

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****M.A. No. 988 of 2017  
In re: O.A No. (Nil) of 2017**Monday, this the 20<sup>th</sup> day of August, 2018**“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)  
Hon’ble Air Marshal BBP Sinha, Member (A)”****Ex-Sepoy (Tailor) Rajinder Singh (Army No 14811533A) 5071  
ASC Battalion, C/o 56 APO, S/o Shri Ram Singh, R/o Vill & Post-  
Bhubaneswar, Tehsil- Didi Hat, PS- Beri Nag, Dist- Pithoragarh  
(UK) Pin-262522.**

..... Applicant

Ld. Counsel for the: **Shri D.S. Rawal**, Advocate  
Applicant

Versus

1. Chief of Army Staff, Integrated Headquarter of the Ministry of Defence (Army), South Block, New Delhi-110011.
2. Officer-in-Charge, ASC Records Bangalore (South).
3. Commanding Officer, 5071 ASC Battalion, C/O 56 APO.
4. Principal Controller Defence Accounts (Pension) Draupadi Ghat, Allahabad.

.....Respondents

Ld. Counsel for the: **Shri Amit Sharma**,  
Respondents. Central Govt. Standing Counsel**ORDER (Oral)**

1. Heard learned counsel for the parties and perused the record.
  2. This is an application for condonation of delay in filing the OA.
- By means of the said OA, the applicant has made a prayer to set aside his discharge order dated 20.11.2007. As per office report,

there is a delay of 09 years, 01 month and 01days in filing the OA. Objection on behalf of the respondents to this application and reply by the applicant to the said objection have also been filed. The ground taken in the application for condonation of delay is that the applicant had acute financial problem and he had been working as labourer to support his family. In the year 2016, he contacted one of the Advocates and filed statutory petition against his discharge, which was rejected as barred by time. The applicant had rendered 13 years 5 months' service before he was discharged from Army. Thus, the only ground taken in the application for condonation of delay is that the applicant was too poor to approach the Court in time for redressal of his grievance.

3. **Per Contra**, it has been pleaded in the objection filed on behalf of the respondents that the applicant had moved statutory petition after a lapse of about 06 years and the same was rightly rejected as barred by time; therefore, the applicant is not entitled to any relief as prayed for in the petition.

4. Submission of learned counsel for the applicant is that in the instant case, poverty of the applicant should be regarded as 'sufficient cause' for the delay in approaching the Court. He further submits that Courts should adopt a liberal and justice-oriented approach in such cases. In support of his submission, he has placed reliance on certain pronouncements of the Hon'ble Apex Court. The first case relied upon is **Ram Sumiran and others versus D.D.C and others**, 1985(3) LCD 86, wherein no steps were taken for bringing on record the legal representatives of the

deceased petitioner within time. The Hon'ble Apex Court condoned the delay and granted substitution of the legal representatives. This case related to a land dispute while the instant case, being a service matter, is founded on different facts and circumstances; hence the applicant is not entitled to the benefit of the said judgment.

5. The next case relied upon is **(Smt.) Asharfi and others versus Jaipal Singh and others**, photocopy of which has been filed but citation is not mentioned. In that case, the Hon'ble Apex Court had observed that having regard to the social and economic conditions prevalent in the country and particularly in the rural areas and the large scale poverty and illiteracy, which is rampant in the country, as a result of which most people do not know what are their rights and obligations, the applications for condonation of delay in bringing legal representatives on record should be considered liberally by the courts. In the said case too, the abatement was set aside and delay in filing the application for bringing on record the legal representatives of deceased respondent was condoned on the ground of poverty, while the instant case stands on different footings. Apart from it, the applicant had rendered more than 13 years of service, so he cannot say that he was poor at that time.

6. Reliance has also been placed on the pronouncement of Hon'ble Apex Court in **State of U.P and others versus Harish Chandra and others**, *AIR 1996 SC 2173*. In the said case, SLP was filed on behalf of the State of U.P and the delay was condoned on the ground that it occurred in processing the matter through official channel. In the instant case, the applicant himself had

caused the delay and no official channel is involved in the matter in any manner.

7. The next case-laws relied upon by the applicant are **State of Haryana versus Chandra Mani and others (AIR 1996 SC 1623)**, **Special Tehsildar, Land Acquisition, Kerala versus K.V.Ayisumma (1996) 10 SCC 634** and **Collector, Land Acquisition, Anantnag and another versus Mst. Katiji and others (1987) 2 SCC 107**, wherein too the delay was condoned as the same was caused in processing the matter through official channels; hence for the same reason, they are of no help to the applicant.

8. The legal position on the subject is very clear. Section 22 of the Armed Forces Tribunal Act, 2007 holds the field and provides for limitation 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. The applicant’s discharge took place after creation of Armed Forces Tribunals in the year 2007.

10. We would like to deal with the issue of limitation raised in the instant case also 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.”*

11. There is absolutely no explanation on record as to why the applicant did not initiate the appropriate proceedings after discharge from service within the prescribed period of limitation. Discharge is not a recurring cause of action and 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, but he has utterly failed in explaining such a huge delay of about 10 years. 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 encapsulate 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.**

12. In view of the discussion held above, the application for condonation of delay (**MA No. 988 of 2017**) has no merit. It deserves to be dismissed and **is hereby dismissed**. Consequently, the OA also stands **dismissed**.

**(Air Marshal BBP Sinha)  
Member (A)**

**(Justice SVS Rathore)  
Member (J)**

August 20, 2018

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