

**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.101/DB/2019

Ashish Bisht aged about 32 years, s/o Shri Bachan Singh Bisht, presently working and posted as Constable No. 1962 'F' Force, 40th Battalion PAC, Haridwar.

.....Petitioner

VS.

1. State of Uttarakhand through Principal Secretary, (Home), Govt. of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Assistant Inspector General of Police, PAC, Uttarakhand, Dehradun
3. Commandant 40th Battalion, PAC, Haridwar.

.....Respondents.

Present: Sri L.K.Maithani, Counsel, for the petitioner.
Sri V.P.Devrani, A.P.O., for the Respondents.

JUDGMENT

DATED: AUGUST 16, 2019

Justice U.C.Dhyani(Oral)

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

“(i) To quash the impugned punishment order dated 03.02.2016 (Annexure No. A-1) by which the respondent no.3 withheld the integrity for the year 2015.

(ii) To quash the impugned punishment order dated 03.02.2016 (Annexure No. A-2) by which the respondent no.2 reverted the petitioner to the lowest pay of pay scale of Constable for one year and denied the remaining pay and allowances of the suspension period to the

petitioner, with its effect and operation and with all consequential benefits.

(iii) To issue any other order, or direction which this Court deems fit and proper, in the circumstances of the case, in favour of the petitioner.

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

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

In December, 2014, the petitioner-Constable was posted under 40th Battalion, PAC, Haridwar, and was working with Vigilance Unit of Prevention of Illegal Mining. He was charged with passing of confidential information to the stone crushers and, therefore, his services were suspended on 12.02.2015 (Copy: Annexure- A 4). Subsequently, *vide* order dated 19.05.2015, petitioners suspension was revoked (Annexure: A 5). Inquiry was handed over to Deputy Commandant, 40th Battalion, PAC, Haridwar, who issued show cause notice to the petitioner on 14.08.2015, in which certain charges were levelled against him, details of which have been given in Para 4(d) of the claim petition. In a nutshell, the charges related to illegal gratification from stone crushers in lieu of passing certain confidential information. Copy of the charge sheet has been brought on record as Annexure: A 6 to the claim petition. Petitioner submitted reply to the charge sheet to Deputy Commandant on 28.08.2015, denying the charges. Deputy Commandant conducted inquiry and submitted his inquiry report on 02.01.2016 to Respondent No.3, in which petitioner was held guilty and recommendation for reversion of the petitioner on the lowest pay of petitioner's the then pay scale, under Rule 4(1)(a) of the U.P. Police Officers of Subordinate Rank (Punishment & Appeal) Rules, 1991 was given. Respondent No.3 issued show cause notice on 13.01.2016 to the petitioner mentioning therein the involvement of the petitioner in illegal realization from stone crusher and recommended reversion on the lowest pay for one year of petitioner's the then pay scale. Respondents sought reply of the petitioner, *vide* show cause notice dated 13.01.16 (Copy: Annexure- A 8). Petitioner could not submit his reply to the show cause notice and, therefore, the orders

impugned, which have been brought on record as Annexures: A1 and A 2, were passed.

It has been averred in Para 4 (h) of the petition that due to lack of awareness and family problems, petitioner could not file appeal on time. The same was filed after limitation period, before Respondent No.2, who *vide* impugned order dated 18.10.2018 (Annexure: A 3) rejected the departmental appeal of the petitioner on the ground of delay.

Faced with no other option, petitioner was compelled to file present claim petition.

3. Ld. A.P.O., at the very outset, vehemently opposed the claim petition on the grounds, *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 order dated 18.10.2018 (Annexure- A3) is set aside. Appellate authority is directed to decide the departmental appeal of the petitioner, directed against orders dated 03.02.2016 (Annexure: A 1 and A 2), 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: AUGUST 16, 2019
DEHRADUN

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