

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW****M.A. No. 1586 of 2018****In re:****OA No. (Nil) of 2018**Thursday, this the 11<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)”**Service No. 234327-G Ex-Sergeant Jagdish Kumar Srivastava  
AF/FIT(I), son of late Ram Chandra Sinha, resident of 1166-  
W2 (Juhi), Basant Vihar, Post Office- Nau Basta, District-  
Kanpur (U.P.)- 208021

..... Applicant

Versus

Ld. Counsel for the: Applicant in person.  
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi- 110011.
2. Chief of the Air Staff, Air Headquarters, Vayu Bhawan, New Delhi- 110106
3. Officer-in-Charge Records, Air Force Record Office, Subroto Park, New Delhi – 110010.

.....Respondents

Ld. Counsel for the: **Shri Kaushik Chatterji, Advocate**  
Respondents.**ORDER (Oral)**

1. We have heard the Applicant, who is present in person, assisted by some other person.
2. As per report of Registry there is delay of 35 years, 08 months and 05 days in filing this O.A.

3. As per the prayer clause of the O.A. the applicant has prayed as under:-

“(a) Issue/ pass an order or direction of appropriate nature to the respondents to set-aside/quash the impugned reply dated 01 Feb 2018.

(b) Issue/pass an order or direction of appropriate nature to the respondents to give effect to Personnel Occurrence Report and to promote to the rank of JWO notionally with all consequential benefits.

(c) Issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.

(d) Allow this application with exemplary costs.”

Thus, the reading of the prayer clause shows that the applicant is seeking his promotion after a long gap of more than 35 years.

4. In brief the facts of the case are that the applicant was enrolled in Indian Air Force on 09.06.1961 and was discharged from service on 30.06.1982. The claim of the applicant is that he had passed promotional examination for promotion to the rank of JWO and Personal Occurrence Report of it was published during his posting at 39 Squadron, C/o 56 APO. The applicant was not communicated that he has qualified the promotional examination. Applicant sent representation (Annexure-A-2) to the respondents on 24.05.2017 and received reply thereof. But the applicant was not satisfied with the reply. He again sent

representation, which was replied again on 01.02.2018, which is quoted as under:-

“AFNET: 21115166

Air Headquarters  
Vayu Bhawan  
New Delhi- 06  
01 Feb 18

Air HQ/ 40651/7/PA (CPC)  
Ex-Sgt Jagdish Kumar Srivastava  
1166-W2 (Juhi)  
Basant Viha  
Nau Basta P.O.  
Kanpur (UP)  
Pin- 208021

### REPRESENTATION ON PROMOTION

1. Please refer your representation dated 02 Dec 17.
2. The issues brought out by you in the ibid representation have been examined. Your contention that you have not been considered for promotion to the rank of JWO due to late promulgation of POR by 39 Sqn is incorrect.
3. All your contemporaries who were enrolled in Jan 1961 were promoted to the rank of substantive Sgt in 1976 and were considered for promotion to the rank of JWO in 1981-82, whereas you were promoted to the rank of substantive Sgt in the year 1978. Airmen of AF Fit trade who were promoted to the rank of substantive Sgt in 1978 were not considered for promotion to the rank of JWO till your discharge date. Hence, late promulgation of POR by 39 Sqn as claimed by you is not the reason for non consideration of your name for the promotion to the rank of JWO in the year 1981-82.
4. For your information, please.

Sd/- (Kiran Krishnan)  
Wg Cdr  
JDPA (CPC)”

Thus, the applicant is claiming his promotion while he stands discharged in the year 1982.

5. In the application for condonation of delay it is submitted that the deponent came to know about the late promulgation of Personal Occurrence Report (POR) regarding his qualifying the examination to the rank of JWO. It is no where mentioned in the

said application as to when he got the said communication. Thereafter it is pleaded that he was admitted in ICU in the year 2007 and thereafter in Escorts Heart Institute and Research Centre on 18.01.2008 and thereafter he has given details of his illness till 2013 but he has not given any explanation for late filing of this O.A. neither prior to his illness nor thereafter. The applicant has tried to explain the delay from 2007 to 2013 i.e. only for a period of 06 years in filing this O.A. A vague ground has been taken by him that he was not aware of the communication of POR but it is no where mentioned that when it was published and when he got this information. Applicant is claiming promotion over his other batch-mates. So this ground is absolutely untenable because he must be aware of the POR when his batch-mates stood promoted. Apart from it when applicant's batch-mates were already promoted, the cause of action arose on that very date. Therefore, applicant is supposed to explain each and every days delay. The lapse of long period makes the position settled and after lapse of such a long period to unsettle the settled position there must exist very strong ground to condone the delay. While in the instant case the applicant has absolutely failed to explain such huge delay. Ground taken in the supporting affidavit to condone the delay shows that an effort has been made to explain the delay of 06 years only. There is no explanation for rest of the period. The applicant was under legal obligation to explain the delay from

the date of his discharge i.e. 30.06.1982 till the date of his filing the present O.A., which he has utterly failed to explain.

6. Before proceeding further we would like to consider the legal position on this point. Hon'ble Apex Court with regard to delayed claim of promotion, as is the real claim in the instant case, 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.”

7. 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 unsetting 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)

8. In view of aforesaid facts and the legal position discussed above, we are of the view that the application for condonation of delay has no merits and it deserves to be dismissed.

9. Accordingly, the application for condonation of delay in filing the O.A. is hereby **dismissed**.

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

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

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

April 11, 2019

JPT