

**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)

Claim Petition No. 72/SB/2021

Bijnesh Chauhan, w/o Ankush Chauhan, Constable (Mahila). Civil Police, presently attached Reserve Police Line, Dehradun.

.....Petitioner

versus

1. State of Uttarakhand through Secretary (Home), Government of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Deputy Inspector General of Police, Garhwal Region, Uttarakhand.
3. Senior Superintendent of Police, Pauri Garhwal, Uttarakhand.

..... Respondents

Present: Sri L.K. Maithani, Advocate, for the Petitioner
Sri V.P. Devrani, A.P.O. for the Respondents

Judgement

Dated: 03rd March, 2023

Justice U.C. Dhyani (Oral)

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

"(i) To quash the impugned orders of dated 11.02.2020 (Annexure No. A-1 and A-2), order dated 01.12.2020 (Annexure No. A-13) and order dated 27.02.2021 (Annexure No. A-14) along with its effects and operation and pay the full salary of the suspension period to the petitioner.

(ii) To issue an order or direction to the respondents to consider the leave application of the petitioner and if found

sufficient leave in her account sanction the leave to the petitioner.

(iii) To issue any other order or direction which this Court may deem fit and proper in the circumstances of case in favour of the petitioner.

(iv) To award the cost of petition.”

2. Censure entry was awarded to the petitioner by disciplinary authority on 11.02.2020 (copy Annexure: A1). Lady Constable was suspended in contemplation of departmental enquiry *vide* order dated 26.09.2019 (copy Annexure: A3). Her suspension was revoked *vide* order dated 27.09.2019 (copy Annexure: A4). She was awarded “no work no pay” for the duration of her absence from 23.09.2019 to 27.09.2019 *vide* order dated 11.02.2020 (copy Annexure: A2). She was directed to be paid only subsistence allowance which was payable to her during suspension period, nothing else *vide* order dated 27.02.2021 (copy Annexure: A14). She filed departmental appeal to the appellate authority on 20.09.2020 (copy Annexure: A12). Her departmental appeal was not entertained, as the same was not filed within time. S.S.P., Pauri Garhwal communicated the same to S.S.P., Tehri Garhwal *vide* letter dated 01.09.2020 (copy Annexure: A13). S.S.P., Tehri Garhwal, wrote a letter to S.S.P., Dehradun, for communicating the same to the petitioner, where she was posted at the relevant point of time *vide* letter dated 27.01.2021 (copy Annexure: A13 *colly*).

3. Aggrieved against the impugned orders, present claim petition has been filed.

4. At the very outset, learned Counsel for the petitioner submitted that the departmental appeal has not been decided on merits and therefore, a direction be given to the appellate authority to decide the same on merits after condoning the delay in filing the same.

5. Documents, which have been brought on record, reveal that the departmental appeal has not been entertained on merits. The same has been returned to the petitioner, as the same was not filed within time. Departmental appeal has been returned to the petitioner as the same was filed after more than 7 months (copy Annexure: A13 and Annexure: 13 *colly*).

6. Learned Counsel for the petitioner also submitted that when the petitioner filed the departmental appeal on 20.09.2020 (copy Annexure: A12) against the punishment order dated 11.02.2020 (copy Annexure: A1), he also filed the application for condoning the delay (copy Annexure: A12 *colly*).

7. Learned Counsel for the petitioner pointed out that the petitioner had specifically taken a ground in the memo of appeal dated 20.09.2020 that the delay in filing the appeal was caused because of Covid-19. She has also cited other reasons, *viz.*, (i) her transfer from Pauri to Tehri and (ii) non-availability of all the documents.

8. There is a provision in Rule 20 of the U.P. Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991, that the delay in filing the departmental appeal can be condoned by the appellate authority, on showing good cause, upto a period of six months. Moreover, the Hon'ble Supreme Court has been pleased to direct in *Suo Motu* Writ Petition (CIVIL) No(s). 03/2020 as follows:

“5. Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following directions:

I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may

be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.

III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.

IV. It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.”.

9. Since the time period for filing the departmental appeal fell in Covid-19 period situation, therefore, the delay for filing the appeal is condonable in view of the directions issued by the Hon'ble Apex Court in *Suo Motu* Writ Petition (CIVIL) No(s). 03/2020. It may be noted here that Section 5 of Limitation Act, 1963, is applicable to applications and departmental appeals before the quasi-judicial authorities also. The delay in filing the departmental appeal is, therefore, condoned, in the interest of justice.

10. Petitioner is granted liberty to file the departmental appeal to the appellate authority on or before 06.04.2023. If departmental appeal is filed by the petitioner within such period, the said authority is directed to decide the same on merits, in accordance with law.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: 03rd March, 2023
DEHRADUN
RS