

ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW

Court No. 1

Misc. Application No. 397 of 2015
With
Misc. Application No. 398 of 2015
(Inre : Original Application No. 326 of 2012)

Tuesday the 26th day of May, 2015

“Hon’ble Mr. Justice S.C. Chaurasia, Member (J)
Hon’ble Air Marshal Anil Chopra, Member (A)”

1. Union Of India through Chief of The Army Staff.
2. OIC EME Records, Secundarabad
3. The PCD Draupadi Ghat, Allahabad.

.....Applicants

By Legal Practitioner Shri D.K. Pandey, Standing Counsel for
the Central Government

Versus

No. 14520765F Ex. Hav (Hony Naib Subedar) Krishna Mohan
Son of Late Sri Asarfi Resident of Village-Girdhar Ganj Bazar,
Post Kunraghat, District Gorakhpur (U.P.)

..... Respondent

By Legal Practitioner Shri Mohd. Arif & Shri V.A. Singh,
Advocate, Counsel for the respondent

ORDER

Hon'ble Mr. Justice S.C. Chaurasia

1. This application for condonation of delay, supported with an affidavit, has been moved on behalf of the applicants, Union of India and others, for condonation of delay in moving the Application for Leave to Appeal under Section 31 of the Armed Forces Tribunal Act, 2007, against the Judgment dated 22.08.2012, passed by the Bench consisting of Hon'ble Mr. Justice B.N. Shukla, Member (J) (since deceased) and Hon'ble Lt. General B.S. Sisodia, Member (A) (since retired) in Original Application No. 326 of 2012, No. 14520765F Nb Sub Krishna Mohan Versus Union of India and Others, on the grounds that in taking instructions from the competent authority and seeking legal advice, delay has been caused and hence, the delay in filing the application for leave to appeal may be condoned.

2. Heard Shri D.K. Pandey, Learned Counsel for the applicants and perused the record. None appeared on behalf of the respondent.

3. As per office report dated 24.02.2015, there is delay of 02 years, 05 months and 02 days in filing the application for leave to appeal.

4. From the perusal of record, it transpires that the final Judgment in Original Application No. 326 of 2012, No. 14520765F Hon Nb Sub Krishna Mohan Versus Union of India and others, was delivered on 22.08.2012. Thereafter, application for leave to appeal, along with an application for condonation of delay in filing the said application, was moved on 24.02.2015. The application for leave to appeal has been filed under Section 31 of the Armed Forces Tribunal Act, 2007. It provides as under:-

“31. Leave to Appeal -(1) An appeal to the Supreme Court shall lie with the leave of the Tribunal; and such leave shall not be granted unless it is certified by the Tribunal that a point of law of general public importance is involved in the decision, or it appears to the Supreme Court that the point is one which ought to be considered by that Court.

(2) An application to the Tribunal for leave to appeal to the Supreme Court shall be made within a period of thirty days beginning with the date of the decision of the Tribunal and an application to the Supreme Court for leave shall be made within a period of thirty days beginning with the date on which the application for leave is refused by the Tribunal.

(3) An appeal shall be treated as pending until any application for leave to appeal is disposed of and if leave to appeal is granted, until the appeal is disposed of; and an application for leave to appeal shall be treated as disposed of at the expiration of the time within

which it might have been made, but it is not made within that time.”

5. In view of Sub Section (2) of Section 31 of the said Act, an application for leave to appeal to the Hon’ble Supreme Court should have been moved within a period of 30 days beginning with the date of the decision of the Tribunal, but, in the instant case the application for leave to appeal has been moved after 02 years, 06 months and 01 day from the date of passing of impugned final Judgment i.e. beyond the statutory period. No sufficient cause has been shown for condonation of such inordinate delay in moving the application for leave to appeal. Since the application for leave to appeal has not been moved within the statutory period of thirty days, it shall be treated as disposed of at the expiration of said period, in view of Section 31(3) of the Armed Forces Tribunal Act, 2007.

6. In Misc. Application No. 32 of 2011, Lt. Col. Ranjodh Singh Vs. Union of India and others, vide Order dated 23.02.2012, it has been held by this Bench of the Tribunal that the application under Section 5 of the Limitation Act is not maintainable. Learned Counsel for the applicants has not made out any case for taking a different view in the matter. Thus, we are in agreement with the said Order dated 23.02.2012 delivered by this Tribunal in Misc. Application No. 32 of 2011, Lt. Col. Ranjodh Singh Vs. Union of India and others.

7. In view of the aforesaid discussion, we are of the view that the application for leave to appeal has been moved after considerable delay, which has not been explained satisfactorily, and the application under Section 5 of the Limitation Act is also not maintainable and it is rejected, accordingly. Consequently, the application for Leave to Appeal under Section 31 of the Armed Forces Tribunal Act, 2007, being highly time barred, is also rejected.

(Air Marshal Anil Chopra)
Member (A)

(Justice S.C. Chaurasia)
Member (J)

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