

**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)

**REVIEW APPLICATION NO. 02/DB/2021  
(Arising out of the order dated 13.11.2019,  
passed in claim petition No. 128/DB/2019)**

Chintamani Joshi aged about 85 years, S/o Late Dharmanand Joshi, R/o House No. 462, Avas Vikas Colony, Bhotia Parao, Haldwani, District Nainital.

..... **Petitioner**

**vs.**

1. State of Uttarakhand through Secretary (Energy) Civil Secretariat, Dehradun.

2. Managing Director, Uttarakhand Power Corporation Limited, Urja Bhawan, Victoria Cross Vijeta, Shahid Gabar Singh Marg, Kanwali Road, Dehradun, District Dehradun.

..... **Respondents**

Present: Sri Shashank Pandey & Sri Sandeep Tiwari, Advocates  
for the petitioner.

Sri V.P.Devrani, A.P.O. for the Respondent No.1.

Sri V.D.Joshi & Sri S.K.Jain, Advocates, for Respondent no.2.

**JUDGEMENT**

**DATED: 17<sup>TH</sup> DECEMBER, 2021**

**Justice U.C.Dhyani, Chairman**

**Mr. Rajeev Gupta, Vice Chairman (A)**

Present review application no. 02/R/DB/2021 has been filed by the review applicant seeking review of order dated 13.11.2019 passed in claim petition No. 128/DB/2019, which was dismissed by this Tribunal, stating the following:

“His petition is very vague, the basic cause of action is time barred and is without application for condonation of delay. Such petition cannot be entertained by this Court, hence it is hereby dismissed being barred by limitation.”

2. The petitioner moved claim petition no. 141/DB/2019 on 16.11.2019. On 18.11.2019, after arguing the claim petition at some length, Ld. Counsel for the Petitioner sought to withdraw the claim petition and the same was, accordingly, dismissed as withdrawn. The petitioner has now come up with the present review petition/application, filed on 10.08.2021 with the application for condonation of delay.

3. On delay condonation application, an order was passed by this Tribunal on 27.09.2021 as follows:-

“The petitioner moved claim petition no. 141/DB/2019 on 16.11.2019. On 18.11.2019, after arguing the claim petition at some length, Ld. Counsel for the petitioner sought to withdraw the claim petition and the same was, accordingly, dismissed as withdrawn. The petitioner has now come up with the present review petition/application, filed on 10.08.2021 with the application for condonation of delay.

Respondents have filed their objections on delay, mainly on the ground that the principle of condonation of delay does not apply to the original proceedings. Ld. Counsel for the respondents has also argued that under Rule 17 of the Uttar Pradesh Public Services Tribunal (Procedure) Rules, 1992, the petition for review can be entertained only if it is filed within thirty days from the date of the order of which the review is so sought and there is inordinate delay in filing the review application. Ld. Counsel for the review applicant submits that the delay, after 15<sup>th</sup> March, 2020 onwards, is condonable in view of order of Hon'ble Apex Court in Misc. Application No. 665 of 2021 in *Suo Moto* Writ (Civil) No. 03 of 2020, dated 23.09.2021, by which the period from 15.03.2020 till 02.10.2021 has been excluded in computing the period of limitation for any suit, appeal, application or petition. Regarding the delay in filing the review application till 15.03.2020, Ld. Counsel for the review applicant in his review application has stated that review application could not be filed earlier because the review applicant /petitioner in present petition is very old and thus could not travel to Dehradun very frequently.

While Rule 17 of the Uttar Pradesh Public Services Tribunal (Procedure) Rules, 1992 specifies that no petition for review shall be entertained unless it is filed within thirty days from the date of the order of which the review is so sought, we observe that Section 5 of the Limitation Act, 1963 provides that—any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

The present review application is covered under above Section 5 of the Limitation Act, 1963. We find that the review applicant is 87 years old and that this Tribunal had a long winter vacation in January-February, 2020. We hold that in view of such a position, the delay in filing the review application can be and is hereby condoned.”

