**A.F.R**.

ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW

**Court No. 2**

**Original Application No. 07 of 2013**

Tuesday the 12th day of February, 2013

"Hon'ble Mr. Justice S.C. Chaurasia, Member (J)
Hon'ble Lt. Gen. R.K. Chhabra, Member (A)"

Ex Lance Naik Mukesh Kumar (No. 1497331M), son of Shri Mohan Prasad, Village & Post Office : Khandura, District Chamoli (Uttarakhand).

Applicant

By Legal Practitioner Shri Lalit Kumar and Dr. Ashish Asthana, Advocate.

Versus

1. Union of India through Secretary, Ministry of Defence, New Delhi.

2. The Chief of the Army Staff, Integrated HQ of MoD (Army), Ministry of Defence, New Delhi.

3. The Commandant, Bengal Engineers Group and Centre, Roorkee (Uttarakhand).

4. The Commanding Officer, No. 1 Training Battalion, BEG Centre, Roorkee (Uttarakhand), Pin 900477.

Respondents

By Legal Practitioner Shri Alok Mathur, Advocate, Senior Central Government Counsel.

## ORDER

**Hon'ble Mr. Justice S.C. Chaurasia**

1. Heard Shri Lalit Kumar, learned Counsel for the applicant and Shri Alok Mathur, learned Counsel for the respondents, on the point of limitation and perused the record.

2. Learned Counsel for the respondents has raised a preliminary objection that as per office report dated 07.01.2013, there is delay of five years, eight months and six days in filing the instant Original Application, but, no application has been moved on behalf of the applicant, for condonation of delay, and thus, the instant Original Application is time barred, and it deserves to be dismissed on this very ground.

3. Learned Counsel for the applicant has submitted that the instant Original Application has been filed within the period of limitation and there is no need to move any application for condonation of delay. His contention is that the office report dated 07.01.2013, in respect of delay, is against the provisions of law. In this context, he has drawn our attention towards Section 22 of the Armed Forces Tribunal Act 2007, and has submitted that there is some ambiguity in framing Section 22(1) (c) and (2) of the said Act, and harmonious interpretation is required, so that the purpose of the said provision may not be frustrated and the effect may be given to the intention of legislature in letter and spirit. In support of his contentions, he has placed reliance on the following decisions:-

(1) 1975 STPL (LE) 7780 SC ANANDJI HARIDAS AND CO. PVT. LTD VERSUS ENGINEERING MAZDOOR SANGH AND ANOTHER,

(2) 1975 STPL (LE) 7666 SC LALA BAL MUKAND (DEAD) BY L. ITS VERSUS LAJWANTI AND OTHERS.

4. Section 22 of the Armed Forces Tribunal Act, 2007 may be reproduced as under:

*"22. Limitation.-(1) The Tribunal shall not admit an application –*

*(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of section 21 has been made unless the application is made within six months from the date on which such final order has been made;*

*(b) in a case where a petition or a representation such as is mentioned in clause (b) of sub-section (2) of section 21 has been made and the period of six months has expired thereafter without such final order having been made;*

*(c) in a case where the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which jurisdiction, powers and authority of the Tribunal became exercisable under this Act, in respect of the matter to which such order relates and no proceedings for the redressal of such grievance had been commenced before the said date before the High Court.*

*(2) Notwithstanding anything contained in sub-section (1), the Tribunal may admit an application after the period of six months referred to in clause (a) or clause (b) of sub-section (1), as the case may be, or prior to the period of three years specified in clause (c), if the Tribunal is satisfied that the applicant had sufficient cause for not making the application within such period."*

5. In the instant case, interpretation of section 22 (1) (c) and (2) of the Armed Forces Tribunal Act, 2007 is required, and, we confine our interpretation to the said provisions only.

