

**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)

CLAIM PETITION NO. 143/NB/DB/2023

Kundan Singh Bisht, aged about 51 years, S/o Late Sri Madan Singh Bisht, presently serving as Senior Assistant, Block Office, Okhalkanda, District Nainital.

.....**Petitioner**

vs.

1. State of Uttarakhand through Secretary, Rural Development Department, Govt. of Uttarakhand, Dehradun.
2. Commissioner, Rural Development, Uttarakhand, Pauri Garhwal.
3. Chief Development Officer, Nainital.
4. District Development Officer, Nainital.
5. Block Development Officer, Block Okhalkanda, District Nainital.

.....**Respondents**

Present: Sri Bhagwat Mehra, Advocate, for the Petitioner
Sri Kishore Kumar, A.P.O., for the Respondents

JUDGMENT

DATED: APRIL 25, 2025

By means of present claim petition, the petitioner seeks the following reliefs:

"A. To set aside the impugned order dated 25-09-2014 passed by the Respondent No. 4 (Annexure No. 1 to Compilation-1).

B. To set aside the impugned consequential annual entry for the year 2014-15 issued by Respondent No. 4 (Annexure No. 2 to Compilation-1).

C. To set aside the impugned appellate order dated 14-02-2023 issued by Respondent No. 3 (Annexure No. 3 to Compilation-1).

D. To direct the Respondents, particularly Respondent No. 3 to grant all consequential benefits to the petitioner.

E. To issue any other order or direction, which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

F. Award the cost of the Claim petition in favour of the petitioner.”

2. Brief facts of the case are as under:

2.1 The petitioner was appointed on the post of Junior Clerk on regular and substantive basis in the Rural Development Department. He was promoted to the next higher post of Senior Assistant. In the year 2014, one Smt. Maya Joshi made certain application/complaint under RTI Act, before the State Information Commission, Uttarakhand. Consequently, an explanation was called from the petitioner vide letter dated 05-06-2014 by the Block Development Officer, Ramgarh, District Nainital, alleging therein that in the year 2000-01, an amount of Rs. 10000/- was given to one beneficiary namely Smt. Basanti Devi under Indira Awas Up-gradation. The petitioner submitted his reply to the concern officer on 23-06-2014, refuting the allegations.

2.2 The Respondent No. 3 again issued a letter on 26.07.2014 to the petitioner asking his reply in the matter, which was issued by ignoring the earlier reply dated 23.06.2014 submitted by the petitioner. He again submitted his reply to the Respondent No. 4 vide letter dated 05.08.2014. The Respondent No. 4 issued another letter in the matter to the petitioner on 08-08-2014, alleging that no reply has been received in the matter, while the fact of the matter was that the reply was filed on 05-08-2014 which was duly forwarded by the concerned authority on the same date. The Respondent No. 3 without considering the reply of the petitioner at all, passed the impugned punishment order on 25-09-2014, whereby, the punishment of censure/reprimand was given to the petitioner without holding any enquiry in the matter, as per law.

2.3 The petitioner vide application dated 25-03-2017 sought certain information in the matter under RTI Act. The reply of the same was furnished by the concerned authority vide reply dated 16-05-2017.

2.4 In the year 2019, the promotional exercise for filling the next higher post of Chief Assistant was being undertaken by the Department. When the petitioner came to know about the information that his name is not being considered for promotion. He requested the officials of Respondent No. 4 to provide a copy of the said adverse entries to him as the same was never served earlier upon him, so that he may file appeal/representation in the matter. As such, in the second week of December, 2019, the petitioner for the first time, came to know about the impugned entry/orders.

2.5 The petitioner submitted a detailed representation against the annual entry of 2014-15, to the District Magistrate, Nainital through proper channel. The Respondent No. 3 did not take any decision on the aforesaid appeal/representation duly forwarded by letter dated 05-01-2020, but, held a meeting of the DPC on 27-10-2020 and held the petitioner ineligible for promotion and various junior persons to him, were promoted to the next higher post of Chief Assistant. Rule-5 of the Disposal of Representations Rules, 2003 clearly provides that if an appeal/statutory representation against any adverse entry is pending consideration, the same cannot be read as adverse against the said employee. Thereafter the Block Development Officer, Okhalkanda, District Nainital vide letter dated 10-03-2021, again requested the District Magistrate, Nainital to expunge the adverse entry of 2014-15.

