

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
BENCH AT NAINITAL**

CLAIM PETITION NO. 15/NB/SB/2023

HC 62 C.P. Santosh Prasad, aged about 44 years, s/o Sri Kunwar Ram,
r/o Village Roripali Post Office Roripali Tehsil Pithoragarh, District
Pithoragarh.

.....Petitioner

vs.

1. State of Uttarakhand through Principal Secretary, Home Department, Dehradun.
2. Deputy Inspector General of Police, Kumaon Region, Nainital.
3. Senior Superintendent of Police, Udham Singh Nagar, District Udham Singh Nagar.

.....Respondents

Present: Sri Harish Adhikari, Advocate, for the Petitioner
Sri Kishore Kumar, A.P.O., for the Respondents

JUDGMENT

DATED: DECEMBER 26 2023

Justice U.C.Dhyani (Oral)

The petitioner was given 'censure entry' for his misconduct, which is under challenge in this claim petition. He preferred departmental appeal against the same, which was not decided on merits, but was rejected on the ground of delay. The same is also under challenge in this claim petition.

2. The Disciplinary Authority (respondent no. 3) passed impugned order on 25.09.2019. The appeal against such order was filed by the petitioner on 22.11.2022. It was not entertained for decision on merits by the Appellate Authority (respondent no. 2) *vide* order dated 07.01.2023, for the reason that same was filed after limitation.

3. Thus the departmental appeal was not decided on merits. It was dismissed on the ground of delay.

4. 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, a time period of 90 days has been prescribed for filing the departmental appeal and the reasons for filing the departmental appeal late has also not been satisfactorily explained, therefore, the departmental appeal was rightly held to be not maintainable, as time barred.

5. It is the submission of learned Counsel for the petitioner that both the orders are bad in the eyes of law. The petitioner could not prefer departmental appeal on time for various reasons, including spread of Covid-19 Pandemic.

6. 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." Therefore, the law enjoins upon the appellate authority to consider condoning the delay.

7. The departmental appeal against the impugned order dated 25.09.2019 was received in the office of Appellate Authority, on 22.11.2022, therefore, the Appellate Authority was justified, at its own end, in holding that the appeal has been filed beyond time.

8. But, 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."

9. Learned Counsel for the petitioner drew the attention of the Tribunal towards decision of the Hon'ble Apex Court in Misc. Application No. 21 of 2022, *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.”

10. The impugned order was passed on 25.09.2019 by the Disciplinary Authority, against which the appeal should have been filed within 90 days. According to sub-rule (6) of Rule 20, the appellate authority, at his discretion, may extend the said period up to six months, which could have been extended upto 25.03.2020. Hon'ble Supreme Court, in Suo Motu Writ Petition (CIVIL) No(s).03/2020, the period from 15.03.2020 till 28.02.2022 has been excluded for the purpose of limitation, on account of pandemic Covid-19.

11. 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. Departmental appeal, in the instant case, has been held to be barred by limitation. Propriety

demands that same should be heard on merits, as it appears that the petitioner was prevented by spread of pandemic Covid-19 in filing the departmental appeal.

12. The delay in filing the departmental appeal after 15.03.2020 is condonable as per the Judgment dated 10.01.2022 of the Hon'ble Supreme Court, in Misc. Application No. 21 of 2022, in Suo Motu Writ Petition (CIVIL) No(s).03/2020, on account of pandemic Covid-19.

13. 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.

14. Appellate Order dated 07.01.2023 passed by DIG, Police, Kumaon Range, Respondent No.2, is set aside. The delay in filing the appeal is condoned, purely in the interest of justice. The claim petition is, accordingly, disposed of by directing the appellate authority to decide the departmental appeal of the petitioner, which is against the impugned order dated 25.09.2019 (Annexure no.1), on merits, without unreasonable delay, in accordance with law.

15. It is made clear that the Tribunal has not expressed any opinion on the merits of the case.

16. Liberty is granted to the petitioner to approach this Tribunal, if cause of action survives to him. No order as to costs.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: DECEMBER 26, 2023
DEHRADUN
KNP