

**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/DB/2022

Lokesh Kumar, s/o Sri Vinod Kumar, aged about 36 years, r/o Gram
Alwarpur, PO- Bhikampur Jeetpur, District- Haridwar, Uttarakhand.

.....Petitioner

vs.

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

.....Respondents

Present: Sri Abhijay Singh Panwar, Advocates, for the petitioner.(online)
Sri V.P.Devrani, A.P.O., for the Respondent No.1.

JUDGMENT

DATED: JULY 06, 2022

Justice U.C.Dhyani (Oral)

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

“I. To set aside the order No. PF-07/2011 dated 06.11.2012 wherein the petitioner has been dismissed from the service and reinstate the petitioner from the date of dismissal from the service.

II. To set aside the order of the DIGP Garhwal Range, No. COG-CA-15/2022 dated 03.02.2022 wherein the appeal has been rejected on the ground of time barred.

III. To direct the respondent no. 4 to decide the appeal filed by the petitioner and pass reasoned and speaking order on the appeal..

IV. To direct the respondent to grant all the consequential service benefits had the petitioner was continue in service.

V. To pass any other suitable order, which this Hon'ble Tribunal may deem fit and proper on the basis of the facts and circumstances of the case.

VI. Award the cost of the claim petition in favour of the petitioner.”

2. Petitioner was appointed as Constable in the Uttarakhand Police in 2007. His services were dismissed by S.S.P., Dehradun *vide* Order No PF 07/2011 dated 06.11.2012 under the provisions of the Uttar Pradesh Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991. Petitioner filed a departmental appeal against the impugned punishment order of dismissal before the D.I.G., Police, Garhwal Range. The said departmental appeal was rejected by the appellate authority on 03.02.2022, on the ground of delay. It is the submission of Ld. Counsel for the petitioner that the appeal was rejected without application of mind.
3. Ld. A.P.O. submitted that although the claim petition has been filed within time from the date of order dated 03.02.2022 passed by the Ld. Appellate authority, which was not decided on merits and was dismissed on the ground of delay, but the first impugned order was passed on 06.11.2012. There is inordinate delay in filing the departmental appeal and, therefore, the claim petition should not be admitted.
4. The Tribunal has noticed that there might be delay in filing the departmental appeal, but there is no delay in filing the claim petition, which has been filed within a year of the appellate order.

5. At the very outset, Ld. Counsel for the petitioner prayed that a direction be given to the appellate authority to decide the departmental appeal of the petitioner, on merits, in accordance with law.

6. The departmental appeal against the impugned order dated 06.11.2012 was received in the office of Appellate Authority, on 19.01.2022. Section 5 of the Limitation Act, 1963 is always applicable to the Appeals and Applications (and not the Suits). Such provision reads as below:

“**Extension of prescribed period in certain cases-** Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 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.”

7. One should not forget that the delay in filing the appeal can always be condoned, on showing sufficient cause and the appeal should, as far as possible, be decided, on merits, as per law. According to the petitioner, he could file the appeal only after his exoneration in those criminal cases, on the basis of which he was dismissed from service. Such reason of delay seem to be *prima-facie* plausible and the appeal is required to be decided on merits.

8. Considering the facts noted above, the Tribunal is inclined to condone the delay in filing the appeal, in the interest of justice, for, after all, the appellate authorities also perform quasi- judicial functions and delay in filing the Appeals (not Suits) may be condoned under Section 5 of the Limitation Act, 1963.

9. It may be noted here that Hon’ble Supreme Court has held, in a catena of decisions, that:

"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. 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 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.
11. 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, in accordance with law.
12. Appellate Order dated 03.02.2022 passed by DIG, Police, Garhwal Range, Respondent No.4, is set aside. The claim petition is,

accordingly, disposed of at the admission stage by directing the appellate authority to decide the departmental appeal of the petitioner, which is against the impugned order dated 06.11.2012 (Annexure: A 1), on merits, at an earliest possible, without unreasonable delay, in accordance with law.

13. It is made clear that the Tribunal has not expressed any opinion on the merits of the case. Condoning the delay in filing the departmental appeal, in the instant case, does not mean that the Tribunal has found merits in the case of the claim petitioner. The delay has been condoned simply to get justice done on merits rather than avoiding the same on the technical ground of delay.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: JULY 06, 2022
DEHRADUN

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