

Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
Court No.2 (Sl. No.8)

M.A. No. 2140 of 2023 with M.A. No. 2141 of 2023 Inre O.A. No. 394 of 2017

Naresh Devrao Jadhav

Applicant

By Legal Practitioner for the Applicant : Shri Vinay Pandey, Advocate

Versus

Union of India & Others

Respondents

By Legal Practitioner for Respondents : Shri Ashish Kumar Singh, Advocate

Notes of the Registry	Orders of the Tribunal
	<p><u>05.02.2024</u> <u>Hon'ble Mr. Justice Anil Kumar, Member (J)</u> <u>Hon'ble Lt Gen Anil Puri, Member (A)</u></p> <p>1. On the case being taken up for hearing, Shri Vinay Pandey, Ld. counsel for the applicant and Shri Ashish Kumar Singh, Ld. Counsel for the respondents are present.</p> <p>2. Objection on recall application filed by the respondents is taken on record.</p> <p>3. The Original Application No. 394 of 2017 has been filed by the applicant for pensionary benefits which was admitted by this Tribunal on 07.09.2017 and counter affidavit in the case has already been filed by the respondents.</p> <p>4. On 07.05.2019, O.A. was dismissed in non prosecution as the applicant after availing sufficient opportunities has neither took steps for amending the petition nor deposited cost imposed on him while allowing to move amendment application.</p> <p><u>M.A. No. 2140 of 2023</u></p> <p>5. This is an application for condonation of delay in filing recall application which is delayed by 02 years, 06 months and 25 days.</p> <p>6. Submission of learned counsel for the applicant is that applicant was busy in treatment of his wife and his own treatment being a patient of kidney. Both are under treatment for which doctors have advised him not to travel/move alone. Thereafter, due to out-break of Covid-19 in the year 2020, applicant could not approach to the tribunal to pursue his case. Thus, delay is not deliberate but for the reasons stated above.</p> <p>7. Learned counsel for the respondents vehemently opposed the prayer and submitted that explanation of delay offered by the applicant is not sufficient as he has failed to offer day to day explanation of long delay and thus application deserves rejection.</p>

8. We have heard learned counsel for the parties and considered submission of learned counsel for the applicant and perused the record.

9. We are of the view that O.A. has been filed for pensionary benefits and delay in filing application has been caused due to illness of applicant and his wife for which medical papers have been filed in support of delay. Besides this, delay in approaching the tribunal due to outbreak of Covid-19 in the year 2020 & 2021 is also not denied. Taking overall reasons for delay into consideration, it will be just to allow the application. Accordingly, application is allowed and the delay in filing recall application is condoned.

M.A. No. 2141 of 2023

10. This is an application for recall of order dated 07.05.2019 passed in O.A. No. 394 of 2017 by which the Original Application was dismissed for non-prosecution.

11. The reasons of delay discussed above and grounds shown in the recall application seem to be sufficient. Accordingly, the application is allowed and the order dated 07.05.2019 passed by this Tribunal is hereby recalled subject to payment of cost of Rs. 5000/- which shall be deposited by the applicant in the Registry within two weeks. If cost is deposited, the same shall be remitted to AFT Bar Association, Lucknow to enrichment of Library.

12. After depositing of cost, list O.A. No. 394 of 2017 on **26.02.2024**.

(Lt Gen Anil Puri)
Member (A)

(Justice Anil Kumar)
Member (J)

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Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
Court No.2 (Sl. No. 15)
O.A. No. 424 of 2023 with M.A. No. 518 of 2023

Ex Nk/Clk Periyanna Arunachalam Applicant
By Legal Practitioner for the Applicant : Shri Tatsat Shukla and
Shri Dhiraj Kumar, Advocates

