

**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.47/SB/2021**

Yashdev Singh Rawat, Head Master, Govt *Purv Madhyamik Vidyalaya, Kathur, Vikas Khand-Kot*, Pauri Garhwal, Uttarakhand.

.....Petitioner

**vs.**

1. The Govt. of Uttarakhand through its Secretary, Education, Secretariat, Subhash Road, Dehradun.
2. The Director, Primary Education, Govt. of Uttarakhand, Dehradun.
3. Additional Director, Primary Education, Garhwal Region, Pauri.
4. District Education Officer (Primary), Pauri Garhwal.
5. Deputy Director, Primary Education, Development Division, Kot, Pauri Garhwal.

.....Respondents.

Present: Dr. N.K.Pant, Advocate, for the petitioner.  
Sri V.P.Devrani, A.P.O., for the Respondents.

**JUDGMENT**

**DATED: JUNE 07, 2021**

**Justice U.C.Dhyani(Oral)**

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

“(i) Issue an order or direction calling for the record and directing the respondents to quash and set aside the order no. 04-basic-miscellaneous/352/reinstate of suspension/2015-2016 dated 21.01.2016 with letter dated 15.10.2020 (Annexure: A-13)..

(ii) Issue an order or direction calling for the record and to direct the respondent to pay all the increments with interest, which are stopped due to aforesaid order, dated 21.01.2016.

- (iii) Issue any suitable order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.
- (iv) Award the cost of the claim petition in favour of the petitioner. ”

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

The petitioner was appointed as Head Master in the Govt. *Poorv Madhyamik Vidyalaya, Kathur, Vikas Khand 5-Kot*, Pauri Garhwal in the year 2012-13. In the year 2012-2013, a kitchen-store was constructed by the School Management Committee/ Teacher-Parents Association, for which Rs.135000-00/- were sanctioned by the Department. Junior Engineer of *Sarv Shiksha Abhiyan*, Pauri, issued completion and utilization certificate after completion of the said construction work. Deputy Education Officer (Primary Education ) Development Area, Kot, Pauri Garhwal, passed an order on 16.05.2015. Petitioner was asked to explain as to why recovery be not made from him and disciplinary action be not taken against him for financial irregularities and indiscipline, for not following the prescribed standards for the said construction work. The petitioner submitted his explanation to the Deputy Education Officer (Primary Education) Development Area, Kot, Pauri Garhwal on 19.12.2015.

It is submitted by the Ld. Counsel for the petitioner that without prior show cause notice, an order of suspension-cum-charge sheet was issued to the petitioner on 26.11.2015. *Vide* order dated 21.01.2016 of District Education Officer, Pauri, the petitioner's suspension order was revoked and he was reinstated in service with full salary, but one increment was stopped permanently. It is also submitted by Ld. Counsel for the petitioner that permanent stoppage of increment comes within the category of 'major penalty', for which there is a prescribed procedure, which was not followed by the respondents.

Aggrieved with the same, several representations were moved. District Education Officer (Basic Education), Pauri and Addl. Director (Basic Education), *vide* letters dated 23.02.2018 (Annexure:A-10) and 15.12.2018 (Annexure: A-11) informed the petitioner that petitioner's

request for setting aside permanent stoppage of increment was not permissible under the Rules.

Petitioner suffered paralytic attack on 25.11.2019. When he recovered, he again requested District Education Officer (Basic Education), Pauri to set aside permanent stoppage of increment. The same was replied in the negative *vide* letter dated 15.10.2020 (Annexure: A- 13). A legal notice was served upon District Education Officer (Basic Education), Pauri and then, on Addl. Director (Basic Education). The Addl. Director informed *vide* letter dated 31.03.2021 (Annexure: A- 16) that since the appeal has not been filed within 90 days, therefore, the same is not maintainable.

Aggrieved with the letters 31.03.2021 (Annexure: A-16) and 15.10.2020 (Annexure: A-13) of the respondents no.3 and 4 , present claim petition has been filed.

