**IN THE COURT OF OMBUDSMAN, ELECTRICITY PUNJAB,**

 66KV Grid Sub-Station, Plot No. A-2,

 Industrial Area, Phase-1, S.A.S. Nagar, (Mohali)

 Phone No: 0172-2270234 - 2270235 Fax: 2274576

**ORDER DATED: 02 / 02 / 2017**

**IN APPEAL NO: 64 OF 2016, IN THE CASE OF SENIOR DEE / TRD / UMB (NORTHERN RAILWAY)**

**TRD BRANCH, DRM OFFICE, RAILWAY ROAD, AMBALA RT 11 / RT-01**

**VERSUS**

**PUNJAB STATE POWER CORPORATION LIMITED**

**(Through Senior Executive Engineer / DS, Sri Anadpur Sahib)**

 Appeal No: 64 / 2016 dated 01.11.2016 was filed by Senior DEE / TRD, Northern Railway, Ambala Division, Ambala against refusal for registration of their dispute case vide Secretary, CGRF, PSPCL, Patiala letter No. 1037 / T-85 / 2016 dated 27.06.2016, relating to Railway Traction Connection A/c No: RT-11 / RT-01 falling under OP Division Sri Anandpur Sahib on the pretext that as per Punjab State Electricity Regulatory Commission (Forum & Ombudsman) Regulation – 2005 read with 5th amendment dated 20.11.2013, forum can entertain only those complaints where representations are made within two years from the date of cause of action, in case the Complainant approaches the Forum directly, whereas, the present case relating to various issues such as MMC, Power Factor Surcharge, Demand Surcharge, Enhancement of consumption, late payment surcharge, Octroi Surcharge etc., for the years 2001 to 2006, has not been filed within the limit of two years and accordingly has not been registered being “Time Barred”.

2. The Petition alongwith connected documents, as filed by the Petitioner, has been minutely perused. An appeal was filed by the Petitioner directly with CGRF directly on dated 21.06.2016 (CGRF Diary No: 199) but the Forum observed that the appeal has not been filed within the stipulated period of 2 years, as per provisions in Regulation and thus the Forum did not registered the appeal, being time barred. The brief of the case is that the petitioner is having Railway Traction Sub-station (TSS) being fed from 132 KV Sub-station, PSPCL, Sri Anandpur Sahib which was charged on 25.02.2001 and put to load on 27.02.2001. The main issues raised by the Petitioner are regarding (i) refund of MMC for the period 29.12.2000 to 25.02.2001, (ii) refund of Power Factor & Demand Surcharge for the period 16.03.2001 to 31.05.2006, (iii) To write off the enhancement of consumption by 10.96% from 24.01.2002 to March, 2006, (iv) To write off late / delayed payment surcharge for the month of June, 2001 and August 2001 and (v) refund of excess paid Octroi Charges for Anandpur Sahib & Kurali TSS.

3. After receipt of the present Petition in my Court, it was registered as Appeal no: 64 of 2016 on 01.11.2016 and was scheduled to be heard on 10.01.2017; but was adjourned on the request of petitioners being their Counsel not available to argue the case and accordingly the case was adjourned to 20.01.2017. On the rescheduled date of hearing, Shri Jaideep Verma, Advocate alongwith Shri Manoj Kumar, AD, EE /TRD / NR on behalf of the petitioner and Er. Harvinder Singh, Senior Executive Engineer, “OP” Division, PSPCL, Sri Anandpur Sahib, on behalf of Respondents – PSPCL, attended the Court proceedings.

4. The petitioner argued that their case was not heard by CGRF and rejected their appeal on the grounds that it was barred by time limitation without considering the facts that during this delayed period the dispute case remained under consideration with higher authorities of Govt. of India and Govt. of Punjab at the level of Chief Secretary and the case was also considered and decided by the Whole Time Member of erstwhile PSEB, which was not accepted being the decision unilateral and thereafter, Legal Authorities were approached, on whose suggestions the Appeal with CGRF was filed. The rejection of Appeal without considering the hard facts of the case is another injustice to the Petitioner as he has been deprived off the justice and relief, if he is entitled on the basis of merits of the case. It was prayed that being Government of India organization and essential nature of the work, the present appeal be admitted and the Petitioner be given an opportunity to present and argue the merits of the case.

