

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

CLAIM PETITION NO. 50/DB/2016

Parvinder Kumar S/o Sh. Tejpal Singh aged about 32 years, Constable 109 Armed Police, Police Line, Dehradun..

.....Petitioner

VS.

1. State of Uttarakhand through Secretary Home, Government of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Inspector General of Police, Garhwal Circle, Dehradun, Uttarakhand.
3. Superintendent of Police, Tehri Garhwal, Uttarakhand.

.....Respondents.

Present: Sri L.K.Maithani, Counsel
for the petitioner.

Sri U.C.Dhaundiyal, A.P.O.
for the Respondents.

JUDGMENT

DATED: FEBRUARY 26, 2018

Justice U.C.Dhyani (Oral)

1. Present claim petition has been filed by the petitioner for following reliefs:

“ (1) To issue an order or direction to quash the impugned order dated 07.09.2010 (Annexure No.A-1) and dated 02.11.2010 (Annexure No.A-2) along with order dated 18.06.2015 (Annexure No.A-3) of respondent No.3 and order dated 14.09.2015 (Annexure No.A-4) of respondent No.2 along with its effect and operation also after calling the entire records from the respondents and further to issue order or direction directing to the respondents to grant all consequential service benefits to the petitioner had it been the impugned orders were never been in existence for all practical purposes

(2) To issue an order or direction to declare the Rule 14 & 16 of the U.P. Police Act, 1991 as adopted by the State of Uttarakhand which is running contrary to provisions of Article 311 of the Constitution of India as well as Section 86 (2) of the Uttarakhand Police Act which are against the law laid down by the Apex Court as ultra virus and unconstitutional and to be deleted from the statute book.

(3) Any other relief which the Court may deem fit and proper in the circumstances of the case.

(4) Cost of the petition be awarded to the petitioner”.

2. Brief facts, giving rise to the present claim petition, are as follows:

The petitioner is a Constable A.P. in Police department. An under trial prisoner Raj Singh, who was in the custody of petitioner and fellow Constable Vineet Kumar, absconded on 29.01.2009, during medical treatment, from the X-ray room of Doon Hospital. A criminal case No. 62/09 under Sections 223/224 IPC was registered against the petitioner.

Charge sheet in respect of absconding of prisoner Raj Singh on 29.01.2009 was given by the inquiry officer. The inquiry officer also gave the petitioner an opportunity of personal hearing on 04.02.2010. Accordingly, he appeared before the inquiry officer on that day and statement of petitioner was recorded.

A show cause along with copy of the finding of inquiry officer and copy of preliminary inquiry report was served upon the petitioner by Respondent no.3. The petitioner submitted his reply to the show cause notice and pointed out the illegality in the inquiry.

3. It is the submission of Ld. Counsel for the petitioner that, without considering the replies of the petitioner, Respondent No.3 passed an order of punishment of ‘censure entry’ for the year 2009 on 07.09.2010. The criminal case, pending against the petitioner, was decided by the Judicial Magistrate-Ist, Dehradun, vide order dated

19.01.2015. Petitioner was exonerated of the charges levelled against him.

4. When the petitioner was acquitted by Ld. Magistrate, he preferred a representation before the Respondent No.3 on 04.06.2013 and prayed for setting aside impugned punishment order. Respondent No.3 refused to do so, vide order dated 18.06.2015. Petitioner preferred an appeal against orders dated 18.06.2015, 07.09.2010 and 2.11.2010 before Respondent No.2. Respondent No.2, vide order dated 14.09.2015, refused to entertain the departmental appeal of the petitioner on the ground of delay. Hence, present claim petition.
5. When the petition was taken up for admission, on 19.09.2016, this Tribunal passed following order:-

“Ld. A.P.O. raised the issue of limitation also, which is kept open and will be decided at the time of hearing on merit.”
6. It is true that, the petitioner was acquitted by the Court of competent jurisdiction, vide order dated 19.01.2015. In other words, he was exonerated of the charges levelled against him, under Section 223 IPC, vide order dated 19.01.2015. Petitioner was given benefit of doubt.
7. Only when the petitioner was exonerated of the charges levelled against him by the Magistrate, he filed departmental appeal. When the departmental appeal was not entertained, on the ground of delay, petitioner preferred present claim petition.
8. Censure entry was awarded to the petitioner on 07.09.2010. In normal course, departmental appeal could be preferred against such an order within 90 days, which was not done in the instant case. The departmental appeal was filed on 23.07.2015, after about five years. The appellate authority, did not entertain the departmental appeal, on the ground of delay.
9. Sub rule (6) of Rule 20 of U.P. Police Officers of Subordinate Rank (Punishment and Appeal) Rules, 1991 reads as under:

“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 appellate authority may, at his discretion, for good cause shown extend the said period up to six months”.

It therefore follows, that, ordinarily an appeal should have been preferred within three months from the date on which the officer concerned was informed of the order of punishment, but in exceptional circumstances, the appellate authority may, at his discretion, for good cause shown, extend the said period up to six months.

10. Therefore, the appellate authority, could have extended the period of limitation up to six months only. This argument is not available to the petitioner that he preferred departmental appeal only when he secured an order of acquittal from the competent Court, and the period of limitation will start running only from the date of judgment of Criminal Court, which, in the instant case, expired in March, 2011.
11. The I.G., Police, Garhwal Zone, (appellate authority), has, therefore, rightly dismissed the departmental appeal, on the ground of delay, vide order dated 14.09.2015(Annexure: A 4). This Court, therefore, finds no reason to interfere in the order assailed in present claim petition.
12. It may be noted here that, the claim petition also is time barred, inasmuch as the same was filed on 14.09.2016, whereas, order of punishment was passed on 07.09.2010. Section 5(1)(b) of the U.P. Public Services (Tribunal) Act, 1976 (as applicable in State of Uttarakhand) reads as follows:

(b) The provisions of the Limitation Act, 1963 (Act 36 of 1963) shall *mutatis mutandis* apply to reference

under Section 4 as if a reference were a suit filed in civil court so, however, that-

(i) notwithstanding the period of limitation prescribed in the Schedule to the said Act, the period of limitation for such reference shall be one year;

(ii) in computing the period of limitation the period beginning with the date on which the public servant makes a representation or prefers an appeal, revision or any other petition (not being a memorial to the Governor), in accordance with the rules or orders regulating his conditions of service, and ending with the date on which such public servant has knowledge of the final order passed on such representation, appeal, revision or petition, as the case may be, shall be excluded:

.....”

12. The claim petition, itself is, therefore, held to be time barred.
13. The same is, accordingly, dismissed, as time barred. No order as to costs.
14. It is made clear that this Court has not gone into merits of the claim petition.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: FEBRUARY 26, 2018
DEHRADUN

VM