

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

Present: Hon'ble Mr. Rajendra Singh

-----Vice Chairman (J)

CLAIM PETITION NO. 04/NB/SB/2023

HC 62 C.P. Santosh Prasad, aged about 44 years, s/o Sri Kunwar Ram, r/o Village Roripali Post Office Roripali Tehsil Pithoragarh, District Pithoragarh.

.....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, Udham Singh Nagar, District Udham Singh Nagar.

.....Respondents

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

JUDGMENT

DATED: MAY 23, 2023

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

“(i) To quash the impugned order dated 09.10.2020 and order dated 21.12.2022 along with its effect and operation and after calling the entire record.

(ii) To issue order or direction to expunge the adverse entry 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 pass any other order or direction which this Hon'ble Court may deem fit and proper in the circumstance of the case.”

2. The petitioner was inducted in service on 03.10.1998 as Constable in District Pithoragarh against the substantive vacancy and by due process of law and pursuant to the appointment order, he joined his duties in District Almora and since 2008-2009, the petitioner is regularly discharging the duties of Head Constable and is posted in District Udham Singh Nagar. On 09.10.2020, the disciplinary authority in utter haste passed the impugned order, by which the

petitioner has been awarded the punishment of censure entry in his service record. The petitioner filed appeal against the order passed by the disciplinary authority before the respondent no. 2 (appellate authority), which was rejected by the appellate authority vide order dated 21.12.2022 on the ground of delay. It is the submission of learned Counsel for the petitioner that the appeal was rejected without application of mind.

3. Learned Counsel for the petitioner has argued that the respondent authorities have adopted pick and choose policy in awarding the punishment to the petitioner because the respondent no. 3 has not given any punishment to other persons for the same incidents. Thus, the impugned orders which are passed by using pick and choose policy by giving selective punishments are liable to be quashed. The appellate authority also rejected the appeal filed by the petitioner without application of mind. During hearing, learned Counsel for the petitioner prayed that a direction be given to the appellate authority to decide the departmental appeal of the petitioner, on merits, in accordance with law.

4. 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, 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.

5. The departmental appeal against the impugned order dated 09.10.2020 was received in the office of Appellate Authority, on 14.10.2022. Section 5 of the Limitation Act, 1963 is always 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.”

6. It may be noted here that Hon’ble Supreme Court has held, in a catena of decisions, that:

"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. 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 praying for condonation of delay. 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. Turning to the facts of the matter giving rise to the present appeal, we are satisfied that sufficient cause exists for the delay."
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 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. 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.

9. Appellate Order dated 21.12.2022 passed by DIG, Police, Kumaon Range, Respondent No.2, is set aside. The delay in filing the appeal is condoned in the interest of justice. The claim petition is, accordingly, disposed of by directing the appellate authority to decide the departmental appeal of the petitioner, which is against the impugned order dated 09.10.2020 (Annexure no.1), on merits, at an earliest possible, without unreasonable delay, in accordance with law.

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

11. The petitioner, if aggrieved by the appellate order passed as above, shall be at liberty to approach this Tribunal by filing a fresh claim petition. No order as to costs.

(RAJENDRA SINGH)
VICE CHAIRMAN (J)

DATE: MAY 23, 2023
DEHRADUN
KNP