



2026:AHC:183928-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

SPECIAL APPEAL DEFECTIVE No. - 593 of 2026

AFR

Vijay Kumar

.....Appellant(s)

Versus

State Of U.P. And 2 Others

.....Respondent(s)

Counsel for Appellant(s)	:	Avnish Kumar Srivastava, Priyanka Sharma
Counsel for Respondent(s)	:	C.S.C.

Court No. - 39

**HON'BLE SAUMITRA DAYAL SINGH, J.
HON'BLE SWARUPAMA CHATURVEDI, J.**

Ref.: Civil Misc. Delay Condaton Application No.2 of 2026

1. Present Special Appeal has been filed with delay of 61 days.
2. Cause shown is sufficient.
3. Delay in filing present Special Appeal is condoned.
4. Delay condonation application is allowed.

Ref.: Order on Appeal

5. Heard Sri Avnish Kumar Srivastava along with Ms. Priyanka Sharma, learned counsel for the appellant and Sri Arimardan Singh Rajput, learned Additional Chief Standing Counsel for the State.

6. Present intra-Court appeal has arisen against the order dated 08.05.2026 passed in Vijay Kumar vs. State of U.P. and Others (2026:AHC:107563). By that order the learned single judge has dismissed the writ petition filed by the petitioner against the order dated 22.08.2006, passed by the I.G., Meerut.

7. In short, the petitioner was appointed on the post of Constable. Allegedly, he remained absent without leave. Occasioned by that occurrence, disciplinary proceedings were initiated against him. He was dismissed from service, vide order dated 30.11.2004. Against the order, the petitioner preferred a statutory appeal. It was dismissed, vide order dated 30.11.2004. Against that order, the petitioner preferred a revision before the Inspector General of Police, Meerut in terms of Rule 23 of the U.P. Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991, (hereinafter referred to as the Rules), on 06.07.2006. That revision was filed with a delay of one and half year. It was dismissed vide order dated 28.2.2006, as time-barred.

8. The learned single judge has taken note of Rule 23 of the Rules and it has been reasoned that the revision was filed beyond limitation and that, in absence of power to condone the delay, the same has rightly been dismissed as time-barred.

9. Having heard learned counsel for the parties and having perused the record, it appears a clear error on principle has crept in the proceedings. Rule 23 of the Rules reads as below:

"Rule 23-Revision- (1) An officer whose appeal has been rejected by an authority subordinate to the Government is entitled to submit an application for revision to the superior authority next to the authority which has rejected his appeal within three months from the date of rejection of appeal as mentioned below:

(a) to the Police Officer who is the immediate jurisdictional superior authority to the Police Officer who passed the appellate order.

(b) to the Director General of Police who may either decide the revision himself or nominate any Additional Director General for deciding it.

(c) to the State Government against the order passed under Clause (b).

On such an application the powers of revision may be exercised only when consequent of flagrant irregularity, there appears to have been material injustice or miscarriage of justice.

Provided that the revising authority may on its own motion call for the examine the

records of any order passed in appeal against which no revision has been preferred under this rule for the purpose of satisfying itself as to the legality or propriety of such order or as to the regularity of such procedure and pass such order with respect thereto as it may think fit;

Provided further that no order under the first proviso shall be made except after giving the person effected a reasonable opportunity of being heard in the matter.

(2) The procedure prescribed for appeal applies also to application for revision. An application for revision of an order rejecting an appeal shall be accompanied by a copy of the original order as well as the order of appellate authority."

(emphasis supplied)

10. Also, section 29 of the Limitation Act, 1963 reads as below:

"29. **Savings.**-(1) Nothing in this Act shall affect section 25 of the Indian Contract Act, 1872 (9 of 1872).

(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.

(3) Save as otherwise provided in any law for the time being in force with respect to marriage and divorce, nothing in this Act shall apply to any suit or other proceeding under any such law.

(4) Sections 25 and 26 and the definition of "easement" in section 2 shall not apply to cases arising in the territories to which the Indian Easements Act, 1882 (5 of 1882), may for the time being extend."

(emphasis supplied)

11. It is not the case of the State that there exists-a provision under the Rules to expressly exclude the applicability of the Limitation Act. At the

same time, Rule 23(1) of the Rules prescribes limitation of three months to institute a revision. However, neither Rule 23 nor any other Rule creates a specific bar against condonation of delay-in filing such a revision, or as may limit the period for which delay may be condoned, in terms of Section 5 of the Limitation Act.

12. On the contrary, by way of legislative intent, the period of three months provided under Rule 23(1) of the Rules is not rigid or fixed. Under the first proviso to Rule 23(1) of the Rules, the revising authority has discretion-to examine the records of any order passed by the appellate authority, on its own motion (of the revising authority), in a case where no revision may have been preferred under the Rules.

