Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

M.A. No. 1449 of 2018

Monday, this the 22nd day of April, 2019

Hon'ble Mr. Justice SVS Rathore, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)

Ram Sajivan Pandey No 2591178W, Ex Sepoy/Cook, son of Shri Ram Kripal Pandey, resident of village Gyanpur Basupur. Post Gyanpur,Maharajganj, Tehsil Sadar, District Faizabad (UP)

…. Applicant

Ld. Counsel for the Applicant: **Shri V.K. Pandey, Advocate**.

Versus

1. Union of India through Secretary, Ministry of Defence, DHQ, PO South Block, R.K. Puram, New Delhi-110011.
2. Chief of Army Staff, R.K. Puram, New Delhi.
3. OIC Records, the Madras Regiment PIN 900458, Post Bag No. 1, Wellington (Nilgiris) 643231, C/O 56 APO.
4. Commandant, 27 Madras Regiment, C.O 56 APO.
5. Commanding Officer, 6 GR C/O 56 APO.
6. PCDA (P) Drapadighat, Allahabad (UP).

...Respondents

Ld. Counsel for the Respondents: Dr Shailendra Sharma Atal, Central Government Counsel.

ORDER(ORAL)

1. By means of this O.A. under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has made the following prayers :-

> *"(i) That this Hon'ble Tribunal may kindly be pleased to modify the dismissal of the applicant into discharge on extreme compassionate grounds w.e.f. 20.10.2003 and respondents may kindly be directed to pay the service pension and entire service benefits with all consequential benefits to the applicant in the interest of justice, and provide the interest on the aforesaid delayed amount of service pension and service benefits with 18% p.a. since due date to actual date of payment.*
>
> *ii) Any other beneficial relief which this Hon'ble Tribunal deems fit and reasonable be also awarded to the applicant against the respondents."*

2. From a perusal of the averments made in the petition, it is clear that the applicant has filed this petition against order of dismissal dated 20.10.2003 after lapse of 14 years, 03 months and 17 days.

3. Brief facts of the case are that the applicant was enrolled in the Indian Army in Madras Regiment as a Sepoy/Cook on 16.07.1986. Learned counsel for the applicant has admitted during course of arguments that the applicant absented from the Unit since 10.05.1993. Since the applicant was posted in field area, as such, the competent authority after observing the relevant process of law declared him a deserter, and consequently, after the waiting period of ten years, dismissed him from service on administrative grounds under Section 20 (3) of the Army Act. Against said order of dismissal dated 20.10.2003, the applicant has preferred the instant petition. In the application for condonation of delay the ground taken by the applicant is that the applicant was suffering from various diseases as such he could not

approach the Tribunal. Further ground taken by the applicant in the application for condonation of delay is that the applicant being the sole earning member in the family, due to his family obligations could not approach the Tribunal. The delay in approaching the Tribunal is not intentional and deliberate and is liable to be condoned.

4. Submission of learned counsel for the applicant is that the applicant had sent various letters to the authorities concerned from 2010 till 2017, and when no proper response was made by the respondents, the applicant has preferred the instant petition. It is submitted that the applicant has been pursuing his cause diligently and the words 'sufficient cause' for not approaching the Tribunal within the period of limitation should be applied in a reasonable and liberal manner so as to advance substantial justice.

5. In rebuttal, learned counsel for the respondents argued that the applicant was dismissed from service on 20.10.2003 after complying with the due process of law. It is also submitted that mere filing of representation does not make out a case for condonation of delay. Such representation must be within a reasonable period and adequate details/explanation must be brought on record to explain the period of delay. It is further argued that the applicant was dismissed on 30.06.2003 and the order of dismissal was well within his knowledge and the applicant has not been able to explain the delay in preferring the present petition. He argued that present petition deserves to be dismissed

on the sole ground of not approaching the Tribunal within the period of limitation.

6. We have heard learned counsel for the parties and perused the record.

7. Learned counsel for the applicant could not dispute that the order of discharge from service was passed after following due procedure by the competent authority does not involve recurring cause of action.

8. In the case of ***M.P. vs. Nandlal Jaiswal & ors*** reported in IR 1987 SC 251), it has been held that if there is inordinate delay and such delay is not satisfactorily explained the Courts/Tribunals shall not intervene and grant relief in exercise of its jurisdiction. The discretion does not ordinarily assist the tardy and the indolent or the acquiescent. In the case of ***N. Balakrishnan vs. M. Krishnamurthy*** reported in (1998) 7 SCC 123, Hon'ble Supreme Court interpreted the word 'sufficient cause' and held that Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered and is thus founded on public policy. Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

9. Law is also well settled that if any order is passed by the Court or Tribunal to dispose of a representation, then the period of limitation would not commence from the date of decision of such a representation. Hon'ble the Apex Court in the case of ***C. Jacob vs. Director of Geology & ors,*** reported in (2008)10 SCC 215 has held that simply because a direction to decide representation was given and the representation was decided, it would not furnish a fresh cause of action. In this regard, we may refer to paras 9, 10, 11 and 15 of the case of ***C. Jacob*** (supra), which read thus:-

