

**Court No.1****ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW****Original Application No. 109 of 2019****Wednesday this the 13<sup>th</sup> day of February, 2019****Hon'ble Mr. Justice S.V.S. Rathore, Member (J)****Hon'ble Lt Gen N.B. Singh, Member (A)**

No. JC-197684X, Nb/Sub Devendra Singh Bhadauria  
 S/o Ram Bahadur Singh Bhadauria  
 R/o Vill – Kumbare, PO – Pachhayan Gaon  
 Dist – Etawah,  
 Presently residing at Krishana Nagar,  
 Wardhana Road, New Mandi, Etawah

..... Applicant

Ld. Counsel for the Applicant : **Shri V.P. Pandey,**  
 Advocate

Versus

1. Union of India, through the Secretary,  
 Ministry of Defence, 101 South Block, New Delhi – 110011.
2. Chief of the Army Staff,  
 Integrated Headquarter Ministry of Defence,  
 South Block, New Delhi – 110001.
3. Office In-Charge Records Signal Records, Jabalpur (M.P.)

..... Respondents

Ld. Counsel for the Respondents : **Dr. Shailendra Sharma Atal,**  
 Central Govt Counsel.

**ORDER (Oral)**

**M.A.No.1076 of 2018**

This is an application for condonation of delay in filing the O.A., which is delayed by more than 09 months.

The grounds shown in the affidavit filed in support of the application seem to be genuine.

Accordingly, the application is allowed and the delay in filing the O.A. is hereby condoned.

After hearing the learned counsel for the parties, we find that it is a fit case for admission.

**Admit.**

Let the case be registered as **O.A.No.109 of 2019**.

1. Heard learned counsel for the parties and with the consent of the parties, this O.A. is being disposed of at the admission stage.

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

*“(I) To issue/pass an order or direction to the respondents to provide rejection order of statutory complaint after quashing the impugned reply as contained in Annexure A-1.*

*(II) Any other relief as considered proper by this Hon’ble Tribunal be awarded in favour of the applicant.*

*(III) Cost of the appeal be awarded to the applicant.”*

3. In brief, the facts of the case are that the applicant was enrolled on 28.01.1972 and was promoted to the rank of Nb/Sub on 09.04.1990. The applicant served as a Black Cat Commando in Unit in 51 SAG for Four Years from 25.05.1985 to 05.04.1985 and also participated in operation PAWAN in Sri Lanka from May 1989 to Feb 1990. The applicant was a

good Sportsman and good Athlete besides being a paratrooper as the applicant has served the Army with full dedication, however, he has not been assessed as he deserved. The applicant was communicated his weak point/adverse remarks on 16.08.1993 it was forwarded by his previous Commanding Officer for the ACR for the year 1992-1993. The ACR for year 1992-93 was intentionally delayed for 05 months and as such his promotion to the rank of Subedar was not granted. The applicant preferred Statutory complaint against ACR for the year 1992-93 and the same is being annexed as Annexure A-2. The applicant preferred a Writ petition before Hon'ble High Court at Allahabad which was transferred to the Armed Forces Tribunal, Lucknow bench on the formation of Armed Forces Tribunal. The Hon'ble Armed Forces tribunal (RB), Lucknow has been pleased to adjudicate the Transferred Application on 05.11.2015 wherein the applicant has been granted notional continuance in service up to the pensionable age or on completion of 28 years of service with all consequential benefits of the rank of Naib Subedar. The photocopy of Judgment and Order of this Hon'ble Tribunal is being annexed herewith as Annexure A-3.

4. The submission of the learned counsel for the applicant is that in the judgment, which was passed in the writ petition/Transfer Application, it was observed that the statutory complaint of the applicant was pending and the same was not decided. (It is pertinent to mention here that it was written in the order as a fact pleaded by the applicant in the T.A.), therefore, the applicant has a right to get his statutory complaint decided and accordingly direction may be given to the respondents.

