

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

Present: Hon'ble Mr. Ram Singh

----- Vice Chairman (J)

Hon'ble Mr. A.S.Nayal

-----Member (A)

**CLAIM PETITION NO. 20/NB/SB/2019**

Vijay Narain Pandey (Male), aged about 60 years, S/o Late Sri Girish Chandra Pandey, presently serving as Incharge Superintending Engineer, World Bank Circle, Public Works Department, Pithoragarh.

.....Petitioner

**VERSUS**

1. State of Uttarakhand through Secretary, Public Works Department, Government of Uttarahand, Dehradun.
2. Secretary, Appointment and Personnel Department, Government of Uttarakhand, Dehradun.
3. Engineer-in-Chief (heard of Department), Public Works Department, Uttarakhand, Yamuna Colony, Dehradun.

.....Respondents

Present: Sri Bagwat Mehra, Ld. Counsel  
for the petitioner

Sri V.P. Devrani, Ld. A.P.O.  
for the Respondents.

**ORDER**

**DATED: AUGUST 28, 2019**

**HON'BLE MR. RAM SINGH, VICE CHAIRMAN (J)**

1. After joining the post of Junior Engineer (Civil) on 08.02.1979 on ad hoc basis, the petitioner was regularly appointed in the Irrigation Department on 19.04.1982 and was promoted to the post of Assistant Engineer on 01.07.1998.

2. After completion of 7 years of service, the petitioner became eligible for promotion to the next higher post of Executive Engineer on 30.06.2005. His claim for promotion to next post, was to be considered against the vacancy of recruitment year 2005-06 but due to some *inter-se* seniority dispute for which, some litigations were going on, the meeting of the DPC was delayed and it was convened on 20.11.2009, for considering all the eligible candidates for the post of Executive Engineer.

3. As per the contention of the petition, on the basis of a complaint, dated 12.08.2007, against the petitioner about non-disbursement of the compensation to the land owners, a departmental proceeding was initiated against him; charge sheet was issued and after considering his reply, an inquiry was conducted by the Superintending Engineer. In the inquiry report dated 16.02.2010, petitioner was exonerated from the charges, but the disciplinary authority, the Secretary to the department, disagreeing with the inquiry report and without following due procedure, passed the impugned punishment order dated 02.06.2010 (Annexure: 1) by which, the petitioner was awarded two punishments: (i) stoppage of two increments and (ii) special adverse entry.

4. Feeling aggrieved by the said order, petitioner submitted a representation/appeal to the State Government on 05.07.2010. However, the same was rejected cursorily vide order dated 28.02.2012.

5. In the DPC proceedings, held on 20.11.2009, finding the fact that the disciplinary proceeding is pending against the petitioner, respondent department, adopted sealed cover procedure and DPC was again convened on 28.08.2010, whereas, the petitioner was found unsuitable for promotion on that basis.

6. Feeling aggrieved by the same, petitioner approached the Hon'ble High Court by filing a writ petition No. 85 (S/B) of 2016, Vijay Narain Pandey vs. State of Uttarakhand and others, after a period of

about six years. In the Counter Affidavit, respondents submitted that the claim of the petitioner for promotion was not considered on account on the punishment order dated 02.06.2010. The petitioner submitted his Rejoinder Affidavit in the writ petition. The above writ petition was heard by the Division Bench of the Hon'ble High Court in detail and on 08.08.2018, the same was dismissed on the ground of delay and laches. However, the petitioner was granted liberty to assail the order of punishment, which he could not assail in the writ petition. Thereafter, this petition was filed by the petitioner on 08.05.2019, before this Court, for seeking the relief to set aside the impugned punishment order dated 02.06.2010, passed by the respondent No. 1, its appeal rejection order dated 28.02.2012 and the charge sheet dated 25.06.2009, and to grant all consequential benefits to the petitioner.

