

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

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

----- Chairman

CLAIM PETITION NO. 20/NB/SB/2022

Rajat Singh Kasana, aged about 35 years, s/o Sri Tejpal Singh, presently posted as Sub-Inspector (Civil Police), Police Line, Nainital, District Nainital.

.....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. Deputy Inspector General of Police, Kumaon Range, Nainital.
4. Senior Superintendent of Police, District Almora.

.....Respondents.

Present: Sri Vinay Kumar, Advocate, for the Petitioner.

Sri Kishor Kumar, A.P.O., for the Respondents.

JUDGMENT

DATED: SEPTEMBER 06, 2022

Justice U.C.Dhyani (Oral)

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

“(i) To quash the impugned Punishment Order dated 05.11.2020 passed by the Senior Superintendent of Police, Almora; whereby the claimant has been awarded censure entry (Annexure No.1).

(ii) To quash the impugned Appellate Order dated 27.05.2021 passed by the 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 05.11.2020 passed by the Senior Superintendent of Police, Udham Singh Nagar (Annexure no.- 2).

(iii) To issue directions in the nature of mandamus commanding or directing the respondents to grant all consequential benefits.

(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. Petitioner was awarded censure entry on 05.11.2020 (Copy: Annexure- 1), for misconduct. The departmental appeal was preferred by

him on 28.02.2021, which was rejected by the Appellate Authority/Inspector General of Police, Kumaon Range, Nainital *vide* order dated 27.05.2021 on the ground that the same is barred by limitation, inasmuch as the punishment order was served on the petitioner on 28.11.2020, whereas the departmental appeal was received in the office of SSP, Almora on 13.04.2021, thus the appeal is beyond the period of limitation of 90 days prescribed in the Uttar Pradesh Police Offices of the Subordinate Ranks (Punishment and Appeal) Rules, 1991. Against the dismissal of the Departmental Appeal on the ground of limitation, the petitioner preferred a representation on 16.06.2021 before the Appellate Authority, wherein the petitioner pointed out that by the orders of the Inspector General of Police, Kumaon Range, Nainital, the claimant was out of station from 31.01.2021 to 04.02.2021. By the orders of the SSP, Almora, the petitioner was out of station for official work from 09.02.2021 to 25.02.2021. Again by the orders of the Inspector General of Police, the petitioner was out of State from 08.03.2021 to 11.03.2021 and thereafter again he was out of State from 31.03.2021 to 07.04.2021 and therefore, the petitioner had sufficient reasons for not being able to prefer the Departmental Appeal within the prescribed limitation.

3. At the very outset, Ld. A.P.O. opposed the claim petition *inter alia*, on the ground, that as per Rule 20(6) of the U.P. Police Officers of Subordinate Ranks (Punishment & Appeal) Rules, 1991 (hereinafter referred to as the Rules), a time period of 90 days has been prescribed for filing the departmental appeal, and therefore, the departmental appeal was held to be not maintainable, as time barred.

4. The law enjoins upon the appellate authority to consider condoning the delay. Rule 20 of the Rules provides for the appeals. According to sub-rule (6) of Rule 20, 'an appeal will not be entertained unless it is preferred within three months from the date on which the Police Officer concerned was informed of the order of punishment: provided that the appellate authority may at his discretion, for good cause shown, extend the said period up to six months.'

[Emphasis supplied]

5 Admittedly, the departmental appeal has not been preferred within stipulated time (three months/90 days) but within 6 months. Should the doors of justice be closed for delinquent petitioner?

6. It may be noted here that Section 5 of the Limitation Act, 1963 is applicable to Appeals and Applications (and not the Suits). It is the submission of Ld. Counsel for the petitioner that that during the period of limitation, most of the time, the petitioner was out of State for official work as per the direction given by the Inspector General of Police, Kumaon Range, Nainital and therefore, he could not file the appeal in time.

7. 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. As has been stated above, Section 5 of the Limitation Act, 1963 is always applicable to the Appeals and Applications (and not the Suits). Departmental appeal, in the instant case, has been held to be barred by limitation. Propriety demands that same should be heard on merits.

8. Moreover, the delay in filing the departmental appeal can safely be condoned in view of order of Hon'ble Apex Court passed in *Suo Moto* Writ Petition (Civil) No. 03/2020.

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. It is reiterated that the same is required to be condoned in view of the orders of Hon'ble Apex Court in *Suo Motu* Writ Petition (Civil) No. 03/2020. 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. Order accordingly.

12. The Order dated 27.05.2021 (Annexure:2) whereby Petitioner's request for entertaining departmental appeal was turned down, is 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 the impugned order of censure entry dated 05.11.2020, on merits, at an earliest possible, in accordance with law.

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

14. It is made clear that the Tribunal has not expressed any opinion on the merits of the case.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: SEPTEMBER 06, 2022.

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