

**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. 09/NB/DB/2019

Smt. Nanda Devi, W/o Late Virendra Pratap Singh, R/o Ward No. 1, New Colony, Kanjabagh, Umrukhurd, Khatima, District Udham Singh Nagar.

.....Petitioner

VERSUS

1. State of Uttarakhand through Secretary, Ministry of Home Department, Uttarakhand, Dehradun.
2. Senior Superintendent of Police, Udham Singh Nagar, Uttarakhand.
3. Inspector General of Police (Kumaon Region), Nainital.

.....Respondents

Present: Sri A.D.Tripathi, 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. The petitioner has challenged the order of dismissal from service of her husband, passed in 2008 and order of appeal passed in 2009, after a long delay of about 11 years, and an application for condonation of delay has been filed, which has been opposed by the respondents, on the ground that inordinate delay in filing the petition

has not been explained, so the petition is hopelessly time barred and is liable to be dismissed at the admission stage, without going into the merits of the case. It is also contended that the petitioner does not come within the definition of public servant for the purpose of this petition.

2. Briefly stated, Late Sri Virendra Pratap Singh, the husband of the petitioner, was recruited in the State Police Force in the year 1991. After serving 17 years, he was dismissed from service on 17.06.2008, on account of absence from duty for a long period, without due sanction of leave. The dismissed employee, died on 21.11.2008 (after five months of the dismissal order), leaving behind his wife and his son. After death of the employee (Late Sri Virendra Pratap Singh), petitioner filed departmental appeal, which was dismissed on 08.07.2009.

3. In her application for condonation of delay, the petitioner has submitted that she was suffering from long illness and undergone abdomen operation; her son was also suffering from serious disease. On account of these reasons, she could not file any petition before the court in time. When, after 9 years, the son of the claimant, collected information about the service record of the deceased employee (husband of the claimant) under RTI Act then, this petition was filed in March, 2019 by the claimant along with the delay condonation application, which has been opposed by the respondents on various grounds.

4. We have heard both the parties on the application for condonation of delay.

5. This petition has been filed after a delay of 3650 days, almost 10 years after the accrual of the right.

6. As per Section 5(1) (b) (1) of the U.P. Public Services Tribunal Act, 1976, as applicable in the State of Uttarakhand, the petition can

be filed before this Tribunal within a period of one year from the decision of the departmental appeal. The dismissal order of the employee was passed on 17.06.2008. The employee was having 90 days time to file the departmental appeal, but the same was not filed in more than 150 days i.e. till the death of the employee on 21.11.2008. The period for departmental appeal was already over, in the life time of the employee.

7. The claimant, as wife of the dismissed employee, filed a statutory departmental appeal in 2009, which was dismissed on the ground of delay vide order dated 08.07.2009. After dismissal of such appeal, claimant was required to file her petition before the court, within a period of one year i.e. by the month of July, 2010.

8. The petitioner has approached this Court on 13.03.2019, after a period of nearly 10 years, which is a long delay. The ground to justify the delay, has been shown that she was suffering from illness and her son was also ill so, she could not file the petition in time. In support of the ground, an affidavit has been annexed, but in the affidavit, day-to-day delay has not been explained and the explanation has been placed in a very vague manner. The documents submitted by the petitioner are, of some medical prescriptions and bills of medicines, which do not justify the long delay in filing of this petition.

9. The court finds that the dismissed employee did not file any departmental appeal within the statutory period of 90 days, while he was alive during that period. The departmental appeal was filed by the present claimant (wife of the deceased employee) after a period of 90 days. Furthermore, after dismissal of the appeal, claim petition was also not filed before the court within a period of one year and a long delay of more than 10 years remains unexplained. This court finds that the ground to justify the delay, is not supported by sufficient reasons and the documents, and day-to-day explanation of

such long delay has not been submitted. Furthermore, after dismissal of the employee, the petitioner does not come within the definition of public servant for the purpose to challenge the dismissal order.

10. The claimant can only be covered under definition of public servant only for the purpose of retiral dues, if any, on retirement of her husband after completion of necessary and satisfactory service, which is not a situation in the present case.

11. Hence, court finds that the delay is not explained by sufficient reasons and explanation, hence, application is dismissed. Consequently, the 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