Court No.1 (E. Court)

M.A. No 130 of 2021 Inre O.A. (Nil) of 2021

Ex WO Chetan Chauhan

Applicant

By Legal Practitioner for the Applicant

Versus

Union of India & Others

Respondents

By Legal Practitioner for Respondents

Notes	of
the	
Regist	ry

Orders of the Tribunal

25.02.2021

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J) Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

On the case being taken up for hearing Shri Pankaj Kumar Shukla, Ld. Counsel for the applicant and Shri JN Mishra, Ld. Counsel for the respondents are present.

M.A. No 130 of 2021

The Original Application has been filed with delay of 04 months and 03 days.

Regarding delay the submission of the Ld. Counsel for the applicant is that it is a pensionary matter in which bar of limitation is not applicable. His further submission is that applicant has explained the delay in affidavit filed in support of application and, in view of this, delay is liable to be condoned.

Ld. Counsel for the respondents has vehemently opposed the prayer saying there being inordinate delay in filing the Original Application and explanation for day to day delay offered by the applicant being not sufficient, application should be dismissed.

Undisputedly, it is a pensionary matter in which cause of action does not accrue on a fixed date. The matter being a case of continuing wrong, cause of action accrues from month to month. Considering this aspect and explanation of delay offered by the applicant, being sufficient, as seems, delay deserves to be condoned.

In the result, delay condonation application is allowed.

Let the Original Application be registered.

O.A. No. 136 of 2021

It is a fit case for adjudication.

Admit.

Ld. Counsel for the respondents seeks and is allowed four weeks time to file Counter Affidavit. Rejoinder Affidavit, if any, may be filed within two weeks thereafter.

List the matter before Registrar on 27.04.2021 for exchange of pleadings.

List the matter before Tribunal on **06.05.2021**.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava) Member (J)

UKT/-

Court No.1 (E. Court)

M.A. No 134 of 2021 Inre O.A. (Nil) of 2021

Hav/PA Vishal Bakshi

Applicant

By Legal Practitioner for the Applicant

Versus

Union of India & Others

Respondents

Notes of	Orders of the Tribunal
the Registry	
	<u>25.02.2021</u>
	Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J) Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)
	On the case being taken up for hearing Shri Wa Cdr SN Dwiyedi (Betd). I d
	On the case being taken up for hearing Shri Wg Cdr SN Dwivedi (Retd), Ld. Counsel for the applicant and Ms. Appoli Srivastava, Ld. Counsel for the respondents
	are present.
	M.A. No 134 of 2021
	The Original Application has been filed with delay of 1 year, 08 months and
	23 days.
	Regarding delay the submission of the Ld. Counsel for the applicant is
	applicant has explained the delay in affidavit filed in support of application and, in view
	of this, delay is liable to be condoned.
	Ld. Counsel for the respondents has vehemently opposed the prayer saying there being inordinate delay in filing the Original Application and explanation for day to
	day delay offered by the applicant being not sufficient, application should be
	dismissed.
	Considering this aspect and explanation of delay offered by the applicant,
	being sufficient, as seems, delay deserves to be condoned.
	In the result, delay condonation application is allowed.
	Let the Original Application be registered.
	O.A. No. 143 of 2021
	It is a fit case for adjudication.
	Admit.
	Ld. Counsel for the respondents seeks and is allowed four weeks time to file
	Counter Affidavit. Rejoinder Affidavit, if any, may be filed within two weeks thereafter.
	List the matter before Registrar on 27.04.2021 for exchange of pleadings.
	List the matter before Tribunal on 06.05.2021 .
	(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava) Member (A) Member (J) UKT/-

Court No.1 (E. Court)

O.A. No 138 of 2021

Applicant

Nb Sub Mapari Gajanan DineshBy Legal Practitioner for the Applicant

Versus

Union of India & Others

Respondents

Notes of the	Orders of the Tribunal
Registry	
	<u>25.02.2021</u>
	Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J) Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)
	Heard Shri Manoj Kumar Singh, Ld. Counsel for the applicant and
	Shri RC Shukla, Ld. Counsel for the respondents.
	It is a fit case for adjudication.
	Admit.
	Ld. Counsel for the respondents seeks and is allowed four weeks time
	to file Counter Affidavit. Rejoinder Affidavit, if any, may be filed within two
	weeks thereafter.
	List the matter before Registrar on 27.04.2021 for exchange of
	pleadings.
	List the matter before Tribunal on 06.05.2021 .
	(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava) Member (A) Member (J)

Court No.1 (E. Court)

