

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT DEHRADUN**

CLAIM PETITION NO.18/SB/2022

Mamta Gola w/o Sri Dinesh Kumar, Sub Inspector, GRP, Roorkee, Haridwar,
Uttarakhand.

.....Petitioner

vs.

1. State of Uttarakhand through Secretary, Home, Govt. of Uttarakhand, , Dehradun.
2. Director General of Police, Headquarter Dehradun, Uttarakhand.
3. Deputy Inspector General of Police, Garhwal Range, Uttarakhand, Dehradun.
4. Senior Superintendent of Police, District Haridwar.

.....Respondents

Present: Dr. N.K.Pant, Advocate, for the petitioner.
Sri V.P.Devrani, A.P.O., for the Respondents.

JUDGMENT

DATED: JANUARY 28, 2022

Justice U.C.Dhyani (Oral)

Present claim petition has been filed by the petitioner for quashing the order dated 07.12.2021 and condoning the delay in filing the departmental appeal.

2. Petitioner is presently working as Sub-Inspector, GRP, Roorkee, District Haridwar. She was awarded censure entry for her misconduct. Her integrity was also withheld. She preferred departmental appeal, which was found to be time barred. Petitioner has, therefore, filed present claim petition for quashing the order dated 07.12.2021, which was communicated to her *vide* letter dated 24.12.2021 (Annexure: A-1).

Prayer has also been made for condoning the delay in filing the departmental appeal.

3. The petitioner could have filed the departmental appeal against the impugned order dated 26.02.2018 within three months, which could be extended up to six months by the appellate authority, at his discretion, for good cause shown in view of sub-rule (6) of Rule 20 of the Uttar Pradesh Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991.

4. It may be noted that Hon'ble Supreme Court has held in a catena of decisions, as below,

"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.

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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."

5. In grounds n & o (of the claim petition), it has been stated that the petitioner was continuously on medical leave and the departmental appeal could not be filed due to her illness.
6. Admittedly, the departmental appeal has not been preferred within stipulated time. Annexure: A-1 is a general order, dealing with six punishment orders. 1st punishment order, which has been mentioned in Annexure: A-1, is dated 20.12.2017 and the last one, *i.e.* 6th (punishment order) is dated 08.01.2019. It appears, on a plain reading of Annexure: A-1, as if departmental appeals against six different punishment orders were received together by registered post, in the office of Deputy Inspector General of Police, Garhwal Range, on 20.09.2021. Annexure: A-1 appears to be vague in this respect.
 - 6.1 *Prima facie*, the appellate authority is right in holding that the departmental appeal is time barred. It was not preferred within three months. The appellate authority could, at his/ her discretion, for good cause shown, extend the said period up to six months. But even six months had elapsed when the appeal was received.
 - 6.2 Even in such a situation, should the doors of justice be closed for the delinquent petitioner?
7. It may be noted here that Section 5 of the Limitation Act, 1963 is applicable to Appeals and Applications (and not the Suits). It is the submission of Ld. Counsel for the petitioner that since the petitioner, who is a Woman Police Officer of Sub Inspector rank, was not keeping well and was on medical leave, therefore, she could not file the appeal in time.
8. 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 or her rights. As has been stated above, Section 5 of the Limitation Act, 1963 is applicable to the Appeals and Applications (and not the Suits). Departmental appeal, in the instant case, has been held to be barred by limitation. Justice demands that same should be heard on merits.

9. Sufficient cause appears to have been shown for not preferring the departmental appeal on time. Facts of the case would disclose that delay in filing the appeal should not come in the way of appellate authority to decide the same on merits. The delay is, therefore, condoned in the interest of justice.
10. 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, but in accordance with law.
11. The Order dated 07.12.2021 (Copy enclosed with Annexure: A-1) only in respect of punishment Order No. J-166/2017 dated 26.02.2018, at serial no.3, whereby Petitioner's request for entertaining departmental appeal was turned down, is set aside. Delay in filing the appeal is condoned in the interest of justice. Appellate Authority is directed to decide the departmental appeal of the petitioner, against the impugned order of censure entry dated 26.02.2018 (Annexure: A-3), on merits, at an earliest possible, without unreasonable delay, in accordance with law.
12. The claim petition thus stands disposed of at the admission stage. No order as to costs.
13. It is made clear that the Tribunal has not expressed any opinion on the merits of the case.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: JANUARY 28, 2022
DEHRADUN

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