



2026:AHC:164798-DB

AFR

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - A No. - 8559 of 2015

Ram Autar Singh Yadav

.....Petitioner(s)

Versus

State of U.P. and Another

.....Respondent(s)

Counsel for Petitioner(s)

:

Counsel for Respondent(s)

:

Court No. - 29

HON'BLE ARINDAM SINHA, J.

HON'BLE SATYA VEER SINGH, J.

(Per Arindam Sinha, J.)

Order on Civil Misc. Restoration Application and Writ Petition

1. Petitioner retired from service in post of Station Officer (SO) in year 1999. Prior to that he filed representation raising grievance for promotion. It was rejected. He made a claim petition before the Tribunal. It came to be dismissed on order dated 30th November, 2012. He filed for review before the Tribunal also dismissed on judgment dated 10th June, 2013. Petitioner then by the writ petition challenged the judgment of the Tribunal. It was dismissed for non-prosecution on order dated 16th February, 2015. He made application for restoration, also dismissed for want of prosecution by co-ordinate Bench on 11th December, 2025. Present application is for recall of order dated 11th December, 2015. Petitioner appearing in person has been coming to Court regularly to prosecute his restoration application. Reproduced below are paragraphs 2 and 3 from our order dated 19th May, 2026.

"2. Perused scanned copy of the writ petition. It appears petitioner had challenged judgment dated 30th November, 2012 made by the Tribunal, dismissing his claim petition. The claim was for promotion on allegation that his juniors had been promoted. He had moved this Court and obtained direction upon the Director General of Police (DGP) to consider his claim. The DGP on order dated 6th April, 2010 rejected his claim citing adverse remarks in his confidential reports as well as having earlier faced censure. The Tribunal refused to interfere. Petitioner unsuccessfully filed for review. Then he moved this Court by present writ petition, dismissed for non prosecution and the restoration application also dismissed for want of prosecution. We have before us, as aforesaid, restoration application for

restoring the earlier dismissed restoration application.

3. On query petitioner submits, he is 85 years old and still fighting for the promotion denied to him. Petitioner contends, the adverse remarks were never communicated to him. Having regard to the fact that he is a senior citizen and regularly attending Court to prosecute his case, we direct the department to make English translation of order dated 6th April, 2010 of the DGP, available at pages 34 to 36 in the writ petition. Dr. Tripathi to make best efforts and get ready for hearing and disposal of the applications and the writ petition, if restored, on adjourned date."

(emphasis supplied)

Department has made English translation of order dated 6th April, 2010 passed by the Director General of Police (DGP). Judgment dated 30th November, 2012 as well as review judgment dated 10th June, 2013 stand disclosed in the writ petition, dismissed for default.

2. On query Dr. Rajeshwar Tripathi, learned advocate, Chief Standing Counsel appearing for State hands up his letter dated 14th July, 2026 addressed to the Principal Secretary as well as the DGP. He submits, in the letter he had quoted our last order dated 10th July, 2026, to ask for instructions. A paragraph of the letter is reproduced below.

"It is, therefore, requested to send any competent Gazetted Officer, who is well conversant with the facts of the case alongwith the relevant records/Parawise Comments prior to 28.07.2026, so that a proper and effective affidavit may be prepared and file before the Hon'ble Court, failing which any adverse order is passed, against the interest of State."

He submits, no instruction has been received. The letter be kept in the file.

3. Petitioner's conduct in seeking to prosecute his case before us has been of diligence. We found out, he is resident of Parasoeli Odampur, district-Etawah. He has travelled on every occasion to be in Court before us as the order-sheet reveals. At present he is more than 85 years old. Fact is, his writ petition having had been dismissed for want of prosecution, his challenge to the order of the Tribunal was never heard on merit. So far as his intent to move the High Court under article 226 in the Constitution of India is concerned, there is no prescribed period on limitation but delay is seen to militate against the Court exercising its extraordinary power. Restoration applications, however, stand on different footing. Section 5 in Limitation Act, 1963 applies for purpose of extension of prescribed period in certain cases. The extension by condonation of delay can be if, as in this case, applicant

satisfies the Court that he had sufficient cause for not making the application within the prescribed period. There is language barrier and the only thing that comes across is that petitioner is seeking to agitate his grievance on having been denied promotion.

