

ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW

**M.A. No 564 of 2016 & M.A.No 928 of 2016**

Tuesday this the 5<sup>th</sup> day of July, 2016

**Hon'ble Mr. Justice D.P.Singh, Member (J)**  
**Hon'ble Air Marshal Anil Chopra, Member (A)**

Bhola Dutt Singh aged about 72 years son of  
Bhagwati Singh resident of Dharam Kanta,  
Mankapur Post Office Bhitaura District Gonda,  
U.P.

..... Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi.
2. Chief of the Army Staff, Integrated Headquarter Ministry of Defence (Army), New Delhi
3. The Records, The Rajput Regiment, Fatehgarh, U.P. PIN-900427.
4. CO, 15 Bn, Rajput Regiment, C/O 56 APO
5. PCDA (Pension), Allahabad.

..... Respondents

**Learned Counsel for  
Applicant**

**- Wing Cdr (Retd) A.K. Singh  
Advocate**

**Ld. Counsel appeared  
Respondents**

**- Shri Namit Sharma,  
Advocate, Central Govt.  
Standing Counsel**

## **Order (Oral)**

1. This is an application for condonation of delay in the O.A (Nil) of 2016 which has been preferred for the relief of promotion as a consequence of judgment and order dated 23.02.2012 rendered in T.A. No 194 of 2009.

2. It would transpire from the materials on record that the Applicant was discharged from service with effect from 20.08.1985 which was subject matter of dispute before the High Court. Subsequently, after establishment of the Tribunal, the aforesaid case stood transferred to the Tribunal. The Tribunal by means of judgment and order dated 23.02.2012 allowed the T.A. but confined the reliefs to grant of monetary benefits instead of consequential benefits as a result of setting aside of discharge of the Applicant. The operative portion of the judgment and order being germane to the controversy as contained in paras 8 and 9 is reproduced below.

*"8. In the circumstances, the discharge of the applicant as effected on 20.04.1985 is set aside. However, the applicant cannot be actually reinstated in service because his normal term of engagement has come to an end in the meanwhile. In the circumstances, we direct that the applicant shall be given consequential monetary benefits treating him to have been in service upto the normal date of his superannuation. His pension shall also be re-determined on this basis. Let this exercise be done by the respondents within a period of four months from*

*the date a certified copy of this order is filed by either of the parties before OIC records, Rajput Regiment. The OIC Records shall without delay complete the formalities at his end and send the relevant papers to the PCDA for completing the exercise.*

9. *The Transferred Application is allowed."*

3. A plain reading of the aforesaid judgment and order shows that the Tribunal confined the reliefs to monetary benefits only as against the post of Subedar directing to treat him to have been in service upto the normal date of his superannuation. It is note-worthy that the Tribunal did not grant any consequential benefits as a consequence of allowing of the T.A. observing that *"the Applicant cannot be actually reinstated in service because his normal term of engagement has come to an end in the meanwhile."* The necessary consequence of the order is that promotional avenue has been denied.

4. The submission of learned counsel for the Applicant is that once discharge has been set aside, the Applicant would be entitled to promotional avenue. The submission of the learned counsel for the Applicant does not commend to us for acceptance and seems to be misconceived for the reason that once the Tribunal has confined the relief only to monetary benefits and has not granted entire consequential benefits, it is not open for us to sit in appeal over the judgment of the co-ordinate bench. If the applicant still feels aggrieved,

he may approach the higher forum or prefer an appeal before Hon'ble Apex Court but another O.A which relates to consequential benefits on account of setting aside of discharge seems to be not maintainable. Otherwise also, the Applicant has preferred the present O.A after efflux of four years from the date of the judgment and order of the Tribunal. The delay does not seem to be reasonably explained as to for what reasons he kept silent and did not approach the Tribunal within reasonable time. The cause shown for the delay is not sufficient.

5. In the above conspectus, we are of the view that the present M.A no 564 of 2016 in re O.A. (Nil) of 2016 is not maintainable both on the ground of delay as well as on merit.

6. In the result, the M.A. No 564 of 2016 in re O.A Nil of 2016 fails and is dismissed, however, with liberty to the Applicant to approach the appropriate forum permissible under law.

(Air Marshal Anil Chopra)  
Member (A)

(Justice D.P. Singh)  
Member (J)