Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

M.A. No. 1118 of 2018
(Application for condonation of delay)

Inre:

OA No. NIL of 2018

Monday, this the 18 day of February 2019

"Hon'ble Mr. Justice S.V.S. Rathore, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)"

No. 721346N Ex Spl Yusuf Mohmed, son Shri Abdul Rehman, resident of village Naehra, P.O. Saidpur,district Bulendshahar.

….. Applicant

Counsel for the Applicant : **Shri KK Mishra**, Advocate.

Versus

1. Union of India, through its Secretary, Ministry of Defence, New Delhi.
2. Chief of Air Staff, Air Headquarters, New Delhi.
3. Officer-in-Charge, Air Force Records Office, Subroto Park, Palam, New Delhi.
4. PCDA (P), Allahabad.

.....Respondents

Counsel for the Respondents. : **Shri Bhanu Pratap Singh,**
Addl Central Govt. Standing Counsel

ORDER (ORAL)

1. Being aggrieved by order of dismissal dated 25.04.2011, the applicant has approached this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 with the following prayers:-

(I) to quash Air Force Record Office, New Delhi, letter No. RO/2510/1/RW (Dis) dated 14 May 1998. (Annexure A-2 to O.A.)

(II) to direct the respondents to reinstate the applicant in service from the date of his discharge, i.e. 10 June 1998, with all consequential benefits.

(III) Any other relief which the Hon'ble Tribunal may consider appropriate may be granted in favour of the applicant.

(IV) Cost of the application be awarded to the applicant.

2. As per report of the Registry, there is delay of 19 years, 05 months and 07 days.

3. Brief facts of the case are that the applicant was enrolled in the Indian Air Force 12.10.1988. As per pleadings of the applicant sometimes in the year 1995 the applicant contacted some disease due to which on account of depression he could not lead a normal life. The disease did not cure. In the year 1997 the applicant proceeded on sanctioned leave but did not report back on expiry of leave period. On his reporting to the Unit after overstayal of leave, he was punished with Severe Reprimand. From the O.A. it is evident that the applicant on account of indiscipline was awarded several red ink entries and finally on 09.061998 he was discharged under the provisions of Chapter III Rule 15 (2) (g) (ii) of the Air Force Rules, 1969.

4. Submission of learned counsel for the applicant is that the applicant had made several representations from 11.03.1999 upto 11.11.2014 but till date no reply was ever sent to the applicant. It is submitted that the applicant has been pursuing his cause diligently and the words 'sufficient cause' for not approaching the Tribunal within the period of limitation should be applied in a reasonable and liberal manner so as to advance substantial justice.

5. In rebuttal, learned counsel for the respondents argued that the applicant was punished with Severe Reprimand and was awarded red ink entries and was discharged from the Air Force on the ground that his services were no longer required being unsuitable for further retention. Learned counsel further submitted that the applicant has tried to build up a case that he had continuously pursued his remedy but the purported representations brought on record by the applicant cannot be relied upon since the applicant has not placed on record the postal receipts etc to show that such representations were actually ever sent. It is also submitted that mere filing of representation does not make out a case for condonation of delay. Such representation must be within a reasonable period and adequate

details/explanation must be brought on record to explain the period of delay, in the absence of which the petition deserves to be dismissed.

6. We have heard learned counsel for the parties and perused the record.

7. Learned counsel for the applicant could not dispute that the order of discharge from service passed after following due procedure by the competent authority does not involve recurring cause of action. In the case of ***M.P. vs. Nandlal Jaiswal & ors*** reported in AIR 1987 SC 251), law has been well settled that if there is inordinate delay and such delay is not satisfactorily explained the Courts/Tribunals are loath to intervene and grant relief in exercise of its jurisdiction. The High Court (Tribunal in this case) in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent. In the case of ***N. Balakrishnan vs. M. Krishnamurthy*** reported in (1998) 7 SCC 123, Hon'ble Supreme Court interpreted the word 'sufficient cause' and held Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered and is thus founded on public policy. It is enshrined in the maxim **Interest reipublicae up sit finis litium** (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

8. The Hon'ble Apex Court in the case of ***Balwant Singh (dead) vs. Jagdish Singh & ors***, reported in (2010) 8 SCC 685 has laid down certain guidelines with regard to condonation of delay. Relevant portion of the judgment reads thus:

> *"32. It must be kept in mind that whenever, a law is enacted by the legislature, it is intended to be enforced in its proper perspective. It is an equally settled principle of law that the provisions of a statute, including every word have to be given full effect, keeping the legislative intent in*

mind, in order to ensure that the projected object is achieved. In other words, no provision can be treated to have been enacted purposelessly.