5. The Respondents argued that dispute case of Railway was first put up in WTM’s meeting was decided on 07.07.2009 and on the recommendations of WTM’s, an amount of Rs. 3.58 Crore was finalized as recoverable by the Audit Party upto 10 / 2010 but the railways did not deposit the amount. Numerous correspondences were made with Petitioners to deposit the amount but neither the amount was deposited nor the decision was challenged before any Competent Authority. After a period of about five years, the railways, in 07 / 2015, put up their case to the Chief Secretary (Punjab) wherein, during meeting, the Petitioners were advised to approach to Grievance Redressal Committee. Thereafter, the Petitioners, after around one year, filed their Petition directly with the Consumer’s Grievances Redressal Forum on 21.06.2016. In the meantime, the disputed amount arose to Rs. 4.14 crore from Rs. 3.58 crore upto 07 / 2015. The CGRF considered their appeal and has rightly rejected being time-barred as the Petitioners have failed to take any action from 2009 to 2016 and thus the petitioners did not deserve any relief or condonation of delay. He prayed to dismiss the present appeal.

6. During oral arguments held on 20.01.2017, the Petitioner’s representative was asked to place on record the evidences that the case did not remained dumped from 2009 to 2016 and was actively being perused at various levels of the Authorities. The representative showed his inability to produce any such document being not available at the moment but prayed to allow two week’s time to find and place on record the necessary documents and ensured that all such documents are available in files lying in various offices. Considering the prayer made by Petitioners and with a view to afford full opportunity of being heard to them, the Petitioners were allowed to supply relevant documents on or before 30.01.2017. Similarly, the Respondents were also asked to submit documents within the stipulated due date of 30.01.2017, regarding their correspondence made from 2009 to 2016 for depositing the disputed amount alongwith itemwise detail of disputed items and deposits made by Petitioners.

7. The Petitioner and Respondents submitted their evidences on the scheduled date, which were considered and pursued. The documents placed on record shows that the Respondents continuously remained in correspondence with the Petitioner asking them to deposit the amount since 2009, worked out as per the decision of Whole Time Members (WTMs) of Erstwhile PSEB. Contrary to it, the Petitioners produced a copy of just one letter dated 09.11.2009, addressed to the AEE / (Operation) Sub Division, Anandpur Sahib, intimating that unilateral decision of WTMs is not fully accepted to Railways and no copy of any other letter has been placed on record right upto 2013 showing a casual approach taken by the Petitioner towards getting the dispute resolved by approaching any Competent Authority of the Respondents or any of the Competent dispute settlement Committee / Court. However, after 2013, certain correspondences made by the Respondents are on record which includes holding of meetings and references made to Government of Punjab, though no document showed that the Respondents ever intended to challenge the decision of WTMs in any of the Competent Courts. It has been observed that two letters have been written by the Petitioners on 25.08.2014 and 10.09.2014 with detailed history of the disputes. After numerous correspondences, ultimately, a meeting was held under the Chairmanship of Chief Secretary (Punjab) on 20.07.2015 wherein it was intimated by PSPCL that out of Rs. 3.58 crore, the PSPCL will waive off Rs. 1.60 crore and for remaining, the Railways may approach the Grievance Redressal Commission under the Punjab State Electricity Regulatory Commission (PSERC). Instead of approaching to the Competent Grievance Redressal Commission, the Petitioner started seeking clarifications from the Respondents regarding details of Rs. 1.60 crore to be waived off by the Respondents. No details provided by Respondents are on record. Thereafter, in order to availing traction power through “Open Access”, the Petitioners requested the Secretary (Power) to provide necessary approval and accordingly a joint meeting, under the Chairmanship of Chief Secretary Punjab, was held on 29.02.2016, wherein the issue of old disputed amount of Rs. 4.29 Crore was also discussed and it was informed by the Director Distribution, PSPCL that this issue has already been settled in the meeting held on 20.07.2015, chaired by Chief Secretary Punjab wherein Railways were requested to pay Rs. 26899354/- after waiver of Rs. 16047268/- . It was further informed that waiver of full amount is not possible for the State Govt; whatever can be waived off, has already been done as per their rules and regulations. It was also advised that Railways may prefer an appeal against the orders passed by the State Govt. to appropriate appellate authority for redressal of their dispute as pending bills are accruing 5% surcharge every month and bill is getting inflated. The MOM dated 29.02.2016 shows that the Railways responded that the payment of minimum amount is being arranged to ensure non-levy of further surcharge on the bill under protest and an appeal shall also preferred with the Appellate Authority. Accordingly, the Railways filed an appeal with CGRF which was not registered by it being time barred.

