

**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. 04/DB/2020

1. State of Uttarakhand through Secretary, Public Works Department, Govt. of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Chief Engineer Level-I, Public Works Department, Yamuna Colony, Dehradun.

.....Review Applicants

vs.

1. Late Sri Mulayam Singh through his wife Smt. Usha Rajput, r/o 195 Manas Nagar, Salaganj, Agra, Uttar Pradesh-282010.
2. Late Sri Mulayam Singh through his Son Sri Rajiv Rajput, R/o 195, Manas Nagar, Salaganj, Agra, Uttar Pradesh-282010.
3. Late Sri Mulayam Singh through his Son Sri Rajat Rajput, r/o 195, Manas Nagar, Salaganj, Agra, Uttar Pradesh-282010.

.....Respondents.

4. Sri Charu Chand Joshi,
5. Sri Purmal Singh Martolia
6. Sri Mohan Singh Hayanki.

.....Proforma Respondents.

Present: Sri V.P. Devrani, A.P.O., for the Review Applicants

No representation for the Respondents.

JUDGMENT

DATED: NOVEMBER 10, 2021

Justice U.C.Dhyani (Oral)

Present review application has been filed by the State and another for reviewing the order dated 09.08.2017, passed by this Tribunal in Claim Petition No. 58/2012, Mulayam Singh vs. State of Uttarakhand & others. When the review application was filed, Sri Mulayam Singh had passed away and therefore, his legal representatives namely, Smt. Usha Rajput, wife; Sri

Rajiv Rajput Son; Sri Rajat Rajput, Son; were arrayed as respondents, alongwith Sri Charu Chand Joshi, Sri Purmal Singh Martolia and Sri Mohan Singh Hayanki, as proforma respondents.

3. Notices were issued to the legal representatives of Late Sri Mulayam Singh Yadav.

4. Order sheet dated 05.11.2020 reveals that Sri M.C.Pant, Advocate, appeared on behalf of respondents No. 1, 2 & 3 (legal representatives of the original claim petitioner) and submitted that he will file Vakalatnama and objections on their behalf.

5. Order sheet dated 05.11.2020 is quoted thus “Notices were sent to respondents No. 4, 5 & 6 but they refused to accept the notices. They did not appear in the original claim petition also. Hence, the service upon these respondents is complete and the matter will be heard even in their absence. Learned Counsel appearing for respondents No. 1, 2 & 3 may file his Vakalatnama as well as objections.”

6. The order sheet dated 01.10.2021 reveals that Sri Abhishek Chamoli, holding brief of Sri M.C.Pant, Advocate for the legal representatives of the original claim petitioner stated that he has no instructions in the matter.

7. Today, the review petition is listed for hearing on maintainability of review application.

8. The review application along with delay condonation application has been filed on behalf of the State. The order sought to be reviewed was passed on 09.08.2017 in Claim Petition No. 58/2012, Mulayam Singh vs. State of Uttarakhand & others. The application for delay condonation along with review application has been filed on 25.08.2020. There is approximately three years' delay in filing the same. There is, therefore, inordinate delay in filing the review application.

9. The grounds taken by learned A.P.O. in his review application are, as follows:

(i) Hon'ble Tribunal has erred in not appreciating the Assistant Engineer Service Rules, 2005.

(ii) Hon'ble Tribunal overlooked the fact that as per Rule 5 of the Uttaranchal P.W.D., Assistant Engineer (Civil) Engineers 1st Amendment Rules, 2005, the post of Assistant Engineer from Junior Engineer is a multiple feeding cadre post.

(iii) Hon'ble Tribunal has overlooked the fact that Rule 6 of the Uttaranchal P.W.D. Assistant Engineer (Civil) Engineer 1st Amendment Rules, 2005 does not apply in the instant matter for the determination of seniority because the promotion to the post of Assistant Engineer is made 40% through direct recruitment by public service commission and 60% by promotion through 4 different feeding cadres as per Rule 5 of Uttaranchal P.W.D. Assistant Engineer (Civil) Engineers 1st Amendment Rules, 2005.

(iv) Hon'ble Tribunal has overlooked the fact that Rule 8(2)(b) read with *proviso* to the Uttaranchal Government Servant Seniority Rules, 2002 is applicable for determination of seniority in such situation.

(v) Hon'ble Tribunal has overlooked the fact that the claimant Late Sri Mulayam Singh was promoted under 8.33% degree quota from the post of Junior Engineer (Civil) to the post of Assistant Engineer (Civil) on 19.05.1998, while the promotion of the private respondent no. 3, Assistant Engineer (Civil) under degree quota was in the year 1991 and at that time Late Sri Mulayam Singh had not even received his degree hence, he was not eligible for promotion under 8.33% degree quota from the post of Junior Engineer (Civil) to the post of Assistant Engineer.

(vi) Hon'ble Tribunal has also overlooked the fact that the claimant was selected in the year 1998 in subsequent selection while respondent no. 3 was selected in previous selection, thus rule 6 of the Uttaranchal Govt. Servant Seniority Rules, 2002 does not apply, but the second *proviso* to Rule 7 of the Seniority Rules of 2002 is applicable in such situation.

(vii) Hon'ble Tribunal has overlooked the fact that so far as the promotion of the respondents no. 4 & 5 is concerned, such respondents were

substantively promoted to the post of Assistant Engineer (Civil) from the post of Junior Engineer (Civil) in the year 1994, prior to the selection of the Claimant in the year 1998. Hence, there is 'no one selection', thus Rule 6 of the Seniority Rules, 2002 does not apply, but second *proviso* to the Rule 7 of the Seniority Rules, 2002 is applicable.

(viii) The petitioner, Mulayam Singh died soon after the delivery of judgment & order dated 09.08.2017, passed in claim petition No. 58/2012, Mulayam Singh vs. State of Uttarakhand & others and thus it remained un-executable.

(ix) The judgment and order dated 09.08.2017, passed in claim petition No. 58/2012, remained unexecutable but similar petitions are being filed in various courts seeking parity on the basis of the said judgment.

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

There is inordinate delay of three years 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 State and another (review applicants) 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.

11. It is the submission of learned A.P.O. that the present review application is review of reviewing the order dated 02.12.2019 whereby the review application itself was dismissed on the ground that the review cannot be filed against a dead person. Learned A.P.O. seeks to take recourse to the judgment rendered by the Hon'ble Supreme Court in SUO MOTU WRIT PETITION (CIVIL) No(s).3/2020. Learned A.P.O. argued that certified copy was given to the respondent department in the month of January, 2020. (*There is no explanation as to why the copy was not taken earlier?*) The delay cannot

be condoned inasmuch as the review application has been filed only on 27.08.2020. Pandemic relaxation was effective from 15.03.2020, not before that. Review application could be filed only within 30 days of the order, and not after that [Rule 17(1)]. Further, according to Rule 17(3) of the U.P. Public Services (Tribunal) (Procedure) Rules, 1992, "where a petition for review of any judgment or order has been disposed of, no further petition for further review shall lie." Therefore, review application is, held, as not maintainable.

12. Delay condonation application, in filing the review application, is dismissed and as a consequence thereof, the review application is also dismissed.

13. 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.

14. 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 applicants have not been able to show as to what is 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.

15. By filing present review application, the review applicants seek to reargue the Claim Petition No. 58/2012 on merits, which is not permissible in law.

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

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: NOVEMBER 10, 2021
DEHRADUN
KNP