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><u>05.02.2024</u> <u>Hon'ble Mr. Justice Anil Kumar, Member (J)</u> <u>Hon'ble Lt Gen Anil Puri, Member (A)</u></p> <p>1. Heard Shri Dhiraj Kumar, Ld. counsel for the applicant and Dr. Shailendra Sharma Atal, Ld. Counsel for the respondents.</p> <p>2. There is a delay of 44 years, 04 months and 11 days in filing Original Application. Applicant has moved application for condoning the delay.</p> <p>3. This Original Application has been filed for treating the applicant notionally in Army service and to grant service pension. In addition to this, providing of ECHS and CSD facilities has also been prayed in the application.</p> <p>4. In this case, a preliminary objection has been raised by the respondents with regard to territorial jurisdiction and condonation of delay of more than 44 years in filing Original Application.</p> <p>5. Submission of Ld. Counsel for the applicant is that delay in filing Original Application is not intentional. His further submission is that applicant was dismissed from service on 12.06.1976 after serving 13 years, 03 months and 21 days of qualifying service. The applicant approached the office of CGDA vide his letter dated 24.06.2010. Thereafter, applicant submitted a representation date 12.08.2021 which was replied by MEG Records vide letter dated 28.09.2021 stating therein that due to shortfall of more than 12 months, applicant is not eligible for service pension. The applicant again approached to the authorities vide letter dated 11.10.2021 but no response received yet.</p> <p>6. His further submission is that this O.A. is maintainable before this Tribunal as applicant is living with his son in Air Force Station, Sarsawa, Dist – Saharanpur (UP) where Govt. Accommodation is allotted to his son, hence, there is no issue of territorial jurisdiction. As far as delay is concerned, he placed reliance on the judgment of the Hon'ble Apex Court in the case of Union of India & Ors vs. Tarsem Singh, reported in 2009 (1) AISLJ 371 and submitted that where a service related claim is based to a continuing wrong, relief can be granted even if there is a long delay in seeking remedy. He also</p>

placed reliance on the judgment of the AFT (RB) Jaipur, Circuit Bench at Jodhpur in the case of OA No. 03/2016 with MA No. 02/2016 & 121/2018, **Smt. Somari Devi, Wd/o Late Sigmn Jora Ram vs. Union of India & Ors** in which more than 29 years of delay has been condoned. Thus, his submission is that delay is not deliberate, but for the reasons stated above.

7. Ld. Counsel for the respondents has vehemently opposed the prayer and submitted that the Original Application is lacking territorial jurisdiction as the applicant is not original habitant of Uttar Pradesh and there is long delay of more than 47 years which has not been properly and satisfactorily explained. Therefore, in view of the law laid down by the Hon'ble Apex Court in the case of **Union of India & others vs. A. Durairaj (Dead)**, 2010 (14) SCC 389 and in the case of **Balwant Singh (Dead) vs. Jagdish Singh and others** (2010) 8 SCC 685, Original Application is liable to be dismissed at the admission stage itself on the ground of maintainability and long delay.

8. Ld. Counsel for the respondents also submitted that as per instruction received from the Record Office, Madras Engineering Group, documents/records relating to ex army person have been weeded out after expiry of mandatory retention period in terms of para 595 of Regulations for the Army, 1987. Hence, at this belated stage, nothing can be established/presumed with regard to details of service/grant of pension in absence of requisite service documents of the applicant.

9. We have perused the records which reveal that applicant is residing with his son in Govt. accommodation allotted at Air Force Station, Sarsawa, Dist – Saharanpur (UP), hence, objection raised by the respondents on the issue of territorial jurisdiction is rejected and thus, application is maintainable before this Tribunal. However, Judgments relied up by the applicant in Para 6 above are not relevant in this case being based on different facts and circumstances for grant of disability pension and therefore, applicant cannot be given the benefit of aforesaid judgments with regard to condonation of long delay in the case of dismissal.

10 On the point of long delay of more than 44 years, submission of applicant that he was suffering from various ailments and also cause of ignorance regarding filing of case before the appropriate forum is not justified. Thus, from the facts of the case itself it is established that delay caused in the filing of Original Application is inordinate and explanation offered for its condonation is insufficient.

11. The Hon'ble Apex Court in the case of **H. Dohil Constructions Company Private Limited Versus Nahar Exports Limited and Another**, reported in (2015) 1 Supreme Court Cases 680, has held that *“the failure of respondents in not showing due diligence in filing of the appeals and the enormous time taken in the refiling can only be construed, in the absence of*

any valid explanation, as gross negligence and lacks in bona fide as displayed on the part of the respondents.” The Hon’ble Apex Court in the above case has also held that “Stringent scrutiny of appellant’s explanation would be needed to determine sufficiency of cause of appeal”.

12. The Hon’ble Apex Court in the case of ***Maniben Devraj Shah Versus Municipal Corporation of Brihan Mumbai***, reported in (2012) 5 Supreme Court Cases 157, has held that “No doubt, sufficient cause should be construed liberally on facts without any hard and fast rule and substantive rights of parties cannot be ignored on account of delay, but a distinction must be made between delay of few days and inordinate delay causing prejudice to the other side.”

13. In view of the above case laws and the facts and circumstances of the case, delay of 44 years 03 months and 24 days in filing of Original Application is not liable to be condoned. It is settled in law that if time limit is given for filing of any application and the same is not filed within that time limit, delay should be explained on day to day basis which applicant has utterly failed in the present case.

14. In the result, delay condonation application is **dismissed**.

15. Original Application being barred by time is also **dismissed**.

(Lt Gen Anil Puri)
Member (A)

(Justice Anil Kumar)
Member (J)

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