33. Furthermore, it is also a well settled canon of interpretative jurisprudence that the Court should not give such an interpretation to the provisions which would render the provision ineffective or odious. Once the legislature has enacted the provisions of Order 22, with particular reference to Rule 9, and the provisions of the Limitation Act are applied to the entertainment of such an application, all these provisions have to be given their true and correct meaning and must be applied wherever called for. If we accept the contention of the Ld. Counsel appearing for the applicant that the Court should take a very liberal approach and interpret these provisions (Order 22 Rule 9 CPC and Section 5 of the Limitation Act) in such a manner and so liberally, irrespective of the period of delay, it would amount to practically rendering all these provisions redundant and inoperative. Such approach or interpretation would hardly be permissible in law.

34. Liberal construction of the expression "sufficient cause" is intended to advance substantial justice which itself presupposes no negligence or inaction on the part of the applicant, to whom want of bonafide is imputable. There can be instances where the court should condone the delay; equally there would be cases where the court must exercise its discretion against the applicant for want of any of these ingredients or where it does not reflect "sufficient cause" as understood in law. (Advanced Law Lexicon, P. Ramanatha Aiyer, 2nd Edn., 1997).

35. The expression "sufficient cause" implies the presence of legal and adequate reasons. The word "sufficient" means adequate enough, as much as may be necessary to answer the purpose intended. It embraces no more than that which provides a plentitude which, when done, suffices to accomplish the purpose intended in the light of existing circumstances and when viewed from the reasonable standard of practical and cautious men. The sufficient cause should be such as it would persuade the court, in exercise of its judicial discretion, to treat the delay as and excusable one. These provisions give the courts enough power and discretion to apply a law in a meaningful manner, while assuring that the purpose of enacting such a law does not stand frustrated.

36. We find it unnecessary to discuss the instances which would fall under either of these classes of cases. The party should show that besides acting bonafide, it had taken all possible steps within its power and control and had approached the court without any unnecessary delay. The test is whether or not a cause is sufficient to see whether it could have been avoided by the party by the exercise of due care and attention. ***(Advanced Law Lexicon, P. Ramanatha Aiyar, 3rd Edn., 2005****).*

9. In the case of ***H. Dohil Constructions Company Private Limited vs. Nahar Exports Limited & anr***, (2015) 1 SCC 680. their Lordships of the Hon'ble Apex Court have observed as under:

"*23. We may also usefully refer to the recent decision of this Court in Esha [(2013) 12 SCC 649)] where several principles were culled out to be kept in mind while dealing with such applications for condonation*

of delay. Principles (iv), (v), (viii), (ix) and (x) of para 21 can be usefully referred to, which read as under: (SCC pp. 658 to 59."

> *(iv) No presumption can be attached to deliberate causation of delay but gross negligence on the part of the counsel for litigant is to be taken note of.*
>
> *(v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.*
>
> *(vii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter, it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.*
>
> *(ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant facts to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go-by in the name of liberal approach.*
>
> *(x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such litigation."*

10. In the case in hand, admittedly the applicant was punished with Severe Reprimand and was awarded red ink entries and was ultimately discharged being unsuitable for retention in the Air Force on 09.06.1996. He was well aware of the order of discharge but did not pursue his remedy by approaching the appropriate forum at least till 2017 when as per pleadings on record he moved application under the RTI Act, 2005. The submission of learned counsel for the applicant that the applicant had moved certain representations since the very beginning is not tenable for the reason that the alleged representations filed along with the O.A. are not supported by postal receipts or any other document to show that such representations were actually sent. Even if for argument sake it may be presumed that such representations were sent, the same would not come to the rescue of the applicant to explain the inordinate delay in approaching the Tribunal as the same, as per own pleading of the applicant, were sent after considerable gap i.e. on 11.03.1999, and thereafter on 07.07.2003, 11.08.2009 and 11.11.2014. The expression "sufficient cause" presupposes no negligence or inaction on the part of the applicant, to whom want of bonafide is imputable. The aggrieved should show that besides acting bonafidely, he had taken all possible steps within his power and control and had approached the court or Tribunal (as the case may

be) without any unnecessary delay. The applicant has utterly failed to explain the delay in approaching this Tribunal.

11. In view of the settled legal proposition enunciated by Hon'ble Supreme Court in above referred pronouncements, there is an absolute lack of bona fide imputable to the applicant in approaching the Tribunal within a reasonable and explainable delay. The applicant has miserably failed to discharge his legal obligation to explain each day delay.

12. In view of the observations made herein above, the application for condonation of delay deserves to be rejected; hence **rejected**.

13. As a consequence to rejection of application for condonation of delay, the O.A. is also dismissed.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice S.V.S. Rathore)
Member (J)

Dated: 18.02.2019
anb