O.A. No 142 of 2021

Lt Col Prasun Kanti Goswami

Applicant

By Legal Practitioner for the Applicant

Versus

Union of India & Others

Respondents

Notes of the Registry	Orders of the Tribunal
	25.02.2021 Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J) Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)
	Memo of appearance filed by Shri Sunil Sharma ,Advocate on behalf
	of the respondents is taken on record.
	Heard Shri Praveen Kumar Shukla, Ld. Counsel for the applicant and
	Shri Sunil Sharma, Ld. Counsel for the respondents.
	During the course of hearing an objection with regard to
	maintainability of O.A. was raised by learned counsel for the respondents in
	view of exception (ii) to Section 3 (o) of the Armed Forces Tribunal Rule, 2007
	and when hearing was going on this, the learned counsel for the applicant
	submitted that applicant does not intend to press the OA, therefore, it may be
	dismissed as withdrawn.
	In view of the aforesaid, the OA is dismissed as withdrawn.
	(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava) Member (A) Member (J)

Court No.1 (E. Court)

Ex. A. No 6 of 2021 Inre T.A. No 94 of 2009

Applicant

Ex Sep Sayed Shahid AliBy Legal Practitioner for the Applicant

Versus

Union of India & Others

Respondents

Notes of the Registry	Orders of the Tribunal
	<u>25.02.2021</u>
	Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J) Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)
	Tion bie vice Admiral Abriay Ragnanatii Raive, Member (A)
	Lawyers are abstaining themselves from judicial work in support
	of agitation and resolution passed by the Awadh Bar Association High
	Court Lucknow, hence case is adjourned.
	List on 13.04.2021 .
	(Vice Admired Abbert Berghungth Kerne) (Intelies Horsel Chandre Crivestere)
	(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava) Member (A) Member (J) UKT/-

Court No.1 (E. Court)

Dy No 7 of 2020 Inre O.A. (Nil) of 2020

Smt Ramwati, W/o Hari Darshan Singh

Applicant

By Legal Practitioner for the Applicant

Versus

Union of India & Others

Respondents

Notes of the Registry	Orders of the Tribunal
	25.02.2021 Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J) Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)
	Lawyers are abstaining themselves from judicial work in support of agitation and resolution passed by the Awadh Bar Association High Court Lucknow, hence case is adjourned. List on 07.04.2021.
	(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava) Member (A) Member (J)

Court No.1 (E. Court)

Ex. A. No 137 of 2018 Inre T.A. No 170 of 2011

Lekh Raj Singh Applicant

By Legal Practitioner for the Applicant

Versus

Union of India & Others

Respondents

Notes of the Registry	Orders of the Tribunal
	25.02.2021 Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J) Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)
	Lawyers are abstaining themselves from judicial work in support of agitation and resolution passed by the Awadh Bar Association High
	Court Lucknow, hence case is adjourned. List on 07.04.2021.
	(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava) Member (A) Member (J)

Court No.1 (E. Court)

Ex. A. No 19 of 2019 Inre T.A. No 34 of 2010 Alongwith O.A. No 509 of 2018 with M.A. No 73 of 2019

Vinay Kumar Applicant

By Legal Practitioner for the Applicant

Versus

Union of India & Others

Respondents

Notes of the	Orders of the Tribunal
Registry	
	25.02.2021 Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J) Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)
	Lawyers are abstaining themselves from judicial work in support
	of agitation and resolution passed by the Awadh Bar Association High
	Court Lucknow, hence case is adjourned.
	List on 08.04.2021 .
	(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava) Member (A) Member (J)

Court No.1 (E. Court)

O.A. No 509 of 2018 with M.A. No 73 of 2019 Alongwith Ex. A. No 19 of 2019 Inre T.A. No 34 of 2010

Ex Sep Vinay Kumar

Applicant

By Legal Practitioner for the Applicant

Versus

Union of India & Others

Respondents

Notes of the Registry	Orders of the Tribunal
	25.02.2021 Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J) Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)
	Lawyers are abstaining themselves from judicial work in support of agitation and resolution passed by the Awadh Bar Association High
	Court Lucknow, hence case is adjourned.
	List on 08.04.2021 .
	(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava) Member (A) Member (J)

Court No.1 (E. Court)

Ex. A. No 38 of 2019 Inre T.A. No 513 of 2010

Ex Swr Satendra Singh

Applicant

By Legal Practitioner for the Applicant

Versus

Union of India & Others

Respondents

Notes of the Registry	Orders of the Tribunal
	<u>25.02.2021</u>
	Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
	Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)
	Lawyers are abstaining themselves from judicial work in
	support of agitation and resolution passed by the Awadh Bar Association
	High Court Lucknow, hence case is adjourned.
	List on 08.04.2021 .
	(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava) Member (A) UKT/-

Court No.1 (E. Court)

M.A. No 1336 of 2018 with M.A. No 1337 of 2018 Inre M.A. No 1789 of 2016 Inre O.A. (Nil) of 2016

