Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

M.A. No. 1518 of 2018
(Application for condonation of delay)
Inre:
OA No. NIL of 2018

Saturday, this the 25th day of May, 2019

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

Mahendra Singh, son of Shri Sohan Lal, 24 Shyam Nagar, Hapur, U.P.

….. Applicant

Counsel for the Applicant : **Shri Vishal Bhatnagar**, Advocate.

Versus

1. Union of India, through Secretary, Ministry of Defence (army), DHQ PO New Delhi - 11

2. The Chief of the Army Staff, Army Headquarters, Sena Bhawan, New Delhi.

3. Commanding Officer, the Mechanized Infantry Regimental Centre, Ahmadnagar – 414110.

4. The Officer-in-Charge Records, The Mechanized Infantry Regiment.

5. Commanding Officer, Charly Training Company, Ahmadnagar.

.....Respondents

Counsel for the Respondents. : **Shri Rajiv Pandey,**
Addl Central Govt. Standing Counsel

ORDER (ORAL)

1. Being aggrieved by order of removal from Army services dated 09.04.1993, the applicant has approached this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 with the following prayers:-

(a) Issue/pass an order or direction of appropriate nature to quashing the illegal discharge order of the applicant with effect from 09.04.1993.

(b) Issue/pass an order or direction of appropriate nature to the respondents to make the payment of arrears along with interest accrued to the applicant due to revision of his pension and continue to pay regular pension to the applicant in the revised rate.

(c) Issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.

(e) Allow this application with costs.

2. As per report of the Registry, there is delay of 24 years, 10 months and 02 days in approaching this Tribunal. .

3. Brief facts of the case are that the applicant was enrolled as recruit in the Indian Army on 25.10.1991. From perusal of Annexure-1 annexed to the petition, it transpires that after enrolment of the applicant, requisite documents were sent for police verification and it was found that the applicant was involved in a case under Section 304 IPC (culpable homicide not amounting to murder) at the time of enrolment and this fact was not disclosed by the applicant in the enrolment form. On account of fact that the applicant was involved in a criminal case, which fact was concealed by the applicant at the time of enrolment, he was discharged from service under Rule 13 (a) IV of the Army Rules, 1954, i.e. unlikely to become an efficient solider. The applicant since 09.04.1993 remained inactive and suddenly on 22.09.2019 the applicant moved an application addressed to the Commanding Officer, Charly Training Company, Basic Infantry Training Battalion, Ahmadnagar stating therein that he has been acquitted in the criminal case under Section 304 IPC and he be taken back in Army service. It is pleaded in the petition that the applicant had preferred representation dated 22.09.2016 to the Chief of the Army Staff, a

copy of which has been annexed as Annexure-4 to the petition. However, Annexure-4 to the petition is not copy of representation addressed to Chief of the Army Staff but is addressed to the Commanding Officer concerned. It is further pleaded in the petition that said representation is still pending. From Annexure-1 to the petition, it is borne out that the Record Officer of the Mechanised Infantry Regiment has duly informed the applicant that he was involved in a criminal case under Section 304 IPC at the time of recruitment and was not fit for Military service, as such he was discharged from service and there is no provision to reinstate him in service. Feeling aggrieved, it appears that the applicant approached the Hon'ble High Court, Allahabad by filing Misc. Writ Petition No. 8840 of 2017 and thereafter the Central Administrative Tribunal, Allahabad by filing Original Application No. 330/1503/2017 which were dismissed on 27.02.2017 and 08.12.2017 respectively on the ground of alternative remedy. As such, the present petition along with application for condonation has been filed by the applicant.

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

5. In the application for condonation of delay, virtually no explanation is forthcoming on behalf of the application as to what precluded him in pursuing his cause since 19.03.1993 when he was removed from service. The sole ground for condoning the delay as mentioned in the application for condonation of delay is that the applicant's representation addressed to the Chief of the Army Staff (in fact it was addressed to the Commanding Officer of the Battalion concerned) dated 02.02.2016 is still pending. There is not even a whisper in application for condonation of delay as to how the applicant intends to explain the inordinate delay from 19.03.1993 till 02.02.2016.

Simply because the applicant was acquitted in the criminal case under Section 304 IPC on 22.02.2016 would not explain the delay.

6. 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.

