

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****M.A. No. 1858 of 2017****In re:****O.A No. (Nil) of 2017**Friday, this the 14th day of September, 2018**“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)
Hon’ble Air Marshal BBP Sinha, Member (A)”**

No. 15479709F Ex Sawar Pranav Kumar Dwivedi, son of Sri Satya Prakash, resident of village Barra, P.O. Uncha Gaon, District Hardoi (UP)

..... Applicant

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

Versus

1. Union of India, through its Secretary, MOD, New Delhi.
2. Chief of Army Staff, Army HQ, New Delhi.
3. Officer-in-Charge, Armored Corps Records, Ahmednagar.
4. Commanding Officer, 15 Armored Regiment, C/O 56 APO

.....Respondents

Ld. Counsel for the Respondents: **Shri R.C.Shukla, Advocate****ORDER (Oral)**

1. Heard learned counsel for the parties and perused the record.
2. This is an application for condonation of delay in filing the OA.

By means of the said OA, the applicant has made the following prayers:

“(i) To direct the respondents to allow the applicant to join his duty ad continue in service till completion of his term of engagement.

(ii) To direct the respondents to thereafter, grant all terminal benefits of the service to the applicant as per his entitlement.

(iii) Any other relief which Hon'ble Court may think just and proper may be granted in favour of the applicant."

3. As per office report, there is a delay of 12 years, 06 months and 08 days in filing the OA. In the application for condonation of delay, the only ground taken was that the wife of the applicant was suffering from cancer. It has also been pleaded that the applicant wrote several letters to his Unit and Records, but they met the same fate. He also approached his Unit personally but he was not allowed to join his duty. Thus, the only ground pressed by the applicant for condonation of delay is the illness of his wife.

4. We have perused the record and found that the applicant has not filed any document alongwith the application for condonation of delay to show that his wife was suffering from cancer. However, two papers have been annexed with the OA, which relate to the year 2004, out of which one is dated 4th October, 2004 and the other is dated 27th September, 2004, but the question is for explaining the delay of last 12 years i.e. after the year 2006 when the applicant was dismissed from service for desertion. There is absolutely no document in support of the submission that the wife of the applicant was admitted in any hospital or was requiring/receiving medical treatment during this period and further, the ailment of his wife was of such a nature and was to such an extent that it prevented the applicant to approach the Tribunal for redressal of his grievance. As per the averments made in the application for condonation of delay,

there was no other person to look after the wife of the applicant and that is the only ground taken for condonation of delay. As we have already observed, there is no medical document on record to infer that the disease suffered by applicant's wife was of such a nature and to such an extent that it made the applicant incapable of moving the OA within time.

5. The legal position on the subject is very clear. Section 22 of the Armed Forces Tribunal Act, 2007 holds the field and provides for limitation as under:

“22. Limitation. —(1) *The Tribunal shall not admit an application—*

(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of section 21 has been made unless the application is made within six months from the date on which such final order has been made;

(b) in a case where a petition or a representation such as is mentioned in clause (b) of sub-section (2) of section 21 has been made and the period of six months has expired thereafter without such final order having been made;

(c) in a case where the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which jurisdiction, powers and authority of the Tribunal became exercisable under this Act, in respect of the matter to which such order relates and no proceedings for the redressal of such grievance had been commenced before the said date before the High Court.

(2) Notwithstanding anything contained in sub-section (1), the Tribunal may admit an application after the period of six months referred to in clause (a) or

clause (b) of sub-section (1), as the case may be, or prior to the period of three years specified in clause (c), if the Tribunal is satisfied that the applicant had sufficient cause for not making the application within such period.”

6. We would like to deal with the issue of limitation raised in the instant case also in the light of proposition of law as laid down by the Hon’ble Apex Court in catena of decisions. In the case of **D.Gopinathan Pillai versus State of Kerala and another**, reported in (2007) 2 SCC 322, the Hon’ble Supreme Court has observed as under:

“5. We are unable to countenance the finding rendered by the Sub-Judge and also the view taken by the High Court. There is no dispute in regard to the delay of 3320 days in filing the petition for setting aside the award. When a mandatory provision is not complied with and when the delay is not properly, satisfactorily and convincingly explained, the court cannot condone the delay, only on the sympathetic ground. The orders passed by the learned Sub-Judge and also by the High Court are far from satisfactory. No reason whatsoever has been given to condone the inordinate delay of 3320 days. It is well-considered principle of law that the delay cannot be condoned without assigning any reasonable, satisfactory, sufficient and proper reason. Both the courts have miserably failed to comply and follow the principle laid down by this Court in a catena of cases. We, therefore, have no other option except to set aside the order passed by the Sub-Judge and as affirmed by the High Court. We accordingly set aside both the orders and allow this appeal.”

7. There is absolutely no explanation on record as to why the applicant did not initiate the appropriate proceedings after dismissal from service within the prescribed period of limitation. Discharge or

dismissal is not a recurring cause of action and in view of the settled proposition of law, as laid down by the Hon'ble Apex Court in **Mewa Ram (Deceased by L.Rs) & Ors v. State of Haryana**, AIR 1987 SC 45, **State of Nagaland v. Lipok AO & Ors**, AIR 2005 SC 2191 and **D. Gopinathan Pillai v. State of Kerala & Anr**, AIR 2007 SC 2624, the applicant was under obligation to give cogent and valid reasons for the delay, but he has utterly failed in explaining such a huge delay of about 12 years. Time and again it has been held by the Hon'ble Apex Court that if the law provides for a limitation, it is to be enforced even at the risk of hardship to a particular party, as the Judge cannot, on applicable grounds, enlarge the time allowed by law, postpone its operation or introduce exceptions not recognised by law. The law of limitation has to be applied with all its rigour. The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play. We are, therefore, not inclined to accept such a plea as raised by the applicant supra, which is wholly unjustified and cannot furnish any ground for ignoring delay and laches. (Vide **General Fire and Life Assurance Corporation Ltd v. Janmahomed Abdul Rahim**, AIR 1941 PC 6, **P.K.Ramachandran v. State of Kerala & Anr**, AIR 1998 SC 2276, **Esha Bhattacharjee v. Raghunathpur Nafar Academy & Ors**, (2013) 12 SCC 649, **Basawaraj v. Land Acquisition Officer**, (2013) 14 SCC 81, **State of Karnataka & Ors v. S.M.Kotravyqa & Ors** (1996) 6 SCC 267, **Jagdish Lal & Ors v. State of Haryana and Ors**, AIR 1997 SC 2366 and **M/s Rup Diamonds & Ors v. Union of India and Ors**, AIR 1989 SC 674.

8. In view of the discussion held above, the application for condonation of delay (**MA No. 1858 of 2017**) has no merit. It deserves to be dismissed and **is hereby dismissed**. Consequently, the OA also stands **dismissed**.

(Air Marshal BBP Sinha)
Member (A)

(Justice SVS Rathore)
Member (J)

Sept 14, 2018

LN/-