> *"9. The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly they assume that a mere direction to consider and dispose of the representation does not involve any `decision' on rights and obligations of parties. Little do they realize the consequences of such a direction to `consider'. If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to `consider'. If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The Tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored.*
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> *10. Every representation to the government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the department, the reply may be only to inform that the matter did not concern the department or to inform the appropriate department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations cannot furnish a fresh cause of action or revive a stale or dead claim.*
>
> *11. When a direction is issued by a court/tribunal to consider or deal with the representation, usually the directee (person directed) examines the matter on merits, being under the impression that failure to do may amount to disobedience. When an order is passed considering and rejecting the claim or representation, in compliance with direction of the court or tribunal,*

such an order does not revive the stale claim, nor amount to some kind of acknowledgment of a jural relationship' to give rise to a fresh cause of action.

15. The present case is a typical example of `representation and relief'. The petitioner keeps quiet for 18 years after the termination. A stage is reached when no record is available regarding his previous service. In the representations which he makes in 2000, he claims that he should be taken back to service. But on rejection of the said representation by order dated 9.4.2002, he filed a writ petition claiming service benefits, by referring the said order of rejection as the cause of action. As noticed above, the learned Single Judge examined the claim, as if it was a live claim made in time, finds fault with the respondents for not producing material to show that termination was preceded by due enquiry and declares the termination as illegal. But as the appellant has already reached the age of superannuation, the learned Single Judge grants the relief of pension with effect from 18.7.1982, by deeming that he was retired from service on that day. We fail to understand how the learned Single Judge could declare a termination in 1982 as illegal in a writ petition filed in 2005. We fail to understand how the learned Single Judge could find fault with the department of Mines and Geology, for failing to prove that a termination made in 1982, was preceded by an enquiry in a proceedings initiated after 22 years, when the department in which appellant had worked had been wound up as long back as 1983 itself and the new department had no records of his service. The appellant neither produced the order of termination, nor disclosed whether the termination was by way of dismissal, removal, compulsory retirement or whether it was a case of voluntary retirement or resignation or abandonment. He significantly and conveniently, produced only the first sheet of a show cause notice dated 8.7.1982 and failed to produce the second or subsequent sheets of the said show cause notice in spite being called upon to produce the same. There was absolutely no material to show that the termination was not preceded by an enquiry. When a person approaches a court after two decades after termination, the burden would be on him to prove what he alleges. The learned Single Judge dealt with the matter as if he the appellant had approached the court immediately after the termination. All this happened, because of grant of an innocuous prayer to `consider' a representation relating to a stale issue."

10. Similar view was expressed by their Lordships of Hon'ble Apex Court in the case of and ***Union of India vs. M.K. Sarkar*** reported in (2010) 2 SCC 59.

11. The Hon'ble Apex Court in the case of ***Balwant Singh (dead) vs. Jagdish Singh & ors***, reported in (2010) 8 SCC 685 has observed that it must be kept in mind that whenever, a law is enacted by the legislature,

it is intended to be enforced in its proper perspective. It is an equally settled principle of law that the provisions of a statute, including every word have to be given full effect, keeping the legislative intent in mind, in order to ensure that the projected object is achieved. In other words, no provision can be treated to have been enacted purposelessly. If we accept the contention of the Ld. Counsel appearing for the applicant that the Court should take a very liberal approach and interpret these provisions in such a manner and so liberally, irrespective of the period of delay, it would amount to practically rendering all these provisions redundant and inoperative. Such approach or interpretation would hardly be permissible in law. It is further held that liberal construction of the expression "sufficient cause" is intended to advance substantial justice which itself presupposes no negligence or inaction on the part of the applicant, to whom want of bonafide is imputable. There can be instances where the court should condone the delay; equally there would be cases where the court must exercise its discretion against the applicant for want of any of these ingredients or where it does not reflect "sufficient cause" as understood in law.

12. In the case of ***H. Dohil Constructions Company Private Limited vs. Nahar Exports Limited & anr***, (2015) 1 SCC 680. their Lordships of the Hon'ble Apex Court have observed as under:

> *"23. We may also usefully refer to the recent decision of this Court in Esha [(2013) 12 SCC 649)] where several principles were culled out to be kept in mind while dealing with such applications for condonation of delay. Principles (iv), (v), (viii), (ix) and (x) of para 21 can be usefully referred to, which read as under: (SCC pp. 658 to 59."*

> *(iv) No presumption can be attached to deliberate causation of delay but gross negligence on the part of the counsel for litigant is to be taken note of.*
>
> *(v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.*
>
> *(vii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter, it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.*
>
> *(ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant facts to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go-by in the name of liberal approach.*
>
> *(x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such litigation."*

13. In the case in hand, learned counsel for the applicant has admitted that the applicant had deserted the Army on 10.05.1993 and was dismissed from service on account of desertion on 20.10.2003. He was well aware of the order of dismissal but did not pursue his remedy by approaching the appropriate forum at least till 2010, when as per pleadings on record, he approached the authorities by preferring a representation for the first time. Armed Forces Tribunal also came into existence in the year 2007. Till then the applicant was free to seek remedy by filing Writ Petition before the High Court.

