

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****M.A. No. 1500 of 2018****In Re****O.A. No. NIL of 2018****Wednesday, this the 24th day of April, 2019****Hon'ble Mr. Justice SVS Rathore, Member (J)****Hon'ble Air Marshal BBP Sinha, Member (A)**

Basudha Rani widow of No. 15157972-N Late Gunner Manoj Pratap Singh, resident of village Gherpur, Post Office Faridpur, District Bareilly (UP).

.... Applicant

Ld. Counsel for the: **Shri S.K. Singh, Advocate.**
Applicant

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, New Delhi -110011.
2. The Chief of Army Staff, Sena Bhawan, New Delhi-110011
3. Senior Records Officer, Nasik Road Camp, Nasik (Maharashtra)
PIN – 422102 APS PIN 908802 C/o 56 APO.
4. Commanding Officer, 127 SATA Regiment, C/o 46 APO.
5. Commanding Officer, 10 Corps Arty Brigade C/o 56 APO.

...Respondents

Ld. Counsel for the: **Shri Amit Jaiswal,**
Respondents. **Addl 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) Quash the finding and sentence dated 26.03.2007 passed by the respondents, after summoning the same from respondents.

“(II) Direct the respondent to grant family pension to the applicant w.e.f. 26.03.2007 and grant her facilities of dependent of ex-serviceman.

“(III) Direct the opposite parties to decide the application dated 05.02.2018 (Annexure No. 4) with reasoned and speaking order within stipulated time.

“(IV) Pass any order which this Hon’ble Tribunal deem fit and proper under the facts and circumstances of the case in favour of the applicant, in the interest of justice.

“(V) Allow the Original Application with cost.

2. From a perusal of the averments made in the petition, it is clear that the applicant who is widow of No. 15157972-N Late Gunner Manoj Pratap Singh has filed this petition against order of dismissal dated 26.03.2007 of her late husband after lapse of 10 years, 10 months and 18 days and thereafter to pay her family pension.

3. Applicant’s husband (No. 15157972-N Late Gunner Manoj Pratap Singh) was enrolled in the Regiment of Artillery on 03.06.2002. On 03.06.2006 he was granted forty days’ Annual leave which was further extended till 22.07.2006 and subsequently again till 01.08.2006. He failed to rejoin duty on expiry of annual leave on 02.08.2006;

consequently Apprehension Roll was issued on 08.08.2006. Husband of the applicant could neither be apprehended by the Police nor he rejoined his duties, therefore, after clear 30 days of absence, he was declared deserter with effect from 02.08.2006 after conducting a Court of Inquiry. However, after lapse of 168 days, the husband of the applicant rejoined duties on 17.01.2007. The husband of the applicant had earlier also overstayed leave from 18.10.2005 to 03.03.2006 (136 days) for which he was awarded punishment of 28 days' Rigorous Imprisonment in military custody and 14 days' pay fine on 04.03.2006. For the second desertion, the husband of the applicant was tried by a Court Martial under Section 39 (b) of the Army Act and sentenced to be dismissed from service. The sentence awarded to the husband of the applicant was also intimated to the applicant. It may be noticed that from the date of initial enrolment in the Army on 03.06.2002 till his dismissal on 26.03.2007, the Army personnel had put in only 04 years, 08 months and 23 days of service including 304 days of non-qualifying service. Upon dismissal from service, all the terminal benefits were paid to the husband of the applicant.

4. The applicant on 05.02.2018 i.e. after lapse of about 11 years submitted an application under the Right to Information Act intimating that her husband has died in a road accident on 20.06.2014 and prayed that the sentence of dismissal of her husband dated 26.03.2007 be set aside and she be granted family pension.

5. In the application for condonation of delay, the sole ground to explain the delay is that the applicant has sent numerous communications to the authorities which were ultimately replied by the respondents on 18.01.2018.

6. Submission of learned counsel for the applicant is that the applicant as well as her late husband had sent various letters to the authorities concerned, and when no proper response was made by the respondents, the applicant has preferred the instant petition. It is submitted that the applicant is an illiterate lady and has been pursuing her cause and the delay in preferring the petition may be condoned so as to advance substantial justice.

7. Learned counsel for the respondents has contested the claim of the applicant. In the counter affidavit filed by the respondents it is averred that the husband of the applicant did not prefer any representation/appeal against the order of punishment and only on 05.02.2018 the applicant (wife of deceased Army personnel) had sent a letter under the Right to Information Act with request to quash the order of dismissal of her late husband and to extend all consequential benefits of ex-serviceman to her.

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

9. 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. 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.

10. 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. Thus, the applicant has miserably failed to explain the delay in preferring the petition which deserves to be dismissed on this count alone.

11. Besides the above, from the averments made in the petition as well as from the reliefs as prayed for by the applicant, it is apparent that the applicant has prayed for family pension after setting aside the order of dismissal of her late husband. Thus, in essence the prayer of the applicant is that the order of dismissal of her late husband be set aside. Admittedly, the husband of the applicant has died in a road accident on 20.06.2014, i.e. much earlier to the filing of the present petition. We find no force in the submission of learned counsel for the applicant that the husband of the applicant had made repeated representations to the respondents to set aside the punishment of dismissal and for his reinstatement in service. Only one typed copy of letter dated 12.07.2007

has been annexed. This letter does not inspire confidence that it was really sent by the husband of the applicant on the date as mentioned therein in the absence of copy of the original letter from which this copy has been typed and also in absence of any postal receipt to indicate its communication. There is nothing on record to show that such a representation was ever sent by the husband of the applicant. No other copy of any purported representation has been brought on record by the applicant. Thus, it may safely be presumed that during his life time the husband of the applicant had neither preferred any statutory petition before the appropriate authority nor had challenged the order of dismissal by preferring any petition before the Armed Forces Tribunal which came to be established in the year 2007. Thus, it may safely be held that the husband of the applicant considering the gravity of offence committed by him while serving the Army had accepted the order of dismissal passed against him after due inquiry and Court Martial. It appears that for the first time, his widow i.e. the applicant, has challenged the order of dismissal of her late husband. The applicant herself has admitted that her late husband had never divulged her about the court martial proceedings held against him as she is an illiterate lady and was unable to make any query with her husband.

12. 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 her legal obligation to explain each day delay.

13. The question which now remains to be considered is whether the next of kin of a dead person who was been dismissed from service during his lifetime can approach the Tribunal for setting aside the order of dismissal and claim pension of dismissed dead person? 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 (what to say his next of kin after his death) 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."

14. 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 are of the considered opinion that the applicant has no legal right to step into the shoes of a dead person and for the first time challenge the order of dismissal, the dismissed person having not resorted to any legal remedy during his life time to challenge the order of dismissal and in the subsistence of order of dismissal, no family pension is payable to the applicant.

25. 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: 24th April, 2019
anb