

**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.152/DB/19 .**

Vishesh Kumar s/o Late Sri Dharmender Kumar, aged about 57 years at present working and posted on the post of work supervisor, Dehradun Branch, Uttarakhand Peyjal Nigam, r/o Chakki Tola, Niranjanpur, district Dehradun, Uttarakhand.

.....Petitioner

**vs.**

1. State of Uttarakhand through Secretary, Peyjal, Govt. of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Managing Director, Uttarakhand Peyjal Sansadhan Vikas Evam Nirman Nigam, 11 Mohini Road, Dehradun.
3. Chief Engineer (Garhwal), Uttarakhand Peyjal Sansadhan Vikas Evam Nirman Nigam, 102, Kyunkaleshwar Road, Kandolia, Devprayag Marg, Pauri, Uttarakhand.
4. General Manager (Ground Water/ Survey), Head Office Uttarakhand, Peyjal Nigam, 11 Mohini Road, Dehradun.
5. Chief Engineer (Headquarter) Uttarakhand Peyjal Sansadhan Vikas Evam Nirman Nigam, 11 Mohini Road, Dehradun.

....Respondents

Present: Sri L.K.Maithani, Advocate, the petitioner.  
Sri V.P.Devrani, A.P.O., for the Respondents.

**JUDGMENT**

**DATED: FEBRUARY 19, 2020**

**Justice U.C.Dhyani (Oral)**

By means of present claim petition, the petitioner seeks the following principal relief, among others:

“ To issue order or direction to the concerned respondents to grant the benefit of post of work supervisor to the petitioner since the date of his regularization on the post of work agents i.e. since 20.11.1990, as was given to the other similarly situated and junior persons to the petitioner, with all consequential service benefits.”

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

The petitioner was initially engaged as work supervisor on muster roll/ daily wages on 01.09.1983 in Uttarakhand Pey Jal Nigam (hereinafter referred to as respondent department). *Vide* order dated 20.11.1990 of the then Superintending Engineer, the petitioner was regularized on the post of work agent. The grievance of the petitioner is that his regularization was to be done on the post of work supervisor, and not on the lower post of work agent. Petitioner made a representation to the then Executive Engineer on 11.07.1994. The Executive Engineer, *vide* letter dated 12.07.1994 recommended the case of the petitioner to Superintending Engineer, Plinth Circle. Thereafter, the then S.E., 9<sup>th</sup> Circle, *vide* order dated 13.12.1994, promoted the petitioner on the post of work supervisor. According to the petitioner, his services should have been regularized on the post of work supervisor *w.e.f.* 01.04.1990, as similarly situated persons, who were initially engaged in the department on daily wages/ muster roll, on the post of work supervisor and regularized on the post of work agent, were regularized on the post of work supervisor from initial date by modifying their orders. The regularization was done retrospectively. Names of a few such employees have been given by the petitioner in para 4 (g & h) of the claim petition. Petitioner made representation to the respondents and prayed for regularization on the post of work supervisor. Respondent No. 3, *vide* letter dated 23.09.2013, made a query from S.E., Construction Division, Dehradun, who, *vide* letter dated 07.10.2013 forwarded the information to Respondent No.3, received from Executive Engineer, Dehradun *vide* letter dated 05.10.2013 and letter dated 07.10.2013. When no action was taken, then petitioner made representation to M.D. and G.M. of the respondent department. The G.M. (Admin), *vide* letter dated 21.08.2018, forwarded the representation of the petitioner to Respondent No.4 for necessary action. Respondent No.4, *vide* letter dated 08.09.2018 desired comments from

Executive Engineer, Dehradun, who *vide* letter dated 20.09.2018 submitted his report and recommended the case of the petitioner. Respondent No.3 raised certain objections stating therein that there are major anomalies in the present report and earlier report. Respondent No.4 returned the case of the petitioner to Respondent No.3, with a direction to dispose of the matter after re-examining it, as the appointing authority of the regular field employees was Regional Chief Engineer. Till date no action has been taken in the matter. The same is pending unnecessarily and without any reason. The benefit of regularization, with retrospective effect, has already been given to the juniors of the petitioner. Hence, present claim petition.

3. Ld. A.P.O., who is representing Respondent No.1 and Sri Manokam Nautiyal, Advocate, who is representing rest of the respondents, objected to the maintainability of the claim petition, on the ground that the same has been filed belatedly.

4. An application for condoning the delay in filing the claim petition has been filed. It is the submission of the petitioner that similarly placed work supervisors in the respondent department were given relief by the department in the year 2013, and he has continuously been approaching the respondent department for such relief, therefore, petitioner should be granted similar relief after condoning the delay.

5. Written objections have been filed on behalf of respondents, vehemently opposing the maintainability of the claim petition by stating that by rendering his services as work agent for four years without any protest, the petitioner has accepted his regularization on the post of work agent *w.e.f.* 01.04.1990 and not being promoted to the post of work supervisor *vide* order dated 23.12.1994.

