

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

Present: Hon'ble Mr. Justice U.C.Dhyani

----- Chairman

Hon'ble Mr. A.S.Nayal

-----Member (A)

CLAIM PETITION NO.37 /SB/2019

Manoj Nainwal, s/o Late Sri R.P. Nainwal aged about 42 years, Sub Inspector, Uttarakhand Police, presently posted at Chowki Panditwari, Thana Cantt, Distt. Dehradun.

.....Petitioner

vs.

1. State of Uttarakhand through Secretary, Home, Govt. of Uttarakhand, Subhash Road, Dehradun.
2. Deputy Inspector General of Police, (Garhwal Region) Uttarakhand, Dehradun
3. Senior Superintendent of Police, Haridwar.

.....Respondents.

Present: Sri V.P.Sharma, Counsel, for the petitioner.
Sri V.P.Devrani, A.P.O., for the Respondents.

JUDGMENT

DATED: MARCH 25, 2019

Justice U.C.Dhyani(Oral)

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

- “(i) To quash the impugned order dated 08.11.2012 (Annexure No. A-1) by which censure entry has been awarded by the respondent no.3 in the service record of the petitioner as well as appellate order dated 27.09.2018 (Annexure No. A-3) by which appeal of the petitioner has also been rejected by the respondent no.2 along with its effect and operation.
- (ii) To quash and set aside the order dated 08.11.2012 for withholding the integrity of the petitioner, which was without jurisdiction.
- (iii) Any other order, relief, which the Hon'ble Tribunal may deem fit and proper, in the circumstances of the case.
- (iv) To award the cost of the petition to the petitioner. ”

2. Facts, giving rise to present claim petition, are as follows:

Petitioner, as Sub Inspector was posted at P.S. Bahadrabad, District Haridwar in the year 2011-2012. A case crime no. 137/2011 under Sections 545, 380, 427, 506 IPC was registered at P.S. Bahadrabad. The investigation was entrusted to the petitioner. After investigation, final report no. 16/12 was submitted by the I.O./petitioner. The appointing authority, *vide* order dated 08.11.2012, directed 'censure entry' in the service record of the petitioner. Petitioner's integrity was also withheld for the year 2012. During the investigation, petitioner collected the evidence and conducted spot inspection. In Cottage No. 2, the accused opened the lock and took away the articles from the cottage. Petitioner recorded the incident, as also the facts in the case diary.

A plea has been taken in the claim petition that the integrity cannot be withheld in mid term and, therefore, respondents have exceeded jurisdiction in withholding the integrity of the petitioner. Although, final report was submitted by the petitioner, as Investigating Officer, in case crime no. 137/11, but the Supervising Officer (C.O.) returned the F.R. and directed further investigation, which culminated in Charge Sheet No. 103/12. Cognizance on the same was taken by J.M.II, Haridwar. A miscellaneous application under Section 482 Cr.P.C. was filed by the parties before Hon'ble High Court of Uttarakhand. The parties settled their dispute amicably and, therefore, Hon'ble Court was pleased to direct that the proceedings of Criminal Case No. 244/13 under Sections 452, 380, 427, 504, 447, 448 IPC, pending in the Court of IInd. Additional Civil Judge/ J.M., Haridwar, shall be set aside.

Consequent upon passing of order dated 28.11.2013 in C-482 No. 1041 of 2013, the petitioner preferred appeal before the appellate authority on 26.09.2018, which departmental appeal was dismissed at the admission stage, as time barred, *vide* order dated 27.09.2018 (Annexure: A-3). The order dated 08.11.2012 of the disciplinary

authority/ appointing authority has been brought on record as Annexure: A-1.

Aggrieved against both the aforesaid orders, petitioner has filed present claim petition.

3. Respondents No. 1, 2 & 3 have filed objections against the claim petition. The same are taken on record. It is the submission of Ld. A.P.O. that not only the departmental appeal, but the claim petition also is barred by limitation.
4. The provisions of the Limitation Act, 1963 shall, *mutatis mutandis*, apply to a reference under the U.P. Public Services (Tribunal) Act, 1976. Section 5 of the Limitation Act, 1963 is always applicable on the Appeals and Applications. In the instant case, the appeal has been held to be barred by limitation. 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.
4. Section 4 (4) of the U.P. Public Services (Tribunal) Act, 1976 (as applicable in Uttarakhand) reads as under:

“4(4) Where a reference has been admitted by the Tribunal under sub-section (3), every proceeding under the relevant service rules or regulation or any contract as to redressal of grievances in relation to the subject-matter of such reference pending immediately before such admission shall abate, and save as otherwise directed by the Tribunal, no appeal or representation in relation to such matter shall thereafter be entertained under such rules, regulations or contract.”
5. Sufficient cause has been shown for not preferring the departmental appeal in time. Facts of the case would disclose that present reference is fit for adjudication on merits. Delay in filing appeal should not come in the way of appellate authority to decide the same on merits.
6. 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, herein 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 subserves 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.

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the 'State' which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even handed manner. There is no warrant for according a stepmotherly treatment when the 'State' is the applicant.

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 of 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. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or

hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file pushing, and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant-non-grata status. 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. The order of the High Court dismissing the appeal before it as time barred, is therefore, set aside. Delay is condoned. And the matter is remitted to the High Court. The High Court will now dispose of the appeal on merits after affording reasonable opportunity of hearing to both the sides. Appeal is allowed accordingly. No costs.

7. 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.
8. Order accordingly.
9. The impugned appellate order dated 27.09.2018 (Annexure: A 3) is set aside. Appellate authority is directed to decide the departmental appeal of the petitioner directed against order dated 08.11.2012 (Annexure: A 1), on merits, at an earliest possible, in accordance with law.
10. The claim petition thus stands disposed of at the admission stage. No order as to costs.

(A.S.NAYAL)
MEMBER (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: MARCH 25, 2019
DEHRADUN

VM