

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

O.A. No. 601 of 2022 with M.A. No. 720 of 2022

Smt. Pushpa Devi, W/o Late Hav Hoshiar Singh
By Legal Practitioner for the Applicant

Applicant

Versus

Chief of Army Staff & Others
By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>03.08.2022</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></p> <p>Memo of appearance filed by Shri Asheesh Agnihotri, Advocate today in the Court on behalf of the respondents is taken on record.</p> <p>Heard Shri K.K. Misra, Ld. Counsel for the applicant and Shri Asheesh Agnihotri, Ld. Counsel for the respondents.</p> <p>Instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for grant of special family pension to the applicant.</p> <p>There is a delay of 33 years, 09 months and 02 days in filing Original Application.</p> <p>Submission of Ld. Counsel for the applicant is that delay in filing Original Application is not intentional. His further submission is that husband of the applicant was enrolled in the Indian Army on 16.12.1971 and was discharged from service on 01.01.1996 after rendering more than 24 years service. The husband of the applicant died on 03.05.1996 due to cancer, just within a period of four months from the date of discharge from service. This fact is indicative that applicant's husband was suffering from this disease (cancer) during his service and much before his discharge from service and therefore, cause of death is cancer. A concession certificate issued by TATA Memorial Centre, Bombay dated 28.04.1996 is filed along with O.A. which is indicative that cause of death is cancer. Due to non availability of relevant documents, applicant sought these documents through RTI from the Record Office and filed the present Original Application. Thus, his submission is that delay is not deliberate, but for the reasons stated above and hence, delay in filing Original Application be condoned and applicant be granted special family pension treating death of applicant's husband as attributable to military service.</p> <p>Ld. Counsel for the respondents has vehemently opposed the prayer and has submitted that long delay of more than 33 years has not been properly</p>

and satisfactorily explained. His further submission is that husband of the applicant has been discharged from service in medical category SHAPE-1 and he was not suffering from any disease at the time of discharge from service as it is nowhere mentioned in the service/medical documents of husband of the applicant that he was suffering from a disease like cancer. He pleaded for dismissal of delay condonation application as well as Original Application being time barred and misconceived.

Having heard the submissions of Ld. Counsel of both sides and considering the facts and circumstances of the case, we find that Concession Certificate dated 25.04.1996 was issued by TATA Memorial Centre to facilitate the patient while travelling from his home station to Bombay Central for treatment/check up at Tata Memorial Centre, Bombay being a cancer patient and hence, applicant's husband death after discharge from service within a period of four months cannot be deemed attributable to military service due to a patient of cancer. It is also nowhere recorded in Death Certificate of husband of the applicant that he died due to cancer, therefore, attributability with regard to death of husband of the applicant within a period of four months from discharge from service, pretending that husband of the applicant suffered disability/disease of cancer while in service, is rejected.

As regards delay, it is settled in law that delay has to be explained on day to day basis. The applicant has revealed in the Original Application that she approached to the respondents vide her representation dated 16.05.1997 followed by a reminder dated 11.02.1998 but thereafter, applicant was silent for about 23 years and filed present Original Application without explaining long delay citing judgment of the Hon'ble Apex Court in the case of **Balakrishanan AP Wagmare vs. Dhandeshwar Maharaj Sansthan** (AIR 1959 SC 798) placing relevance for condonation of delay in her favour. But, on reading the aforesaid judgment, we find that it is not relevant which speaks about injury caused by a wrongful act but there is no such continuous cause of injury in the present case, hence, it is effected by Section 22 of Armed Forces Tribunal Act, 2007 which deals with limitation in which it is mentioned that court before condoning the delay must be satisfied that applicant has sufficient cause for not making the application within such period. Thus, from the facts of the case itself it is established that delay caused in the filing of Original Application is inordinate and explanation offered for its condonation is insufficient.

The Hon'ble Apex Court in the case of **H. Dohil Constructions Company Private Limited Versus Nahar Exports Limited and Another**, reported in (2015) 1 Supreme Court Cases 680, has held that *"the failure of respondents in not showing due diligence in filing of the appeals and the enormous time taken in the refiling can only be construed, in the absence of any valid explanation, as gross negligence and lacks in bona fide as displayed on the part of the respondents."*

The Hon'ble Apex Court in the above case has also held that *"Stringent scrutiny of appellant's explanation would be needed to determine sufficiency of cause of appeal"*.

The Hon'ble Apex Court in the case of ***Maniben Devraj Shah Versus Municipal Corporation of Brihan Mumbai***, reported in (2012) 5 Supreme Court Cases 157, has held that *"No doubt, sufficient cause should be construed liberally on facts without any hard and fast rule and substantive rights of parties cannot be ignored on account of delay, but a distinction must be made between delay of few days and inordinate delay causing prejudice to the other side."*

In view of the above case laws and the facts and circumstances of the case, delay of more than 33 years in filing of Original Application is not liable to be condoned.

Accordingly, Original Application is **dismissed** both on the ground of delay and on merits.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

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