

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

Present: Hon'ble Mr. Justice U.C.Dhyani
----- Chairman
Hon'ble Mr. Rajeev Gupta
-----Vice Chairman (A)

CLAIM PETITION NO.86/SB/2019

Ashish Aswal, aged about 33 years, S/o Sri Rajendra Singh Aswa, I Presently posted as Constable in Police Line, Race Course, Dehradun.

.....Petitioner

vs.

1. State of Uttarakhand through Principal Secretary, Home, Secretariat, Subhash Road, Dehradun.
2. Director General of Police, Uttarakhand, Dehradun
3. Senior Superintendent of Police, Dehradun.

.....Respondents.

Present: Sri V.P.Sharma, Counsel, for the petitioner.
Sri V.P.Devrani, A.P.O., for the Respondents.

JUDGMENT

DATED: JULY 18, 2019

Justice U.C.Dhyani(Oral)

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

“(i) Impugned order (Annexure No. A-1) dated 04.08.2018 may kindly be declared void, illegal, against fundamental, constitutional, civil right of the petitioner, rules, orders and principles of natural justice and may kindly be quashed and set aside.

(ii) The Hon'ble Tribunal may kindly be quashed and set aside the appellate order dated 01.07.2019 and 06.07.2019 Annexure A-2 and A-3 of this claim petition.

(iii) The Hon'ble Tribunal may kindly be allowed to quash and set aside the suspension order dated 28.04.2018 Annexure: A-4 and Order dated 23.06.2018 Annexure: A-8 of this claim petition.

(iv) Any other order, relief, which the Hon'ble Tribunal may deem fit and proper, in the circumstances of the case.

(v) To award the cost of the petition to the petitioner. ”

2. Facts, giving rise to present claim petition, are as follows:

Petitioner is currently posted as Constable in Police Lines, Dehradun. On 23.06.2018, a show cause notice was issued by respondent no.3 to the petitioner, imputing certain charges, details of which are given in para 4.7 of the claim petition. On the selfsame day, another show cause notice was issued by respondent no.3 to the petitioner regarding non-payment of full salary for the suspension period, i.e., 24.04.2018 to 03.06.2018. Petitioner was unable to submit the replies to aforesaid show cause notices.

Respondent No.3, *vide* order dated 04.08.2018 (Copy: Annexure- A 1) awarded 'censure entry' to the petitioner. Petitioner was also denied full salary for the suspension period. He was only given subsistence allowance. Basic allegation against the delinquent Constable is that he passed wrong information and misled the night patrolling officer. Feeling aggrieved against both the orders, petitioner preferred departmental appeals to I.G., Garhwal Range, Respondent No.2. Such departmental appeals were held to be not maintainable, as time barred *vide* orders dated 01.07.2019 (Annexure- A2) and 06.07.2019 (Copy: Annexure- A3),

Aggrieved against the same, present claim petition has been filed.

3. Ld. A.P.O., at the very outset, vehemently opposed the claim petition on the ground, *inter alia*, that as per Rule 20 of the Uttar Pradesh Police Officers of Subordinate Rank (Punishment & Appeal) Rules, 1991, a time period of 90 days has been prescribed for filing the departmental appeal, and therefore, the I.G., Garhwal Range was justified in holding that the departmental appeals are not maintainable, being time barred.

4. The provisions of the Limitation Act, 1963 shall, *mutatis mutandis* apply to a reference under the U.P. Public Services (Tribunal) Act, 1976. Section 5 of the Limitation Act, 1963 is always applicable on the Appeals and Applications. In the instant case, the appeal has been held to be barred by limitation. 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.

5. Section 4 (4) of the U.P. Public Services (Tribunal) Act, 1976 (as applicable in Uttarakhand) reads as under:

“4(4) Where a reference has been admitted by the Tribunal under sub-section (3), every proceeding under the relevant service rules or regulation or any contract as to redressal of grievances in relation to the subject-matter of such reference pending immediately before such admission shall abate, and save as otherwise directed by the Tribunal, no appeal or representation in relation to such matter shall thereafter be entertained under such rules, regulations or contract.”

6. Sufficient cause has been shown for not preferring the departmental appeal in time. Facts of the case would disclose that present reference is fit for adjudication on merits. Delay in filing appeal should not come in the way of appellate authority to decide the same on merits. The same is condoned.

7. It will be quite 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:

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.

- 8 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.
9. Order accordingly.
10. The appellate orders dated 01.07.2019 (Annexure- A2) and 06.07.2019 (Copy: Annexure- A3), are set aside. Appellate authority is directed to decide the departmental appeal of the petitioner, directed against orders dated 04.08.2018 (Annexure: A 1 and A 6), on merits, at an earliest possible, in accordance with law.
11. The claim petition thus stands disposed of at the admission stage. No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: JULY 18, 2019
DEHRADUN

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