

**Form No. 4**  
**{See rule 11(1)}**  
**ORDER SHEET**  
**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**

**Court No. 2 (Sl. No. 19)**

**O.A. No. 1262 of 2023 with M.A. No. 1798 of 2023**

**Ex Nk (AT) Biswanath Ram (Dismissed)** Applicant  
By Legal Practitioner for the Applicant : Shri Shailendra Kumar Singh, Advocate

Versus

**Union of India & Others** Respondents  
By Legal Practitioner for Respondents: Dr. Shailendra Sharma Atal, Advocate

Notes of the Registry	Orders of the Tribunal
	<p><b><u>01.07.2024</u></b> <b><u>Hon'ble Mr. Justice Anil Kumar, Member (J)</u></b> <b><u>Hon'ble Lt Gen Anil Puri, Member (A)</u></b></p> <p>1. On the case being taken up for hearing, Shri Shailendra Kumar Singh, Ld. Counsel for the applicant and Dr. Shailendra Sharma Atal, Ld. counsel for the respondents are present.</p> <p>2. Instant Original Application has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 to summon the order of dismissal from service dated 20.10.1996 and to convert it into discharge so that applicant becomes entitled for service pension.</p> <p><b><u>M.A. No. 1798 of 2023</u></b></p> <p>3. There is a delay of 34 years, 10 months and 15 days in filing Original Application. Objection on delay condonation application filed by the respondents and its reply filed by the applicant are on record.</p> <p>4. Submission of Ld. Counsel for the applicant is that delay in filing Original Application is not intentional. His further submission is that applicant was enrolled in the Indian Army on 29.01.1971. The applicant was granted 62 days annual leave from 16.04.1986 to 16.06.1986 but after expiry of leave, he could not join his unit due to inevitable domestic reasons and became Overstayed of Leave (OSL) w.e.f. 17.06.1986. The applicant was declared deserter w.e.f. 17.06.1986 and subsequently, he was dismissed from service on 20.10.1996. The applicant had rendered 15 years, 04 months and 18 days of service, prior to desertion from service. After dismissal from service, the wife of the applicant was asked to send some documents for payment of amount of credit balance, AFPP Fund and AGIF etc. vide ASC Records letter dated 03.12.1992 which was paid to her in August 2004 after protracted correspondence and rectification of observations. The wife of the applicant submitted a petition dated 13.10.2010 to the hon'ble President of India for grant of service pension</p>

to her husband having served more than 15 years of service which was replied by ASC Records that her husband is not entitled to service pension being a deserter case.

5. Learned counsel for the applicant further submitted that applicant submitted a personal application dated 19.11.2015 which was replied by ASC Records denying grant of pension to the applicant. The applicant once again represented his case to Govt. of India (PMO Office) vide representation dated 16.07.2021 but no relief has been granted to the applicant. Thus, the applicant has been continuously approaching the respondents for grant of pension having served more than 15 years pensionable service, hence there is no delay to raise his grievance on the part of applicant. In this regard, he placed reliance on the judgment of the Hon'ble Apex Court in the case of **S. Muthu Kumaran vs. Union of India & Others**, Civil Appeal No. 352 of 2017, decided on 17.01.2017 and AFT (RB) Chandigarh in OA (A) No. 21 of 2012, **Baljeet Singh vs. Union of India & Ors**, decided on 31.01.2018 and prayed that delay in approaching the Tribunal is not deliberate but for the reasons stated above. He prayed that delay may be condoned and applicant's dismissal from service to be converted into discharge so that applicant becomes eligible for service pension for having served more than 15 years of qualifying service.

6. Ld. Counsel for the respondents has vehemently opposed the prayer and submitted that applicant has not challenged the order of dismissal and long delay of more than 34 years has not been properly and satisfactorily explained. He further submitted that the hon'ble Apex Court in the case of **C. Jacob vs. Director of Geology and Mining and another**, reported in (2008) 10 SCC 155 had held that "*a dead or stale claim is not permitted to be revived. The person who sleeps over his right is not entitled for any indulgence*". His further submission is that the Hon'ble Allahabad High Court in Civil Misc. Writ Petition No. 8524 of 2000, **Inderapal Singh vs. Union of India and others**, dated 04.08.2004 had dismissed the petition holding that "the petitioner himself was not interested in pursuing the matter and kept silent for 18 years. Consequently, the appeal filed by the petitioner was wholly belated and the delay could not be condoned merely because the petitioner woke up for 18 years". Hence, he pleaded for dismissal of delay condonation application as well as Original Application being time barred and misconceived.

7. Having heard submissions of both sides and perusing the record, we find that submission of learned counsel for the applicant seems to be correct that in this case dismissal has been indirectly challenged to condone the delay.

8. We have also gone through the judgments relied upon by the parties in paras 5 & 6 above and we are of the view that grounds and reasons shown in affidavit filed in support of application are sufficient. Delay condonation application is allowed and delay in filing application is condoned. Delay

condonation application stands disposed off.

**O.A. No. 1262 of 2023**

9. Matter needs adjudication.

10. Admit.

11. Learned counsel for the respondents is granted four weeks time to file counter affidavit. Rejoinder Affidavit, if any, may be filed within two weeks thereafter.

12. List on **21.10.2024**.

**(Lt Gen Anil Puri)**  
**Member (A)**

**(Justice Anil Kumar)**  
**Member (J)**

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