

**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. 168/SB/2022

Arvind Prasad Nautiyal, Constable No. 4669, Indian Reserve Battalion, r/o F
107, Aditya Doon Sayar Apartment, Sainlok, GMS Road, Dehradun.

.....Petitioner

vs.

1. The Government of Uttarakhand through Secretary, Home Department, Secretariat, Subhash Road, Dehradun.
2. The Director General of Police, Uttarakhand Police, Dehradun.
3. The Inspector General of Police, Uttarakhand Police, Dehradun.
4. The Deputy Inspector General of Police, Provincial Armed Constabulary, Haridwar.
5. Commandant 2nd Indian Reserve Battalion, Dehradun.

.....Respondents

(virtually)

Present: Sri Vibhore Maheshwari and Sri Uttam Singh, Advocates,
for the petitioner.

Sri V.P.Devrani, A.P.O., for Respondent No.1.

JUDGMENT

DATED: NOVEMBER 19, 2022

Justice U.C.Dhyani (Oral)

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

“(I) Permit the petitioner to file an appeal before the Appellate Authority against the impugned order 03.02.2022..

(II) Direct the respondent to consider the appeal and decide the same on merit within a period of two months.

(III) To pass any other suitable order, which the Hon’ble Tribunal may deem fit and proper on the basis of facts and circumstances of the case.

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

2. Facts, in brief, of the claim petition are that the petitioner was appointed as Constable in Indian Reserve Battalion. On 28.10.2021, one and half section of the E-Coy of 2nd Indian Reserve Battalion was deputed to carry out the verification of the tenants in Rajpur Police Area, Dehradun in the wee hours. Petitioner was also part of this team.

2.1 On 28.10.2021, at 04:00 AM the team assembled at Jhajra Post, Dehradun and at 04:15 AM proceeded to report the Rajpur Road Police Station under the Post Commander, Sub Inspector Swadesh Shah. At Rajpur Road Police Station, presence of all the team personnel was made in the General Diary. The verification of the tenants was completed at 11:30 AM and team returned to Jhajra Post around 12:30 PM on 28.10.2021.

2.3 Petitioner, after obtaining oral permission of the Post Commander, went for taking lunch, as he had not taken anything since morning. At about 01:00 PM, the Commandant, 2nd IRB carried out sudden inspection of the post and petitioner was marked as absent from the premise. On enquiry by the Commandant, the Post Commander did not speak anything about the oral permission sought by the petitioner from him.

2.4 Preliminary enquiry was conducted by Sri Matbar Singh, Assistant Commandant and petitioner was blamed for absence from the post without written permission. On 12.01.2022, respondent no. 5 issued a show cause notice to the petitioner (Annexure: A-2). Petitioner was to submit his reply to the show cause notice within 07 days, otherwise punishment of recovery of one day’s salary would be imposed upon him. Petitioner filed the reply and refuted the allegation. But the respondent no. 5 without considering his reply, awarded punishment of recovery of one day’s salary.

2.5 The petitioner did not file any appeal against the punishment order dated 03.02.2022.

3 *Vide* impugned order dated 03.02.2022 (Annexure: A-1), one day's salary was directed to be deducted, as fine, from the salary of the petitioner.

4 Ld. Counsel for the petitioner submitted that petitioner could not file the departmental appeal against the impugned order due to the reasons beyond his control.

5 Referring to the first relief of the petitioner, Ld. A.P.O. submitted that the permission of the Tribunal is not required to file an appeal before the appellate authority against the impugned order dated 03.02.2022.

6 The Tribunal agrees with such submission of Ld. A.P.O. that no permission is required for the petitioner to file a departmental appeal, as per law.

7 The second relief is for directing the respondents to consider the appeal and decide the same on merit within a period of two months.

8 Let us see what is the law on the point. Rule 20 of the Uttar Pradesh Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991, reads as below:

“20. Appeals— (1) Every Police Officer against whom an order of punishment mentioned in sub-clauses (i) to (iii) of clause (a) and sub clauses (i) to (iv) of 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 s.

(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 months.

(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.

9 The Rule, therefore, provides that the appeal may be entertained within three months from the date on which the Police Officer concerned was informed of the order of punishment. But the appellate authority may, at his discretion, for good cause shown, extend the said period up to six months.

10 It is the submission of Ld. Counsel for the petitioner that since the circumstances were beyond his control, therefore, a direction be given to the appellate authority to condone the delay in filing the departmental appeal and decide the same on merits within stipulated time.

11 Had it been a reference, the Tribunal would not have found it fit to condone the delay in filing such reference or claim petition (which is like a Suit), but delay in filing the appeal or application may be condoned, on good cause shown, under the Limitation Act, 1963. Section 2(1) of the Limitation Act, 1963 provides that '*suit*' does not include an appeal or an application. Further, as per Section 5 of the Limitation Act, 1963, 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.

12. It may be noted here that the petitioner could have filed the departmental appeal against the impugned order dated 03.02.2022 within 90 days, which could be extended up to six months by the appellate authority, at his discretion, for good cause shown in view of sub-rule (6) of Rule 20 of the Uttar Pradesh Police Officers of Subordinate Ranks (Punishment and Appeal)

Rules, 1991. But even six months have elapsed since the impugned order was passed.

13. It has been stated by Ld. Counsel for the petitioner that petitioner could not file the departmental appeal against the impugned order due to the reasons beyond his control.

14. Admittedly, the departmental appeal has not been preferred within stipulated time. But, should the doors of justice be closed for delinquent petitioner?

15. Further, Hon'ble Supreme Court has held in a catena of decisions, as below,

"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.

.....

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."

16. 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 (and not the Suits). Departmental appeal, in the instant case has not been filed. Propriety demands that the departmental appeal filed by the petitioner should be heard on merits, if he prefers the same within a reasonable period (from now).

17. 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.

18. This Tribunal, therefore, in the peculiar facts of the case, deems it appropriate to direct the appellate authority to decide the departmental appeal of the petitioner, on merits, in accordance with law.

19. Order accordingly.

20. 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 dated 03.02.2022, on merits, at an earliest possible, without unreasonable delay, in accordance with law.

21. 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: NOVEMBER 19, 2022
DEHRADUN