

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

CLAIM PETITION NO. 183/SB/2023

Sunil Rawat, Sub Inspector in Uttarakhand Police, presently working and posted as STF, Dehradun.

.....Petitioner

versus

1. State of Uttarakhand through Secretary (Home), Government of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Inspector General of Police, Uttarakhand, Garhwal Range, Dehradun, Uttarakhand.
3. Senior Superintendent of Police, District Haridwar, Uttarakhand.

.....Respondents

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

JUDGMENT

DATED: NOVEMBER 03, 2023

Justice U.C.Dhyani (Oral)

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

“(i) To quash the impugned punishment order dated 05.08.2021 (Annexure No. A-1) passed by the respondent no.3 and impugned order dated 29.08.2023 (Annexure No. A-2) passed by the respondent no.2 with its effects and operation and with all consequential benefits.

“(ii) To issue any other order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case.

“(iii) Award the cost of the petition to the petitioner.”

2. Petitioner was awarded censure entry on 05.08.2021 (Annexure: A1), for being negligent in his duties. The departmental appeal was preferred by him on 18.08.2023, which was not entertained and rejected by the Appellate Authority/Inspector General of Police, Garhwal Range, vide order dated 29.08.2023, as time barred (Annexure: A2).

3. Learned 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 rightly rejected by the appellate authority, 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 (90 days). It was corona time. Reference of lockdown has been given by the petitioner in his departmental appeal also. Should the doors of justice, in such circumstances, be closed for the delinquent petitioner?

6. It may be noted here that Section 5 of the Limitation Act, 1963, is applicable to the Appeals and Applications (and not the Suits). It is the submission of learned Counsel for the petitioner that petitioner was busy in Govt. duties and therefore, he could not file the departmental appeal in time. Learned Counsel for the petitioner would also draw the attention of the Tribunal towards decision of the Hon'ble Apex Court passed in Misc. Application No. 21 of 2022 in *Suo Motu* Writ Petition (CIVIL) No(s).03/2020, on account of pandemic Covid-19. Para 5 of the judgment is quoted hereinbelow for convenience:

"5. Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we

deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following directions:

I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.

III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.

IV. It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.”.

7. In addition to the above, 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. It has been stated above that Section 5 of the Limitation Act, 1963, is always applicable to the Appeals. Departmental appeal, in the instant case, has been rejected as time barred. Propriety demands that the same should be decided on merits.

8. 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.

9. The order dated 29.08.2023 (Annexure:A2), whereby petitioner's request for hearing departmental appeal was not entertained on the ground of delay, 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, on merits, without unreasonable delay, in accordance with law.

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

11. Rival contentions are left open.

(JUSTICE U.C.DHYANI)
CHAIRMAN
[virtually]

DATE: November 03, 2023.
DEHRADUN.
RS