

**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. 59/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. Deputy Inspector General of Police, Kumaun Region, Nainital
3. 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 order dated 03.10.2019 and order dated 30.09.2015 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 The imputation against the petitioner is that on 18.12.2013, when he was posted as Constable Clerk in Police Station Kichchha, District Udham Singh Nagar, one Constable Naveen Tamta, who was posted as Guide, got ill. The petitioner did not substitute any other Police official in his place on security duty in Jama Masjid, Kichchha. The petitioner did not inform his Inspector In-charge either. An incident of arson took place near Jama Masjid in the night. Tension was brewing in P.S. Kichchha on account of arson and use of objectionable language in posters. Had any other Police official been sent on security duty, then, probably, such incident of arson would not have taken place.

2.2 A show cause notice, along with draft censure entry was issued to the petitioner on 01.07.2015 (Annexure: A 4) by SSP, Udham Singh Nagar, Respondent No. 3, 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 08.07.2015. The delinquent petitioner gave his reply to the show cause notice (Annexure: A 5), explaining therein that the mistake was committed because of excess work. The petitioner Constable did his duty with honesty and the mistake was not deliberate or intentional .

2.3 SSP, Udham Singh Nagar was not satisfied with the explanation thus furnished. Censure entry was, accordingly, directed to be awarded to the petitioner *vide* order dated 30.09.2015 (Annexure: A2).

2.4 Aggrieved against the order dated 30.09.2015 (Annexure: A 2), petitioner filed departmental appeal on 04.09.2019 (Annexure: A 6) to D.I.G., Police, Kumaun Region, which was dismissed by the appellate authority *vide* order dated 03.10.2019 (Annexure: A 1) on the ground that the same has not been filed within stipulated 90 days.

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, but the departmental appeal has been filed by the petitioner Constable after 04 years, 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.

.....

..... 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. 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.

7. 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.

8. The question, which arises, in the instant case, 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? 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.
9. The Tribunals and Courts have bigger role to play while legally examining the Service matters. 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. Delay in filing the same will not come in the way of appellate authority to decide the same on merits.
11. The appellate order dated 03.10.2019 (Annexure- A1) is set aside. Appellate authority is directed to decide the departmental appeal of the petitioner, directed against order dated 30.09.2015 (Annexure: A 2), on merits, at an earliest possible, in accordance with law.
12. It is made clear that we have not expressed any opinion on the merits of the case.
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 28, 2021
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