

**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.118/DB/2020

Smt. Sunita d/o Shri Shyam Lal, aged about 54 years, dismissed Constable (F) r/o Vasundhara Enclave, Gali No.9, Dehradun, District Dehradun, Uttarakhand.

.....Petitioner

vs.

1. State of Uttarakhand through Principal Secretary, Home, Government of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Inspector General of Police, Garhwal Region, Uttarakhand, Dehradun
3. Superintendent of Police, District Chamoli.

.....Respondents.

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

JUDGMENT

DATED: APRIL 05, 2021

Justice U.C.Dhyani(Oral)

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

“(i) To quash the impugned punishment order dated 05.06.2018 (Annexure No. A-1) passed by the Respondent No.3 and impugned order dated 22.08.2019 of Respondent No.2 about which Respondent No.2 informed the petitioner with its effects and operation.

(ii) To issue an order or direction to the respondents to reinstate the petitioner in her service with continuity of service with all consequential benefits or in alternate on the facts and circumstances of the facts mentioned in Para 4, direction be issued to the respondents that keeping in view the 50 years' service of the petitioner modify the punishment of

dismissal of the petitioner in compulsory retirement with pensionary benefits.

(iii) To issue any other suitable order or direction which this 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. Petitioner was dismissed from service by S.P., Chamoli *vide* order dated 05.06.2018 (Copy: Annexure- A1). She preferred departmental appeal before Inspector General of Police, Garhwal Region, who *vide* order dated 22.08.2019 did not admit the same on the ground that the departmental appeal was barred by limitation. The fact that the appeal was not admitted, being time barred, was conveyed to the petitioner *vide* letter dated 23.09.2019 (Copy: Annexure-A 2), by S.P.,Chamoli.
3. In other words, petitioner was dismissed from service *vide* order dated 05.06.2018. She preferred departmental appeal, which was not admitted *vide* order dated 22.08.2019, on the ground that the same has been filed after expiry of period of limitation (90 days). It may be noted here that the departmental appeal ought to have been preferred within ninety days as per Rules. I.G., Garhwal Range, *vide* order dated 22.08.2019 ruled that petitioner's departmental appeal is not possible to be admitted, in as much as the same has not been filed within ninety days. The allegation against the petitioner was that medical vouchers and bills submitted by her in the department were fake.
4. Aggrieved against the dismissal of her departmental appeal, as time barred, present claim petition has been filed.
5. Ld. A.P.O., at the very outset, vehemently 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 I.G., Garhwal Range was justified in holding that the departmental appeal is not maintainable, being time barred.
6. 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 on the Appeals and Applications. Departmental appeal, in the instant case, has been held to be barred by limitation.

7. When Ld. Counsel for the petitioner was asked by the Bench, as to what prevented the petitioner from filing the departmental appeal on time, Ld. Counsel for the petitioner replied that, consequent upon filing of an FIR against her under Sections 420, 467, 468, 471 IPC, she was arrested by the Police and sent to jail. Subsequently, she was enlarged on bail. Charge sheet was issued against her. She was under great mental distress and, therefore, she could not file the departmental appeal on time. She could file the departmental appeal only in July/ August, 2019.
8. Although the pretext is different, and the provisions of CPC are not exactly applicable to the proceedings before the Tribunal, yet 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*, for appreciating the philosophy behind condoning the delay, as 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.

9. Although the allegations against the petitioner are serious, but sufficient cause appears to have been shown for not preferring the departmental appeal on time. Facts of the case would disclose that present reference is fit for adjudication on merits. Delay in filing the appeal should not come in the way of appellate authority to decide the

same on merits. The same is, therefore, condoned in the interest of justice.

10. So far as filing of present claim petition is concerned, the same has been filed on 07.12.2020 during the days of pandemic Covid-19. The appellate authority had returned the appeal on 23.09.2019 (*date of communication of the order*), holding that the same is barred by limitation. The claim petition ought to have been filed by the petitioner before this Tribunal on or before 23.09.2020, but Hon'ble Apex Court has mandated under Articles 141 and 142 of the Constitution of India that the delay in filing the petitions/applications/suits/ appeals/all other proceedings during pandemic Covid-19 shall be condoned. Hon'ble Supreme Court in SUO MOTU WRIT PETITION (CIVIL) No(s).3/2020 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). Hon'ble Apex Court ordered that 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 Court in present proceedings. [Now Hon'ble Supreme Court has held that the period of limitation shall stand extended from 15.03.2020 to 14.03.2021]
11. 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.
12. Order accordingly.

13. The appellate order dated 22.08.2019, intimated to the petitioner *vide* order dated 23.09.2019 (Annexure- A2) is set aside. Appellate authority is directed to decide the departmental appeal of the petitioner, directed against order dated 05.06.2018 (Annexure: A 1), on merits, at an earliest possible, in accordance with law.
14. 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: APRIL 05, 2021
DEHRADUN

VM