Arvind Kumar Applicant

By Legal Practitioner for the Applicant

Versus

Union of India & Others

Respondents

Notes of the Registry	Orders of the Tribunal
	25.02.2021 Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J) Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)
	Lawyers are abstaining themselves from judicial work in support of agitation and resolution passed by the Awadh Bar Association High Court Lucknow, hence case is adjourned. List on 09.04.2021.
	(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava) Member (A) Member (J)

Court No.1 (E. Court)

M.A. No 589 of 2019 with M.A. No 590 of 2019 Inre Dy No 251 of 2013

Kamlesh Singh Applicant

By Legal Practitioner for the Applicant

Versus

Union of India & Others

Respondents

Notes of the Registry	Orders of the Tribunal
	25.02.2021 Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J) Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)
	Lawyers are abstaining themselves from judicial work in support of agitation and resolution passed by the Awadh Bar Association High Court Lucknow, hence case is adjourned. List on 09.04.2021.
	(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava) Member (A) Member (J)

Court No.1 (E. Court)

M.A. No 672 of 2019 Inre O.A. (Nil) of 2019

Ex Nk Ram Rajya

Applicant

By Legal Practitioner for the Applicant

Versus

Union of India & Others

Respondents

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Notes of Orders of the Tribunal the Registry

25.02.2021

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Lawyers are abstaining themselves from judicial work in support of agitation and resolution passed by the Awadh Bar Association High Court Lucknow, hence case is adjourned.

List on **09.04.2021**.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava) Member (J)

UKT/-

Court No.1 (E. Court)

O.A. No 66 of 2018

Adesh Kumar Applicant

By Legal Practitioner for the Applicant

Versus

Union of India & Others

Respondents

Notes of	Orders of the Tribunal					
the						
Registry						
	25.02.2021					
	Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)					
	Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)					
	Lawyers are abstaining themselves from judicial work in support					
	of agitation and resolution passed by the Awadh Bar Association High					
	Court Lucknow, hence case is adjourned.					
	List on 12.04.2021 .					
	(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava) Member (A) Member (J)					

Court No.1 (E. Court)

O.A. No 186 of 2018 along with O.A. NO 338 of 2017 (Decided)

Ex Hav (Hony Nb Sub) Raj Kumar

Applicant

By Legal Practitioner for the Applicant

Versus

Union of India & Others

Respondents

Notes of the	Orders of the Tribunal			
Registry				
	25.02.2021 Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J) Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A) Lawyers are abstaining themselves from judicial work in support			
	of agitation and resolution passed by the Awadh Bar Association I			
	Court Lucknow, hence case is adjourned.			
	List on 02.03.2021 .			
	(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava) Member (A) Member (J)			

Court No.1 (E. Court)

O.A. No 484 of 2018 with M.A. No 113 of 2019

Nb Sub Jagbhan Singh Tomar

Applicant

By Legal Practitioner for the Applicant

Versus

Union of India & Others

Respondents

Notes of the	Orders of the Tribunal			
Registry				
	25.02.2021 Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J) Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)			
	Lawyers are abstaining themselves from judicial work in suppo			
	of agitation and resolution passed by the Awadh Bar Association			
	Court Lucknow, hence case is adjourned.			
	List on 13.04.2021 .			
	(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava) Member (A) Member (J)			

Court No.1 (E. Court)

O.A. No 55 of 2021

Ex Cfn Keval Rana

Applicant

By Legal Practitioner for the Applicant

Versus

Union of India & Others

Respondents

By Legal Practitioner for Respondents

25.02.2021

Notes of Orders of the Tribunal the Registry

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J) Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

On the case being taken up for hearing Shri KKS Bisht, Ld. Counsel for the applicant is present.

Maj Sini Thomas, Departmental Representative is present from the side of respondents.

We have heard learned counsel for the applicant and the Departmental Representative.

The facts of the case are that applicant was enrolled in Indian Army on 24.12.2010 as Infantry Soldier. He met with an accident on 10.12.2017 while performing military duties at OTA, Chennal and his disability was diagnosed as 'CLOSED HEAD INJURY' and his medical category was P3 (Permanent). He was served a notice dated Feb 2020 to show cause by 22 Feb 2020 positively why his case for discharge from the army should not be taken up with Records 14 GR. He submitted his reply to this notice in time intimating therein that he was a newly married having responsibility of his entire family on his shoulders, therefore, he should be allowed to complete his pensionable service. However, instead of paying any heed to his request the respondents have passed the order to discharge the applicant from service w.e.f. 28 Feb 2021. It is against this order the applicant has filed the present application and has also prayed that operation of the order be stayed till disposal of application.