4. We had put State on notice that we want to deal with the restoration applications and if we found petitioner to be successful, thereupon the writ petition itself will be restored and heard. As aforesaid, no instruction has been received by Dr. Tripathi. The Supreme Court in **Collector Land Acquisition, Anantnag v. Mst. Katiji**, reported in **(1987) 2 SCC 107** had declared on condonation of delay. Part of paragraph 3 of the judgment is reproduced below.

*"3. 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:*

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."

(emphasis supplied)

Drawing inspiration from above judgment we proceed to look into merits of petitioner's case, if any, for purpose of firstly dealing with question of delay.

5. It appears from judgment dated 30th November, 2012 that petitioner had approached the Tribunal on his claim for promotion. Prior to that he had made representation to the DGP, who on order dated 6th April, 2010 rejected it. English translation of paragraphs 6 and 8 to 10 of the order are reproduced below.

"6. The nominated Sub-Inspectors fulfilling the aforesaid eligibility criteria were interviewed range-wise by the Departmental Selection Committee. The petitioner was questioned regarding his service record and departmental rules, police department procedures in the interview and marks were awarded as per the prescribed standards after conducting a personality test. The merit list was prepared on the basis of marks. Keeping in view the available vacancies, candidates securing a rank in the merit were granted promotion to the post of Officiating Inspector in order of seniority. The process of promotion / selection to the post of Inspector continued to be conducted in accordance with the above Government Order and procedure till 1997.

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8. It is evident from the perusal of petitioner's service book that compliance of the order dated 7.8.89 passed by the Hon'ble Tribunal has already been made by the competent authority vide Hindi Order Book No. 811 dated 26.9.90, under which orders have been passed for payment of full pay and allowances to the petitioner for the period of suspension from 24.9.75 to 3.12.75 and for payment of Rs. 374/- for the period from 26.6.78 to 31.7.78 and thereafter, Rs. 386/- for the period from 1.8.78 to 26.7.79. The punishment provided to the petitioner on 26.6.78 has also been set aside on 20.9.90. Therefore, the appellate order dated 16.5.79 against the above punishment automatically becomes ineffective.

9. It is also evident that the petitioner was provided adverse remarks for the years 1973, 1975, 1978, 1979, 1981, 1987 and 1994 and was punished with bad character roll entry on 03.12.1975, 04.12.1980 and 28.11.1987 and

adverse entry on 23.12.1995 and 19.12.1996.

10. Thus, in view of the work done by the petitioner, he has been punished 5 times and adverse remarks have been mentioned 7 times."

(emphasis supplied)

It is clear from paragraph 6 of the DGP's order that petitioner was questioned regarding his service record and departmental rules, police department procedures in the interview and marks were awarded as per prescribed standards after conducting a personality test. We had noticed it earlier and drawn attention of State to it. Paragraph 2 from our order dated 10th July, 2026 is reproduced below.

"2. Department has made English translation of impugned order dated 6th April, 2010 of the Director General of Police (DGP). Paragraph 6 from the translation is reproduced below.

*"6. The nominated Sub-Inspectors fulfilling the aforesaid eligibility criteria were interviewed range-wise by the Departmental Selection Committee. **The petitioner was questioned regarding his service record and departmental rules, police department procedures in the interview and marks were awarded as per the prescribed standards after conducting a personality test.** The merit list was prepared on the basis of marks. Keeping in view the available vacancies, candidates securing a rank in the merit were granted promotion to the post of Officiating Inspector in order of seniority. The process of promotion / selection to the post of Inspector continued to be conducted in accordance with the above Government Order and procedure till 1997."*

(emphasis supplied)

*On query Dr. Tripathi submits, the Tribunal had set aside the suspension as well as punishment orders by judgment dated 4th August, 1989. **We require the dates of events mentioned in above reproduced English translation of paragraph 6 in impugned order i.e., inter-alia, date when petitioner was questioned regarding the service record. State to produce marksheet tabulation to show marks obtained by the successful candidates for promotion as well as marks, petitioner obtained. We pose this query as there is indication that the selection for promotion was done at a time prior to judgment dated 4th August, 1989 and there is no mention of petitioner's performance in the process having had been kept in seal cover.***

(emphasis supplied)

6. It appears from judgment dated 30th November, 2012, petitioner's claim petition was not opposed. Paragraph 3 from the judgment is reproduced below.

