

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

Through audio conferencing

Present: Hon'ble Mr. Justice U.C.Dhyani
----- Chairman
Hon'ble Mr. Rajeev Gupta
-----Vice Chairman (A)

CLAIM PETITION NO.68/NB/SB/2020

Talib Hussain, aged about 42 years, s/o Sri Riyasat Hussain, r/o Village Dhansara,
Post & Tehsil Bazpur, District Udham Singh Nagar.

.....Petitioner

vs.

1. State of Uttarakhand through Principal Secretary, Department of Home,
Govt. of Uttarakhand, Dehradun.
2. Director General of Police, Uttarakhand Police Headquarters, Dehradun.
3. Inspector General of Police, Kumaon Region, Nainital.
4. Deputy Inspector General of Police, Kumaon Range, Nainital.
5. Senior Superintendent of Police, District Nainital

.....Respondents.

Present: Sri Vinay Kumar, Advocate, for the petitioner.
Sri Kishor Kumar, A.P.O., for the Respondents.

JUDGMENT

DATED: SEPTEMBER 01, 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 23rd December 2019 passed by the Senior Superintendent of Police, Nainital, whereby the claimant has been awarded censure entry (Annexure: A1).*

(ii) *To quash the impugned Appellate Order dated 30th May 2020 passed by the Deputy Inspector General of Police, Kumaon Range and order dated 27th July 2020 passed by Inspector General of Police, Kumaon Range, Nainital, whereby the Departmental Appeal filed by the claimant has been rejected and thereby affirmed the Punishment Order dated 23rd December 2019 passed by the Senior Superintendent of Police, Nainital (Annexures: A2 & A3).*

(iii) To issue directions in the nature commanding and directing the respondent to grant all consequential service benefits to the claimant.

(iv) To award the cost of the petition or to pass such order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case.

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

The petitioner was attached to the Police Line, Nainital on 31.10.2018. On 24.11.2018, the petitioner and Constable Lalit Mohan were deputed to produce the accused Sudhir Chawala, who was lodged in District Jail, Nainital, before the Court at Rudrapur. On the said date, at around 9:10 a.m., the petitioner and Constable Lalit Mohan reported at district jail, Nainital and they were handed over the custody of Sudhir Chawala by the Jail Authorities for production before the concerned Court at Rudrapur. Since the petitioner was not provided any vehicle, he hired a taxi for producing the accused before the Concerned Court. After the Court proceedings, the petitioner and Constable Lalit Mohan handed over the custody of accused Sudhir Chawala to the Jail Authorities on the same day within time.

Vide letter No. 212/19 dated 05.01.2019, the S.S.P., Nainital appointed Additional S.P., Lalkuan, Nainital to enquire into the charge that the petitioner and Constable Lalit Mohan committed irregularities while producing the accused Sudhir Chawala before the concerned Court at Rudrapur. The inquiry officer recorded the statements of the petitioner, Constable Lalit Mohan, Taxi Driver, Aftab Alam, Sudhir Chawala, wife of Sudhir Chawala, Dr. Prakash Pant and Dr. G.S. Cheema. Preliminary inquiry officer submitted his report to the S.S.P., Nainital on 07.03.2019.

On the basis of the preliminary inquiry report dated 07.03.2019, the Appointing Authority/SSP, Nainital issued a show cause notice to the petitioner on 23.03.2019. The petitioner was required to show cause as to why a 'censure entry' be not recorded for (his) negligent conduct, within 15 days from the date of receipt of the same. Petitioner submitted his reply to the show cause notice to the SSP, Nainital on 08.04.2019. In his reply, petitioner pointed out that he and Constable Lalit Mohan were provided only Rs. 200 for producing the accused from Nainital Jail to Rudrapur Court. The

accused was handed over to them without providing him food. He replied that the accused was repeatedly pointing out that he be provided food as he is a diabetic patient. Finding of the inquiry officer was that when the accused was not medically fit, then, instead of providing him food, the petitioner should have contacted the nearest Govt. Hospital and further action should have been taken after the advice of the Doctor.

The imputation against the petitioner was that he was negligent in duty while taking the accused Sudhir Chawala, the main accused of NH-74 Scam to Jail. During preliminary inquiry, it has come to the knowledge that while taking the accused back to Nainital District Jail, he was provided food by the petitioner in presence of his wife at Woodpecker Hotel, which was reported in the Electronic Media and Newspaper.

The petitioner was suspended on 05.01.2019, on the allegation that he was negligent in his duty while producing accused Sudhir Chawala in the Court. During pendency of the inquiry proceeding, the petitioner was reinstated in service on 12.02.2019. The appointing authority awarded a punishment of 'censure entry' to the petitioner *vide* order dated 23.12.2019. On the same date, petitioner was issued a notice to show cause as to why only subsistence allowance be not paid to him for the period of suspension. Petitioner submitted reply to the show cause notice on 01.02.2020. The appointing authority did not find the explanation of the petitioner to be satisfactory and therefore, *vide* order dated 07.02.2020, directed that petitioner will only be entitled for the subsistence allowance for the period of suspension.

On the basis of the inquiry report, the disciplinary authority did not find the reply to the show cause notice, as satisfactory and rejected the same. He was awarded 'Censure Entry' *vide* order dated 23.12.2019. Against the order dated 23.12.2019, petitioner preferred the departmental appeal before the Departmental Appellant Authority i.e., Deputy Inspector General, Kumaon Range, Nainital on 18.05.2020 *i.e.* after a delay of 18 days of statutory period of appeal. The appellate authority rejected the appeal of the petitioner on the ground of delay, on 30.05.2020.

Aggrieved with the same, petitioner preferred a representation before the Inspector General of Police, Kumaon Range, Nainital through SSP, Nainital that he could not file the appeal within time due to Covid-19 lockdown. The same was rejected by the Inspector General of Police, Kumaon Range, Nainital *vide* order dated 27.07.2020, on the ground that the punishment order was served upon the petitioner on 30.01.2020 and the lockdown was imposed on 25.03.2020 and petitioner had sufficient time to prefer an appeal. Hence, present claim petition has been filed.

3. Sri Vinay Kumar, 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 the appellate authority for decision on merits.

4. Ld. A.P.O. submitted 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, Kumaon Range was justified in holding that the departmental appeal is time barred.

5. 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 time barred.

6. **In the instant case, punishment order was passed on 23.12.2019 but served upon him on 30.01.2020. Departmental appeal should have been filed within 90 days, but before the expiry of 90 days, there was spread of Covid-19 pandemic and, therefore, petitioner could not file departmental appeal in time.**

7. 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 in deciding 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 State), has passed an order 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 Supreme Court.

8. This order was passed in exercise of power under Article 142 read with Article 141 of the Constitution of India to declare that such order is a binding order on all Courts/Tribunals and authorities.

9. 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*, in reference to petitioner's departmental appeal, 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. 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."

10. **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.**

11. Order accordingly.

12. The appellate orders dated 30.05.2020 and 27.07.2020 (Annexures: A2 & A3) are set aside. Appellate authority is directed to decide the departmental appeal of the petitioner, directed against order dated 23.12.2019 (Annexure: A1), on merits, without unreasonable delay, in accordance with law.

13. The claim petition thus stands disposed of. No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: SEPTEMBER 01, 2021
DEHRADUN
KNP