To set aside the impugned appellate order dated 24.03.2022 passed by the Respondent No. 3 (Annexure No. 2 to Compilation-I).
- C. To issue any other order or direction, which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.
- D. Award the cost of the Claim Petition in favour of the petitioner.”

2. The petitioner earlier approached this Tribunal by filing Claim Petition No. 108/NB/DB/2021, which was decided by the Tribunal vide its judgment dated 21.01.2022. It is apposite to reproduce this judgment of the Tribunal in the claim petition No. 108/NB/DB/2021 as below: -

“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.”

3. In furtherance of the above order, the appeal of the petitioner has been disposed of vide order dated 24.03.2022 of the Chief Engineer (Distribution), Uttarakhand Power Corporation Ltd. (Annexure No. 2 to the claim petition) stating that after personal hearing of the petitioner and perusal of the related departmental papers the undersigned has come to the conclusion that the petitioner has not produced any solid evidence, documents etc. in his departmental appeal on the basis of which the punishment order dated 16.02.2017 can be struck down. This order further states that in compliance of the punishment order dated 16.02.2017, Rs. 3,29,031/- have been recovered from Sri Rakesh Kumar Verma (the then Junior Engineer) and on the basis of these facts and circumstances, there is no force in the departmental appeal of the petitioner and accordingly the department appeal of the petitioner has been dismissed. Aggrieved with the punishment order and the appellate order, this claim petition has been filed.

4. The claim petition, *inter-alia*, states the following in its para 4:-

“(34). That undisputedly, recovery from salary is a major penalty as prescribed in the Statutory Rules/Regulations governing the field. The service conditions of the petitioner are governed by the Statutory Regulations framed by the Corporation, namely the “The Uttar Pradesh State Electricity Board (Officers and Servants) (Conditions of Service) Regulations, 1975” (hereinafter referred as Regulations, 1975), which are still applicable in Uttarakhand. A detailed procedure has been prescribed in the said Regulation before imposing a minor or major penalty upon a servant.

(35). That Regulation 1-A of the said Regulations deals with kinds of penalties to be inflicted upon the delinquent employee. Regulation 3 provides regarding imposition of penalties.

(36). That Regulation 7 of the said Regulations provides for constitution of Committee to enquire into disciplinary cases. The composition of the

Enquiry Committee has also been given in the said Regulation. The relevant extracts of the Regulation 6 are reproduced below for kind consideration of this Hon'ble court.

“6. Constitution of committee to inquire into cases. – (1) The Board may from time to time constitute one or more enquiry committees, as it may consider necessary for inquiry into allegations, complaints or charges against officers and servants.

(2) Every Enquiry Committee constituted under class (1) shall consist of the following: -

(i) A Chief Engineer or Additional Chief Engineer, UPSEB – convener

(ii) A Law Officer or Additional Law Officer, UPSEB – Member

(iii) An Officer from the Accounts Branch of UPSEB – Member not below the rank of Accounts Officer nominated by the Chairman in that behalf.”

.....

(37). That the categorical case of the petitioner is that neither any charge-sheet, nor any enquiry report has ever been served upon him nor any show cause notice was ever served upon him in order to enable him to file his explanation regarding the conclusion/determination made by the punishing authority. The said conduct on the part of the Respondents is totally against the provisions contained in aforesaid Regulations.

(38). That it is submitted that the punishment imposed upon the petitioner is undisputedly a penalty, for which it was obligatory on the part of the Disciplinary Authority to act in the matter as per the provisions contained in aforesaid Statutory Regulations and also the copy of the enquiry report should have been served upon the petitioner and a show cause notice should have been issued to him in order to enable him to comment on the conclusions/ determinations made by the Enquiry Officer. In the absence of any charge-sheet, enquiry report and by non-affording the opportunity of show cause against the finding of the Enquiry Officer, it was not possible for the petitioner to submit any reply in the matter.

(39). That from the above, it is apparent that the petitioner was denied reasonable opportunity of defending himself, which has resulted in miscarriage of justice. Since this was not done by the Disciplinary Authority, hence the entire proceedings have vitiated on this score alone. The petitioner prays that the Respondents be directed to furnish the charge-sheet and enquiry report, if any, before this Hon'ble court so that the truth may come to light.”

5. Counter Affidavit filed on behalf of the respondents No. 2 to 6 does not show whether any charge-sheet, or any enquiry report has ever been served upon

the petitioner or any show cause notice was ever served upon him in order to enable him to file his explanation regarding the conclusion/determination of the punishment made by the punishing authority. The counter affidavit mainly states that the appellate authority after consideration the matter in a very fair, objective and well considered manner, after going through the concerned file/documents, have passed the impugned appellate order dated 24.03.2022. The punishment order dated 16.02.2017 was passed after due inter-departmental enquiry and after considering the material available on record.

6. This Tribunal observes that the appellate order has been passed in a very cursory and casual manner in which neither the points raised by the petitioner in his appeal nor decision of the appellate authority thereon has been mentioned. Moreover, the punishment order is a modification of the earlier order dated 16.12.2016 in which recovery has been ordered from Sri Rakesh Kumar Verma and Sri Pankaj Kumar and the order dated 16.02.2017 states that on the basis of representation of Sri Rakesh Kumar Verma and Sri Pankaj Kumar and after full cognizance/inspection of the matter, the modified recoveries are ordered according to which, the recoveries of Sri Rakesh Kumar Verma and Sri Pankaj Kumar have been modified and a recovery of Rs. 15,12,900/- has been imposed upon the petitioner. The punishment order dated 16.02.2017 has been passed without following the proper procedure as prescribed in the The Uttar Pradesh State Electricity Board (Officers and Servants) (Conditions of Service) Regulations, 1975. The appellate authority has also failed to notice the same.

7. In view of the above, the punishment order dated 16.02.2017 in respect of the petitioner and the appellate order dated 24.03.2022 are hereby set aside. The respondents shall be at liberty to proceed against the petitioner afresh in accordance with law.

8. The claim petition is disposed of as above. No order as to costs.

(RAJENDRA SINGH)
VICE CHAIRMAN (J)

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

DATE: MARCH 22, 2023
NAINITAL
BK