3. Ld. A.P.O., at the very outset, vehemently opposed the claim petition on the ground, *inter alia*, that as per Rule 11(4) of the Uttarakhand Government Servants (Discipline and Appeal) Rules, 2003, a time period of 90 days has been prescribed for filing the departmental appeal, and therefore, the Additional Director, Basic Education, Garhwal Region, Pauri was justified in holding that the departmental appeal is not maintainable, as time barred.
4. 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 to the Appeals and Applications. Departmental appeal, in the instant case, has been held to be barred by limitation.
5. 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 the petitioner suffered paralytic attack on 25.11.2019 (*documents enclosed*), therefore, he could not file departmental appeal before appellate authority, on time. When

he started recovering and regained his health, then only he approached the authority concerned. .

6. 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 in filing appeals, 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.

.....

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 praying for condonation of delay. .... 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. ....”

7. Main grievance of the petitioner is that no proper procedure has been followed while awarding major penalty to him. One increment was stopped permanently *vide* order dated 21.01.2016. The petitioner could not file departmental appeal on time because of serious ailment. When he recovered, he filed the same, only to be informed, finally, on 31.03.2021 (Annexure: A-16) that the departmental appeal could have been filed only within 90 days, which has not been filed.

At present, we are not on the merits of the claim petition. The departmental appeal of the petitioner was dismissed, because the same was not filed within 90 days. The appellate authority appears to be justified in not deciding the departmental appeal, on merits, in view of sub-rule (4) of Rule 11 of the Uttarakhand Government Servants (Discipline and Appeal) Rules, 2003, which reads as below:

“11(4) The appeal shall be preferred within 90 days from the date communication of impugned order. An appeal preferred after the said period shall be dismissed summarily.”

8. The question, which arises for consideration is – whether the Tribunal can condone the delay in filing the departmental appeal, if sufficient cause has been shown by the appellant (petitioner herein) for not preferring the appeal on time?

Generally, if the departmental appeal is heard on merits, the following are the considerations:

“Rule 12 of the Discipline and Appeal Rules, 2003:

**Consideration of Appeals-** The Appellate Authority shall pass such order as mentioned in clause (a) to (d) of Rule-13 of these rules, in the appeal as he thinks proper after considering:-

- (a) Whether the facts on which the order was based have been established;
- (b) Whether the fact established afford sufficient ground for taking action; and
- (c) Whether the penalty is excessive, adequate or inadequate.”

Rules 13 and 14 of the Discipline and Appeal Rules, 2003 are also important in the context of this case. The same read as below:

(13). **Revision-** Notwithstanding anything contained in these rules, the Government may on its own motion or on the representation of concerned Government Servant call for the record of any case decided by an authority subordinate to it in the exercise of any power conferred on such authority by these rules; and

- (a) confirm, modify or reverse the order passed by such authority, or
- (b) direct that a further inquiry be held in the case, or
- (c) reduce or enhance the penalty imposed by the order, or
- (d) make such other order in the case as it may deem fit.”

(14). **Review-** The Governor may, at any time, either on his own motion or on the representation of the concerned Government Servant review any order passed by him under these rules, if it has brought to his notice that any new material or evidence which could not be produced or was not available at the time of passing the impugned order or any material error of law occurred which has the effect of changing the nature of the case.

*[Emphasis supplied]*

The Tribunals and Courts have bigger role to play while legally examining the Service matters arising out of departmental appeals. No time limit has been prescribed for the Government either in Rule 13 or Rule 14 (*supra*) to hear Revision or Review. The claim petition in this Tribunal is required to be filed within one year, but there is no embargo for the Tribunal to condone the delay in filing departmental appeal, if sufficient ground is shown. The said jurisdiction should be exercised in view of catena of decisions of Hon’ble Apex Court including the one which we have referred to in para 6 of this judgment, especially when the petitioner was prevented to file departmental appeal, on time, because of paralytic attack.

9. Sufficient cause appears to have been shown for not preferring the departmental appeal on time. Facts of the case would disclose that delay in filing the appeal should not come in the way of appellate authority to

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

10. 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.
11. Here, it is made clear that we have not expressed any opinion on the merits of the case.
12. Order accordingly.
13. **The letters dated 15.10.2020 (Annexure: A-13) and 31.03.2021 (Annexure: A-16), whereby Petitioner's request for entertaining departmental appeal was turned down, are 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 permanent stoppage of one increment, on merits, at an earliest possible, without unreasonable delay, 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: JUNE 07, 2021*  
*DEHRADUN*

*VM*