Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

M.A. No. 219 of 2018 along with M.A. No. 842 of 2018

In Re:
O.A. (A) No. NIL of 2018

Thursday, this the 25th day of April, 2019

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

Hav No. 13620045-Y Prem Singh, son of Late Sheer Naipal Singh, posted at 'A' Coy, 06 PARA Co/o 56 APO.

…. Applicant

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

Versus

1. Union of India through the Secretary, Ministry of Defence, South Block, New Delhi -110011.
2.
3. The Chief of Army Staff, Integrated HQ of MoD (Army) DHQ, PO New Delhi -110011
4.
3. Commanding Officer, Administative Battalion Commander, The PARA Regt Trg Centre, Bangalore-560006

...Respondents

Ld. Counsel for the Respondents: Shri Amit Jaiswal, 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) To quash and pass an direction to the respondents to set aside the punishment dated 21 Jan 2009 and all future orders in furtherance thereto.

(ii) To direct the respondents to restore Applicants service status (profile)

(iii) To pass orders which their Lordships may deem fit and proper in the existing facts and circumstances of the case.

(iv) Allow this application with cost."

2. By means of the instant petition, the applicant has challenged the order of punishment inflicted upon him dated 21.01.2009. As per office report, the petition has been filed with delay of 08 years, 06 months and 06 days. Earlier, the applicant along with the petition had filed application for condonation of delay. In said application, virtually no meaningful ground was taken explaining the delay in preferring the petition, as such, on 23.04.2019, the applicant has filed better affidavit explaining the delay. Pleadings have been exchanged between the parties.

3. Brief facts of the case are that the applicant was enrolled in the Parachute Regiment on 01.03.1994. On 30.10.2005 the applicant was posted to Parachute Regiment Training Centre as a Driver. While posted at Parachute Regiment Training Centre, on 07.11.2007 the applicant was detailed to transport patients to Command Hospital (Air Force) in Military Vehicle having Registration No.BA No. 03D 153458A on regular basis. While on way, due to traffic jam ahead of under bridge, the applicant turned the vehicle to the left side and collided with one motorcycle resulting in the spot death of one Mr Rama Krishna Chintala, who was driving the motorcycle. A Court of Inquiry (CoI) was conducted to investigate the circumstances under which the vehicle driven by the applicant met with an accident with the motorcycle. Subsequently, a Summary Court Martial was held on 21.01.2009 and the applicant was tried under Section 69 of the Army Act, 1950 for the offence 'committing a civil offence, that is to say, causing death by a rash or negligent act not amounting to culpable

homicide under Section 304-A of the Indian Penal Code'. The applicant was punished with reduction to the lower rank i.e. Havildar to Naik and was severely reprimanded vide order dated 21.01.2009. The punishment was confirmed by the Deputy Judge Advocate General, Headquarters, Southern Command vide order dated 21.01.2009. Meanwhile, father of the deceased filed petition NVOP No. 152 of 2010 (Old No. 14 of 2008) and the Additional District Judge concerned directed that a compensation of Rs. 14,22,200/- with interest at the rate of 6% per annum be paid to the father of the deceased. The Parachute Regiment Training Centre deposited an amount of Rs. 22,82,631 including interest with the MACT Court Gudivada on 22.01.2018. The applicant filed two petitions on 22.09.2014 and 19.12.2014, one with the GOC-in-C Southern Command and the second to the Chief of the Army Staff respectively. The applicant requested for consideration of his petition dated 19.12.2014 which was considered and was rejected being devoid of merits on 28.11.2016. The applicant was discharged from service on completion of his term of engagement after serving for 24 years on 28.02.2018 from the rank of Havildar. Now the applicant has approached this Tribunal for setting aside the punishment order dated 21.01.2009 and for grant of consequential reliefs.

4. In the second affidavit filed in support of application for condonation of delay, the ground to explain the delay is that in June 2009 that applicant was posted in the counter insurgency area at Srinagar. In the year 2012, the applicant's father suffered cardiac problems and was operated at Base Hospital, Delhi. In November 2015 his father expired. It is further stated

that his appeal was rejected on 28.11.2016.

5. Submission of learned counsel for the applicant is that on account of posting of the applicant in the counter insurgency area at Srinagar as well as the ailment of his father and his ultimate death, the applicant could not pursue his cause. It is further submitted that the order rejecting his appeal was communicated to him on 28.11.2016, as such, there is no delay imputable to the applicant in preferring the present O.A. It is submitted that the applicant has been pursuing his case and the delay in preferring the petition may be condoned so as to advance substantial justice.

6. Learned counsel for the respondents has contested the claim of the applicant. It is vehemently argued that the applicant has not reasonably explained as to what precluded him to approach the Tribunal after 21.01.2009. It is further submitted that the grounds taken by the applicant to explain the inordinate delay are vague. Learned counsel argued that the applicant was posted back in Agra in 2012 and even since then he has not approached the Tribunal. It is argued that the ground of illness of applicant's father is also not tenable since his father died in the year 2015 and the applicant has not given good reasons as to why he failed to approach the Tribunal for rederessal of his grievance immediately thereafter.

7. Learned counsel for the applicant could not dispute that the order of punishment of reduction in rank passed and severe reprimand after following due procedure by the competent authority, does not involve recurring cause of action.

8. Law is 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.*
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> *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."*

9. 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."

10. 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.*
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> *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 Aiyar, 3rd Edn., 2005****).*

11. 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.

12. 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 filed to explain the delay in preferring the petition which deserves to be dismissed on this count alone.

13. 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. Admittedly, the order of punishment was passed on 21.01.2009. Thereafter, the applicant did not take any recourse for redressal of his grievance and only on 22.09.2014 and

thereafter on 19.12.2014 he preferred representation against the order of punishment. What precluded him from pursuing his case since 2009 till 19.12.2014 is not reasonably explained and the grounds taken by the applicant do not inspire confidence. While posted in counter insurgency area, the applicant must have availed casual leave and annual leave. So it was open to him to seek remedy during such leave period. There is no explanation as to what prevented him from seeking his remedy during that leave period. Thus, the applicant has miserably failed to discharge her legal obligation to explain each day delay.

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.

15. 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: 25th April, 2019
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