

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

**ORIGINAL APPLICATION No. 735 of 2022
with M.A. No 908 of 2022**

Thursday, this the 16th day of February, 2023

**“Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”
“Hon’ble Maj Gen Sanjay Singh, Member (A)”**

No. 6496551Y, Ex Sep / ASH, Munna Rai, S/o Shri Lallan Rai,
R/o VPO - Maniar, Tehsil - Shikhandarpur, District - Ballia, U.P.

..... **Applicant**

Ld. Counsel for the : **Shri Manoj Kumar Awasthi, Advocate**
Applicant

Versus

1. Union of India through Secretary Ministry of Defence (Army), South Block, New Delhi - 110010.
2. Chief of the Army Staff, IHQ MoD (Army), Army HQ, South Block New Delhi.
3. Officer -in - Charge Records, Sena Seva Corps Abhilekh (Pashu Parivahan), ASC Records (AT), PIN - 900493, C/o 56 APO
4. Commanding Officer, 883 AT BN ASC, C/0 56 APO
5. Principle Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad.

.....**Respondents**

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

ORDER(ORAL)

“Per Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”

1. The instant Original Application has been filed along with application for condonation of delay under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

(A) To issue / pass an order or direction to set - aside / quash the Discharge Order dated 30.11.2007 passed by respondent No. 3.

(B) To issue / pass an order or direction to the respondents to reinstate the applicant in service and grant all consequential benefits by notionally reinstating the applicant in service from date of discharge i.e. 30.11.2007 alongwith @ 12% interest on arrear.

(C) To issue / pass an order or direction to the respondents to grant all the facilities to the applicant pursuant to “Ex - Servicemen” Status viz; Canteen facility, Medical Facility.

(D) To issue / pass any other order or direction as this Hon’ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant.

(E) *To allow this original application with costs.*

M.A. No 908 of 2022

2. Brief facts giving rise to the present applicant are that the applicant was enrolled in the Indian Army on 29.03.2003 and discharged from service on 30.11.2007 in medical category SHAPE-1. The instant Original Application, along with an application for condonation of delay has been filed on 08.09.2022 for condonation of delay and to reinstate the applicant in service..

3. Learned counsel for the applicant has tried to justify the aforesaid delay on certain compelling reasons relating to family commitments, unawareness of law and due to his not being much educated and paucity of funds. During course of service character of the applicant was GOOD and he has been granted certificate for the same by Coy Cdr, Depot Coy. Applicant submitted several representations for redressal of his grievances and to reinstate him in service but of no avail. He was discharged from service without giving any show cause notice. Learned counsel for the applicant pleaded that delay in filing O.A. be condoned and applicant be reinstated in service with all consequential benefits.

4. On the other hand, learned counsel for the respondents has vehemently opposed the submission of the applicant stating that applicant maintained a silence for about 15 years and failed to

explain the delay in moving the application. It is settled principle of law that ignorance of law is not bliss and it is further submitted that the delay can be condoned only in cases when the same is explained properly. Delay caused in approaching the Tribunal has not explained on day to day basis with sufficient cause.

5. 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?”

6. Armed Forces Tribunals were established in the year 2007, even then the applicant did not approach the Tribunal. He moved the representation for the first time on 02.07.2022 after more than 15 years of the establishment of the AFT.

7. The dismissal from service is not a recurring cause of action. The cause of action in the instant case started from the date of dismissal from service. He moved a belated application for redressal of his grievance.

8. Section 22 of the Armed Forces Tribunal Act, 2007 provides for limitation. It 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.”

9. 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.”

10. There is absolutely no explanation on record as to why the applicant did not approach the competent Army authorities for redressal of his 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 laches. (Vide **General Fire and Life Assurance Corporation Ltd v. Janmahomed Abdul Rahim**, AIR 1941 PC 6, **P.K. Ramachandran v. State of Kerala & 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.

11. In view of the discussions held above, the application for condonation of delay (MA No. 908 of 2022) has no merit. It deserves to be dismissed and is hereby **dismissed**. Consequently, the O.A. is also **dismissed**.

12. No order as to costs.

(Maj Gen Sanjay Singh)
Member (A)

(Justice Ravindra Nath Kakkar)
Member (J)

Dated : 16 February, 2023

Ukt/-