

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

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

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

CLAIM PETITION NO. 75/DB/2019

Devi Prasad Thapliyal, aged about 52 years, S/o Shri Sureshanand Thapliyal, R/o Gram Dhak, Post Dhak, Tehsil- Joshimath, Chamoli.

.....Petitioner.

vs.

1. State of Uttarakhand through Secretary, Tourism, Secretariat, Dehradun.
2. Gharhwal Mandal Vikas Nigam Ltd. through its Managing Director, 74/1, Rajpur Road, Dehradun..
3. Managing Director, Garhwal Mandal Vikas Nigam Ltd., 74/1, Rajpur Road, Dehradun.

.....Respondents.

Present: Sri Aman Rab, Counsel, for the petitioner.
Sri V.P.Devrani, A.P.O., for Respondent No.1
Sri S.K.Jain, Counsel, for Respondents No 2 & 3.

JUDGMENT

DATED: JUNE 27, 2019

Justice U.C.Dhyani (Oral)

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

“(i) Set aside/ quash the impugned order dated 02.03.2019 bearing letter No. 1494/Vy0 P0 passed by the respondent no.3 (Annexure: A) terminating the petitioner with immediate effect

(ii) Graciously be pleased to direct the respondents to release full wages of the petitioner from the date of termination along with the interest @ 12% p.a.

(iii) Graciously be pleased to pass any such other relief or reliefs as this Hon'ble Tribunal may deem just and proper in the circumstances of this case.

(iv) Award the cost of the petition to the petitioner against the respondents."

2. Facts, giving rise to present claim petition, are as follows:

Petitioner, who was initially appointed as Kitchen Helper, on daily wages basis, was regularized on 01.12.1988, in the pay scale of Rs.305-390/- in Hotel Drona. The petitioner was thereafter, working as Waiter with Respondent No.2. The petitioner was posted at different places from time to time. In March, 2018, the petitioner was transferred to Joshimath and was performing his duties at Old Tourist Guest House (for short, TGH). Manager of TGH was not happy with the posting of the petitioner. He made a false complaint against the petitioner to Respondent No.3 on 25.08.2018. Allegations were levelled against the petitioner that he consumed alcohol and used vulgar language in TGH compound, which resulted in inconvenience to the tourists. Petitioner was suspended *vide* order dated 01.09.2018 by Respondent No.3, who issued the charge sheet to him on 12.09.2018. Charge of misconduct under Rule 5(5), 5(12) and 5(17) of the Model Conduct, Discipline and Appeal Rules of Garhwal Mandal Vikas Nigam (for short, GMVN) were levelled against the petitioner, who replied to the same and denied all the charges levelled against him *vide* letter dated 21.12.2018. Deputy General Manager (Admin) was appointed as inquiry officer, who *vide* report dated 28.01.2019, confirmed the charges. A show cause notice was given to the petitioner on 04.02.2019. The petitioner submitted his reply to Respondent No.3 on 20.02.2019. Opportunity of personal hearing was granted to the petitioner by Respondent No.3 on 02.03.2019. Petitioner appeared before Respondent No. 3 and reiterated his defenses. The petitioner, in Para XXIII of the petition, has given a reference of decision rendered by Hon'ble Calcutta High Court to say that medical examination of the petitioner, who had been subjected to a departmental inquiry related to intoxication, is necessary. In Para XXIV, a reference of the

decision of Hon'ble Apex Court has been given. According to the petitioner, his services were terminated *vide* order dated 02.03.2019 (Annexure: A), which is illegal, unreasonable and arbitrary. Hence, present claim petition.

3. Sub-section (5) of Section 4 of the U.P. Public Services (Tribunal) Act, 1976 reads as below:

“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 his grievances.”

4. There is provision for filing an appeal under Rule 42 of Model Conduct, Discipline and Appeal Rules of GMVN. There is a schedule appended to such Rules which provides that challenging the punishment order passed by the appointing authority, i.e., Managing Director, GMVN, an appeal may be filed before the Board of Directors. Admittedly, such departmental appeal has not been filed by the petitioner.
5. The Tribunal, therefore, considers it fit to direct the petitioner to file a departmental appeal against the impugned order, if he is so advised.
6. The impugned order was passed on 02.03.2019. The claim petition has been filed before this Tribunal on 26.06.2019. As per the scheme of appeal, the same should have been filed within one month of passing the impugned order, which has not been done in the instant case. The petitioner was probably under the impression that he could have filed the claim petition directly before this Tribunal. Hence, there could be delay in filing the departmental appeal.
7. It is, therefore, directed that if an appeal is filed by the petitioner before the Board of Directors, the delay in filing the same shall be condoned, in the peculiar facts of the case.

8. The claim petition is, accordingly, disposed of, at the admission stage itself. No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: JUNE 27, 2019
DEHRADUN

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