

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

Present: Hon'ble Mr. Rajendra Singh

----- Vice Chairman (J)

Hon'ble Mr. A.S.Rawat

-----Vice Chairman (A)

**REVIEW PETITION NO. 05/NB/DB/2024
(Arising out of the judgment dated 04.10.2024, passed in
Claim Petition No. 107/NB/DB/2023)**

Sher Singh Rawat, aged about 56 years, s/o Sri Dharban Singh Rawat, Friends Colony, Bhotia Parao, P.S. Haldwani, Nainital.

.....**Review applicant**

VS.

1. State of Uttarakhand, through Secretary, Finance, Secretariat, Dehradun.
2. Superintendent of Police, Vigilance Department, Dehradun.
3. Commissioner, Commercial Tax, Dananwala, Dehradun.

.....**Respondents**

Present: Sri Siddhant Manral, in brief of
Sri Dharmendra Barthwal, Advocate, for the review applicant
Sri Kishor Kumar, A.P.O., for the Respondents

JUDGMENT

DATED: MARCH 11, 2025

A review application was filed by the petitioner on 10.12.2024 to review the order dated 04.10.2024 passed by this Tribunal in Claim Petition No. 107/NB/DB/2023, Sher Singh Rawat vs. State of Uttarakhand & others.

2. Today, the review petition is listed for hearing on maintainability of review application. The review application along with delay condonation application has been filed on 10.12.2024 on behalf of the review applicant. The order sought to be reviewed was passed on 04.10.2024 in Claim Petition No. 107/NB/DB/2023. There

is approximately 36 days delay in filing the same. There is, therefore, delay in filing the review application.

3. The grounds taken by the review applicant his review application are, as follows:

(i) The Judgment and order dated 04-10-2024 is against the settled principles of law and there is an error apparent on the face of record.

(ii) The learned Claim Tribunal failed to consider that the applicant/petitioner was directed to approach the learned Public Service Tribunal by the Hon'ble High Court of Uttarakhand at Nainital vide its order dated 25-05-2023 passed in Writ Petition No. 216 of 2023.

(iii) The learned Claim Tribunal failed to consider that since the applicant/claimant was relegated before the learned PST to avail his appropriate remedy by the Hon'ble High Court, it was incumbent upon the learned Tribunal to hear the matter on merits notwithstanding the question of limitation and delay (if any) in approaching the Tribunal would be deemed to have been condoned in view of the order of the Hon'ble High Court directing the petitioner to avail his appropriate remedy before the learned Tribunal. In such an eventuality a fresh cause of action to approach the learned Tribunal is espoused from the date of order of the Hon'ble High Court i.e. 25-05-2024 and the limitation in respect of such cause of action would begin to run from the date of the said order.

(iv) The learned PST failed to consider that the cause of action in part for filing the present Claim Petition arose based on the order dated 19-09-2019, granting bail to the petitioner and the order dated 15-03-2021, staying the conviction of the petitioner passed by the Hon'ble High Court of Uttarakhand at Nainital in CRLA No. 431 of 2019. It is also noteworthy that due to the constraints imposed as a consequence of the Covid-19 pandemic the stay order dated 15-03-2021 could not be extended and the same stood automatically vacated in view of the judgment of the Hon'ble Supreme Court in the Asian Resurfacing Case (which was a good law at that point of time). In view of the said development the part cause of action to approach this learned Tribunal was lost. The said stay order dated

15-03-2021 could only be reinstated and extended following the order of the Hon'ble High Court dated 29-03-2023 passed in CRLA No. 431 of 2019, whereby the time extension application was filed by the applicant was allowed. Thus part cause of action to approach this Hon'ble Tribunal again arose on 29-03-2023 and the applicant/petitioner has approached this Hon'ble Tribunal well within one year from the date of when the said part cause of action arose.

(v) The learned Uttarakhand Public Services Tribunal failed to consider that the cause of action in respect of the present Claim Petition arose not only from passing of the mechanical termination order dated 13-11-2020 but also from the said mechanical termination order not being set aside despite the representation dated 12-04-2023, whereby the applicant/petitioner had requested that his termination be set aside and his service be reinstated in view of the conviction of the petitioner/applicant being stayed by the Hon'ble High Court.

(vi) The cause of action to approach this Hon'ble Tribunal also arose from the inaction on part of the Department in setting aside the termination order of the petitioner/applicant pursuant to the petitioner's representation dated 12-04-2023 and the petitioner has approached to this Hon'ble Tribunal well within one year from the date of said cause of action.

(vii) Otherwise on merits the impugned order is an entirely mechanical order which is not tenable in the eyes of law and if the same is not set aside then a huge miscarriage of Justice will be caused.

(viii) In view of aforesaid facts and circumstances stated above it is expedient and necessary in the interest of justice that this Hon'ble Court may graciously be pleased to review/recall its order dated 04-10-2024 and may kindly be pleased to decide the present Petition in favour of the petitioner.”

4. The review application filed by the review applicant before this Tribunal is not maintainable for the following reasons:

There is delay of 36 days in filing the review application. No cogent reason has been assigned in the application for condoning the delay in filing the review application. As per Rule 17 of the Uttar

Pradesh Public Services Tribunal (Procedure) Rules, 1992, the review application should be filed within thirty days. Admittedly, the same has not been done by the review applicant on time. Although Section 5 of Limitation Act may be applicable in filing the review application, but since there is no sufficient reason in support thereof, therefore, the Tribunal is unable to condone the delay in filing the review application.

5. The delay condonation application, in filing the review application, is dismissed and as a consequence thereof, the review application is also dismissed.

6. The original claim petition was dismissed solely on the ground of delay. However, if, assuming for the sake of arguments, the delay in filing the review application would be condoned, even then the review application is not likely to succeed, on merits, before this Tribunal.

7. The scope of review is very limited to the extent of (i) clerical or arithmetical mistakes (ii) error apparent on the face of record and (iii) for any other 'sufficient reason'. The review applicant has not been able to show the error apparent on the face of record. There is no other 'sufficient reason' to show that the review application is maintainable and should be allowed.

8. By filing present review application, the review applicant seeks to reargue the Claim Petition No. 107/NB/DB/2023 on merits, which is not permissible in law.

9. Review application, therefore, fails and is dismissed.

(A.S.RAWAT)
VICE CHAIRMAN (A)

(RAJENDRA SINGH)
VICE CHAIRMAN (J)

DATE: MARCH 11, 2025
DEHRADUN
KNP