8. I have gone through all the available documents, evidences on record and the entire record was pursued minutely, the parties were heard at length after granting due opportunity of hearing and further all the points raised and subsequent documents placed on record by both parties, were considered objectivity in order to reach at the just and proper conclusions. I find merit in the arguments of the Respondents that the decision of WTMs taken in their meeting held on 07.07.2009 was required to be challenged in the Competent Court, in case of non-acceptance of the decision by the Petitioners but the Petitioners failed to take any such action. When asked about the action taken report after WTM’s decision, the Petitioners claimed that the issue was not dropped and remained under correspondence with various authorities and ultimately was referred to the Government of Punjab in 07 / 2015 wherein during meeting, the Chief Secretary advised to file Petition before the Grievances Redressal Committee and accordingly after getting the Petition prepared from Legal experts, the same was filed before the Forum, which termed it as time barred and did not enlisted for hearing on its merits. Though, during oral discussions, held on 20.01.2017 and thereafter on 30.01.2017, the petitioners could not place on record any documentary evidences to prove their arguments for delay from 2009 to 2015 and accordingly the decision dated 27.06.2016 of CGRF is entitled to be upheld on the “time barred” basis; but in my view, the rejection of appeal mere on the grounds of delay in filing the appeal does not meet the ultimate end of justice and will deprive off the Petitioner for any relief on the basis of merits of the case, if otherwise, he is entitled for such relief in accordance with the applicable Regulations.

As a sequel of above discussions, the petitioner definitely deserves an opportunity to be heard, present the merits of his case and argue to get justice, if otherwise, he is entitled on merits. Therefore, considering the time limitation from the date of first meeting held under the Chairmanship of Chief Secretary, Punjab on 20.07.2015, wherein the Authorities have directed the Respondents to approach to the Grievances Redressal Committee for redressal of their dispute and by virtue of powers, conferred upon me vide Regulation 17.4 of PSERC (Forum & Ombudsman) Regulation-2005 read with Regulation 4.9 of PSERC (Forum & Ombudsman)(,Regulation-2016, it is hereby directed that the appeal, on receipt from petitioner, should be registered by the Forum for adjudication on merits without going into the issue of condonation of delay, which may be considered as condoned in view of the present circumstances. Before taking the fresh appeal from the petitioner, the CGRF should ensure that the Petitioner had complied with the provisions of Regulation 2.26 of the Punjab State Electricity Regulatory Commission (Forum & Ombudsman) Regulations - 2016.

9. Accordingly, the Petitioners are directed to file a fresh Petition, duly supported with necessary documents / evidences, to the Chief Engineer cum Chairman, Consumer Grievances Redressal Forum (CGRF), PSPCL, # P-1, White House, Rajpura Colony Road, Patiala within a period of 45 (forty five) days from the date of issue of this order, failing which, the Petitioners shall lose their right to challenge the disputed demand raised by the Respondents.

Dated: 02. 02. 2017

 (MOHINDER SINGH)

 Ombudsman,

 Electricity Punjab,

 SAS Nagar (Mohali)