7. As the petitioner has challenged the orders, passed by the respondents in the year 2010 and 2012, after a delay of about seven years, hence, a delay condonation application has been filed along with an affidavit, in which, the only ground for condonation of delay has been mentioned, that the liberty was granted to the petitioner, by the Hon'ble High Court, to assail the main punishment order, hence, petitioner has filed this petition for challenging the order passed in 2010 and 2012.

8. The delay condonation application, has been opposed by the respondents with an affidavit, on the ground that as per Section 5(1) (b) (1) of the U.P. Public Services Tribunal Act, 1976, as applicable in the State of Uttarakhand, the period of limitation for filing such reference is only one year from the date of order, passed against the petitioner, whereas, the present claim petition has been preferred beyond the prescribed period of limitation. There is a delay of nine years, to challenge the impugned order dated 02.06.2010, passed by the respondent No. 1. There is also a delay of seven years in challenging the appellate order dated 28.02.2012 and of ten years for challenging the charge sheet dated 25.06.2009. The delay, as caused by the petitioner,

was willful and deliberate and is not condonable, as such, and it is unexplained. The petitioner cannot take any benefit from the order of the Hon'ble High Court, because of the reasons that the Hon'ble High Court itself has decided their petition, as time barred, and the liberty, if any, was granted, as per the provisions of law and the petitioner has not shown any other cogent reason for condonation of delay. Hence, the application is liable to be rejected and petition being time barred, is also needs to be dismissed at the admission stage.

9. We have heard both the sides on the delay and perused the record.

10. The charge sheet dated 25.06.2009, impugned punishment order dated 02.06.2010 and the appellate order dated 28.02.2012 were the final orders, against which the petitioner was having right to challenge the same before the court, within a period of one year i.e. lastly upto 28.02.2013. The punishment order was passed on the basis of an inquiry, based on the charge sheet dated 25.06.2009 but after exhausting the departmental remedy of appeal on 28.02.2012, the petitioner was sleeping over for a period of more than seven years. There is no such contention of the petitioner that he was not informed/communicated about the punishment order. The punishment order dated 25.02.2010 was properly communicated to him in time, as he filed its review petition, which was finalized on 28.02.2012. Hence, inaction on the part of the petitioner for more than seven years, to challenge the punishment order and its reviewing order, cannot be justified on the basis of the writ petition, filed before the Hon'ble High Court because of the reasons that the writ petition itself was time barred and it was filed by the petitioner for seeking promotion, while against the order of the adverse entry, the petitioner was having separate cause of action for which he never filed any petition in time. The writ petition filed by the petitioner before the Hon'ble High Court

itself was dismissed on the ground of delay, referring to the judgment of the Hon'ble Apex Court in Shiba Shankar Mohapatra (2010) 12 SCC 471.

11. The petitioner has contended that by the order of the Hon'ble High Court, liberty was reserved to the petitioner to assail the order, which he could not assail in that writ petition. We find that the Hon'ble High Court, nowhere condoned the delay for challenging the punishment order. Reserving the liberty was subject to the provisions of the law. The punishment order passed in 2010 and its review order passed on 28.02.2012, became final and the period of limitation to challenge the same, finally passed in February 2013.

12. The petitioner approached this Court in May 2019, even the Hon'ble High Court was approached by him in 2016, i.e. after a period of three years. There is no justification for that period and there is no cogent reason to justify the delay after 2016 to 2019. Even if the period of pendency of writ petition is exempted, but the period, prior to the filing of the writ petition i.e. from 2013 to 2016, has not been explained anywhere properly.

13. This court finds that the petitioner has failed to explain the delay in filing this petition and we are of the view that the petition is hopelessly time barred and the delay condonation application deserves to be dismissed. Consequently, the claim petition also deserves to be dismissed at the admission stage, being time barred.

The delay condonation application is hereby rejected and the claim petition, being time barred, is also dismissed at the admission stage.

**(A.S.NAYAL)**  
MEMBER (A)

**(RAM SINGH)**  
VICE CHAIRMAN (J)

*DATE: AUGUST 28,, 2019*  
NAINITAL  
KNP