6. In the case of ANANDJI HARIDAS AND CO. PVT. LTD VERSUS ENGINEERING MAZDOOR SANGH AND ANOTHER (Supra), the Hon'ble Supreme Court has held in para 9 of judgment as under:-

> "9. *As a general principle of interpretation, where the words of a statute are plain, precise and unambiguous, the intention of the Legislature is to be gathered from the language of the statute itself and no external evidence such as Parliamentary Debates, Reports of the Committees of the Legislature or even the statement made by the Minister on the introduction of a measure or by the framers of the Act is admissible to construe those words. It is only where a statute is not exhaustive or where its language is ambiguous, uncertain, clouded or susceptible of more than one meaning or shades of meaning, that external evidence as to the evils, if any, which the statute was intended to remedy, or of the circumstances which led to the passing of the statute may be looked into for the purpose of ascertaining the object which the Legislature had in view in using the words in question*."

7. In the case of LALA BAL MUKAND (DEAD) BY L. ITS VERSUS LAJWANTI AND OTHERS (Supra), Hon'ble Supreme Court has held in para 19 of judgment as under:

> *"19. We do not wish to encumber this judgment with a detailed discussion of all the citations and the reasoning advanced therein in support of one or the other view. It will be sufficient to say that upon the language of Section 12 (2) both the constructions are possible, but the one adopted by the*

*majority of the courts, appears to be more consistent with justice and good sense. The Limitation Act deprives or restricts the right of an aggrieved person to have recourse to legal remedy, and where its language is ambiguous, that construction should be preferred which preserves such remedy to the one which bars or defeats it. A Court ought to avoid an interpretation upon a statute of Limitation by implication or inference as may have a penalising effect unless it is driven to do so by the irresistible force of the language employed by the legislature.*"

8. It is not disputed that jurisdiction, powers and authority of the Tribunal became exercisable under the provisions of Armed Forces Tribunal Act, 2007 (herein after referred to as Act) on 08.08.2009 and the cause of action in the instant case arose on 01.12.2006. The instant Original Application has been filed on 07.01.2013. It is also not disputed that the applicant has not initiated any proceeding for redressal of his grievance before the Hon'ble High Court prior to the said date, i.e. 08.08.2009.

9. The plain reading of Section 22(1)(c) indicates that the Original Application shall not be admitted by the Tribunal if the cause of action relating to Original Application has arisen during the period of three years immediately preceding the date of enforcement i.e. 08.08.2009. In the instant case, the cause of action has arisen on 01.12.2006. According to Section 22(1)(c), the instant Original Application can not be admitted by this Tribunal, because, the cause of action has arisen during the period of three years immediately preceding the date of enforcement. Whereas, the plain reading of

Section 22 (2) indicates that Notwithstanding anything contained in sub-section (1), the Tribunal may admit an application, if the cause of action arose prior to the period of three years, specified in clause (c), if Tribunal is satisfied that the applicant had sufficient cause for not making the application within such period.

10. It shows that on the one hand, the Tribunal shall not admit the application, if the cause of action arose during the period of three years immediately preceding the date of enforcement, but, notwithstanding the said provision, it may admit, the application, if the cause of action arose prior to the period of three years, as mentioned in clause (c) of sub-section (1) of Section 22 of the Act, if the Tribunal is satisfied that the applicant had sufficient cause for not making the application within said period. The plain reading of Section 22(1)(c) and (2) of the Act will create anomaly and in fact, it can not be the intention of legislature that on the one hand, application relating to cause of action arising during the period of three years shall not be admitted, but, on the other hand, the application relating to cause of action, which arose prior to period of three years, may be admitted on sufficient cause being shown by the applicant for not making application within said period.

11. In a case reported in AIR 1986 SC 1499 M/s. Girdhari Lal & Sons versus Balbir Nath Mathur and others, Hon'ble Supreme Court has held in para 9 of Judgment as under :-

*"9. So we see that the primary and foremost task of a court*

*in interpreting a statute is to ascertain the intention of the legislature, actual or imputed. Having ascertained the intention, the court must then strive to so interpret the statute as to promote or advance the object and purpose of the enactment. For this purpose, where necessary the court may even depart from the rule that plain words should be interpreted according to their plain meaning. There need be no meek and mute submission to the plainness of the language. To avoid patent injustice, anomaly or absurdity or to avoid invalidation of a law, the court would be well justified in departing from the so-called golden rule of construction so as to give effect to the object and purpose of the enactment by supplementing, the written word if necessary."*

