

Court No. 2 (Case taken in Court No 1)**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****MISCELLANEOUS APPLICATION NO 820 OF 2016 INRE
ORIGINAL APPLICATION No Nil of 2016**Tuesday, this the 27th day of September 2016**Hon'ble Mr. Justice Abdul Mateen, Member (J)
Hon'ble Air Marshal Anil Chopra, Member (A)**

No 15165704Y GNR (GD) Rakesh Kumar son of Late Ram Nagina, resident of Village-Kuichawar (Chawani), P.O.-Naine, Tehsil-Salempur, District-Deoria Sadar, Uttar Pradesh.

.....Applicant

Ld. Counsel for the: **Shri P.K. Shukla, Advocate**
Applicant

Versus

1. Union of India through its Secretary Ministry of Defence Civil Secretariat, New Delhi.
2. Chief of Army Staff, IHQ of MoD (Army), South Block, Army HQ, New Delhi-110011.
3. The OIC, Arty Records, Nasik Road Camp, Nasik.
4. Commanding Officer, 133 Medium Regiment C/o 56 APO.

.....Respondents

Ld. Counsel for the : **Shri Amit Sharma,**
Respondents **Central Govt Counsel assisted by
Col Kamal Singh, OIC Legal Cell.**

ORDER (ORAL)

1. Heard Shri P.K. Shukla, Ld. Counsel for the applicant and Shri Amit Sharma, Ld. Counsel for the respondents assisted by Col Kamal Singh, OIC Legal Cell.
2. Applicant Rakesh Kumar has preferred the present O.A. which as per office report dated 13.04.2016 is delayed by three years five months and thirteen days. The applicant has preferred M.A. No. 820 of 2016 for condonation of delay. Objection to application for condonation of delay bearing No 1619 of 2016 has been filed by the respondents to which Ld. Counsel for the applicant submits that he does not intend to file reply.
3. Sketch facts are that the applicant was enrolled in the Army as recruit on 23.07.2004. After completion of training he was posted to 133 Field Regiment. The applicant proceeded on ten days' sanctioned casual leave from 07.01.2008 to 16.01.2008. However he failed to join his duties on expiry of aforesaid period of leave as such after thirty days of overstaying leave he was declared deserter by court of inquiry with effect from Jan 2008. After having absented for 256 days he surrendered and was tried by Summary Court Martial. Letter dated 11.02.2011 was issued by the Army Headquarters directing the applicant to report to 133 Field Regiment but the applicant failed to comply with the directions. A tentative charged sheet was served on the applicant

under Section 38 (1) of the Army Act followed by Summary Court Martial. The applicant was awarded punishment of dismissal from service with effect from 27.04.2012.

4. Feeling aggrieved with the order of dismissal dated 27.04.2012 the applicant preferred O. A. No. 408 of 2012 which was dismissed by order dated 27.04.2015 with liberty to the applicant to file a petition before the Chief of the Army Staff under Section 164 of the Army Act, 1950 within two weeks. Submission of Ld. Counsel for the applicant is that the Summary Court Martial proceedings were not provided to the applicant as such he was unable to prefer the statutory complaint under Section 164 of the Army Act, 1950 within the stipulated period. He further submitted that later on Summary Court Martial proceedings were provided to him by means of filing the same along with counter affidavit. As such he preferred statutory complaint under Section 164 (2) of the Army Act, 1950 to Chief of the Army Staff on 07.05.2015 which is still pending as pleaded in the O. A.

5. As mentioned above there is delay of three years five month and thirteen days in filing the O. A. taking into consideration the date of decision of O. A. No. 408 of 2012 which was dismissed on 27.04.2015 with liberty to the applicant to prefer statutory complaint under Section 164 of the Army Act, 1950 within two weeks.

6. it is to be seen that at least after 27.04.2012 the delay in filing the O. A. has been explained or not. Having gone through we find that the same has been suitably explained while filing O.A. No 408 of 2012 and after its dismissal on 27.04.2015 the applicant has preferred petition under Section 164 of the Army Act, 1950 before the Chief of the Army Staff on 07.05.2015 which is still pending.

7. Accordingly delay in filing the O.A. is condoned.

8. With the consent of Ld. Counsel for the parties we proceed to hear the O.A.

9. Relief (B) sought by the applicant may be reproduced as under :-

“B. To issue/pass an order/directions to the respondents for decide the Statutory Petition U/s 164 (2) of the Army Act filed by the applicant dated 07.05.2015 as contained in Annexure no 7 to this Original Application.”

10. Ld. Counsel for the applicant vehemently submitted that the complaint filed by the applicant under Section 164 (2) of the Army Act, 1950 has still not seen the light of the day and is pending. He confined his prayer only to the extent that direction may be issued to the respondents to decide the statutory complaint dated 07.05.2015 (*Annexure 7 to the O.A.*) preferred by the applicant.

11. The prayer made by Ld. Counsel for the applicant seems to be innocuous and as such with the consent of Ld. Counsel for the parties we **dispose** of the O. A. with a direction to the Chief of the Army Staff to dispose of the statutory complaint dated 07.05.2015 filed by the applicant within a period of four weeks from the date of production of a certified copy of this order along with a copy of the statutory complaint by a speaking and reasoned order with due communication to the applicant.

12. It is made clear that we have not entered into the merits of the case.

12. Subject to above directions, O. A. is **disposed** of finally.

No order as to costs.

(Air Marshal Anil Chopra)
Member (A)

anb

(Justice Abdul Mateen)
Member (J)