

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****M.A. No. 1863 of 2017****In re:****OA No. (Nil) of 2017**Monday, this the 03rd day of September, 2018**“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)
Hon’ble Air Marshal BBP Sinha, Member (A)”**

No 14812476W Ex Sep Chauhan Kishore Manda Bhai, Son of Sri Mnada Bhai Care of Mahabir Singh Yadav, Sub Inspector Hanumat Nagar Colony Near Shahi Pullia, Lucknow.

..... Applicant

Ld. Counsel for the: Shri Rohit Kumar, Advocate
Applicant

Versus

1. Chief of Army Staff, DHQPO, New Delhi.
2. Commandant cum Chief Records Officer ASC Centre (S) and Records, Bangalore.
3. Union of India through Secretary, Ministry of Defence, DHQPO, New Delhi.

.....Respondents

Ld. Counsel for the: Shri G.S. Sikarwar, Advocate
Respondents.**ORDER (Oral)**

1. We have heard learned counsel for the parties on the application for condonation of delay (MA No. 1863 of 2017) and considered the objections and replies thereto and perused the record.

2. There is delay of more than 08 years from the date of accrual of actual cause of action in filing this O.A., however, the Registry has reported the delay of 05 months and 19 days from the date the statutory petition of the applicant was dismissed.

3. In brief the facts necessary for the purpose of instant controversy may be summarised as under.

4. The applicant was enrolled in Army on 25.04.1995. After completion of training he was posted to several locations. However, he was prematurely discharged w.e.f. 30.09.2008 after having more than 13 years of service to his credit. The discharge of the applicant was on the basis of several red ink entries and after issuing a show cause notice he was discharged from service under Rule 13(3) item III(v) of the Army Rules, 1954. Before proceeding further at this stage we would like to reproduce the earlier details of punishments awarded to the applicant, which were mentioned in the show cause notice issued to the applicant. Show cause notice reads as under:-

“
21104/CT/DV-1
HQ 21 Corps
PIN- 908521
C/o 56 APO
16 Aug 08

No 14812476W Sep/MT
Chauhan Kishore Manda Bhai
'A' Coy, 5221 ASC Bn (MT)
Pin 905321
C/o 56 APO

SHOW CAUSE NOTICE

1. On scrutiny of your field service documents it has come to light that you have incurred eight red ink entries and one black ink entry till date as per details given below.

Ser No.	AA Sec	Punishment Awarded	Date of Punishment
(a)	AA Sec 48	07 days RI in mil custody	28 Jul 01
(b)	AA Sec 48	20 days RI in mil custody	15 Apr 02
(c)	AA Sec 39 (c)	07 days Pay Fine	06 Nov 02
(d)	AA Sec 39(a)	14 days RI in mil custody	20 Nov 03
(e)	AA Sec 48	21 days RI in mil custody & 14 days Pay Fine	08 May 04
(f)	AA Sec 48	28 days RI in mil custody & 14 days Pay fine	28 Nov 05
(g)	AA Sec 48 & 39(b)	28 days RI in mil custody	09 Sep 06
(h)	AA 54 (b)	14 days RI in mil custody	25 Jun 07
(i)	AA Sec 39(b) & AA 54(b)	14 days RI and 07 days Pay fine	07 Jul 08

2. Despite regular counselling and punishments awarded, you have shown no improvement in your military discipline and conduct, which is unbecoming of a good soldier. You have been repeatedly found involved in disciplinary cases. In view of the above, your continued retention in service in Army is not considered desirable.
3. In view of the above, you are hereby directed to explain reasons as to why you should not be discharged from service under the provision of Army Rule 13(3) Item III (v) and Army Headquarters letter No A3210/159/AG/PS2(c) dated 28 Dec 1988.
4. Your reply should reach the undersigned by 30 August 2008 positively.

(RK Sharma)
Brig
Brig Adm
For GOC ”

5. Learned counsel for the applicant submits that the applicant was not provided the show cause notice nor any other documents nor the order of discharge. It is submitted on behalf of the applicant that after the discharge of the applicant on 30.09.2008, the applicant for the first time moved an application

under the RTI Act on 22.08.2015 seeking information regarding his premature local discharge and the movement order dated 30.09.2008. Thereafter on receipt of certain documents the applicant filed statutory complaint on 31.12.2015, which was disposed of by the impugned order dated 10.11.2016. The copy of the show cause notice dated 16.08.2008 and the movement order dated 30.09.2008 have been annexed by the applicant as Annexure A-3 and Annexure A-4 to the application, which show that copy of the discharge order was also addressed to the applicant. Thus, by filing this O.A. the applicant intends to challenge his discharge order dated 19.09.2008. It transpires from the perusal of the order that the applicant has also furnished reply to the said show cause notice, which gives rise to only inference that the applicant has received the show cause notice.