4. Counter affidavit of Sri. K.B. Choubey, G.M, in-charge HR, Uttarakhand Power Corporation Limited (for short, 'UPCL') has been filed on behalf of UPCL, touching upon the maintainability and merits of the review application/ petition.
5. Reply to the application of the Petitioner to recall the order dated 13.11.2019 and to direct the Respondents to dispose of the representation has been filed on behalf of UPCL.
6. It is the submission of Ld. Counsel for UPCL, *inter alia*, that the order under review cannot be recalled and there is no error (apparent) or jurisdictional error in the judgement (under review). It has also been stated that although there was no movement during pandemic Covid-19, but the Tribunal was functional *online*. Objections to the maintainability of the petition were filed earlier on 15.11.2021, in which it was stated, among other things, that the review application is permissible under Rule 17(1) and Rule 17(3) of the Uttar Pradesh Public Services Tribunal (Procedure) Rules, 1992 only.
7. Present petition, according to Ld. Counsel for UPCL, is an abuse of the process of the court. Ld. A.P.O., as also Ld. Counsel for UPCL,

referred to a decision of Hon'ble Apex Court in Civil Appeal No. 3681/2020, Sriram Sahu vs. Vinod Kumar & Ors., which was decided on 03.11.2020, to argue that there should be grave and palpable errors on the face of the judgement on record to attract review. It cannot be exercised if the judgement is erroneous in law. In their objections filed on 13.12.2021, it was submitted on behalf of UPCL that the Petitioner was an employee of Uttar Pradesh State Electricity Board and he was terminated from service *vide* order dated 14.12.1992. Under the U.P. Re-Organization Act, 2000, the jurisdiction of the petition lies with the state of Uttar Pradesh.

8. The petition has wrongly been filed before this Tribunal. The petition was dismissed on 13.11.2019, as barred by limitation. The same is cognizable by State of Uttar Pradesh, according to Ld. Counsel for the UPCL.

9. The Petitioner was posted as a store-keeper in Electric Stores Division, Kashipur, District Nainital, when from 04.05.1992 to 09.05.1992, a physical inspection of stores was conducted. In the said physical inspection, nine equipments were found short and an FIR was lodged, in this respect, on 05.06.1992. *Vide* order dated 05.06.1992, the petitioner was suspended and a departmental enquiry was instituted against him. He was given the chargesheet on 07.08.1992. According to the petitioner, this chargesheet was illegal and punishment based on such chargesheet could not be given to the Petitioner. The petitioner was dismissed from service *vide* order dated 14.12.1992. He filed a departmental appeal which was also rejected *vide* order dated 12.04.1996.

10. In the meanwhile, case crime No. 2111/06 started on the same charges. *Vide* order dated 01.07.2009, the Petitioner was found guilty and was punished with one year imprisonment alongwith a fine of Rs. 3,000/-. The Petitioner filed appeal No. 15/2009 in the Sessions Court, Nainital, against order dated 1.07.2009. The Petitioner succeeded in his appeal and

*vide* order dated 25.05.2011, the Petitioner was absolved of the charges levelled against him. The department filed criminal revision No. 154/2011 before the Hon'ble High Court of Uttarakhand, which criminal revision was decided on 17.11.2017. The Hon'ble High Court dismissed the revision of the department and refused to interfere with the findings of the Sessions Court.

11. Once the petitioner was exonerated of the charges levelled against him, the petitioner made a representation on 1.10.2017 to G.M, UPCL, to quash order dated 14.12.1992 *vide* which the Petitioner was dismissed from service. The structure of the department was changed. During 25 years of dismissal (from service) of the Petitioner, the Petitioner addressed his representation dated 07.04.2018, followed by reminders on 29.09.2018 and 14.03.2019 to G.M., UPCL.

When no action was taken, the Petitioner filed claim petition No. 91/DB/2019 before this Tribunal at Dehradun. On being pointed out that there were five G.M.s in UPCL, the Petitioner withdrew the claim petition with liberty to file the same afresh, and moved fresh representation to draw attention of the Respondent authorities to the following points:

- (i) Chargesheet was signed by the enquiry officer.
- (ii) Petitioner was not permitted to cross-examine the witnesses.
- (iii) Charges in the departmental enquiry and criminal case were identical
  - (a) M. Paul Anthony vs. Bharat Gold Mines & another, (1993) 3 SCC 679.
  - (b) G.M. Tank vs. State of Gujarat & Ors., (2006) 5 SCC 446.
  - (c) Inspector General of Police vs. M. Samuthiram, (2019) 1 SCC 598.
- (iv) Petitioner succeeded in his criminal appeal. He was absolved of the charges by Sessions Court, Nainital.

