

**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. 19/NB/DB/2023

Ranjeet Kumar s/o Late Sri Vikram Lal, r/o Ward-Hatrangia, Lohaghat, district Champawat.

.....Petitioner

vs.

1. State of Uttarakhand through Secretary, Home Department, Government of Uttarakhand, Dehradun.
2. Director General of Police, Uttarakhand, Dehradun.
3. Deputy Inspector General of Police, Kumaon Range, Nainital.
4. Superintendent of Police, Champawat.

.....Respondents

Present: Sri Bhagwat Mehra, Advocate, for the Petitioner
Sri Kishore Kumar, A.P.O., for the Respondent no. 1

JUDGMENT

DATED: FEBRUARY 27, 2023

Justice U.C.Dhyani (Oral)

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

- I. To set-aside the impugned punishment order dated 13.09.2019 passed by the Respondent no.4 (Annexure No.1 to Compilation-I).*
- II. To set-aside the impugned appellate order dated 17.06.2022 passed by the respondent no. 3 (Annexure No.2 to Compilation-I).*
- III. To direct the Respondents, particularly Respondent no. 4 to forthwith reinstate the petitioner on the post of Sweeper with back wages.*
- IV. To direct the Respondents, particularly Respondent no. 4 to grant all consequential benefits to the petitioner.*
- V. To pass any other suitable order as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.*
- VI. To allow the claim petition with cost."*

2. Petitioner was initially appointed as Class-IV employee (Sweeper) in District Police Office, Champawat *vide* order dated 12.11.1999 on substantive post and on regular basis. His services were dismissed by S.P., Champawat *vide* Order No. A-11/2004 dated 13.09.2019 under the Uttar Pradesh Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991. Petitioner filed a departmental appeal against the impugned punishment order of dismissal before the D.I.G., Police, Kumaon Range, Nainital. The said departmental appeal was dismissed by the appellate authority on 17.06.2022, on the ground of delay.

3. It is the submission of Ld. Counsel for the petitioner that the appeal was rejected without considering that petitioner's SLP was pending consideration before the Hon'ble Supreme Court and due to disruption of work on account of Covid-19 Pandemic, the said SLP could not be heard [*the SLP was finally dismissed vide order dated 12.09.2022*] and having no other option left, the petitioner filed the statutory appeal on 05.05.2022 before the respondent no. 3, which was dismissed on the ground of delay *vide* order dated 17.06.2022 by the appellate authority.

4. Ld. A.P.O. submitted that although the claim petition has been filed within time from the date of order (17.06.2022) passed by the Ld. Appellate authority, which was not decided on merits and was dismissed on the ground of delay, but the first impugned order was passed on 13.09.2019. There was inordinate delay in filing the departmental appeal and, therefore, the claim petition should not be admitted.

5. The Tribunal has noticed that there might be delay in filing the departmental appeal, but there is no delay in filing the claim petition, which has been filed within a year of the appellate order.

6. At the very outset, Ld. Counsel for the petitioner, therefore, prayed that a direction be given to the appellate authority to decide the departmental appeal of the petitioner, on merits, in accordance with law.

7. The departmental appeal against the impugned order dated 13.09.2019 was received in the office of Appellate Authority, on 05.05.2022. Departmental

appeal should have filed within 90 days as per Rule 20(6) of the U.P. Police Officers of Subordinate Ranks (Punishment & Appeal) Rules, 1991. The Delay in filing the same could have condoned by the appellate authority upto six months. Section 5 of the Limitation Act, 1963 is applicable to the Appeals and Applications (and not the Suits). Such provision reads as below:

“Extension of prescribed period in certain cases- Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 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.”

8. One should not forget that the delay in filing the appeal can always be condoned, on showing sufficient cause and the appeal should, as far as possible, be decided, on merits, as per law.

9. The delay in filing the departmental appeal after 15.03.2020 is condonable as per para 5 of the Judgment dated 10.01.2022 of the Hon’ble Supreme Court, passed on Misc. Application No. 21 of 2022 in Suo Motu Writ Petition (CIVIL) No(s).03/2020, on account of pandemic Covid-19, which 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.”

10. Considering the facts noted above, the Tribunal is of the view that it should condone the delay in filing the appeal, in the interest of justice, for, after all, the appellate authorities also perform quasi- judicial functions and delay in filing the Appeals (not Suits) may be condoned, on good cause shown, under Section 5 of the Limitation Act, 1963.

11. This Tribunal, 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.

12. Appellate Order dated 17.06.2022 passed by DIG, Police, Kumaon Range, Nainital, Respondent No.3, is set aside. The claim petition is, accordingly, disposed of at the admission stage by directing the appellate authority to decide the departmental appeal of the petitioner, which is against the impugned order dated 13.09.2019 (Annexure no. 1), on merits, without unreasonable delay, in accordance with law.

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

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: FEBRUARY 27, 2023
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KNP