

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****M.A. No. 2530 of 2016
In re:
OA No. (Nil) of 2016**Tuesday, this the 16th day of April, 2019**“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)
Hon’ble Air Marshal BBP Sinha, Member (A)”**

No 2976796X Ex Sep Trimal Singh, son of Shri Late Kewal Singh, Resident of Village Shahpur Jamal, P.O. Suwabala, District Bijnour, U.P.

..... Applicant

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

Versus

1. Union of India through the Secretary, Ministry of Defence, New Delhi-01.
2. Chief of the Army Staff, Integrated HQ of MoD (Army), DHQ PO, New Delhi- 110011.
3. Commanding Officer, 23 Rajput.

.....Respondents

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

1. We have heard learned counsel for the parties on the application for condonation of delay (MA No. 2530 of 2016) and perused the record.

2. As per office report, this OA was filed after a delay of 25 years, 07 months and 25 days.

3. By means of this petition, the applicant has made following prayers:-

“(i) To summon the Discharge order and quash and set aside the impugned order of Discharge dt 21 Sept 1990 and the rejection of statutory representation dated 11 June 2010.

(ii) To direct the Respondents to pay the Applicant balance of salary from date of his Discharge till his retirement with interest of 12%.

(iii) To consider Applicant for pension retrospectively with interest of 12%.

(iv) To pass any order which the lord-ship may deem proper considering the nature and circumstances of the case.

(v) Allow this appeal with heavy cost.”

4. From a perusal of the averments made in the petition, it is clear that the applicant has filed this petition after a lapse of more than 25 years. The discharge from service is not a recurring cause of action; therefore, the applicant was required to explain day to day delay in filing this petition.

5. Learned counsel for the applicant has argued that the applicant after discharge from service went to his home town where his family members started quarrelling with him in respect of his agricultural land. On account of such land dispute his economic condition deteriorated and therefore he could not pursue his cause regarding his discharge from service. The applicant has pleaded that he sent a letter against his discharge to concerned authority in April, 2010 i.e. after about 20 years but

of no consequence. He has also pleaded that as the applicant was facing financial hardship, he also approached Delhi High Court Legal Services Committee for assistance to pursue his case where from he received a reply vide letter dated 01.03.2012 to the effect that his case falls within the jurisdiction of Armed Forces Tribunal, Regional Bench, Lucknow. He has also annexed a letter dated 04.09.2015 (Annexure DA-03) to demonstrate that he had requested the Delhi High Court Legal Services Committee to return his papers. It has also been pleaded by the applicant that thereafter he sent a letter to the Registrar, Armed Forces Tribunal, Regional Bench, Lucknow to get filed his case through some counsel, which was replied vide letter dated 10.05.2016, copy whereof has been annexed by him as Annexure DA-04.

6. Learned counsel for the respondents submits that the delay in filing this petition has not been properly explained and, therefore, the inordinate delay of more than 25 years in preferring this petition on the ground that, firstly; his economic condition deteriorated, and secondly; he made correspondence to pursue his case, ought not be condoned. The applicant has challenged the discharge order dated 21.09.1990 on merits, which can be looked into only when the delay in filing the O.A. is satisfactorily explained.

7. The ground taken by the applicant that he had approached the appropriate authority on 11.06.2010 for reconsideration of

his case and he received reply with no relief. The averment in the original application for condonation of delay that Annexure DA-01 is the reply, is absolutely wrong. Annexure DA-01 filed by the applicant is in fact show cause notice dated 11.06.1990 issued to the applicant to show cause as to why he may not be discharged. In para-2 of the show cause notice it is mentioned that in the short spell of service, the applicant was tried and convicted for offences of assault and affray three times and using insubordinate language to superior officers. Thus, it is neither an appeal against discharge nor a representation. Rather the applicant has tried to mislead this Tribunal by stating that he received reply of his letter to Chief of Army Staff sent by him in April, 2010 by means of Annexure DA-01, which is dated 11.09.90. Admittedly, the applicant was discharged after giving him a show cause notice (Annexure DA-01 dated 11.06.2090) on 21.09.1990. It is no where the case of the applicant that he had replied the said show cause notice. The applicant thereafter did not pursue his case and on flimsy grounds he has tried to make an unsuccessful attempt to explain delay in approaching the Tribunal by preferring this petition in the year 2016. In the facts of the present case, we are of the view that the applicant has not been able to explain the delay in preferring the present petition. Although the applicant has pleaded that in April, 2010 he wrote a letter to the Chief of Army Staff while no such letter allegedly sent by the applicant has been brought on record. If for the argument sake we consider the submission of learned

counsel for applicant then there is explanation only after 2010. But there is no plausible explanation for the huge delay of twenty years prior to that because applicant was discharged in the year 1990.