In objection, respondents have only stated that in view of various pronouncements of the Hon'ble Apex Court that if interim relief amounts to grant of final relief the same should not be granted, the prayer of interim relief claimed by the applicant cannot be allowed. To this, respondents have also quoted two pronouncements in the objection itself i.e. *Burn Standard Co, Ltd* and *Ors V. Dinabandhu Majumdar and Anr*, AIR 1995 SC 1499 and *Indian School Certificate Examination v. Isha Mittal and Anr* (2000) 7SCC 521.

In reference to show cause notice dated Feb 2020, learned counsel for the applicant submitted that applicant was physically and mentally fit when entered into service. Applicant suffered the disability of CLOSED HEAD INJURY' for no fault, on his part but while performing military duties. He is a newly married having responsibility of his entire family on his shoulders. He further submitted that in the event of being discharged from service, on account of alleged disability, the applicant would be put to great hardship and it would be very difficult for him to run his family from the little money he will be receiving as disability element as mentioned in the Show Cause Notice, a copy of which has been annexed as Annexure A-1 (i) with O.A. He submitted that despite the alleged disability applicant is capable of doing many duties in the unit which involve less stress, and there are so many soldiers with disabilities in his unit who have been given sheltered appointment, however respondents denied the same to the applicant citing increased state of LMC personnel in the unit. He thus submitted that considering that applicant's disability is not due to his own fault but is due to military duty and in similarly situated matters sheltered appointments have been offered in the unit and the applicant's circumstances also demand the same, operation of the respondents order should be stayed till disposal of O.A. or till next medical board is conducted.

With regard to a query made to the respondents on 17.02.2021, the Departmental Representative Maj Sini Thomas submitted on the basis of instructions received that total strength of jawans and LMC personnel in the unit is 881 and 51 respectively that the prescribed ratio between both of them is 19:1 and that as per policy not more than 5% of unit strength can be allowed in LMC. Presently LMC status is 5.78%. She also submitted that apart from disability element, applicant is also entitled to service element at the time of discharge.

The only objection raised by the respondents with regard to grant of interim relief is that if in the event of interim relief being granted it would amount

the grant of relief which may be granted at the time of final adjudication of the case only, the same should not be granted in view of pronouncements of the Hon'ble Apex Court in various cases. They have not raised any objection that when applicant met with accident which resulted into disability diagnosed as 'CLOSED HEAD INJURY' and categorised as P3 (Permanent), he was performing military duties. They have also not raised objection that individuals with disability, which applicant has, can do duties which involve less stress and also that many in the unit in similar matters have been offered sheltered appointment.

Respondents have denied the sheltered appointment to applicant citing reasons of increased number of LMC personnel and deficiency in manpower in the unit. The reasons cited by the respondents for denying sheltered appointment to the applicant prima facia does not inspire confidence of us, more so when LMC personnel strength in the unit is only marginally higher and there being no definite policy that in the given situation who may be retained and who may out.

As per Show Cause Notice, Annexure A-1 (i), applicant has been placed in Low Medical Category P3 (Permanent) w.e.f. 20 Jan 2020 to 19 Jan 2022 for diagnosis 'CLOSED HEAD INJURY' as per medical board proceedings AFMSF-15A (Ver-2006) dated 21 Jan 2020. This indicates that present medical category of the applicant is for a period of three years only and his future medical category will be assessed in next medical board proceeding which may be conducted on or after 19 Jan 2022. Thus, when the medical category of the applicant is not for life, but for a period of three years only and further medical category will be assessed in the next medical board proceeding, it would be unfair if he (applicant) is discharged from service due to increased number of LMC personnel in the unit.

While recording the aforesaid we are conscious of the pronouncements of the Hon'ble Apex Court that interim relief claimed in a suit/application should not be allowed if it amounted to decreeing the suit/application in such relief can be allowed at final adjudication only. However, in situation when there is no definite rule or policy as stated above and there may be possibility of being irrational in granting sheltered appointment, the court or Tribunal cannot sit idle

with closed eyes.

In the facts of the case when it is prima facia established that applicant's disability for which he is being discharged from the service is not due to his fault, and in similar matters sheltered appointment has been offered to others and the applicant is being denied the same without any plausible reason, but in the name of increased number of LMC persons only which is only marginally high as per own submission of the respondents we find that it is a fit case in which indulgence of the Tribunal is required.

Accordingly, the prayer of interim relief is allowed. The operation of the respondents order contained in letter dated 09 Sep 2020, i.e. Annexure No A-1 (ii) to the O.A., is stayed till disposal of O.A. or till the next medical board proceeding in the matter is held, which ever be earlier.

Respondents have not filed counter affidavit so far. They are directed to get it filed within four weeks from today.

List the matter before Registrar on **26.04.2021** for exchange of pleadings.

List the matter before Tribunal on 12.05.2021.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)

Member (A) Member (J)

UKT/-