

**Court No. 1 (List B)****ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW****Original Application No.NIL of 2015**Thursday, this the 29<sup>th</sup> day of June 2017**Hon'ble Mr. Justice D.P. Singh, Member (J)****Hon'ble Air Marshal Anil Chopra, Member (A)**

Sita Ram (No.6451010L Ex Sepoy/Dvr),  
 Son of Late Nanney,  
 Resident of Village Kila Naurangabad Post Bhadrakh  
 District Lucknow (UP).

.....Applicant

Ld. Counsel for :  
 the Applicant

**Shri R Chandra,**  
**Advocate**

Versus

1. Union of India, through the Secretary,  
 Ministry of Defence  
 Government of India,  
 New Delhi-110001.
2. The Chief of the Army Staff,  
 Army Headquarters,  
 DHQ Post Office,  
 New Delhi – 110011.
3. The Officer-in-Charge,  
 ASC Records (AT),  
 PIN 900493, C/o 56 APO.
4. Principal Controller of Defence  
 Accounts (Pension),  
 Draupadi Ghat,  
 Allahabad 211014 (UP).

.....Respondents

Ld. Counsel for the :  
 Respondents

**Shri Ashish Kumar Singh,**  
**Ld. Counsel for Central Govt.**

**ORDER (Oral)**

**M.A.No.2138 of 2015 & O.A.No. Nil of 2015**

1. This is an application for condonation of delay in filing the Original Application.

2. The applicant was enrolled in the Army as Driver (Animal Transport) in ASC on 24.11.1962 and he was discharged from service on 11.12.1974, a copy of discharge order has been annexed as Annexure No. A-1 to the Application. It has been submitted by the learned counsel for the applicant, while making prayer for condonation of delay, that on account of ignorance of law and paucity of funds, he could not approach the Tribunal in time. The delay in filing the Original Application is about 42 years. Of course a liberal view should be taken, but the applicant has miserably failed to show any solid ground for approaching the Tribunal with inordinate delay of about 42 years.

3. In a case reported in **Balwant Singh (Dead) vs. Jagdish Singh & others** (2010) 8 Supreme Court Cases 685), the Hon'ble Supreme Court while considering the grant of condonation of delay held in paragraphs 26 and 37 as under :

*“26. The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuation right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly.*

*37. We feel that it would be useful to make a reference to the judgment of this Court in Perumon Bhagvathy Devaswom. In this case, the Court, after discussing a number of judgments of this Court as well as that of the High Courts, enunciated the principles which need to be kept in mind while dealing with applications filed under the provisions of Order 22 CPC along with an application under Section 5 of the Limitation Act for condonation of delay in filing the*

*application for bringing the legal representatives on record. In SSC para 13 of the judgment, the Court held as under (SCC pp. 329-30).*

*“(i) The words ‘sufficient cause for not making the application within the period of limitation’ should be understood and applied in a reasonable, pragmatic, practical and liberal manner, depending upon the facts and circumstances of the case, and the type of case. The words ‘sufficient cause’ in Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice, when the delay is not on account of any dilatory tactics, want of bona fides, deliberate inaction or negligence on the part of the appellant.*

*(ii) In considering the reasons for condonation of delay, the courts are more liberal with reference to applications for setting aside abatement, than other cases. While the court will have to keep in view that a valuable right accrues to the legal representatives of the deceased respondent when the appeal abates, it will not punish an appellant with foreclosure of the appeal, for unintended lapses. The courts tend to set aside abatement and decide the matter on merits, rather than terminate the appeal on the ground of abatement.*

*(iii) The decisive factor in condonation of delay, is not the length of delay, but sufficiency of a satisfactory explanation.*

*(iv) The extent or degree of leniency to be shown by a court depends on the nature of application and facts and circumstances of the case. For example, courts view delays in making applications in a pending appeal more leniently than delays in the institution of an appeal. The courts view applications relating to lawyer’s lapses more leniently than applications relating to litigant’s lapses. The classic example is the difference in approach of courts to applications for condonation of delay in filing an appeal and applications for condonation of delay in refiling the appeal after rectification of defects.*

*(v) Want of ‘diligence’ or ‘inaction’ can be attributed to an appellant only when something required to be done by him, is not done. When nothing is required to be done, courts do not expect the appellant to be diligent. Where an appeal is admitted by the High Court and is not expected to be listed for final hearing for a few years, an appellant is not expected to visit the court or his lawyer every few weeks to ascertain the position nor keep checking whether the contesting respondent is alive. He merely awaits the call or information from his counsel about the listing of the appeal.’’ (emphasis in original)*

*We may also notice here that this judgment had been followed with approval by an equi-Bench of this Court in Katari Suryanarayana.’’*

4. In view of the law settled by the Hon'ble Supreme Court and keeping in view the factual position of the present case, the applicant has miserably failed to show the sufficient cause for condonation of delay in filing the Original Application.

5. Accordingly, the application for condonation of delay lacks merit and is accordingly rejected.

6. In consequence thereof, the Original Application is also dismissed.

**(Air Marshal Anil Chopra)**  
**Member (A)**

**(Justice D.P. Singh)**  
**Member (J)**

Dated: 29<sup>th</sup> June, 2017  
PKG