

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

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

----- Chairman

CLAIM PETITION NO. 109/NB/SB/2022

Const. 516 CP. Sunder Lal, aged about 41 years s/o Late Sri Bahadur Ram, r/o Village Syaldoba P.O. Syaldoba District Almora.

.....Petitioner

vs.

1. State of Uttarakhand through Principal Secretary, Home Department, Dehradun.
2. Deputy Inspector General of Police, Kumaon Region, Nainital.
3. Senior Superintendent of Police, Nainital.

.....Respondents

Present: Sri Harish Adhikari, Advocate, for the Petitioner.
Sri Kishor Kumar, A.P.O., for the Respondents.

JUDGMENT

DATED: OCTOBER 11, 2022

Justice U.C.Dhyani (Oral)

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

“(i) To quash the impugned order 18.06.2021 and order dated 14.06.2022 along with its effect and operation and after calling the entire record.

“(ii) To issue order or direction to release the withheld salary of the petitioner of 30 days along with interest 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 this Hon'ble Court may deem fit and proper in the circumstances of the case.

2. Petitioner was awarded penalty equivalent to the salary of 30 days and such penalty was deducted from the monthly salary of the petitioner *vide* impugned order dated 18.06.2021 (Copy: Annexure-2), by the respondent

no. 3, for an incident which took place on 08.03.2021 at Chowki Mangoli of Police Station, Mallital, Nainital. Against the said order, the departmental appeal was preferred by him, which was rejected by the Appellate Authority/Deputy Inspector General of Police, Kumaon Range, Nainital *vide* order dated 14.06.2022 on the ground that the same is barred by limitation.

3. Ld. A.P.O. defended the departmental action by arguing 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 rightly held to be not maintainable, as time barred.

4. The law enjoins upon the appellate authority to consider condoning the delay, on showing good cause. 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 learned Counsel for the petitioner prayed that the appellate authority be directed to decide the departmental appeal of the petitioner on merits after condoning the delay.

6. It may be noted here that Section 5 of the Limitation Act, 1963 is applicable to Appeals and Applications (and not the Suits).

7. The delay in filing the departmental appeal can safely be condoned in view of order of Hon'ble Apex Court dated 10.01.2022, passed on Misc. Application No. 21 of 2022 in Suo Motu Writ Petition (CIVIL) No(s).03/2020, on account of pandemic Covid-19. Para 5 of the judgment is quoted hereinbelow for convenience:

“5. Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following directions:

I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.

III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.

IV. It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.”.

8. 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.

9. In view of the orders of Hon’ble Apex Court in *Suo Motu* Writ Petition (Civil) No. 03/2020, the delay in filing departmental appeal is 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 14.06.2022 (Annexure:1) whereby Petitioner's request for entertaining departmental appeal was turned down, is set aside. Delay in filing the departmental appeal against the disciplinary authority's order dated 18.06.2021 (Annexure:2) is condoned in the interest of justice. Appellate Authority is directed to decide the departmental appeal of the petitioner, against the impugned order dated 18.06.2021, on merits, at an earliest possible, in accordance with law.

13. The claim petition thus stands disposed of, at the admission stage. 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: OCTOBER 11, 2022.
DEHRADUN.
KNP