**Court No. 1**

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**

**Misc Application No. 615 of 2018**
(Application for condonation of delay)

**In re:**
**OA No. NIL of 2018**

Monday, this the 27th day of May, 2019

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

**No. 6938590 P** Ex Sepoy Bikash Kumar son of Shri Ashok Kumar Singh, resident of Village and Post Dhruwgama, District Samastipur (Bihar), presently residing at c/o Shri Amit Kumar, House No. 206, Block-A, Starlilng Appartment, Ashok Nagar, Allahabad (UP).

….. Applicant

Counsel for the Applicant : **Shri R. Chandra**, Advocate.

Versus

1. Union of India, through the Secretary, Ministry of Defence, Government of India, New Delhi – 110011.
2. The Chief of the Army Staff, Integrated Headquarters, New Delhi-110011.
3. The Officer-in-Charge, Army Ordnance Corps, PIN 900453, c/o 56 APO..
4. The Commandant, Northern Command Vehicle Depot, Udhampur.
5. Commanding Officer, Charly Training Company, Ahmadnagar.

.....Respondents

Counsel for the Respondents. : **Ms Appoli Shrivastava,**
Addl Central Govt. Standing Counsel

**ORDER (ORAL)**

1. Being aggrieved by order of dismissal from Army services dated 09.05.2008, the applicant has approached this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 with the following prayers:-

> *(i) The Hon'ble Tribunal may be pleased to set aside the order dated 11.09.2017 (Annexure No. A-1). Further dismissal order dated 09.05.2008 be summoned from custody of the respondents and be set aside.*
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> *(ii) To direct the respondents to re-instate the applicant in the service with all consequential benefits as given to his batchmates with the interest of 24 percent per annum.*
>
> *(iii) Any other appropriate order or direction which the Hon'ble Tribunal may deem just and proper in the nature and circumstances of the case.*

2. As per report of the Registry dated 05.03.2018, there is delay of 09 years, 03 months and 25 days in approaching this Tribunal.

3. Brief facts of the case are that the applicant was enrolled in the Indian Army on 30.12.1996. The applicant has pleaded that he was awarded 05 Red Ink Entries and 01 Black Ink Entry within the period 12.05.2006 to 29.01.2008. From Anneuxre-1 annexed to the petition, it is borne out that the applicant was awarded the following red ink/black entries during his service career:-

(i) On 22.10.2002, the applicant was awarded Red Ink Entry for offence under AA Sec 63 An act prejudicial to good order and military discipline and was awarded 14 days rigorous imprisonment.

(ii) On 17.11.2005 the applicant was awarded Black Ink Entry for offence under AA Sec 48, Intoxication and was reprimanded.

(iii) On 12.05.2006 the applicant was awarded Red Ink Entry for offence under AA Sec 48 Intoxication and was deprived of appointment of Lance Naik.

(iv) On 08.05.2007 the applicant was awarded Red Ink Entry for offence under AA Sec 52 (a) Committing theft of property belonging to the Government and was punished rigorous imprisonment for 28 days.

(v) On 11.12.2007, the applicant was awarded Red Ink Entry for offence under AA Sec 48 and AA Sec 46 (c) Intoxication and was awarded rigorous imprisonment for 14 days.

(vi) On 29.01.2009 the applicant was awarded Red Ink Entry for under AA Sec 54 (b), An act losing by negligence Identity Card, a Government property, issued to him for his use and was awarded rigorous imprisonment for 14 days.

In spite of being punished with the above punishments, the applicant did not mend himself and since his continuation in service was considered detrimental to the organization, he was dismissed from service as an undesirable solider vide order dated 09.12.2008. It appears that the applicant thereafter on 24.11.2014, i.e. after about six years, for the first time approached the Records Officer, AOC Records, Secunderabad informing that he had lost his discharge book and requested for issuing him a duplicate discharge book which he again lost and on 28.01.2017, the applicant was issued yet another duplicate copy of the discharge book. Even thereafter, after waiting for more than a year, on 05.03.2018, the applicant has preferred the instant petition along with application for condonation of delay.

