

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW****M.A. No. 136 of 2018****In re:****OA No. (Nil) of 2018**Thursday, this the 04<sup>th</sup> day of April, 2019**“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)  
Hon’ble Air Marshal BBP Sinha, Member (A)”**

No. 5750119F Ex Hav (Clk) Govind Lal, S/o Late Yamuna Prasad, R/o Village &amp; Post Kunraghat, District Gorakhpur, (U.P)

..... Applicant

Versus

Ld. Counsel for the: **Shri Virat Anand Singh, Advocate**  
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi.
2. Chief of Army Staff, Integrated Headquarters of the Ministry of Defence (Army), South Block, New Delhi-110011
3. Chief Record Officer, Records 58, Gorkha Rifles, Happy Valley Shillong- 793007

.....Respondents

Ld. Counsel for the: **Shri Ashish Kumar Singh, Advocate**  
Respondents.**ORDER (Oral)**

1. Counsels for the parties were heard on the application for condonation of delay.
2. As per report of Registry there is delay of 19 years, 11 months and 14 days in filing this O.A.

3. By means of accompanying O.A. the applicant has made the following prayers:-

“(a) Issue/ pass an order or direction of appropriate nature whereby commanding the respondents to grant notional promotion to the applicant with all consequential benefits including re-fixation of pension with effect from 01.08.1997.

(b) Allow the application with all consequential benefits with exemplary cost.”

4. In brief the facts as stated by the applicant in his O.A. are as under:

The applicant was enrolled in the Indian Army on 25.06.1980 and was discharged as a Hav (Clerk) on 31.07.1997 in low medical category. The applicant rendered a total 16 years and 07 months service. During all his service period he served in different fields including high altitude areas.

5. In the affidavit accompanying the application for condonation of delay, it has been pleaded by the applicant that applicant was discharged on 01.08.1997 due to non- sanction of sheltered appointment by O/C Records, 58 Gorkha Rifles. Applicant was entitled for his promotion on the next higher post of Naib Subedar but his case was ignored rather other similarly situated persons, junior to him were promoted. According to the applicant he was willing to serve in the Army in case any suitable sheltered employment was available but the same could not be provided to him. He has filed copy of willingness certificate to this effect as Annexure No.2 to the O.A., which

shows that the applicant had given his willingness for the sheltered appointment, however, the same could not be given as the same was not available. Thus, at such a belated stage the claim of the applicant is that he ought to have been treated in service and given sheltered appointment, thereafter he should have been promoted and after his promotion his pay should have been re-fixed and therefore he would have been entitled for higher pension.

6. While arguing on the point of condonation of delay the only submission of the learned counsel for the applicant is that since denial of sheltered appointment has affected the amount of pension of the applicant, which is a recurring cause of action, therefore, delay should be condoned. In support of his submission the learned counsel has placed reliance on a judgment of Hon'ble Delhi High Court in the case of **Ex Sep Sri Chand vs. Union of India & others** WP (C) No. 148 of 2012 dated 09.01.2012.

7. On behalf of the respondents it has been argued that it is not a case of direct claim of pension but for enhanced pension after treating him in continuous service and thereafter his promotion and his salary re-fixation and on the basis of such re-fixed salary, if any, for his enhanced pension. Therefore the applicant is not entitled to the benefit of aforementioned case law because of difference of facts.

8. We have examined the aforementioned case law on which learned counsel for the applicant has placed reliance. In that case the grievance of the applicant was that he had 14 years and 07 months of service in DSC and therefore there was a short fall of few months for grant of second service pension and for condoning the said delay and for grant of second service pension the O.A. was filed before the Armed Forces Tribunal, Principal Bench, New Delhi after a huge delay of 19 years and the same was dismissed on the ground of delay. Feeling aggrieved, the said order was challenged before Hon'ble Delhi High Court and Hon'ble Delhi High Court vide its judgment dated 09.01.2012 in the case of **Ex Sep Sri Chand** (supra) has dealt the controversy regarding delay in Para-13 of its judgment, relevant portion of which is reproduced as under:-

“13. ....

6. In Shiv Dass v. Union of India (2007) 9 SCC 274 this Court held: (SCC p. 277, paras 8 & 10)

"8. ... The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third-party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction.

“10. In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay

in filing the petition. ... If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years."