2.6 The Respondent No. 3 vide letter dated 04-09-2021 raised the issue of delay in preferring the appeal. Consequently the petitioner submitted an application in the matter in December, 2021, which was duly forwarded by the Respondent No. 5 to the higher authorities vide letters dated 18-12-2021, 28-12-2021, 28-04-2022,

21-05-2022, 15-09-2022 and 07-12-2022 for expunge of the said adverse entry. The office of District Magistrate, Nainital vide letter dated 29-12-2022 raised the question of delay in the matter by stating that the appeal has been preferred on 06-09-2022.

2.7. The petitioner submitted a reply on 03-01-2023 which was duly forwarded by the Respondent No. 5 to the District Magistrate, Nainital. However, Respondent No. 3 vide impugned letter dated 14-02-2023, has cursorily rejected the representation/appeal of the petitioner on the ground of alleged delay. It is the submission of learned Counsel for the petitioner that the appeal was rejected without application of mind. During hearing, learned Counsel for the petitioner prayed that a direction be given to the appellate authority to decide the departmental appeal of the petitioner, on merits, in accordance with law. Faced with no other alternative, petitioner has filed present claim petition, citing various grounds, as to why the impugned punishment order should be set aside.

3. Ld. A.P.O., at the very outset, vehemently opposed the claim petition, inter alia, on the ground that as per Rule 11(4) of the Uttarakhand Government Servants (Discipline and Appeal) Rules, 2003, a time period of 90 days has been prescribed for filing the departmental appeal, and therefore, the Chief Development Officer, Nainital was justified in holding that the departmental appeal is not maintainable, as time barred.

4. Section 5 of the Limitation Act, 1963 is always applicable to the Appeals and Applications (and not the Suits). Such provision reads as below:

“Extension of prescribed period in certain cases- 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.”

5. Although filing of representation will not extend the limitation in filing a claim petition, as has been held by Hon'ble Supreme Court in the decision of State of Uttarakhand & another vs. Shiv Charan Singh Bhandari & others, (2013) 12 SCC 179, but one should not forget that the delay in filing the appeal can always be condoned, on showing sufficient cause and the appeal should, as far as possible, be decided, on merits, as per law.

6. It may be noted here that Hon'ble Supreme Court has held, in a catena of decisions, that:

"1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.
..... Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 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 praying for condonation of delay. The Courts, therefore, have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even handed justice on merits in preference to the approach which scuttles a decision on merits. Turning to the facts of the matter giving rise to the present appeal, we are satisfied that sufficient cause exists for the delay.”

7. Howsoever grave the allegations against the petitioner might be, it is settled law of the land that every *lis*, as far as possible, should be decided on its merits, unless a person sleeps over his rights. As has been stated above, Section 5 of the Limitation Act, 1963 is always applicable to the Appeals and Applications (and not the Suits). Departmental appeal, in the instant case, has been held to be barred by limitation. Propriety demands that same should be heard on merits.
8. Considering the sufficiency of reasons thus furnished in this behalf, and in the interest of justice, the Tribunal is inclined to condone the delay in filing the appeal, for, after all, the appellate authorities also perform quasi- judicial functions.
9. The Tribunal has noticed that there might be delay in filing the departmental appeal, but there is no delay in filing the claim petition, which has been filed within a year of the appellate order.
10. At the very outset, Ld. Counsel for the petitioner prayed that a direction be given to the official respondents to decide the departmental appeal of the petitioner, on merits, in accordance with law.
11. This Tribunal, therefore, in the peculiar facts of the case, deems it appropriate to relegate the matter to the appellate authority for deciding the departmental appeal of the petitioner, on merits, in accordance with law.

12. The Appellate Order dated 14.02.2023 passed by Respondent No.3, is set aside. The delay in filing the appeal is condoned ,in the interest of justice.

13. The claim petition is, accordingly, disposed of by directing the appellate authority to decide the departmental appeal of the petitioner, on merits, at an earliest possible, without unreasonable delay, in accordance with law.

14. It is made clear that the Tribunal has not expressed any opinion on the merits of the case.

15. The petitioner, if aggrieved by the appellate order passed as above, shall be at liberty to approach this Tribunal by filing a fresh claim petition. No order as to costs.

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

(RAJENDRA SINGH)
VICE CHAIRMAN (J)

DATE: APRIL 25, 2025
DEHRADUN
KNP