Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
Court No.1

O.A. No. 542 of 2022 with M.A. No. 658 of 2022

Smt Bhagwati Devi, W/o L/Nk Bhim Bahadur Rana Applicant
By Legal Practitioner for the Applicant

Versus

Union of India & Others Respondents
By Legal Practitioner for Respondents

Notes of the Registry	Orders of the Tribunal
	15.07.2022 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** Heard Shri VR Chaubey, Ld. Counsel for the applicant and Dr. Chet Narayan Singh, Ld. Counsel for the respondents. The applicant has filed this application under Section 14 of the Armed Forces Tribunal Act, 2007 for grant of family pension w.e.f. the missing of her husband on 06.09.1996. There is delay of about 23 years, 04 months and 14 days in filing Original Application. Submission of learned counsel for the applicant is that husband of the applicant was enrolled in Indian Army on 15.02.1984 and he was missing w.e.f. 06.09.1996. Husband of the applicant was declared deserter from 06.09.1996. Applicant submitted representation dated 12.11.2021 for grant of family pension which was denied by the respondents vide letter dated 17.11.2021 stating that her husband was deserter from army w.e.f. 06.09.1996 and dismissed from service on 06.09.1999. He submitted that similarly situated families whose husbands were missing are getting family pension. Delay and latches have no

	meaning in such types of cases because the cause of action is recurring cause of action and same is arising day by day. In the case of continuing wrong and injury, the delay or latches are of no consequence. Therefore, each wrong gives rise to a separate cause of action for the victim. The applicant cannot be deprived from her legal and rightful claim of pension on the ground of delay and latches. He further submitted that delay in filing Original Application is not deliberate and intentional. His submission is that applicant is a lady and does not know Hindi. She was in financial hardship, hence he could not approach the Tribunal in time. Thus, his submission is that delay is not deliberate, but for the reasons stated above. Learned counsel for the respondents has vehemently opposed the prayer saying there being an inordinate delay of more than 23 years and the same being not properly and satisfactorily explained, delay is not liable to be condoned. Applicant has filed instant Original Application against order of dismissal and not for grant of pension. The husband of the Applicant had served in the army for about 12 year and he was not getting any pension, hence applicant is not entitled for grant of family pension. He further submitted that such a long delay in case of dismissal is not condonable without proper reason. Having heard the submissions of learned counsel of both sides and perused the documents available on record.

Now the point for determination is as to whether the applicant has been able to show any sufficient cause for condonation of such inordinate delay?

Armed Forces Tribunals were established in the year 2007, even then the applicant did not approach the Tribunal. She moved the representation for the first time in the year 2021, after about 22 years from the date of dismissal of her husband.

Learned counsel for the applicant has tried to justify the aforesaid delay on compelling reason of paucity of funds. She has, however, failed to explain the delay in moving the application after about 22 years. Dismissal from service is not a recurring cause of action. The cause of action in the instant case started from the date of dismissal of her husband from service. She moved a belated application for redressal of her grievance.

Section 22 of the Armed Forces Tribunal Act 2007 deals with the limitation, which 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.

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 Apex 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."

There is absolutely no explanation on record as to why the applicant did not approach the competent Army authorities for redressal of her grievance 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 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, which is wholly unjustified and cannot furnish any ground for ignoring delay and latches. **(Vide *General Fire and Life Assurance Corporation Ltd v. Janmahomed Abdul Rahim*, *AIR 1941 PC 6, P.K. Ramachandran v. State of Keral & 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.*** Thus, a plain reading of the aforesaid judgments show that the court before condoning the delay, must be satisfied that the applicant has sufficient cause for not making the application within such period. Admittedly, in this case husband of the applicant was dismissed from service in the year 1999 and thereafter, she remained silent and for the first time in the year 2021 applicant approached the respondents for grant of family pension. This delay

	of 23 years in filing instant Original Application could not be explained by the applicant. Such a long period cannot be treated to be a reasonable period. If the period of limitation is taken from the date of filing of application, then it would simply make Section 22 of the AFT Act, 2007 meaningless because in that circumstances, any administrative Act of the Armed Forces shall not attain finality. The purpose of provision of limitation is to give finality to the orders passed by the authority. Until and unless the applicant satisfies the Tribunal that she was not in a position to come before the Tribunal within time due to certain unavoidable circumstances, such huge delay cannot be condoned. In the instant case, the applicant has utterly failed to satisfy us on this point. We have noticed that applicant never challenged the dismissal order before the competent authority or before the court of law by way of appeal/writ and even applicant never represented her cause for grant of family pension for a considerable long period of more than 23 years. If the applicant would have represented her case for grant of family pension in time, court of law would have resorted her grievance. There being an inordinate delay of more than 23 years and the same being not properly explained, we do not find any sufficient reason to condone the same. Case law relied upon by the applicant is based on different fact and circumstances. After carefully examining the entire record and considering the facts and circumstances of the case, we find that explanation offered by the applicant for delay in filing Original Application is not sufficient. It is settled in law that if time limit is given for filing of any

	application and the same is not filed within that time limit, delay should be explained on day to day basis which applicant has utterly failed in the present case. In view of the discussions held above, the application for condonation of delay has no merit. It deserves to be dismissed and is hereby **dismissed**. Consequently the O.A. is also **dismissed** being time barred. **(Vice Admiral Abhay Raghunath Karve) Member (A)** **(Justice Umesh Chandra Srivastava) Member (J)** UKT/-