6. Ld. A.P.O. submitted that the period for filing the claim petition before this Tribunal is one year and petitioner has filed present claim petition after a considerable delay of more than 29 years. The claim petition, therefore, suffers from laches, according to Ld. A.P.O.

7. We have given our anxious consideration to the aforesaid objections of Ld. A.P.O. and Ld. Counsel for respondent department. After going through the pleadings and documents brought on record, we are of the view that it is

not a case in which the petitioner has been sitting idle since 1990. He has repeatedly been espousing his cause through representations, which were, most of the times, recommended by the departmental officers to their superiors. Some action was taken on such recommendatory letters, but ultimately the same could not clinch the issue in favour of the petitioner, despite the fact that those who were engaged as muster roll work supervisor after engagement of the petitioner, have been given benefit of regularization retrospectively. The peculiar characteristic of this case is that initially the petitioner was engaged as muster roll employee as work supervisor. After having served the respondent department for 4 years, he was although regularized, but on the lower grade post of work agent. Whereas similarly placed employees were subsequently regularized on the post of work supervisor, the petitioner was not. In other words, similarly placed employees, who were initially engaged as work supervisor, were regularized on the post of work supervisor, retrospectively. In between, they were regularized as work agent. The petitioner has been hoping that his regularization will be done from the back date like his juniors, but the same did not yield result. Several documents from Annexure: A-1 to Annexure:A-13 have been brought on record to show the same. Annexure: A-3 is a copy of the representation of the petitioner dated 11.07.1994, addressed to Executive Engineer, Dehradun. Annexure: A-4 is letter dated 12.07.1994, written by Executive Engineer to Superintending Engineer, U.P. Pey Jal Nigam. The petitioner was promoted on the post of work supervisor *w.e.f.* 02.12.1988 in the pay scale of Rs.825-15-900/- *vide* letter dated 23.12.1994. The case of one Sri Virendra Singh Bisht, work agent was reviewed *vide* letter dated 21.11.2001 and was regularized on the post of work supervisor *w.e.f.* 01.04.1984 (Annexure: A-6). Similar treatment was given to one Sri Pratap Singh, work agent *vide* Annexure: A-7. Copies of representations given by the petitioner to his superior officers, from time to time, have also been brought on record. Petitioner's case was recommended by his superiors and one such example is recommendation of Ms. Pallavi Kumari, Executive Engineer, who on 20.09.2018 (Annexure: A 11). G.M., (Ground Water/ Survey), wrote a letter to Chief Engineer, Garhwal on 06.10.2018 (Annexure: A 12) to decide the matter at his own level after re-examining the issues involved. The documents obtained under RTI have also been filed to show that it was continuous and

concerted effort on the part of the petitioner to have agitated his grievance before the officers of the respondent department. Another recommendation in favour of the petitioner is a letter dated 22.01.2019 of Superintending Engineer, addressed to Chief Engineer, Garhwal and letter dated 18.11.2019 of Executive Engineer to Superintending Engineer, Construction Division of the respondent department.

8. There is difference between ‘technical justice’ and ‘substantial justice’. The primary function of the Court is to adjudicate dispute between the parties and to advance substantial justice. When substantial justice and technical consideration are pitted against each other, cause of substantial justice deserves to be preferred. It has been observed by Hon’ble Apex Court in *Collector Land Acquisition Anant Naag & another vs. MST Katiji & others*, AIR 1987 SCC 107, although in different context, that “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.” Again, in *State of Nagaland vs. Lipok Ao and others*, (2005) 3 SCC 752, albeit in a different backdrop, the Hon’ble Apex Court was pleased to observe that “a pragmatic approach has to be adopted and when substantial justice and technical approach are pitted against each other, the former has to be preferred.”

9. One can, therefore, safely conclude that the petitioner has not been sitting idle. He has made representations from time to time in an effort for redressal of his grievances, which, at times, were recommended by the departmental officers to their superiors. When the petitioner’s concerted effort could not yield result, he was compelled to file present claim petition, which cannot be said to be time barred. It does not suffer from laches. Petitioner has not been sleeping over his rights.

10. Being satisfied with the sufficiency of reasons thus furnished in support of delay condonation application and documents filed, the same is allowed. Delay in filing the claim petition is condoned.

11. Now the only question which is left for consideration of this Tribunal remains— what should be done, if continuous representations of the petitioner are not decided by the respondent department? The only reply to the

aforesaid question would be that Respondent No. 3 should be directed to bring the representation of the petitioner to its logical conclusion, as per law.

12. Order accordingly.

13. The claim petition is disposed of at the admission stage by directing Respondent No.3 to decide the pending representation(s) of the petitioner by a reasoned and speaking order, in accordance with law, at an earliest possible but not later than 12 weeks of presentation of certified copy of this order, along with a copy of such previous representation.

14. Needless to say that the decision so taken shall be communicated to the petitioner soon thereafter.

**(RAJEEV GUPTA)**  
VICE CHAIRMAN (A)

**(JUSTICE U.C.DHYANI)**  
CHAIRMAN

*DATE: FEBRUARY 19,2020*  
*DEHRADUN*

*VM*