

**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. 14/SB/2021

Kavar Pal Singh, aged about 33 years s/o Sri Yashpal Singh, Presently posted as Constable at Uttarakhand Pollice at Uttarakashi.

.....Petitioner

vs.

1. State of Uttarakhand through Principal Secretary, Home, Secretariat, Subhash Road, Dehradun.
2. Deputy Inspector General of Police, Uttarakhand, Dehradun
3. Senior Superintendent of Police, Rudraprayag.

.....Respondents.

Present: Sri V.P.Sharma, Counsel, for the petitioner.

Sri V.P.Devrani, A.P.O., for the Respondents.

JUDGMENT

DATED: FEBRUARY 09, 2021

Justice U.C.Dhyani(Oral)

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

“(i) Impugned order (Annexure No. A-1) dated 09.01.2020 may kindly be declared void, illegal, against fundamental, constitutional, civil right of the petitioner, rules, orders and principles of natural justice and may kindly be quashed and set aside.

(ii) The Hon'ble Tribunal may kindly quash and set aside the appellate order dated 31.12.2020 Annexure: A-2 of this claim petition.

(iii) The Hon'ble Tribunal may kindly allow to quash and set aside the suspension order dated 10.06.2019 Annexure: A-3.

(iv) Any other order, relief, which the Hon'ble Tribunal may deem fit and proper, in the circumstances of the case.

(v) The Hon'ble Tribunal may kindly allow to pay full salary for suspension period from 10.06.2019 to 22.06.2019.

(vi) To award the cost of the petition to the petitioner. ”

2. Facts, necessary for adjudication of present claim petition are that 'censure entry' was granted to the petitioner by S.P., Rudraprayag (Respondent No.3) for misconduct *vide* order dated 09.01.2020 (Copy Annexure: A-1). Departmental appeal was preferred by the petitioner against the said order on 07.12.2020. The departmental appeal was dismissed, as time barred, by D.I.G. Police, Dehradun, (Respondent No.2) *vide* order dated 31.12.2020 (Copy Annexure: A-2). Aggrieved with the same, present claim petition has been filed by the petitioner.

3. Sri V.P.Sharma, Ld. Counsel for the petitioner prayed, at the very outset, that the delay in filing the departmental appeal may kindly be condoned in view of decision of Hon'ble Apex Court in Suo motu writ petition (Civil) No.3/2020 and the same may be relegated to respondent no.2 for decision on merits.

4. Ld. A.P.O., opposed the claim petition on the ground, *inter alia*, that as per Rule 20 of the Uttar Pradesh Police Officers of Subordinate Rank (Punishment & Appeal) Rules, 1991, a time period of 90 days has been prescribed for filing the departmental appeal, and therefore, the D.I.G. Police, Dehradun was justified in holding that the departmental appeal is not maintainable, being time barred.

5. 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.

6. Sufficient cause has been mentioned By Ld. Counsel for the petitioner for not preferring the departmental appeal in time. Facts of the case would disclose that the appeal is fit for adjudication on merits. Delay in filing departmental appeal should not come in the way of appellate authority to decide the same on merits. The same is condoned in view of SUO MOTU WRIT PETITION (CIVIL) No(s).3/2020, in which Hon'ble Supreme Court while taking *suo motu* cognizance of the situation arising out of the challenge faced by the country on account of Covid-19 Virus and resultant difficulties that might be faced by litigants across the country in filing their petitions/applications/suits/ appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and/or State), has passed an order on 23.03.2020 to obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country including this Tribunal, ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended *w.e.f.* 15th March 2020 till further order/s to be passed by Hon'ble Supreme Court in present proceedings.

7. This order was passed in exercise of power under Article 142 read with Article 141 of the Constitution of India and declared that this order is a binding order within the meaning of Article 141 on all Courts/Tribunals and authorities.

8. It will also be 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, in reference to petitioner's departmental appeal:

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.

9 This Court, therefore, in the peculiar facts of the case, deems it appropriate to condone the delay and relegate the matter to the appellate authority for deciding the departmental appeal of the petitioner, on merits, in accordance with law, in the interest of justice.

10. Order accordingly.

11. The appellate order dated 31.12.2020 (Annexure- A2), is set aside. Appellate authority is directed to decide the departmental appeal of the petitioner, directed against order dated 09.01.2020 (Annexure: A 1), on merits, at an earliest possible, in accordance with law.

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

13. Urgency application also stands disposed of.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: FEBRUARY 09, 2021
DEHRADUN

VM