

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 142 of 2022 with M.A. No. 187 of 2022 and  
M.A. No. 188 of 2022****Wednesday, this the 10<sup>th</sup> day of August, 2022****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)  
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

1. Smt. Asha Shukla  
Wife of Ex. Nk Late Ram Milan Shukla  
R/o Village : Alpi Ka Pura, PO : Atrampur (Serawan),  
Tehsil : Soraon, District : Prayagraj (Allahabad)
2. Sandeep Kumar Shukla  
S/o Ex. Nk Late Ram Milan Shukla  
R/o Village : Alpi Ka Pura, PO : Atrampur (Serawan),  
Tehsil : Soraon, District : Prayagraj (Allahabad)

**.... Applicants****Ld. Counsel for the Applicants : **Shri Vivek Kumar Pandey**, Advocate****Versus**

1. Union of India, Ministry of Defence, New Delhi through its Secretary.
2. Chief of Army Staff, through Director General of EME Master General of Ord Branch, Integrated Headquarters of MoD (Army), Post – DHQ, Delhi Cantt– 110010.
3. Officer Incharge, EME Records Sikandarabad-21.
4. Command Officer, Command Hospital WC Chandi Mandir.

**... Respondents****Ld. Counsel for the Respondents : **Dr. Shailendra Sharma Atal**,  
Govt Standing Counsel****ORDER (Oral)**

1. The instant Original Application has been filed on behalf of the applicants under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicants have sought the following reliefs:-

*“A. To quash the impugned order dated 16.11.2020 and 08.12.2020 passed by respondent No. 3 and 2 and quash the retirement certificate dated 31.10.2007 of husband of applicant No. 1, which was issued under Army Rules 13 (3) III (i).*

*B. To direct to the respondent authorities to issue discharge certificate on the medical ground under Army Rules 13 (3) III (iv) in the place of retirement certificate dated 31.10.2007 of husband of applicant No. 1.*

*C. To direct to the respondent authorities to grant compassionate appointment to the applicant No. 2 on the basis of discharge certificate of father of applicant No. 2 on the medical ground under Army Rules 13 (3) III (iv).*

*D. To issue any, order or direction which this Hon’ble Court deem fit and proper in view of the facts and circumstances of the case, may be granted in favour of the applicant.*

*E. To award cost of the Original Application in favour of the applicant.”*

2. There is a delay of 11 years, 10 months and 13 days in filing Original Application for which a delay condonation application has been filed by the applicants.

3. Submission of Ld. Counsel for the applicants is that delay in filing Original Application is not deliberate but for the reasons enumerated below. After death of husband of applicant No. 1, she became shocked and went in comma and it took more than 2 years to recover her. Thereafter, applicant No. 1 was engaged in serving her family as her children were minor. After the death of her husband all the family and

financial burden came upon applicant no. 1. The applicant No. 1 is house wife and having no source of income, except getting the pension, therefore, she is suffering from financial hardship and hence, she could not file the application within time before this Tribunal.

4. Learned counsel for the applicants further submitted that husband of the applicant No. 1 was enrolled in the Indian Army on 24.10.1985 and was discharged from service on 31.10.2007 in the post of Naik. The husband of applicant No. 1 suffered injury on 02.07.2005 when he fell down from Tank and got abdomen injury during Army duty for which he was downgraded to low medical category in disability category P2 (Permanent) as per medical certificate/report dated 07.03.2006 and his next medical board was due on 08.08.2008 but husband of applicant No. 1 was discharged forcefully on 31.10.2007 in an illegal and arbitrary manner for which discharge certificate to be quashed and fresh discharge certificate on medical grounds to be issued. The husband of applicant No. 1 was under treatment from 2007 to 2010 till death (22.12.2010) for his injuries sustained during 2005.

5. Learned counsel for the applicants further submitted that all the family and financial burden came upon applicant no. 1 and after when applicant No. 2 became major, submitted a representation dated 12.10.2020 to the respondent authorities for his compassionate appointment but the same was rejected vide impugned orders dated 16.11.2020 and 08.12.2020. He pleaded that discharge order of husband of the applicant No. 1 be issued a fresh on medical grounds and applicant

No. 2 be granted compassionate appointment for supporting financially to his family.

6. Ld. Counsel for the respondents has vehemently opposed the prayer and has submitted that long delay of more than 15 years has not been properly and satisfactorily explained on day to day basis. His further submission is that applicants have filed present application for quashing the retirement certificate dated 31.10.2007 and to grant compassionate appointment to applicant No. 2 which is not maintainable under the provisions of Rule 10 of the AFT (Procedure) Rules, 2008 which clearly mandates that an application shall be based upon a single cause of action and plural remedies cannot be claimed in ordinarily manner. He also relied upon the law laid down by the Hon'ble Apex Court in the case of **Balwant singh (dead) Vs. Jagdish Singh and Others**, reported in (2010) 8 SCC 685. He further submitted that the Hon'ble Courts in a catena of judgments have time and again held that the courts are not for the people who are not vigilant and sleep over their rights and court should be strict while dealing with the cases of such litigants who sleep over their right and approach the Hon'ble Courts at a highly belated stages. He pleaded for dismissal of delay condonation application as well as Original Application at the admission stage on the grounds of delay and maintainability.

7. Having heard the submissions of Ld. Counsel of both sides 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.

8. We find that husband of applicant No. 1 was discharged from service correctly as per Army Rules 13 (3) III (i) on completion of 22 years service in the rank of Naik as per terms of engagement of service, hence, discharge certificate cannot be issued on medical grounds as prayed by the applicants.

9. As far as compassionate appointment to applicant No. 2 (dependent family member) is concerned, it is given to three categories of a dependent family member of the Armed Forces who (i) dies during service (ii) is killed in action (iii) is medically boarded out and is unfit for civil employment. Since, applicant No. 2 does not fall under any aforesaid criteria, hence, he is not entitled for compassionate appointment.

10. In the result, we find that delay in filing Original Application is not condonable. Accordingly, delay condonation application is **rejected**.

11 Original Application being time barred and also on the grounds as observed/discussed in paras 7, 8 & 9 above, is also **rejected**.

12. No order as to costs.

13. Pending Misc. Applications, if any, shall stand disposed off.

(Vice Admiral Abhay Raghunath Karve)  
Member (A)

(Justice Umesh Chandra Srivastava)  
Member (J)

Dated : August, 2022  
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