

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

CLAIM PETITION NO.12/SB/2022

Kunwar Ram Arya s/o Sri Budhiballabh Arya, Sub Inspector, Civil Police, presently working and posted at Thana Lambgaon, District Tehri Garhwal, under the respondent department.

.....Petitioner

vs.

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

.....Respondents

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

JUDGMENT

DATED: JANUARY 14, 2022

Justice U.C.Dhyani (Oral)

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

- (a). To issue an order or direction to set aside the impugned punishment order dated 24.08.2020 (Annexure: A-1) and impugned order dated 03.09.2021 (Annexure: A-2) passed by respondents no. 3 and 2 respectively declaring the same as null and void in the eyes of law and all the claims along with all consequential benefits.
 - (b) Issue any other suitable order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.
 - (c) Award the cost of the petition to the petitioner.
2. Petitioner was awarded censure entry on 24.08.2020 (Copy: Annexure- A 1), for misconduct. The departmental appeal was preferred by him on 17.08.2021, which was found time barred. The fact

that the departmental appeal is time barred, was communicated to the petitioner through Inspector In-Charge, Police Station Kotwali, Ranipur, Haridwar, *vide* letter dated 03.09.2021 (Copy: Annexure- A 2). It should have been sent to the appellate authority and if the same was not within time, the appellate authority only should have taken the decision that the departmental appeal is time barred. It appears that the departmental appeal was never placed before the appellate authority and was disposed of summarily, at the level of SSP, Haridwar, that the same is time barred and is, therefore, not admissible/ maintainable.

3. At the very outset, Ld. A.P.O. opposed the claim petition *inter alia*, on the ground, that as per Rule 20(6) of the U.P. Police Officers of Subordinate Ranks (Punishment & Appeal) Rules, 1991 (hereinafter referred to as the Rules), a time period of 90 days has been prescribed for filing the departmental appeal, and therefore, the departmental appeal was held to be not maintainable, as time barred.
4. The law enjoins upon the appellate authority to consider condoning the delay. Rule 20 of the Rules provides for the appeals. According to sub-rule (6) of Rule 20, '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 months.'
5. Admittedly, the departmental appeal has not been preferred within stipulated time. In any case the appellate authority would have dismissed the departmental appeal, as time barred. But, should the doors of justice be closed for delinquent petitioner?
6. 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 Police Officer of Sub Inspector rank, was busy in Kumbh Mela and Covid duty, therefore, he could not file the appeal in time.

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 or her 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. Delay in filing the departmental appeal can safely be condoned in view of order of Hon'ble Apex Court passed in *Suo Moto Writ Petition (Civil) No. 03/2020*.
9. Although the pretext is different, and the provisions of CPC are not exactly applicable to the proceedings before the Tribunal, yet 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:

“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 sub serves 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.

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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.”

- 10 At present, we are not on the merits of the claim petition. The departmental appeal of the petitioner was found time barred, because the same was not filed within stipulated time.
- 11 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. It is reiterated that the same is required to be condoned in view of the orders of Hon’ble Apex Court in *Suo Motu* Writ Petition (Civil) No. 03/2020.
12. 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.
13. Order accordingly.
14. The Order dated 03.09.2021 (Annexure: A-2) 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 24.08.2020, on merits, at an earliest possible, without unreasonable delay, in accordance with law.

15. The claim petition thus stands disposed of at the admission stage.
No order as to costs.
16. 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 14, 2022
DEHRADUN

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