5. On behalf of the respondents, it has been argued that in earlier writ petition/T.A., the prayer of the applicant was as under:

*“a) To issue a writ, order or direction including a writ in the nature of Certiorari, calling for the records of the case and quashing the Discharge order dated 25-8-93 (vide annexure No. 2) taking effect*

*from 1-1-94 as well as the show cause notice dated 17.9.93 (vide annexure No.3) with further directions to the respondents to continue the petitioner in service with all the benefits of the promotion and other financial benefits, graduate to him permissionable under rules and pay the same accordingly.*

- b) To issue any other writ, order or directions to which the petitioner is entitled in the facts and circumstances of the case.*
- c) to ward the cost of this writ petition in favour of the petitioner and against the respondents.”*

6. It is clear from his prayer that at that point of time, the applicant has not made any prayer for setting aside his adverse entries. Writ petitioner was filed in the year 2004. Even at that time, i.e. after about seven years of moving the statutory complaint, the applicant has not made any prayer that the copy of the same be provided to him nor he has made any prayer that adverse entries be recalled and set aside.

7. On behalf of the respondents, it has been vehemently argued that at that point of time, the applicant who himself argued his case, has not raised any grievance against his adverse entries, if any, and now at such a belated stage, he cannot be permitted to agitate his grievance, because it was for the applicant to raise his entire claim at that point of time and not in piecemeal. We find substance in this submission of the learned counsel for the respondents.

8. This aspect of procedure is covered by Order II Rule 2 of C.P.C., which reads as under:

**“2. Suit to include the whole claim-** (1) *Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.*

**(2) Relinquishment of part of claim-** *Where a plaintiff omits to sue in respect of, or internationally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.*

*(3) Omission to sue for one of several reliefs- A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.*

*Explanation- For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action."*

9. A perusal of the aforesaid order shows that every litigant is under legal obligation to raise his entire claim in his petition/case. If he omits to raise any claim or any part of his claim, then the same shall be deemed to have been waived and the applicant shall not be permitted to agitate the same in future. This rule applies with full force in the instant case. The earlier writ petition filed by the applicant was allowed in favour of the applicant after about seven years of his filing statutory complaint and following order was passed, which reads as under :

*"13. In view of above, the T.A. deserves to be allowed, hence allowed. Order of discharge from service dated 25.08.1993 is set aside. The petitioner is entitled to notional continuance in service up to the pensionable age or on completion of 28 years of service with all consequential benefits of the rank of Naib Subedar. However, payment of back wages is confined to 50% payable to the petitioner. Payment of salary and re-fixation of pension and allowance shall be made available to the petitioner within four months from the date of presentation of a certified copy of this order."*

10. During the course of hearing, when we made a query from the learned counsel for the applicant as to for what purpose now he is claiming to provided copy of the order passed on his statutory complaint, then his submission was that he would seek promotion to the post of Subedar. To seek promotion at such a belated stage i.e. after about 25 years indirectly by seeking copy of order, cannot be permitted, particularly when the applicant in his earlier litigation has not raised this issue, which was filed in the year 2004.

11. Apart from it, learned counsel for the applicant has annexed a copy of the letter dated 20<sup>th</sup> December 2016, as Annexure A-1 to the O.A.,

addressed to the applicant in reply to his representation dated 08.11.2016 sent by Lieutenant Colonel, Chief Record Officer for Officer-in-Charge Records, whereby the applicant was informed that the competent authority had already rejected the said statutory complaint vide order dated 25<sup>th</sup> January 1994 due to lack of substance which has already been communicated to the applicant and nothing survives in the applicant's case and case may be treated as closed.

12. On behalf of the respondents, it has been stated that copy of the order dated 25<sup>th</sup> January 1994 passed by the competent authority on the statutory complaint of the applicant was enclosed and the applicant is not entitled to raise his claim because in the earlier writ petition, which was filed in the year 2004, he has not raised any such claim. It is submitted that the applicant has made such a prayer only to make it a ground to condone the delay by saying that he got the copy of rejection order in the year 2019 and thereafter to file O.A. to claim his promotion after 25 years which is not justified. We find substance in the submission of the learned counsel for the respondents.

13. It is also noteworthy that after moving the statutory complaint in the year 1993, the applicant for the first time, sent the representation to get copy of rejection order in the year 2016. No such prayer was made in the year 2004 when writ petition was filed. It gives rise to the inference that that point of time, applicant waived his claim, if any, to seek promotion or to get copy of rejection order. Once a claim is waived, then subsequently the same cannot be agitated by filing a fresh O.A.

14. Accordingly, this Original Application has no substance, deserves to be dismissed and is hereby **dismissed**.

**(Lt Gen N.B. Singh)**  
**Member (A)**

Dated : February 13<sup>th</sup>, 2019.  
PKG

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