14. In view of the well settled legal proposition articulated by Hon'ble Supreme Court in above referred pronouncements, there is an absolute lack of bona fide imputable to the applicant in approaching the Tribunal within a reasonable and explainable delay. The applicant has

miserably failed to discharge his legal obligation to explain each day delay.

15. We feel worth mentioning that surprisingly the applicant in his representations, copies of which have been annexed as Annexure Nos 2 to 12 along with the petition has mentioned that he has rendered about 23 years of service in the Army while this fact is patently wrong. By mentioning this fact of his putting in service of 23 years, the applicant has tried to mislead the competent authority while the admitted fact is that the applicant was enrolled in the Army on 16.07.1986 and voluntarily absented himself from service on 10.05.1993 and was dismissed with effect with effect from 20.10.2003 as a deserter. Thus the assertion of the applicant that he served the Army for 23 years is obviously untrue and has been mentioned to mislead the authority concerned.

15. So far as the prayer made by the applicant for converting the order of dismissal by order of discharge, suffice to mention that the applicant was enrolled in the Army on 16.07.1986 and had deserted the Army, as per own admission of learned counsel for the applicant, on 10.05.1993, i.e. about 06 years, so he was very much aware of the fact as to what absence from duty means in Army. In a very recent judgment in Civil Appeal No. 3095 of 2017 ***Union of India & others vs. Ex. No. 6492086A Sep/Ash Kulbeer Singh*** decided on 11.03.2019, Hon'ble the Apex Court has set aside the judgment passed by a co-ordinate Bench of this Tribunal wherein the order of dismissal after 302 days of absence

was converted into discharge was held to be bad in the eye of law and accordingly the same was set aside.

16. If the submission of learned counsel for the applicant that the order of dismissal be converted into order of discharge is given any credence, it would amount that the applicant is admitting his absence for about 10 years. If a person is absent for a long period of 10 years, then he must face the consequences because such an act is extremely in gross violation of strict Army discipline. Hon'ble Apex Court in the aforementioned case of ***Kulbeer Singh*** regarding punishment observed as under:-

> *"Insofar as the second submission is concerned, it is evident from the statement, which was extracted earlier, that the respondent had admitted his absence for 302 days without leave. The statement contains a justification for the absence. From the record, it is evident that the respondent did not make any effort to apply for extension of his leave. Absence of 302 days from his duty by a member of the Armed Force could not be condoned. We are clearly of the view that the Armed Forces Tribunal was in error in coming to the conclusion that the punishment which was imposed was harsh. The only basis for the finding was that the respondent had put in twelve years of service. This was all the more a reason why any responsible member of the Armed Force should not have absented from service without permission.*
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> *The Tribunal clearly misdirected itself in law in coming to the conclusion that the punishment of dismissal from service was harsh and disproportionate."*

17. In view of the recent pronouncement of Hon'ble Supreme Court aforementioned on the subject also, we find no good ground to grant indulgence to the applicant.

18. The question which now remains to be considered is whether a person who has been dismissed from service can claim pension? Hon'ble Apex Court considered this point in the case of **Shish Ram vs.**

Union of India & others reported in Supreme Court Reports (2011) 13 (Addl.) S.C.R. 289 and has held that a dismissed person has no right to claim pension and gratuity. The relevant Para-8 of the said judgment reads as under:-

> *"8. Regarding pension and gratuity claimed by the appellant, Regulation 113 (a) of the Pension Regulations, 1961 is quoted hereinbelow:*
>
> > *"An individual, who is dismissed under the provisions of the Army Act, is ineligible for pension or gratuity in respect of all previous service. In exceptional cases, however, he may, at the discretion of the President be granted service pension or gratuity at a rate not exceeding that for which he would have otherwise qualified had he been discharged on the same date."*
>
> *Regulation 113(a) is clear that an individual, who is dismissed under the provisions of the Army Act, is ineligible for pension or gratuity in respect of all previous service. As the appellant had been dismissed from the service under the provisions of the Army Act, he was not eligible for pension and gratuity and the High Court was right in rejecting the claim of the appellant for pension in the impugned judgment."*

19. In view of the observations made herein above, we are of the considered opinion that the applicant has not been able to explain the inordinate delay in approaching the Tribunal and deserves no indulgence. Furthermore, we find no good ground to convert the order of dismissal into order of discharge and once the order of dismissal subsists, the applicant is also not entitled to family pension.

20. Application for condonation of delay is **rejected** accordingly.

Consequently, the OA is also **dismissed**.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice SVS Rathore)
Member (J)

Dated: 22nd April, 2019
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