

Court No.1**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****M.A. No.246 of 2018
In re:
OA No. (Nil) of 2018**Thursday, this the 09th day of August, 2018**“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)
Hon’ble Air Marshal BBP Sinha, Member (A)”**

No 13685521A Ex Gdsm Prem Kumar Sharma, Son of Sri Kishan Chand, Trived Enclave R/o Vill Girdharpur Sunarsi, PO Chhaprela, Distt Gautam Buddh Nagar (UP).

..... Applicant

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

Versus

1. Union of India, through its Secretary, MoD, New Delhi.
2. Chief of Army Staff, Army HQ, New Delhi.
3. Officer-in-Charge, Records, Brigade of Guards, PIN-900746 C/O 56 APO.
4. Commanding Officer, 3 Guards, PIN- 910903, C/O 56 APO.

..... Respondents

Ld. Counsel for the: **Shri Shyam Singh, Advocate**
Respondents.**ORDER****Per Justice SVS Rathore, Member (J)**

1. We have heard learned counsel for the parties on the application for condonation of delay (MA No.246 of 2018) and perused the record.

2. As per office report, this OA was filed after a delay of 26 years, 11 months and 25 days.

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

“(i) To call for entire records of SCM proceedings.

(ii) To quash SCM proceedings including the sentence awarded by this Court Martial.

(iii) To re-instate the applicant in service with all consequential benefits, w.e.f. 04 Aug 1990.

(iv) Cost of the case may be allowed.”

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 26 years. The dismissal 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 was in a disturbed mental state and, therefore, he could not approach the Tribunal within the period of limitation. In Para-8 of the affidavit filed in support of the application for condonation of delay, it has been averred that the applicant had also sought copies of SCM proceedings and other related documents but those were not provided to him. He has annexed copies of those letters alongwith the O.A. These letters start from 21.03.1994 till 25.10.2017. Apart from it, there is not even a single medical document/ certificate showing that the applicant

was in such a mental state that he could not approach the Tribunal for redressal of his grievance for more than 26 years. On the contrary, the applicant was continuously making the representations and moving applications under the RTI Act, which gives rise to the only inference that he was in a fit state of mind.

6. Learned counsel for the respondents submits that the delay in filing this petition has not been properly explained and, therefore, the huge delay in preferring this petition on the ground that he was not provided with the copies of SCM proceedings, ought not be condoned as that relates to the merits of the case, which can be looked into only when the delay in filing the O.A. is satisfactorily explained.

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

8. 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.”

9. We would 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.”

10. There is absolutely no explanation on record as to why the applicant did not initiate the appropriate proceedings after dismissal 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 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 Kerala & 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.

11. 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 26 years in filing this petition. 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) (Justice SVS Rathore)
Member (A) Member (J)

August 09, 2018

JPT