

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

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

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

CLAIM PETITION NO. 58/NB/DB/2019

Vinod Kumar, aged about 35 years, s/o Sri Harish Lal, presently posted as Constable Civil Police Number 984, Police Station Nanakmatta, District Udham Singh Nagar.

.....Petitioner

vs.

1. State of Uttarakhand through Principal Secretary, Home, Govt. of Uttarakhand, Dehradun.
2. Director General of Police, State of Uttarakhand, Dehradun.
3. Deputy Inspector General of Police, Kumaun Region, Nainital
4. Senior Superintendent of Police, District Udham Singh Nagar.

.....Respondents

Present: Sri Mahesh Chandra Upreti, Counsel, for the petitioner.
Sri Kishore Kumar, A.P.O., for the Respondents.

JUDGMENT

DATED: SEPTEMBER 28, 2021

Justice U.C.Dhyani(Oral)

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

- (i) To quash the impugned orders dated 03.10.2019, 15.07.2015 and 25.02.2015 (contained as Annexures No.1, 2 & 3) along with its effect and operation and after calling the entire record.
- (ii) To issue order or direction to expunge the adverse entry of censure recorded in the service record of the applicant and grant all the service

benefits or pass any other order direction which this Hon'ble Court may deem fit and proper under the facts and circumstances stated in the body of the claim petition.

(iii) To issue any other order or direction which the 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:

2.1 On 03.03.2014, when the petitioner was posted as Constable Clerk in Police Station Kichchha, District Udham Singh Nagar, annual inspection of the P.S. concerned was conducted by SSP, Udham Singh Nagar. During course of inspection, it was found, on perusal of duty register, that extra honorarium was drawn for Home Guard Ranjeet Singh, Home Guard Karam Singh and Home Guard Surendra Pal. Extra honorarium was drawn for 05.02.2014 (01 day) for Home Guard Ranjeet Singh; extra honorarium for 03.02.2014, 08.02.2014 and 09.02.2014 (03 days) for Home Guard Karam Singh and two days' extra honorarium for 03.02.2014 and 05.02.2014 for Home Guard Surendra Pal. The same appeared to be a case of financial irregularity. A certificate putting the seal of P.S. Kichchha was issued by the petitioner Constable. Petitioner Constable was required to match the attendance register of P.S. Kichchha with muster roll and only then the muster roll ought to have been verified. Petitioner did not do so.

2.2 A show cause notice, along with draft censure entry was issued to the petitioner on 31.12.2014 under Rule 14(2) of the Uttar Pradesh Police Officers of Subordinate Rank (Punishment & Appeal) Rules, 1991 (for short, 1991 Rules), which was received by the petitioner on 05.01.2015. The delinquent petitioner gave his reply to the show cause notice on 23.01.2015, explaining therein that the mistake was committed because of excess work. The entry of Home Guard Karam Singh could not be made in General Diary (GD) on 03.02.2014 and 09.02.2014 and entry of Home Guard Surendra Pal could not be done in GD on 05.02.2014, therefore, extra honorarium, which was paid, not because of carelessness on the part of the petitioner, but due to excessive work load.

- 2.3 SSP, Udham Singh Nagar was not satisfied with the explanation thus furnished. According to the disciplinary authority, the petitioner ought to have matched the attendance register with muster roll and only then the same should have been certified. Censure entry was, accordingly, directed to be awarded to the petitioner *vide* order dated 25.02.2015 (Annexure: A3).
- 2.4 Aggrieved against the order dated 25.02.2015 (Annexure: A 3), petitioner filed departmental appeal, which was dismissed/ not entertained *vide* order dated 15.07.2015 (Annexure: A 2) on the ground that the same has not been filed within stipulated 90 days. Still aggrieved with the same, the petitioner Constable preferred revision, which was dismissed *vide* order dated 03.10.2019 (Annexure: A 1) on the ground that there is no provision for second appeal or revision.
3. Ld. A.P.O., vehemently opposed the claim petition on the ground, *inter alia*, that in 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 Deputy Inspector General of Police, Kumaun Region, Nainital 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. 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:

“ To condone, or not to condone, is not the only question. Whether or not to apply the same standard in applying the ‘sufficient cause’ test to all the litigants regardless of their personality in the said context is another.

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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.

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..... 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..
.....”

6. It may be noted here that excess payment which was given to the Home Guards for the month of February, 2014, was realized from them

in the very next month, as is reflected in letter dated 09.03.2015 of District Commandant, Home Guards, Udham Singh Nagar, which was addressed to SSP, Udham Singh Nagar. It was informed that the excess payment has been realized and deposited in the Treasury on 03.03.2015. The petitioner is a Constable. Punishment of censure entry entails civil consequences.

7. If sufficient cause is shown by the appellant or applicant, the delay can be condoned under Section 5 of Limitation Act, 1963. In the instant case, the departmental appeal of the delinquent petitioner was held to be time barred and was, therefore, not decided on merits. The Tribunal is of the view that Section 5 of the Limitation Act is applicable on statutory appeals.
8. 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 although appears to be justified in not deciding the departmental appeal, on merits, in view of Rule 20 of the Uttar Pradesh Police Officers of Subordinate Rank (Punishment & Appeal) Rules, 1991, but the Tribunal should not lose sight of the fact that the delay in filing the same may be condoned, if sufficient cause has been shown.
9. The question, which arises for consideration, in the instant case, 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? Ld. Counsel for the petitioner submitted that the petitioner could not file the departmental appeal on time because he was awfully busy in his official duties. Petitioner is a Constable Clerk, who is required to do a lot of things, leaving no time to pursue his personal interests. In his explanation to the show cause notice also, the petitioner attributed the same cause for not making entries in the GD.
10. The order dated 15.07.2015 (Annexure: A 2) passed by the appellate authority would indicate that the order of censure entry dated

25.02.2015 was supplied to the delinquent petitioner on 02.03.2015, against which the departmental appeal preferred by the appellant/petitioner was received in the office of the appellate authority on 04.06.2015. The departmental appeal ought to have been filed within 90 days. The appellate authority can extend the period of 90 days for filing the appeal, up to six months, on showing sufficient cause.

11. The Tribunals and Courts have bigger role to play while legally examining the Service matters. 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.
12. 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. Delay in filing the same will not come in the way of appellate authority to decide the same on merits.
13. The appellate order dated 15.07.2015 (Annexure: A 2) is set aside. Consequently, revisional order passed thereafter is of no consequence. Appellate authority is directed to decide the departmental appeal of the petitioner, directed against order dated 25.02.2015 (Annexure: A 3), on merits, at an earliest possible, in accordance with law.
14. It is made clear that we have not expressed any opinion on the merits of the case.
15. The claim petition thus stands disposed of. No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: SEPTEMBER 28, 2021
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