

**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. 97/SB/2021

Shri Manvinder Singh aged about 35 years, s/o Shri Mohan Singh, presently posted as Constable in Uttarakhand Police at Nagar Kotwali, Haridwar.

.....Petitioner

VS.

1. State of Uttarakhand through Principal Secretary, Home, Govt. of Uttarakhand, Subhash Road, Dehradun.
2. Deputy Inspector General of Police, Uttarakhand, Dehradun.
3. Senior Superintendent of Police, Haridwar.

.....Respondents.

Present: Sri V.P.Sharma, Advocate, for the Petitioner (Online).

Sri V.P.Devrani, A.P.O., for the Respondents.

JUDGMENT

DATED: OCROBER 06, 2021

Justice U.C.Dhyani (Oral)

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

- (i) *The impugned order dated 30.10.2017 (Annexure: A1) may kindly be declared void, illegal, against fundamental, constitutional, civil right of the petitioner, rules, orders and principles of natural justice and may kindly be quashed and set aside.*
- (ii) *To quash and set aside the appellate order dated 12.08.2021 (Annexure: A2 of this Claim petition).*
- (iii) *To quash and set aside the suspension order dated 26.10.2016 (Annexure: A3).*
- (iv) *To pay full salary for suspension period from 10.06.2019 to 22.06.2019.*

(v) *To award cost of this petition to the petitioner.*

(vi) *Any other relief which the Hon'ble Court may deem fit and proper in the circumstances of the case.*

2. Facts, which appear to be necessary for adjudication of present claim petition are that 'censure entry' was awarded to the petitioner by S.S.P., Haridwar (Respondent no. 3) for misconduct *vide* order dated 30.10.2017 (Copy Annexure: A1), against which departmental appeal preferred by the petitioner was dismissed, as time barred, by Deputy Inspector General of Police, Garhwal Region (Respondent no. 2) *vide* order dated 12.08.2021 (Copy Annexure: A2). Petitioner is also aggrieved with the order dated 26.10.2016 (Annexure: A3), passed by S.S.P, Haridwar whereby the petitioner has been denied the salary for the suspension period.

A show cause notice, along with draft censure entry was issued to the petitioner on 16.06.2017 (Annexure: A5) by SSP, Haridwar, Respondent No. 3, under Rule 14(2) of the Uttar Pradesh Police Officers of Subordinate Rank (Punishment & Appeal) Rules, 1991 (for short, 1991 Rules). The delinquent petitioner gave his reply to the show cause notice (Annexure: A6), denying the allegations.

Present claim petition has been filed by the petitioner for quashing the aforesaid orders (Annexures: A1 to A3).

3. The imputation against the petitioner is that in the year 2016, while posted at P.S. Kaliyer, he took bribe from Anees s/o Iltfa, an accused of case crime No. 97/2016 under section 302, 201 IPC and when the fact of bribe came into knowledge, the money was returned. In addition to that, during preliminary inquiry, complainant, in his statement, has also stated that petitioner has taken Rs. 60,000/- as expenditure of petrol in private and Govt. vehicles. Such fact has also been mentioned by village representative Sri Shafakat, Gram Pradhan, village Mukarpur, in his statement. Petitioner took illegal gratification and when the same came into light, returned the money to the complainant. Such conduct of the petitioner has tarnished the image of police in the eyes of the public.

4. Ld. A.P.O., vehemently opposed the claim petition *inter alia*, on the ground that in Rule 20 of the Uttar Pradesh Police Officers of Subordinate Rank (Punishment & Appeal) Rules, 1991, a time period of 90 days has been prescribed for filing the departmental appeal, but the departmental appeal has been filed by the petitioner Constable after three years and nine months, and therefore, the Deputy Inspector General of Police, Garhwal Region, Dehradun was justified in holding that the departmental appeal is not maintainable, as time barred.

5. 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. Section 5 of the Limitation Act, 1963 is always applicable to the Appeals and Applications. Departmental appeal, in the instant case, has been held to be barred by limitation.

6. It will be quite appropriate to quote the observations of Hon'ble Apex Court in Collector, Land Acquisition, Anantnag and Another vs. Mst. Katiji and Others, (1987)2 SCC 107, for appreciating the philosophy behind condoning the delay in filing appeals, as below:

“ To condone, or not to condone, is not the only question. Whether or not to apply the same standard in applying the “sufficient cause” test to all the litigants regardless of their personality in the said context is another.

The legislature has conferred the power to condone delay by enacting Section 5 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on 'merits'. The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice--that being the life-purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:-

"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."

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.

.....

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....."

7. If sufficient cause is shown by the appellant or applicant, the delay can be condoned under Section 5 of Limitation Act, 1963. In the instant case, the departmental appeal of the delinquent petitioner was held to be time barred and was, therefore, not decided on merits. The Tribunal is of the view that Section 5 of the Limitation Act is applicable on statutory appeals.

8. At present, we are not on the merits of the claim petition. The departmental appeal of the petitioner was dismissed, because the same was not filed within 90 days. The appellate authority although appears to be justified in not deciding the departmental appeal, on merits, in view of Rule 20 of the Uttar Pradesh Police Officers of Subordinate Rank (Punishment & Appeal) Rules, 1991, but the Tribunal should not lose sight of the fact that the delay in filing the same may be condoned, if sufficient cause has been shown.

9. Therefore, the question, which arises, in the instant case, for consideration is—whether the Tribunal can condone the delay in filing the departmental appeal, if sufficient cause has been shown by the appellant (petitioner herein) for not preferring the appeal on time? Ld. Counsel for the

petitioner submitted that the petitioner could not file the departmental appeal on time because (i) condition of his father was critical on account of heart problem and hypertension and (ii) situation arising from Pandemic Covid-19 and resultant difficulties were faced by the petitioner in filing the appeal before the appellate authority.

10. The Tribunals and Courts have bigger role to play while legally examining the Service matters. 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 and also because the Hon'ble Supreme Court has given a general direction for condoning the delay in *Suo Moto* Writ Petition no. 03 of 2020 for the period 15.03.2020 to 02.10.2021.

11. This Court, 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, purely in the interest of justice. Delay in filing the same will not come in the way of appellate authority to decide the same on merits.

12. It is made clear that the Tribunal has not expressed any opinion on the merits of the case. Rival contentions are left open.

* * *

13. So far as the determination of salary for the period of suspension is concerned, this Tribunal is of the view that the prayer of the petitioner should be decided in terms of 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).....

(3).....

[Emphasis supplied]

The above noted provision of Financial Handbook (*supra*) provides for a situation which the petitioner is faced with in present claim petition. The competent authority shall, therefore, consider and make a specific order regarding pay and allowances to be paid to the petitioner for the period prayed for by him in present claim petition.

14. Orders accordingly.

15. The appellate order dated 12.08.2021 (Annexure- A2) is set aside. Appellate authority is directed to decide the departmental appeal of the petitioner, directed against order dated 30.10.2017 (Annexure: A1), on merits, without unreasonable delay, in accordance with law.

Further, competent authority is directed to consider and make a specific order in respect of the petitioner in terms of Para 54-B FHB on production of certified copy of this order, after giving him an opportunity of hearing, without unreasonable delay.

16. The claim petition thus stands disposed of at the admission stage. No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: OCTOBER 06, 2021
DEHRADUN
KNP