

**Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)**

IA - 281 of 2010 in DFR 1071 of 10

Dated : 18th January 2011,

**Present : Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson
Hon'ble Mr. V.J. Talwar, Technical Member**

In the matter of:

**North Central Railway, Jhansi Appellant (s)
Versus
Madhya Pradesh Electricity Regulatory CommissionRespondent (s)**

Counsel for the Appellant (s) : Ms. Geetanjali Mohan

Counsel for the Respondent (s)

ORDER

This is an application for condonation of delay of 1272 days in filing this Appeal against the impugned order dated 18.01.2007. According to the learned counsel for the Applicant, ***R-3 Madhya Pradesh Poorva Kshetra Vidyut Vitran Co. Ltd.*** has filed the Petition before the State Commission for modification of the tariff order which had been passed on 30.03.2006 and the same was passed modifying the earlier order by the order dated 18.01.2007. Thereafter they filed an application for Review and the same had been dismissed on 05.04.2009. Again this applicant filed another review petition before the Commission on 13.05.2009 and the same also has been dismissed on 01.06.2010 holding that second review was not maintainable.

Only thereupon this Applicant has filed this Appeal on 13.07.2010 before this Tribunal challenging the order dated 18.01.2007, along with an application for condone the delay of 1272 days in filing the appeal.

(Corrections made in italics and bold are as per Order of the Tribunal dated 29.08.2011 in R.P. D.F.R. No. 729 of 2011)

We have heard and considered the submissions made by the learned Counsel for the Appellant.

The perusal of the records as well as the Affidavit filed by the Appellant/Applicant seeking for the condonation of delay would reveal that the Appellant/Applicant have made several attempts to seek for Review in the form of seeking clarification, by filing the petition after petition before the Commission and failed in all their attempts.

Only when the last Review Petition was dismissed on 01.06.2010, they have decided to file the present Appeal before this Tribunal.

The particulars given in the Affidavit would indicate that instead of filing the Appeal as against the main order dated 18.01.2007 directly before this Tribunal they have approached the Commission by filing the Review Petition on two subsequent dates seeking modification of the earlier order. There is no explanation as to why they filed 2nd Review Petition before the State Commission.

In our view the Appellant should have approached this Tribunal either as against the impugned Order dated 18.01.2007 or at least against the first Review Order dated 05.04.2009 without any delay. Instead, they had chosen to file a petition for second review before the State Commission, even though, it is settled law that the second review is not maintainable.

So, we feel that the Appellant/ Applicant from the beginning has not been vigilant in prosecuting the matter before proper forum in time.

In view of the fact that there is a continuous lack of vigilance on the part of the Applicant and as there is no sufficient cause shown in the affidavit filed before this Tribunal for the inordinate delay of 1262 days, we deem it fit to reject the application to condone the delay.

Accordingly, the Application is dismissed.

(V.J. Talwar)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

ZA/KSM