

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

CLAIM PETITION NO. 24/SB/2021

Meherban Singh Bhandari s/o Sri Dayan Singh Bhandari, Constable 233 A.P.,
Police Line, Dehradun.

.....Petitioner

vs.

1. State of Uttarakhand through Secretary, Home, Govt. of Uttarakhand,
Secretariat, Subhash Road, Dehradun.
2. Deputy Inspector General of Police, Garhwal Region, Uttarakhand, Dehradun.
3. Senior Superintendent of Police, District Dehradun.

.....Respondents

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

JUDGMENT

DATED: FEBRUARY 03, 2022

Justice U.C.Dhyani (Oral)

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

“(a) To quash the impugned punishments order No. D-51/16 of dated 21.07.2016 (Annexure: A-1), impugned order No. N-137/14 of dated 21.07.2016 (Annexure: A-2) of Respondent No.3 and impugned order dated 31.08.2021 of Respondent No.2 with its effects and operation.

(b) To issue an order or direction to the respondents to pay the remaining salary and allowances to the petitioner for the period of suspension.

(c) To issue an order or direction to the respondents to grant all the consequential benefits of service withheld and denied due to the impugned orders.

(d) Issue any other suitable order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

(e) Award the cost of the petition to the petitioner.”

2. Brief facts, which appear to be necessary for adjudication of the claim petition are as follows:

2.1 Disciplinary authority (Respondent No.3) passed an order on 21.07.2016 (Copy: Annexure- A 1), which was challenged by the petitioner before the appellate authority (Respondent No.2), who held *vide* order dated 31.08.2021 (Annexure: A-3 *Colly*) that the departmental appeal is not maintainable, as time barred. The order of the appellate authority was communicated to the petitioner by Respondent No.3 *vide* letter dated 04.09.2021 (Annexure: A-3). The claim petition has been filed on 02.02.2022.

2.2 Although challenge to order dated 31.08.2021 (Annexure: A-3 *Colly*) and letter dated 04.09.2021, before this Tribunal, are within time, but the statutory departmental appeal against the impugned order Annexure: A-1 was filed after five years.

2.3 In this claim petition, petitioner has challenged Annexure: A-1 as well as Annexure: A-3 (along with Annexure: A-3 *Colly*), besides another order dated 21.07.2016, Annexure: A-2, which too was assailed by the petitioner after five years. The appellate authority has held that the same is also not maintainable, as time barred.

3. It is the submission of Ld. Counsel for the petitioner that delay in filing the statutory departmental appeal may be condoned. It is also the submission of Ld. Counsel for the petitioner that Section 5 of the Limitation Act, 1963, is applicable to the Applications and Statutory Appeals against the orders of Quasi Judicial Authorities (and Judicial Authorities).

4. In reply, Ld. A.P.O. submitted that there is inordinate and unexplained delay of five years in filing the statutory appeal before

Respondent No.3 and therefore, such delay should not be condoned by the Tribunal.

5. Let us see, what is law on the point?

Rule 20 of the Uttar Pradesh Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991 (hereinafter referred to as the Rules) deals with Appeals, as under:

“20. Appeals--(1)Every police officer against whom an order of punishment mentioned in sub -clauses (1) to (3) of clause (a) and sub-clauses (1) to (4) clause (b) entitled to prefer an appeal against the order of such punishment to the authority mentioned below—

(a) to the Deputy Inspector -General , if the original order is of the Superintendent of Police or officers empowered under sub -rule (4) of rule 7 of these rules,

(b) to the Inspector -General, if the original order is of the Deputy Inspector - General.

(c) to the Director -General, if the original order is of inspector General,

(d) to the State Government , if the original order is of Director General.

(2) No appeal shall lie against an order inflicting any of the petty punishments enumerated in sub-rules (2) and (3) of rule 4.

(3) Every officer desiring to prefer an appeal shall do so separately.

4) Every appeal, preferred under these rules shall contain all material, statements, arguments relied on by the police officers preferring the appeal, and shall be complete in itself, but shall not contain disrespectful or improper language. Every appeal shall be accompanied by a copy of final order which is the subject of appeal.

(5) Every appeal, whether the appellant is still in service of Government or not, shall be submitted through the Superintendent of Police of the district or in the case of police officers not employed in district work through the head of the office to which the appellant belongs or belonged.

(6) An appeal will not be entertained unless it is preferred within three months from the date on which the police officer concerned was informed of the order of punishment.

Provided that the appellate authority may at his discretion ,for good cause shown extend the said period up to six month.

(7) If the appeal preferred does not comply with the provisions of sub-rule (4) the appellate authority may require the appellant to comply with the provisions of the said sub rule within one month of the notice of such order to him and if the appellant fails to make the above compliance the appellate authority may dispose of the appeal in the manner as it deems fit .

(8) The Director- General or an Inspector- General may for reasons to be recorded in writing, either on his own notion or on request from an appellate authority before whom the appeal is pending transfer the same to any order officer of corresponding rank.”