13. The words "against which no revision has been preferred" clearly indicate that the *suo motu* power of the Revising Authority, may be exercised only after the 90 days limitation prescribed under Rule 23(1) of the Rules, have expired. Unless that time period has first lapsed, it may never be said-no revision had been preferred, in that case. That statement may be made only after expiry of period of limitation of three months, it is noted that no revision had been filed.

14. For the duration of three months under section 23(1) of the Rules, the statutory right of the affected party to file a revision survives or exists. Therefore, during currency of that limitation, it may never be reasoned that the party had not availed that right or that, the statutory right of revision granted by the statute had been lost to the affected party. Therefore, intrinsic evidence of legislative intent-to allow for a revision to arise, after expiry of three months, exists.

15. Then, in **Superintending Engineer/Dehar Power House Circle Bhakra Beas Management Board (PW) Slapper & Another vs. Excise and Taxation Officer, Sunder Nagar/Assessing Authority (2020) 17 SCC 692**, it has been observed as below:

"28. In the light of the decisions as mentioned earlier, when we examine the scheme of the 2005 Act, the provisions contained in Section 45 provide for an appeal from every original order passed under the Act or the Rules made thereunder. Sub-section (4) of Section 45 provides appeal to be filed within 60 days, or such more extended period as the appellate

authority may allow, for reasons to be recorded in writing. Thus, because of the provisions contained in Section 45(4), the principles of Section 5 would apply to an appeal before the appellate authority, which otherwise in the absence of specific provision would not have applied to authority. The revision is provided to the Commissioner suo motu under the provisions of Section 46(1), and the period provided is 5 years for suo motu exercise of revisional power. However, the tribunal has the power to entertain application within 60 days from the date of communication of the order. When we consider the provisions of Section 48, revision is provided to the High Court, and an aggrieved person may within 90 days of the communication of such order, file a revision. Section 48(1) nowhere expressly excludes the applicability of the provisions of the Limitation Act. The provisions of Section 5 are applicable to Section 48 as they are not expressly excluded by the provisions under the 2005 Act. More so, in view of the provisions in Section 45(4), which makes provisions to condone the delay like the Limitation Act, conferring power upon an authority also to condone delay. Further, suo motu revision has also been provided under Section 46. In Section 48, there is no express exclusion. Because of the scheme of the Act, it cannot be inferred that by implication, the provisions of Section 5 of the Limitation Act are excluded. Provisions contained in Section 29(2) of the Limitation Act would be attracted as there is no express exclusion or by implication, in view of the provisions of the 2005 Act. We hold that by virtue of the provisions contained in Section 29(2), provisions of Section 5 of the Limitation Act would apply to proceedings under Section 48 of the 2005 Act."

16. The principle invoked by the learned single judge and also relied by the learned Additional Chief Standing Counsel, is not applicable. That principle applies only with respect to statutes that not only prescribe a period of limitation, but further restrict the power to condone the delay, either absolutely or conditionally-for a specified period of time. Typically, such provisions exist in modern fiscal statutes.

17. In absence of any provision-either negating the power of the Revising Authority, to condone the delay or to restrict the power to condone the delay upto an outer limit, and not beyond, there is no sanction in law-to reason that the period of limitation of three months prescribed under Rule 23(1) of the Rules, was absolute, or that delay was not condonable with reference to Section 5 of the Limitation Act.

18. Plainly, on the own force of Section 5 read with Section 29 of the Limitation Act read with 23(1) of the Rules, the power to condone delay

in filing revision, exists with the Revising Authority. To the extent, learned single judge has reasoned otherwise, a clear error on principle exists. On that count, the order of the learned single judge cannot be sustained.

19. Considering the revision was preferred in the year 2006, 20 years have passed. In absence of any special circumstance cited by the State to oppose condonation of delay of one and half year in institution of the revision, we find no useful purpose would be served in remitting the matter to the revising authority to consider the issue of delay.

20. For reasons noted above, the intra-Court appeal and the writ petition are allowed. The order of the learned single judge dated 08.05.2026 and the order impugned in the writ petition dated 22.08.2006 are set aside.

21. The matter is now remitted to the Revising Authority to proceed to hear and decide the Revision filed by the petitioner, on merits, treating the delay to have been condoned.

22. The revision may be dealt with and decided as expeditiously as possible, by a reasoned and speaking order, preferably within a period of three months from today.

23. Let a copy of this order be placed on the record of the writ petition.

(Swarupama Chaturvedi,J.) (Saumitra Dayal Singh,J.)

September 1, 2026

S.A.