

Court No.3**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****Miscellaneous Application No. 1657 of 2015**Tuesday, this the 15th day of December 2015**Hon'ble Mr. Justice D.P. Singh, Member (J)**
Hon'ble Air Marshal Anil Chopra, Member (A)No. 2669951-M, Ex-Havildar Rajesh Bahadur Singh
s/o Late Shri Ram Baran Singh, Resident of Vilage & Post-
Khajoor Gaon, Tehsil Lalganj District Raebareilly (U.P.).

...Applicant

Ld. Counsel for the : **Shri P.N. Chaturvedi, Advocate**
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarter of the Ministry of Defence (Army), South Block, New Delhi-110011.
3. Commanding Officer, 13th Battalion of Grenadier Regiment C/o 56 APO.
4. Senior Record Officer, Grenadier Regiment Jabalpur.
5. Principal Controler of Defence Accounts (P), Draupadighat Allahabad

...Respondents

Ld. Counsel for the : **Dr. Shailendra Sharma Atal, Central**
Respondents. **Govt Counsel assisted by**
Capt PritiTyagi, OIC, Legal Cell.

ORDER (ORAL)

1. This is an application for condonation of delay in preferring the Original Application.
2. We have heard Ld. Counsel for the parties and perused the record.
3. The applicant was enrolled in the Grenadier Regimental Centre, Jabalpur on 20.01.1978. Thereafter it appears that he developed disease 'SUB MANDIBULAR GLAND CALCULUS (RT) V-67' which is disease of throat. He was admitted in 174, Military Hospital on 17.04.1994 and was discharged from hospital on 26.04.1994. Thereafter, the applicant was placed in low medical category BEE (P). Thereafter he was discharged from service on 31.08.1996 in the rank of Havildar. Submission of Ld. Counsel for the applicant is that the discharge order is bad in law being passed in medical category P-2.
4. According to office report, the Original Application has been preferred with delay of 18 years 6 months.
5. Ld. Counsel for the applicant has attempted to explain the delay. His submission is that the applicant had preferred Writ Petition No. 3099 of 2003 in the High Court, Lucknow Bench, Lucknow which was subsequently transferred to this Tribunal on creation of the Armed Forces Tribunal and was re-numbered

as T.A. 20 of 2014. The T.A. was dismissed with liberty to file a fresh case by order dated 01.04.2015.

6. A specific query was made to the Ld. Counsel for the applicant as to how he would explain delay between 1996 to 2003 when he had preferred Writ Petition in the High Court to which the reply was that it was not for him to explain the delay in the filing the writ petition since the matter has been transferred to the Tribunal. Earlier the T.A. was registered and now fresh Original Application has been preferred in pursuance to liberty granted by the High Court.

7. Cases are transferred to the Tribunal in pursuance to Section 34 of the Armed Forces Tribunal Act, 2007 (in short, the Act). Perusal of statutory provisions contained in Section 34 of the Act shows that the Tribunal on receipt of such record shall proceed to deal with such suit or other proceeding, so far as may be, in the same manner as in the case of an application made under sub-Section (2) of Section 14 of the Act from the stage which was reached before such transfer or from any earlier stage or de novo as the Tribunal may deem fit. From a perusal of the aforesaid provision it is apparent that it is not barred for the Tribunal to consider the stages which cover the filed earlier to filing Writ Petition in the High Court or the authority from where the case has been transferred. For convenience sake, Section 34 of the Act is reproduced as follows:

“34. Transfer of pending cases. – (1) Every suit, or other proceeding pending before any court including a High Court or other authority immediately before the date of establishment of the Tribunal under this Act, being a suit or proceeding the cause of action whereon it is based, is such that it would have been within the jurisdiction of the Tribunal, if it had arisen after such establishment within the jurisdiction of such Tribunal, stand transferred on that date to such Tribunal.

(2) Where any suit, or other proceeding stands transferred from any court including a High Court or other authority to the Tribunal under sub-section (1),--

(a) the court or other authority shall, as soon as may be, after such transfer, forward the records of such suit, or other proceeding to the Tribunal;

(b) the Tribunal may, on receipt of such records, proceed to deal with such suit, or other proceeding, so far as may be, in the same manner as in the case of an application made under sub-section (2) of section 14 from the stage which was reached before such transfer or from any earlier stage or de novo as the Tribunal may deem fit.”

8. In the present case, the applicant has not explained the delay between 1996 to 2003. In the application for condonation of delay, there is not a whisper with regard to delay in preferring the Writ Petition which has been transferred to this Tribunal. The T.A. registered in the Tribunal followed the present application for condonation of delay is in continuance of the Writ Petition filed before the High Court. Accordingly, while

considering the application for condonation of delay, it is obligatory for the Tribunal to consider the delay from the initial date.

9. On the cost of reiteration it may be observed that the applicant has not explained the delay between 1996 to 2003. The applicant seems to have failed to explain the delay. Even if a liberal approach is adopted, it would not mean that the Tribunal should close its eyes regarding commission and omission on the parties of counsel for the applicant. The applicant should have explained the delay while filing the present O.A. which seems to not have been done.

10. In catena of judgments the Hon'ble Supreme Court has held that while moving application for condonation of delay, the litigant should explain the entire period of delay caused in preferring the application. Of course, day to day delay may not be necessary to explain, but the entire period of delay should broadly be explained while preferring O.A.

11. Since the applicant has not explained the delay, cause shown is not sufficient to condone the delay in moving the O.A. At least there should be finality with regard to proceeding and for that purpose the Parliament in its wisdom has inducted Section 5 in the Indian Limitation Act, 1963. In view of the above, cause shown in application for condonation of delay is not sufficient.

12. Application for condonation of delay lacks merit and is rejected.

No order as to costs.

13. Since the application for condonation of delay has been rejected, as a consequence, the O.A. is also rejected.

(Air Marshal Anil Chopra)
Member (A)

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