Sub-rule (6) of Rule 20 of the Rules, therefore, provides that an appeal will not be entertained unless it is preferred within three month from the date on which the Police officer concerned was informed of the order of punishment . Provided: that the appellate authority may at his discretion ,for good cause shown extend the said period up to six months.

6. This fact is under no dispute that the departmental statutory appeal against order dated 21.07.2016 before the appellate authority was not preferred within six months. The appellate authority (Respondent No.2), therefore, committed no mistake in holding that the departmental appeal is not maintainable, as time barred.
7. At this juncture , Ld. Counsel for the petitioner placed reliance upon a decision rendered by Hon’ble Apex Court in *Collector, Land Acquisition, Anantnag and Another vs. Mst. Katiji and Others, (1987)2 SCC 107* to argue that refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. Contrary to that, when delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties.
8. The Tribunal would have acceded to the aforesaid submission of Ld. Counsel for the petitioner sympathetically, but for the fact that no reason, what to talk of cogent reason, has been given by the petitioner to explain the delay in filing the departmental appeal.
9. Petitioner was one of the accused, who faced trial under Sections 147 IPC, 148 IPC, 302 IPC and Section 307 IPC read with Section 149 IPC in the Court of Ld. Sessions Judge, Dehradun. The petitioner/accused was acquitted of the charges levelled against him *vide* order dated 25.07.2015, passed by the Ld. Sessions Judge, Dehradun in Sessions Trial No. 13/2015. Disciplinary authority (Respondent No.3) awarded censure entry to the delinquent petitioner,

for the year 2016 *vide* order dated 21.07.2016 (Annexure: A-1). The departmental appeal was received in the office of Respondent No. 2 on 25.08.2021, *i.e.* after a delay of five years.

10. As has been mentioned above, no cause, what to talk of good cause, has been shown by the petitioner for filing the statutory appeal after a delay of five years.

11. The Tribunal is, therefore, unable to condone the delay in filing the statutory departmental appeal before Respondent No.2. The view taken by the appellate authority (Respondent No.2) is, accordingly, affirmed. As a consequence thereof, the claim petition, challenging the impugned appellate order, is dismissed.

* * *

12. The next question which arises for consideration is, whether the Tribunal should scrutinize the impugned order dated 21.07.2016, Annexure: A-1, which was challenged by the petitioner before the appellate authority (Respondent No.2), who, *vide* order dated 31.08.2016, Annexure: A-3 (*Colly*) held that the departmental appeal is not maintainable as time barred.

13. After hearing Ld. Counsel for the parties, the Tribunal is of the considered view that the appealable order should not directly be scrutinized in a 'reference' for which time limit before this Tribunal is one year in view of Section 5 (1)(b)(i) of the U.P. Public Services (Tribunal) Act, 1976 (as applicable to State of Uttarakhand). Had there been even a little scope to scrutinize the same, the petition was unlikely to succeed inasmuch as the imputation against the delinquent petitioner were grave.

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14. Petitioner's services remained under suspension from 21.09.2014 to 15.01.2015. He was issued show cause notice on 14.06.2016 (Annexure: A-8) by Respondent No.3, to file reply within 15 days of

receipt of the notice. Delinquent petitioner filed the reply to the show cause notice on 02.07.2016 (Annexure: A-8 *Colly*). Orders were passed on 21.07.2016, (Annexure: A-2) by the disciplinary authority (Respondent No.3) after receiving the reply to the show cause notice dated 02.07.2016. The disciplinary authority ruled that the explanation furnished by delinquent petitioner was not sufficient. He was, therefore, held, not entitled to get anything else, except the salary and allowances paid to him during suspension period. His suspension period was, however, to be counted towards increment, promotion, pension etc. The aforesaid order dated 21.07.2016, (Annexure: A-2) appears to have been passed by the disciplinary authority under Para 54-B, Financial Handbook, Vol. 2 to 4, which reads as below:

“54-B (1) When a Government servant who has been suspended is reinstated or would have been so reinstated but for his retirement on superannuation while under suspension, the authority competent to order reinstatement shall consider and make a specific order—

(a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with reinstatement or the date of his retirement on superannuation as the case may be; and

(b) whether or not the said period shall be treated as a period spent on duty.

(2).....

15. When such an order was challenged before the appellate authority, the same was also held to be not maintainable, as time barred. This Tribunal has already discussed above that no reason, what to talk of plausible reason, has been shown by the petitioner to condone the delay in filing the statutory appeal.

16. Even if it be conceded for the sake of arguments, as submitted by Ld. Counsel for the petitioner, that no statutory appeal lies against impugned order dated 21.07.2016 (Annexure: A-2), the fact remains that Annexure: A-2 too has not been challenged by the petitioner before the Tribunal within one year. It may be mentioned, at the cost of repetition, that the time period for filing a reference before this

Tribunal is one year under Section 5 (1)(b)(i) of the U.P. Public Services (Tribunal) Act, 1976.

* * *

17. The claim petition, therefore, fails and is dismissed in view of the above discussion. In the circumstances, there shall be no order as to costs.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: FEBRUARY 03, 2022
DEHRADUN

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