

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
CIRCUIT BENCH AT NAINITAL**

**M.A.No. 477 of 2016
In Re: O.A.No. Nil of 2016**

Wednesday, this the 30th day of May, 2018

**“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)
Hon’ble Air Marshal BBP Sinha, Member (A)”**

Ex Soldier Pushkar Singh, son of Bachan Singh, resident of village Neil,
Patwari Circle Maithan, Tehsil Gairsain, District Chamoli.

..... Applicant

Ld. Counsel for the Applicant: **Shri S.S.Yadav, Advocate**

Versus

1. Union of India, through Secretary Defence, Government of India, New Delhi.
2. Chief of the Army Staff, New Delhi.
3. Record Office, 6 MECH INF (1 GARH RIFL) PIN 900476, C/o 56 APO
4. Commanding Officer, 6 MECH INF (1 GARH RIFL) PIN 900476, C/o 56 APO

.....Respondents

Ld. Counsel for the Respondents: **Dr Gyan Singh, CGSC**

ORDER (Oral)

1. This is an application for condonation of delay in filing the Original Application, by means of which the applicant has challenged his discharge order dated 20.05.2010. This OA has been filed on 02.03.2016. Thus, the applicant has come up before this Tribunal after elapse of about six years to challenge his discharge order.

2. The only ground urged by learned counsel for the applicant to explain the delay in filing the OA is that the applicant was mentally unfit. According to him, he was discharged from service while he was mentally

disturbed and when he recovered from the said illness, he preferred this OA. However, no medical document has been filed in support of this submission. During the course of hearing on this application, when learned counsel for the applicant was asked as to how he explains the delay in moving this OA, then the only submission made by him was that this has to be explained by the respondents, who have discharged the applicant and not by the applicant. We fail to appreciate such a submission made by learned counsel for the applicant. At this stage, we are not concerned as to under what circumstances the applicant was discharged, but we have to see as to how the applicant has explained the delay in filing the OA.

3. It is submitted by learned counsel for the respondents that discharge of the applicant in itself is not a recurring cause of action. Therefore, the applicant was required under law to explain the delay in filing the OA satisfactorily. The respondents in their objection on delay condonation application have specifically averred that the applicant has utterly failed to explain the delay on day-to-day basis. It has also been argued that the applicant was discharged on his own request on compassionate ground in medical category SHAPE-I, which means fully fit.

4. As observed above, the only submission of learned counsel for the applicant to justify the delay is that the applicant was not in a fit state of mind; therefore, he could not prefer this OA within time. There is absolutely no medical document to show that the applicant was at any point of time medically unfit or was treated at any hospital for the alleged mental illness. In para 2 of the affidavit filed in support of the delay condonation application, the applicant himself has deposed that as per the

discharge order, he was discharged due to mental disturbance which was artificial cause made by the respondent themselves, so due to tension and liability towards the dependants, he came in frustration and was fed up and was unable to search the mode of agitating his grievance. Thus, according to the applicant himself, the ground of mental illness for discharge was an artificial ground created by the respondents and actually he was not mentally unfit. This is the only reason for delay, as aforesaid, given by the applicant, which, in our considered opinion, the applicant has utterly failed to establish. Therefore, the prayer for quashing the discharge order is barred by time.

5. Accordingly, this OA, so far as it relates to the prayer to quash the discharge order, is hereby rejected.

6. The applicant has also joined the prayer for grant of disability pension, which is a recurring cause of action. Therefore, the delay in raising the prayer for grant of disability pension deserves to be condoned and is hereby condoned.

OA is admitted only with regard to the prayer for grant of disability pension.

Counter affidavit has already been filed by the respondents.

List this case for hearing on **02.08.2018**. The applicant may file rejoinder affidavit in the meantime.

(Air Marshal BBP Sinha)
Member (A)

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

Dated :May 30, 2018
LN/-