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

5. Submission of learned counsel for the applicant is was the responsibility of the respondents to ensure that the order of dismissal was provided to the applicant. He argued that the order of dismissal was not served upon the applicant and when the applicant was issued duplicate discharge book on

20.02.2014, he came to know about the order dismissing him from service. It is submitted that since the applicant again lost the discharge book, as such, when he was issued the second duplicate discharge book in January 2017 he has approached this Tribunal. It is pleaded that delay in approaching the Tribunal against order of dismissal was on account of the fact that the mother of the applicant is suffering from Cancer and the applicant is doing a private job in Allahabad. It is further pleaded that the delay may be condoned.

6. Refuting the arguments of learned counsel for the applicant, it has been argued by learned counsel for the respondents that the applicant was an habitual offender and in spite of being provided sufficient opportunity to mend his ways, he did not show improvement and earned 05 Red Ink Entries and 01 Black Ink Entry during his service career. It is argued that offence under AA Sec 54 (b), an act of losing identity card is a serious offence. It is further submitted that the applicant has tried to mislead the Tribunal by pleading in the petition that all the entries were awarded to him with effect from 12.05.2006 to 29.01.2008 with the avowed intent to dismiss the applicant whereas from Annexure-1 to the petition it is clear that the applicant was awarded adverse entries from 22.10.2002. It is vehemently argued that the applicant deserves no indulgence since he has not come with clean hands. Further it is argued that the applicant has not explained delay in approaching the Tribunal from the date of dismissal i.e. 09.05.2008 and the grounds taken by the applicant relating to missing of the discharge book, and that too on two occasions, is a flimsy ground which is not tenable. It is further argued that the applicant has also not explained delay in approaching the Tribunal after

20.02.2014 when he was issued duplicate of the discharge book and again after January 2017 till the filing of the petition on 05.03.2018 for more than a year, when he was issued second duplicate copy of the discharge book.

7. Thus, the main ground to condone the delay is that at the time of his dismissal, the discharge book was not given. But as per document No. 1 annexed with the petition, it is clear that discharge book was provided to the applicant. Applicant in his letter dated 24.11.2014 has stated that his discharge book has been lost and prayed for duplicate discharge book. It was nowhere prayed by the applicant that he be provided with the discharge book as the same has not been provided to him. Hence the applicant has not come with clean hands.

8. 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.

9. It is 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).

10. 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.*
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> *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).*
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> *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.*
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> *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****).*

11. 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."*
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> > *(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.*
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> > *(v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.*
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> > *(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.*
> >
> > *(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."*

12. The admitted position is that the applicant was dismissed from service on 09.05.2008 as an undesirable solider due to his earning Red Ink and Black Ink entries. It cannot even for argument sake be presumed that the order of dismissal was not within the knowledge of the applicant since he was not discharging duties and was also not paid salary thereafter. Since the applicant did not complete the minimum term of engagement, as such, he was also not paid pension. In case the applicant's case is considered in view of the observations made by Hon'ble Supreme Court in the above quoted cases,

keeping in view the fact that no effort was made by the applicant to challenge the impugned order of dismissal dated 05.03.2018 for more than eight years, condonation of delay shall be in utter disregard to the statutory mandate. Even if adopting a liberal approach, it shall not make out a case to condone the delay, that too of more than eight years. Condoning the unexplained delay of more than eight years shall frustrate the very object of Section 5 of the Indian Limitation Act and the statutory period as provided in the Armed Forces Tribunal Act, 2007.

13. So far as argument of the learned counsel for the applicant that it was the duty of the respondents to provide the discharge book to the applicant and, therefore, the period of delay should be calculated from the date when he was provided the discharge book is concerned, the admitted position is that the applicant was provided with the duplicate discharge book on 20.02.2014 on h is own demand. The applicant lost the discharge book. We do not find any substance in this argument of learned counsel for the applicant because under Section 114, Illustration (e) of the Indian Evidence Act, 1872 it is judicially presumed that judicial and official acts have been regularly performed. Thus, if there is a presumption that due procedure has been followed, a duty is cast on the person who challenges the impugned order that due procedure has not been followed.

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. As a result of the observations made herein above, the application for condonation of delay deserves to be rejected; hence **rejected**.

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: 27.05.2019
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