7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition."

9. It transpires that in view of the judgment of Hon'ble Apex Court in the case of **Shiv Dass** (supra) Hon'ble Delhi High Court held that denial of pension is a recurring wrong and the delay in such matters should be condoned but consequential relief relating to arrears normally should be restricted for three years as held by Hon'ble Apex Court in the case of **Shiv Dass** (supra). But in the facts of the present case it is not direct claim of the

applicant for enhancement of pension, for which he has set up a hypothetical case that had he been not discharged in low medical category and had he been allowed to continue in service and had he been granted promotion and sheltered appointment, in that case his salary would have been fixed at a higher scale. Consequently his pension would also have enhanced. We fail to understand the effort of learned counsel for the applicant that it is a case for enhanced pension. If such a argument of the learned counsel for the applicant is given weightage then it would mean that no such service matter can ever be barred by time. Following steps have to be taken before the revision of pension of applicant; (i) Discharge of the applicant has to be set aside, (ii) He should be treated to be in service, (iii) He should be considered for promotion and thereafter to be promoted and (iv) He must be granted pay of promotional post. Only after taking such steps the pension of the applicant can be revised. Therefore we find no substance in this argument of the learned counsel. Virtually the prayer of the applicant is that he was wrongly discharged and he was wrongly denied continuity of service and also promotion in comparison to other similarly situated persons. The argument that this is a matter of pension, which is a recurring cause of action is a misleading argument. We are of the considered opinion that such type of frivolous petition, that too on the basis of hypothetical argument, which has no legal basis must be discouraged and dealt with strictly.

10. Before proceeding further we would like to discuss the view of Hon'ble Apex Court with regard to delayed claim of promotion as is the real claim in the instant case. Hon'ble Apex Court in the case of **P.S. Sadasivaswamy vs. State of Tamil Nadu** reported in (1975) 1 SCC 152 has discussed this aspect in Para-2 of its judgment, relevant portion of which is reproduced as under:-

“A person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters. The petitioner's petition should, therefore, have been dismissed in limine. Entertaining such petitions is a waste of time of the Court. It clogs the work of the Court and impedes the work of the Court in considering legitimate grievances as also its normal work. We consider that the High Court was right in dismissing the appellant's petition as well as the appeal.”

11. Apart it, Hon'ble Apex Court in the case of **State of Uttaranchal and another vs. Shiv Charan Singh Bhandari and others** (2013) 12 SCC 179 again had occasion to consider this aspect. In this case Hon'ble Apex Court has also considered its earlier judgment quoted above and thereafter has held in Para-27 and Para-28 as under:-

“27. We are absolutely conscious that in the case at hand the seniority has not been disturbed in the promotional cadre and no promotions may be unsettled. There may not

be unsettling of the settled position but, a pregnant one, the respondents chose to sleep like Rip Van Winkle and got up from their slumber at their own leisure, for some reason which is fathomable to them only. But such fathoming of reasons by oneself is not countenanced in law. Any one who sleeps over his right is bound to suffer. As we perceive neither the tribunal nor the High Court has appreciated these aspects in proper perspective and proceeded on the base that a junior was promoted and, therefore, the seniors cannot be denied the promotion.

28. Remaining oblivious to the factum of delay and laches and granting relief is contrary to all settled principles and even would not remotely attract the concept of discretion. We may hasten to add that the same may not be applicable in all circumstances where certain categories of fundamental rights are infringed. But, a stale claim of getting promotional benefits definitely should not have been entertained by the tribunal and accepted by the High Court."

(Underlined by us)

12. In view of what has been discussed above, this application for condonation of delay has no merits. Accordingly, this application is hereby **dismissed** with cost of Rs.5,000/- (Rupees five thousand), which has to be deposited by the applicant within one month from today and the same shall be transmitted to the Bar Association of Armed Forces Tribunal, Regional Bench, Lucknow for enrichment of its Library. In case of failure to deposit of the cost within the stipulated period, Registrar shall take steps for recovery of the same as arrears of land revenue.

13. Since the application for condonation of delay has been dismissed, consequently the O.A. is also **dismissed**.

**(Air Marshal BBP Sinha)**  
**Member (A)**

April 04, 2019

**(Justice SVS Rathore)**  
**Member (J)**

JPT