7. The law is fairly well settled that if any order is passed by the Court or Tribunal to dispose of a representation, then the period of limitation would not commence from the date of decision of such a representation. Hon'ble the Apex Court in the case of ***C. Jacob vs. Director of Geology & ors,*** reported in (2008)10 SCC 215 has held that simply because a direction to decide representation was given and the representation was decided, it would not furnish a fresh cause of action. In this regard, we may refer to paras 9, 10, 11 and 15 of the case of ***C. Jacob*** (supra), which read thus:-

> *"9. The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly they assume that a mere direction to consider and dispose of the representation does not involve any `decision' on rights and obligations of parties. Little do they realize the consequences of such a direction to `consider'. If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to `consider'. If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The Tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored.*
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> *10. Every representation to the government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the department, the reply may be only to inform that the matter did not concern the department or to inform the appropriate department. Representations with incomplete particulars may be replied*

by seeking relevant particulars. The replies to such representations cannot furnish a fresh cause of action or revive a stale or dead claim.

11. When a direction is issued by a court/tribunal to consider or deal with the representation, usually the directee (person directed) examines the matter on merits, being under the impression that failure to do may amount to disobedience. When an order is passed considering and rejecting the claim or representation, in compliance with direction of the court or tribunal, such an order does not revive the stale claim, nor amount to some kind of acknowledgment of a jural relationship' to give rise to a fresh cause of action.

15. The present case is a typical example of `representation and relief'. The petitioner keeps quiet for 18 years after the termination. A stage is reached when no record is available regarding his previous service. In the representations which he makes in 2000, he claims that he should be taken back to service. But on rejection of the said representation by order dated 9.4.2002, he filed a writ petition claiming service benefits, by referring the said order of rejection as the cause of action. As noticed above, the learned Single Judge examined the claim, as if it was a live claim made in time, finds fault with the respondents for not producing material to show that termination was preceded by due enquiry and declares the termination as illegal. But as the appellant has already reached the age of superannuation, the learned Single Judge grants the relief of pension with effect from 18.7.1982, by deeming that he was retired from service on that day. We fail to understand how the learned Single Judge could declare a termination in 1982 as illegal in a writ petition filed in 2005. We fail to understand how the learned Single Judge could find fault with the department of Mines and Geology, for failing to prove that a termination made in 1982, was preceded by an enquiry in a proceedings initiated after 22 years, when the department in which appellant had worked had been wound up as long back as 1983 itself and the new department had no records of his service. The appellant neither produced the order of termination, nor disclosed whether the termination was by way of dismissal, removal, compulsory retirement or whether it was a case of voluntary retirement or resignation or abandonment. He significantly and conveniently, produced only the first sheet of a show cause notice dated 8.7.1982 and failed to produce the second or subsequent sheets of the said show cause notice in spite being called upon to produce the same. There was absolutely no material to show that the termination was not preceded by an enquiry. When a person approaches a court after two decades after termination, the burden would be on him to prove what he alleges. The learned Single Judge dealt with the matter as if he the appellant had approached the court immediately after the termination. All this happened, because of grant of an innocuous prayer to `consider' a representation relating to a stale issue."

8. Similar view was expressed by their Lordships of Hon'ble Apex Court in the case of and ***Union of India vs. M.K. Sarkar*** reported in (2010) 2 SCC 59 wherein in para 18, their Lordships have observed thus:-

"Where a belated representation in regard to a "stale" or "dead" issue/dispute is considered and decided, in compliance with a direction by

> *the court/tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the "dead" issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches."*

9. Thus, if the Records Office has replied the representation of the applicant dated 21.10.1996 it would not extend the limitation or erase the delay and laches.

10. It is also settled law 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 and the lethargic. (See ***M.P. vs. Nandlal Jaiswal & ors*** reported in AIR 1987 SC 251).

11. 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.*
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> *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****).*

12. 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.*
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> *(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.*
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> *(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."*

13. Hon'ble the Apex Court in the case of ***Vikram Singh vs. Commissioner of Police***, reported in (2018) 1 SCC 308 has considered the question suppression of material fact at the time of enrolment. In said judgment, Hon'ble the Apex Court, in para-2, has considered the effect of acquittal and has observed that if acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it is not a case of clean acquittal, or benefit of doubt hasbeen given, the employer may consider all relevant facts available as to antecedents and may take appropriate decision as to the continuance of the employee. In said decision, the Hon'ble Apex Court was considering a situation where acquittal had taken place prior to the enrolment. In the instant case, the applicant was acquitted after hug e delay of 23 years. Apart from it, if a person is involved in a serious offence under Section 304 IPC, then his employer has every right not to permit his continuance in service. Applicants subsequent acquittal, in the circumstances of the case, will not create any right in his favour.

14. 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.

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

16. 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: 25.05.2019
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