8. At this juncture we would like to deal with legal aspect of the issue.

9. Section 22 of the Armed Forces Tribunal Act, 2007 provides for limitation. It reads as under:

“22. Limitation. —(1) *The Tribunal shall not admit an application—*

(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of section 21 has been made unless the application is made within six months from the date on which such final order has been made;

(b) in a case where a petition or a representation such as is mentioned in clause (b) of sub-section (2) of section 21 has been made and the period of six months has expired thereafter without such final order having been made;

(c) in a case where the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which jurisdiction, powers and authority of the Tribunal became exercisable under this Act, in respect of the matter to which such order relates and no proceedings for the redressal of such grievance had been commenced before the said date before the High Court.

(2) Notwithstanding anything contained in sub-section (1), the Tribunal may admit an application

after the period of six months referred to in clause (a) or clause (b) of sub-section (1), as the case may be, or prior to the period of three years specified in clause (c), if the Tribunal is satisfied that the applicant had sufficient cause for not making the application within such period.”

10. We would also like to deal with the issue of limitation raised in the instant case in the light of proposition of law as laid down by the Hon’ble Apex Court in catena of decisions. In the case of **D. Gopinathan Pillai versus State of Kerala and another**, reported in (2007) 2 SCC 322, the Hon’ble Supreme Court has observed as under:

“5. We are unable to countenance the finding rendered by the Sub-Judge and also the view taken by the High Court. There is no dispute in regard to the delay of 3320 days in filing the petition for setting aside the award. When a mandatory provision is not complied with and when the delay is not properly, satisfactorily and convincingly explained, the court cannot condone the delay, only on the sympathetic ground. The orders passed by the learned Sub-Judge and also by the High Court are far from satisfactory. No reason whatsoever has been given to condone the inordinate delay of 3320 days. It is well-considered principle of law that the delay cannot be condoned without assigning any reasonable, satisfactory, sufficient and proper reason. Both the courts have miserably failed to comply and follow the principle laid down by this Court in a catena of cases. We, therefore, have no other option except to set aside the order passed by the Sub-Judge and as affirmed by the High Court. We accordingly set aside both the orders and allow this appeal.”

11. There is absolutely no explanation on record as to why the applicant did not initiate the appropriate proceedings after

discharge from service within the prescribed period of limitation. In view of the settled proposition of law, as laid down by the Hon'ble Apex Court in **Mewa Ram (Deceased by L.Rs) & Ors v. State of Haryana**, *AIR 1987 SC 45*, **State of Nagaland v. Lipok AO & Ors**, *AIR 2005 SC 2191* and **D. Gopinathan Pillai v. State of Kerala & Anr**, *AIR 2007 SC 2624*, the applicant was under an legal obligation to give cogent and valid reasons for the delay. Time and again it has been held by the Hon'ble Apex Court that if the law provides for a limitation, it is to be enforced even at the risk of hardship to a particular party, as the Judge cannot, on applicable grounds, enlarge the time allowed by law, postpone its operation or introduce exceptions not recognised by law. The law of limitation has to be applied with all its rigour. The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play. We are, therefore, not inclined to accept such a plea as raised by the applicant supra, which is wholly unjustified and cannot furnish any ground for ignoring delay and laches. (Vide **General Fire and Life Assurance Corporation Ltd v. Janmahomed Abdul Rahim**, *AIR 1941 PC 6*, **P.K.Ramachandran v. State of Keral & Anr**, *AIR 1998 SC 2276*, **Esha Bhattacharjee v. Raghunathpur Nafar Academy & Ors**, *(2013) 12 SCC 649*, **Basawaraj v. Land Acquisition Officer**, *(2013) 14 SCC 81*, **State of Karnataka & Ors v. S.M.Kotrayyqa & Ors** *(1996) 6 SCC 267*, **Jagdish Lal & Ors v.**

State of Haryana and Ors, AIR 1997 SC 2366 and M/s Rup Diamonds & Ors v. Union of India and Ors, AIR 1989 SC 674.

12. When the grounds of delay condonation are tested on the touchstone of aforementioned guidelines, the conclusion is irresistible that the applicant has utterly failed to explain the delay of more than 25 years in filing this petition.

13. Accordingly, we do not find it a fit case for condonation of delay. It deserves to be dismissed and is hereby **dismissed**. Consequently, the OA also stands dismissed as being barred by time.

(Air Marshal BBP Sinha)
Member (A)

(Justice SVS Rathore)
Member (J)

April 16, 2019

JPT