

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

CLAIM PETITION NO.57/SB/2024

Anil Kumar, aged about 53 years, s/o Sri Bir Singh, r/o Atalpur P.O. Ialyana Meerut (U.P.), presently residing at H.No. 153/102 Shivnagar Modipuram, Meerut (U.P.).

.....Petitioner

vs.

1. State of Uttarakhand through Secretary, Finance, Civil Secretariat, Govt. of Dehradun.
2. Commissioner, State Tax, Uttarakhand, Dehradun.
3. Uttarakhand Public Service Commission, Haridwar, through its Secretary.

.....Respondents

Present: Sri Mayank P. Pandey (online) & Ms. Stuti Pandey, Advocates,
for the petitioner.

Sri V.P.Devrani, A.P.O., for the Respondents No.1 & 2.

Notice not issued to Respondent No. 3.

JUDGMENT

DATED: JUNE 20, 2024

Justice U.C.Dhyani (Oral)

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

“1) Issue an order or direction, to set aside the order dated 24.4.2024 issued by respondent no.1, contained as Annexure no.2 to the petition.

II) Issue an order to set aside the termination order dated 7.10.2022 received by the petitioner on 12.10.2022 on his e-mail ID, contained as Annexure no.1 to the petition.

III) Direct the respondent to restore back the services of the petitioner as State Tax Officer, with all consequential benefits, failing which the applicant/petitioner will suffer irreparably, or may be pleased to pass such further orders as this Hon'ble Tribunal may deem fit and proper under the circumstances of the.

IV) To pass any other suitable order, which this Hon'ble Tribunal may deem fit and proper on the basis of the facts and circumstances of the case.

V) Award the cost of the petition. ”

2. The petitioner approached the Hon'ble High Court, who was pleased to dispose of his writ petition being WPSB No. 261/2024 *vide* order dated 15.05.2024, as under:

“4. While serving as State Tax Officer, a chargesheet was issued to the petitioner on 31.08.2021 containing two charges and a disciplinary inquiry was held against him in which he was found guilty. The Disciplinary Authority has passed an order on 07.10.2022, whereby he was removed from service. Petitioner challenged the said order in appeal, however, his appeal has also been dismissed by Appellate Authority. In this writ petition, petitioner has challenged the order passed by Disciplinary authority and affirmed by Appellate Authority. 5. Since petitioner has remedy to approach Tribunal established under Public Services Tribunal Act, 1976, therefore, this Court is not inclined to entertain the writ petition. Accordingly, writ petition is dismissed on the ground of alternate remedy with liberty to petitioner to approach the Tribunal.

3. An affidavit has been filed by the petitioner in support of his claim petition. Relevant documents have also been filed along with the same.

4. Petitioner was a State Tax Officer. On charges of corruption, he was removed from service by the Commissioner, State Tax, Uttarakhand, Dehradun, Respondent No.2 *vide* order dated 07.10.2022 (Copy: Annexure- A 1).

5. Aggrieved against his removal from service, petitioner filed departmental appeal, which (departmental appeal) was dismissed by the

Secretary, Finance, Govt. of Uttarakhand, Respondent No.1, *vide* order dated 24.04.2024 (Copy: Annexure- A 2), on the ground that departmental appeal has been filed after 90 days. The same was held to be not maintainable, as barred by time. A reference of Rule 11 (4) of the Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003 (as amended by Amendment Rules, 2010) (for short, Rules of 2003) has been given in the impugned order dated 24.04.2024 (Annexure: A-2). Such Rule 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 Preferring an appeal shall do so in his own name. The appeal shall contain all material statements and arguments 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.”

[Emphasis supplied]

6. As per impugned order dated 24.04.2024 (Annexure: A-2), the earlier impugned order dated 07.10.2022 (Annexure: A-1) was communicated to the petitioner on 27.10.2022. If that was so, the departmental appeal, before the appellate authority, should have been preferred within 90 days from the date of communication of impugned order, limitation of which was only up to 25.01.2023. According to Annexure: A-2, the same has been filed after a delay of 11 months. In this way, the appellate authority has committed no mistake in dismissing the departmental appeal summarily as per Rule 11(4) of the Rules of 2003.

7. Ms. Stuti Pandey, Ld. Counsel for the petitioner submitted that liberty may be granted to the petitioner to file application under section 5 of Limitation Act, 1963 and a direction be given to Ld. Appellate Authority to pass an appropriate order on such application for condoning the delay in filing the departmental appeal.

8. Section 5 of the Limitation Act, 1963 reads as below:

5. 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 judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.

[Emphasis supplied]

9. Section 5 of the Limitation Act is applicable to any appeal or any application, other than the one filed under order XXI CPC. The appeal may be admitted after the prescribed period, if the appellant satisfies the appellate authority that he had sufficient cause for not preferring the appeal within the prescribed period. The appellate authority, while deciding departmental appeal, acts as a quasi judicial authority. If the appellant, before such authority, satisfies it that the appellant had sufficient reasons for not preferring the appeal within time, then the delay in filing the same may be condoned under Section 5 of the Limitation Act.

10. Ld. Counsel for the petitioner submitted that appellant (petitioner herein) shall move an application to the appellate authority under Section 5 of the Limitation Act, who may be directed to decide such application and thereafter to hear the departmental appeal on merits after condoning the delay, as per law.

11 Ld. Counsel for the petitioner submitted that such an order may be passed by Single Bench of the Tribunal.

12. The Tribunal finds sense in such submission of Ld. Counsel for the petitioner. A direction is, therefore, given to Respondent No.1 to hear the appellant (petitioner herein) when he moves application under Section 5 of the Limitation Act and pass an appropriate order for condoning the delay in filing the departmental appeal, if he satisfies the appellate

authority that he (appellant) had sufficient cause for not preferring the appeal within time.

13. If the delay is condoned, the appellate authority may decide the departmental appeal on merits, as per law.

14. With the observations as above, the claim petition is disposed of at the admission stage, with the consent of Ld. Counsel for the parties..

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: JUNE 20, 2024
DEHRADUN

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