

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

M.A. No. 1818 of 2018
(Application for condonation of delay)

Inre:

OA No. NIL of 2018

Monday, this the 22nd of April, 2019

“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)
Hon’ble Air Marshal BBP Sinha, Member (A)”

Subhash Chand (Ex-Spr No. 1477135L) son of Shri Zile Singh, OIC Bengal Engineers Group, Roorkee, resident of village Amipur Baleni, district Baghpat, U.P.

..... Applicant

Counsel for the Applicant : **Shri Gyan Singh Chauhan**, Advocate.

Versus

1. Union of India, through Chief of the Army Staff, Headquarter, Ministry of Defence, New Delhi.
2. Senior Record Officer, OIC Records, Bengal Engineers Group Records, Roorkee.

.....Respondents

Counsel for the Respondents. : **Shri Rajiv Pandey**,
Addl Central Govt. Standing Counsel

ORDER (ORAL)

1. Being aggrieved by order of dismissal dated 20.04.2003, the applicant has approached this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 with the following prayers:-

- (a) *To quash the impugned order of dismissal dated 20.04.2003 on the ground of desertion passed by respondent no. 2 contained as Annexure No 1 of the present application, in the interest of justice.*
- (b) *To quash the impugned order dated 30.11.2016 passed by the respondent No. 2 regarding grant of pension contained as Annexure No. 2 of the present application, in the interest of justice.*
- (c) *Costs and expenses of the application in favour of the applicant against all the opposite parties.*

(d) *Any other relief or reliefs which this Hon'ble Tribunal deems fit and proper in the circumstances of the case may also be granted./*

2. As per report of the Registry, there is delay of 15 years, 04 months and 02 days in preferring this petition against order of dismissal.

3. Brief facts of the case are that the applicant was enrolled in the Indian Army in Bengal Engineers Group on 21.03.1985. As per pleadings of the applicant, the applicant had proceeded on leave and was to rejoin the Unit on 04.10.1999. However, he did not rejoin duties and consequently, after adopting due process of law, he was declared deserter and after waiting for the required period of three years, he was dismissed from service by the impugned order dated 20.04.2003. The ground taken by the applicant in the application for condonation of delay is that the applicant due to non availability of proper legal advice, preferred statutory complaint on 16.02.2018, i.e. after about 15 years from the date of dismissal from service. It is also pleaded that the delay in filing the petition is not intentional and deliberate, but bona fide, and thus, 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 in the years 2016 and 2018 but no reply was ever sent to the applicant. 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 20.04.2003 after complying with the due process of law. Learned counsel further submitted that the applicant has tried to build up a case that he had continuously pursued his remedy but no such purported representations have been brought on record by the applicant with valid proof of communication and the photo copy of the postal receipt filed by the applicant relates to the alleged representations preferred by the applicant in the years 2016 and 2018. 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, in the absence of which the petition deserves to be dismissed.

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 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 AIR 1987 SC 251, law has been well settled that if there is inordinate delay and such delay is not satisfactorily explained the Courts/Tribunals are loath to intervene and grant relief in exercise of its jurisdiction. The High Court (Tribunal in this case) in exercise of its 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. It is enshrined in the maxim **Interest reipublicae up sit finis litium** (it is for the general welfare that a period be put to litigation). 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.

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 wherein in para 18, their Lordships have observed thus:-

"Where a belated representation in regard to a "stale" or "dead" issue/dispute is considered and decided, in compliance with a direction by the court/tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the "dead" issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches."

11. The Hon'ble Apex Court in the case of ***Balwant Singh (dead) vs. Jagdish Singh & ors***, reported in (2010) 8 SCC 685 has laid down certain guidelines with regard to condonation of delay. Relevant portion of the judgment reads thus:

"32. 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.

33. Furthermore, it is also a well settled canon of interpretative jurisprudence that the Court should not give such an interpretation to the provisions which would render the provision ineffective or odious. Once the legislature has enacted the provisions of Order 22, with particular

reference to Rule 9, and the provisions of the Limitation Act are applied to the entertainment of such an application, all these provisions have to be given their true and correct meaning and must be applied wherever called for. 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 (Order 22 Rule 9 CPC and Section 5 of the Limitation Act) 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.

34. 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. (*Advanced Law Lexicon, P. Ramanatha Aiyer, 2nd Edn., 1997*).

35. The expression “sufficient cause” implies the presence of legal and adequate reasons. The word “sufficient” means adequate enough, as much as may be necessary to answer the purpose intended. It embraces no more than that which provides a plentitude which, when done, suffices to accomplish the purpose intended in the light of existing circumstances and when viewed from the reasonable standard of practical and cautious men. The sufficient cause should be such as it would persuade the court, in exercise of its judicial discretion, to treat the delay as and excusable one. These provisions give the courts enough power and discretion to apply a law in a meaningful manner, while assuring that the purpose of enacting such a law does not stand frustrated.

36. We find it unnecessary to discuss the instances which would fall under either of these classes of cases. The party should show that besides acting bonafide, it had taken all possible steps within its power and control and had approached the court without any unnecessary delay. The test is whether or not a cause is sufficient to see whether it could have been avoided by the party by the exercise of due care and attention. (*Advanced Law Lexicon, P. Ramanatha Aiyer, 3rd Edn., 2005*).

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, admittedly the applicant was dismissed from service on account of desertion on 20.04.2003. He was well aware of the order of dismissal but did not pursue his remedy by approaching the appropriate forum at least till 2016 when as per pleadings on record he approached the authorities by preferring representation. The submission of learned counsel for the applicant that the applicant had moved certain representations since the very beginning is not tenable for the reason that neither said representations have been filed along with the petition nor any such ground has been taken in the application/affidavit filed in support of application for condonation of delay. It is pleaded that application is within time. The expression “sufficient cause” presupposes no negligence or inaction on the part of the applicant, to whom want of bona fide is imputable. The aggrieved should show that besides acting bonafidely, he had taken all possible steps within his power and control and had approached the court or Tribunal (as the case may be) without any unnecessary delay. The applicant has utterly failed to explain the delay in approaching this Tribunal.

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. In view of the observations made herein above, the application for condonation of delay deserves to be rejected; hence **rejected**.

16. As a consequence to rejection of application for condonation of delay, the O.A. is also dismissed.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice S.V.S. Rathore)
Member (J)

Dated: 22.04.2019
anb

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