(v) When the department filed criminal revision, Hon'ble High Court did not interfere with the decision of Sessions Court, Nainital.

The petitioner moved another representation to the respondent authorities on 27.08.2019 (Annexure A1). Such representation was not decided. Therefore, the Petitioner filed claim petition No. 128/DB/2019 with a prayer to decide the representation of the petitioner in a time bound manner.

12. Delay in filing the review application has already been condoned by this Tribunal *vide* order dated 27.09.2021 on the basis of decision rendered by Hon'ble Apex Court in Misc. Application No. 665 of 2021 in *Suo Moto* Writ (Civil) No. 03 of 2020, dated 23.09.2021.

13. Order dated 13.11.2019 was passed by the Tribunal on the grounds that:

- (i) The Petitioner did not seek relief for quashing orders dated 14.12.1992 and 12.04.1996.
- (ii) No application for condonation of delay has been moved.
- (iii) In the relief clause, the Petitioner has not mentioned against which order he is aggrieved.
- (iv) The claim petition is barred by limitation.

13. Ld. Counsel for the Petitioner submitted that Petitioner's prayer is innocuous. He wants his representation to be decided by the Respondent authorities (UPCL) *inter alia* on the grounds that the charge in the criminal case and the departmental proceedings were the same; he was exonerated of the charges, levelled against him by the Ld. Sessions Judge, Nainital; department preferred criminal revision, in which the Hon'ble High Court did not interfere with the decision of Sessions Court; he is entitled to be given relief in view of M. Paul Anthony's case (*supra*)

coupled with the fact that a fresh Cause of Action has arisen to him in view of subsequent set of facts.

It may be noted here that the limitation clause may be applicable to the Tribunal or the Court, not for the administrative authorities. In other words, nothing should come in the way of the Respondent department to decide the representation of the Petitioner, as per law. This Tribunal, therefore, should not ignore the innocuous prayer of the Petitioner, made in the claim petition, that his representation may kindly be directed to be decided by Respondent department (UPCL), as per rules. If such prayer is not accepted, the same will amount to pre-judging the issue, which is contrary to the Principles of Natural Justice.

14. Ld. Counsel for the Petitioner also pointed out that the claim petition was filed to seek relief against inaction of UPCL in not deciding the representation dated 27.08.2019 of the Petitioner. For the same, the Petitioner had filed claim petition No. 128/DB/2019 in time and the same should not have been dismissed on the grounds mentioned by the Tribunal in its order dated 13.11.2019 at the admission stage. In the hearing of the review application, it has been contended by the Respondent department that the Petitioner should have made his representation to the U.P. Power Corporation Ltd. where he was employed and from where he was dismissed.

15. We note that UPCL is the successor corporation of the then U.P. State Electricity Board ( now U.P. Power Corporation Ltd.) in the State of Uttarakhand and as such, the Petitioner made a representation to UPCL, on which UPCL should have taken some action either by forwarding it to the U.P. Power Corporation Ltd. or by guiding the Petitioner to file representation before U.P. Power Corporation Ltd. or by disposing of the representation in any other lawful manner but just keeping the representation of the Petitioner pending amounts to inaction on the part

of UPCL which is challengeable before this Tribunal under the U.P. Public Services Tribunal Act, 1976.

16. In view of the above, the order dated 13.11.2019 passed by this Tribunal in claim petition No. 128/DB/19 is set aside and this Review application is disposed of with a direction to Managing Director, Uttarakhand Power Corporation Limited, Dehradun to take suitable action on the representation of the Petitioner by passing a speaking order in accordance with law at an early date but not later than two months of presenting a certified copy of this order alongwith a copy of representation, as per law, untrammelled by any of the observations made by us in the body of the judgement.

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

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

*DATE: 17<sup>TH</sup> DECEMBER, 2021*  
*DEHRADUN*  
*RS*