6. On the basis of said information under the RTI Act and moving statutory complaint after several years by itself does not extend the period of limitation, which started from the date on which cause of action actually arose. If it is taken as a ground to condone the delay, then no army action can ever be final if the person is at liberty to file statutory complaint at any time. It would make the limitation period meaningless. There is no dispute on the factual position that the cause of action arose on 19.09.2008 when the order of discharge was passed. It is unbelievable that a person was not aware of his discharge

because discharge is not a continuing cause of action as after the discharge payment of salary is stopped automatically. Therefore, by no stretch of imagination it can be presumed that the applicant was not aware that he is no longer an Army personnel subject to Army Act. Hence seeking information under the RTI Act and thereafter to move statutory complaint after several years has absolutely no relevance in this case so far the period of limitation is concerned. The perusal of the order passed by the competent authority dated 10.11.2016 on the statutory complaint of the applicant dated 31.12.2015 shows that it has also been mentioned in the said order that under the rules the statutory complaint has to be moved within the period of 90 days from the date of discharge. Paras-2 and 6 of the this order are relevant, which read as under :-

“2. It is intimated that you have submitted a Statutory Complaint dated 31 Dec 2015 against your discharge from service on 30 Sep 2008(A/N) with a request to set aside the premature discharge with all consequential benefits. A Statutory Complaint is required to be submitted within 90 days from the date of discharge as per IHQ of Mod (Army) letter No 62736/AG/DV-1(P) dt 16 Dec 1999 read in conjunction with IHQ of Mod (Army) letter No 62736/AG/DV-1(P) dt 12 Apr 2013 whereas you have submitted the same after a lapse of more than eight years from the date of discharge. Hence the same is not tenable in accordance with HQ of MoD (Army) letter No 62736/AG/DV-1(P) dt 12 Apr 2013. However, treating the said Statutory Complaint as a Petition under the provisions of Para 368 of the Regulations for the Army 1987 (Revised Edition), the same is disposed off with the justifications in succeeding paras.”

6. Despite regular counselling and punishment awarded, you have not shown improvement in your

military discipline and conduct which is unbecoming of a good soldier. Accordingly a show cause notice was issued by Brig Adm, HQ 21 Corps vide letter No 21104/CT/DV-1 dt 16 Aug 2008 as to why you should not be discharged from service under the provision of Integrated HQ of MOD (Army) letter quoted at para 4 above. Your reply to Show Cause Notice dated 25 Aug 2008 was perused by General Officer Commanding, HQ 21 Corps and after due thought, the Competent Authority directed that you will be discharged from service as undesirable under Army Rule 13(3) item (iii) (v). Accordingly, your discharge from service was recommended by CO, 5221 ASC Bn and you were discharged from service on 30 Sep 2008(A/N).”

7. On behalf of the respondents reliance has been placed on the pronouncement of Hon’ble Apex Court in the case of **Union of India vs. M.K. Sarkar (2010) 2 SCC 59** and on the strength of this case law it has been argued that the limitation has to be counted from the date of original cause of action and belated claim should not be entertained. At this stage we would like to reproduce the Para-16 of the above judgment which reads as under:-

“ 16. A court or tribunal, before directing “consideration” of a claim or representation should examine whether the claim or representation is with reference to a “live” issue or whether it is with reference to a “dead” or “stale” issue. If it is with reference to a “dead” or “stale” issue or dispute, the court/tribunal should put an end to the matter and should not direct consideration or reconsideration. If the court or tribunal deciding to direct “consideration” without itself examining the merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and laches. Even if the court does not expressly say so, that would be the legal position and effect.”

8. At this juncture we would like to deal with legal aspect of the issue.

9. Section 22 of the Armed Forces Tribunal Act, 2007 provides for limitation. It reads 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.”

In the facts of the instant case applicant was discharged from service after establishment of Armed Forces Tribunal.

10. We would like to deal with the issue of limitation raised in the instant case 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.”

11. There is absolutely no explanation on record as to why the applicant did not initiate the appropriate proceedings after discharge from service within the prescribed period of limitation. 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. 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 encapsule 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*).

12. In view of the discussion made above, we are of the considered view that the statutory complaint was filed by the applicant after more than 08 years, that apart there is no valid and reasonable explanation on behalf of the applicant explaining the delay from the date of his actual discharge i.e. 30.09.2008.

13. Accordingly, we do not find it a fit case for condonation of delay. It deserves to be dismissed and is hereby **dismissed**. Consequently, the OA is also **dismissed** being barred by time.

(Air Marshal BBP Sinha)
Member (A)

(Justice SVS Rathore)
Member (J)

September 03, 2018

JPT