"3. The learned P.O. was present but he could not produce any argument."

The Tribunal on perusal of the record found that petitioner's representation had been rejected by the DGP on aforesaid order dated 6th April, 2010. The Tribunal looked into paragraph 9 of the DGP's order to find that the authority had passed reasoned and speaking order after considering all the facts mentioned by petitioner. Hence, there was no ground to grant any relief to petitioner.

7. As aforesaid petitioner applied for review before the Tribunal. He contended the adverse remarks were never communicated to him. His review was also dismissed. Paragraph 4 from judgment dated 10th June, 2013 of the Tribunal is reproduced below.

*"4. On considered of arguments and facts put up by both the parties, it is found that D.G.P., U.P. in its order dated 06-04-2010 has mentioned that A.C.R. of the petitioner pertaining to the years 1973, 1975, 1978, 1979, 1981 and 1994 are adverse and petitioner has also been given misconduct entry on 03-12-1975, 04.12.1980 & 28.11.2087 and censure any entry on 23.02.1995 & 19.12.1996. **there is no satisfactory evidence in support of the fact that petitioner has not evidence in support of the fact that petitioner has not been communicated the adverse entries which D.G.P. has mentioned in its order dated 06-04-2010.** Petitioner wants to re-adjudicate the matter in the light of the same facts and pleadings which have already been discussed in judgment & order dated 30.01.2012, which is not possible in the review petition. The scope of review is limited only to 'an error apparent on the face of the record and the petitioner has failed to point out such an apparent error in the judgment and order dated 30.11.2012. Hence, there is no ground to review the judgement and order dated 30.11.2012 and the same is liable to be dismissed."*

(emphasis supplied)

It will appear from above the Tribunal found omission on part of petitioner to demonstrate that he had not been communicated the adverse entries. The Tribunal appears to have lost sight that a fact can be proved, while the negative cannot. It was up to the department to demonstrate communication. Petitioner saying he had not been communicated the adverse entries of many years, could not be called upon to prove the negative. The Tribunal obviously

erred in review of its earlier judgment based on the adverse entries, where the department had not resisted the case.

8. As aforesaid, the writ petition was dismissed for want of prosecution. In above facts and circumstance and relying upon **Collector Land Acquisition, Anantnag** (supra) we allow the restoration applications. Order dated 11th December, 2025 dismissing the earlier restoration application is recalled. Said application is restored and also allowed. Order dated 16th February, 2015 dismissing the writ petition is thus recalled and the writ petition restored to file and number.

9. State has no answer to the DGP having said that petitioner was considered for promotion yet there is no record of his assessment, in sealed cover or otherwise. This on top of State's omission to demonstrate that the adverse remarks were communicated to petitioner, based on which promotion was said to have been denied. The denial of promotion based on the adverse entries do not support the DGP's statement that petitioner was considered for promotion. We are convinced that petitioner was treated unfairly.

10. There will be order in terms of prayers (1) and (4), reproduced below.

"1. Issue a writ, order or direction in the nature of 'certiorari' quashing the judgment dated 30-11-2012(Annexure No.5); passed by State Public Services Tribunal, Indira Bhawan, U.P. in Claim Petition NO. 1328 of 2010 (Ram Avtar Singh Yadav Vs. State of U.P. & Another).

.....

4. to Issue a writ, order or direction in the nature of 'mandamus' directing the respondents to give to promote the petitioner on the post of Inspector of Civil Police with effect from 16.03.1980 and also to make payment of salary and other allowances admissible to the post of Station Officer In-charge from the year 1975."

We make it clear the promotional salary and benefits are to be computed from 16th March, 1980 till date of petitioner's retirement and corresponding retiral benefits must also be given to him. Petitioner will communicate website copy of this order to both respondents. There be compliance within four weeks of the communication.

11. The writ petition is **disposed of**.

August 4, 2026
Mohini

(Arindam Sinha,J.)

(Satya Veer Singh,J.)