

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT DEHRADUN**

CLAIM PETITION NO. 184/SB/2024

Arvind Kumar, aged about 34 years, Constable, 46 BN PAC, posted in Police Line, Dehradun, s/o late Sri Subhash Kumar, village-Harchandpur, Thana Manglore, Post Gurukul Narsan, Haridwar.

.....Petitioner

versus

1. The Secretary, Home Department, Government of Uttarakhand, Dehradun.
2. The Additional Director General, Uttarakhand Police, Dehradun.
3. The Inspector General of Police, Provincial Armed Constabulary, Jakhan, Dehradun.
4. The Deputy Inspector General of Police, Provincial Armed Constabulary, at 40 BN PAC Headquarters, Haridwar.
5. The Commandant, 46 BN, PAC, Rudrapur.

..... Respondents

Present: Sri Uttam Singh, Advocate, for the petitioner
Sri V.P. Devrani, A.P.O. for the respondent no. 1

JUDGEMENT

Dated: 12th December, 2024

Justice U.C. Dhyani (Oral)

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

“(i) To condone the delay and allow the petitioner to file appeal against the order dated 12.10.2020 passed by disciplinary authority/ Commandant 46 BN PAC before the appellate authority (Annexure No. A-1).

(ii) To direct the respondent/ Commandant to pay the full salary for the suspension period 13.12.2019 to 14.01.2020 as only minor punishment has been awarded.

(iii) Any other relief the Hon'ble Tribunal may deem fit in the circumstances of the case.

(iv) Award the cost of the petition to the petitioner.”

2. Petitioner was awarded 'censure entry' on 12.10.2020 by Commandant, 46 BN, PAC, Rudrapur. Without filing departmental appeal or revision, he has filed present claim petition.

3. Petitioner has filed affidavit in support of his claim petition. Relevant documents have been filed with the claim petition.

4. It is the submission of learned Counsel for the petitioner that that the petitioner could not file departmental appeal as he was deprived of time and requires the delay to be condoned by the Tribunal in filing the departmental appeal.

5. At the very outset, learned A.P.O. objected to the maintainability of the claim petition *inter alia* on the ground that the same is premature in view of Section 4(5) of the Uttar Pradesh Public Services (Tribunal) Act, 1976, which reads as below:

4(5) The Tribunal shall not ordinarily admit a reference unless it is satisfied that the public servant has availed of all the remedies available to him under the relevant service rules, regulations or contract as to redressal of grievances.

6. Learned A.P.O. argued that the disciplinary authority passed the order on 12.10.2020. As per Rule 20 of the Uttar Pradesh Police Officers of Subordinate Rank (Punishment & Appeal) Rules, 1991 (for short, 'Rules of 1991'), a time period of 90 days has been prescribed for filing the departmental appeal, therefore, present claim petition is time barred.

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. Section 5 of the Limitation Act, 1963 is always applicable on the Appeals and Applications. Appellate Authority acts as quasi-judicial authority under the Rules of 1991.

8. It will also be 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, herein below, in different context but relevant to condoning the delay in petitioner's departmental appeal:

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.

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the 'State' which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even handed manner. There is no warrant for according a stepmotherly treatment when the 'State' is the applicant.

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 of 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. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file pushing, and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant-non-grata status. 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. The order of the High Court dismissing the appeal before it as time barred, is therefore, set aside. Delay is condoned. And the matter is remitted to the High Court. The High Court will now dispose of the appeal on merits after affording reasonable opportunity of hearing to both the sides. Appeal is allowed accordingly. No costs.

9. This Tribunal, therefore, in the peculiar facts of the case, deems it appropriate to condone the delay in filing the departmental appeal and if the petitioner files appeal within reasonable time, the

same may be entertained and decided by the competent authority, as per law.

10. The claim petition is disposed of, at the admission stage, by permitting the petitioner to file departmental appeal before the appellate authority, as per law. Delay in filing the same is condoned in the peculiar facts of the case and purely in the interest of justice. It is provided that if appeal is filed by the petitioner before the appellate authority, the same shall be entertained and decided by the said authority, on merits, in accordance with law.

11. Rival contentions are left open.

12. Since present claim petition has been decided without calling upon the respondents to file response/ or W.S., therefore, respondents are given liberty to move for recall/ review of the order, if they feel aggrieved with the same.

(JUSTICE U.C. DHYANI)
CHAIRMAN
[virtual]

DATE: 12th December, 2024
DEHRADUN
RS