12. In a case reported in AIR 1955 SC 830 (p. 833) Tirath Singh versus Bachittar Singh, Hon'ble Supreme Court has held as under :-

"*Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence."*

13. Tirath Singh's case (supra) has been affirmed by the Hon'ble Supreme Court in State of Madhya Pradesh versus Azad Bharat Finance Co. AIR 1967 SC 276 (p. 278), Union of India versus Sankalchand AIR 1977 SC 2328 (pp. 2337, 2358, 2373), CIT versus National Taj Traders AIR 1980 SC 485 (p. 490), R. Rudraiah versus State of Karnataka AIR 1998 SC 1070, Molar Mal versus Kay Iron Works (P.) Limited AIR 2000 SC 1261, AIR 2002 SC 1334 (pp.

1340, 1341) Padmasundara Rao versus State of T.N. and Modern School versus Union of India AIR 2004 SC 2236 (p. 2257).

14. In a case reported in AIR 2001 SC 2699 : (2001) 7 SCC 71 Dadi Jagannadham versus Jammulu Ramulu, Hon'ble Supreme Court has observed that the Court cannot make up deficiencies left by the legislature, but Court must try to harmonize the conflicting provisions.

15. If the language of the provisions of the Act is ambiguous and on its plain reading, would create such a situation which shall frustrate the purpose of the provisions, itself, the harmonious construction is required to be made in such a way that the intention of legislature may be enforced and the purpose of the provisions of the Act may not be frustrated.

16. Each and every word including comma and full stop are to be interpreted in such a manner that the provisions of the Act may be enforced. Hon'ble Supreme Court has also held that the Limitation Act deprives or restricts the right of an aggrieved person to have recourse to legal remedy and where its language is ambiguous, that construction should be preferred which preserves such remedy to the one which bars or defeats it.

17. Having considered the pros and cons of the matter, and conjoint reading of both the said provisions of the Act, it appears the intention of the legislature that if the cause of action has arisen during the period of three years, immediately preceding the date of enforcement, the application shall be admitted by the Tribunal

without showing any sufficient cause and in case, the cause of action has arisen prior to the period of three years, immediately preceding the date of enforcement i.e. 08.08.2009, the application may be admitted, if the Tribunal is satisfied that there was sufficient cause for aggrieved person for not filing the application during the said period. Such harmonious interpretation of the said provisions would definitely enforce the intention of the legislature in letter and spirit. The anomaly in provisions of Section 22 (1)(c) and (2) of the Act, has to be resolved by harmonious interpretation of both the provisions, so that the aggrieved person may not suffer injustice unnecessarily.

18. In view of the aforesaid discussion, we are of the view that if the application is moved in respect of cause of action, which has arisen during the period of three years immediately preceding the date of enforcement, i.e. 08.08.2009, and no proceedings for the redressal of such grievance had commenced before the said date in the Hon'ble High Court, the same shall be within the period of limitation and shall be admitted by the Tribunal and the aggrieved person is not required to show any sufficient cause in respect thereof. If the application is moved in respect of cause of action, which has arisen prior to the period of three years, immediately preceding the date of enforcement i.e. 08.08.2009, the same may be admitted, if the Tribunal is satisfied that the applicant had sufficient cause for not making the application within the said period.

19. In the instant case, the cause of action arose on 01.12.2006 i.e. during the period of three years immediately preceding the date of enforcement and no proceedings for redressal of such grievance had commenced before the said date in the Hon'ble High Court, we are of the view that the instant Original Application has been filed within the period of limitation. Since the applicant has filed the instant Original Application within the period of limitation, he is not required to move any application for condonation of delay. The office report dated 07.01.2013 is incorrect, and is rejected.

20. We find ourselves unable to accept the contention of the learned Counsel for the respondents that the instant Original Application is time-barred. Consequently, the preliminary objection raised by him is overruled.

(Lt. Gen. R.K. Chhabra)
Member (A)

(Justice S.C. Chaurasia)
Member (J)

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