

**Court No.3****ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW****MISCELLANEOUS APPLICATION NO 285 of 2015**Tuesday, this the 15<sup>th</sup> day of December 2015**Hon'ble Mr. Justice D.P. Singh, Member (J)**  
**Hon'ble Air Marshal Anil Chopra, Member (A)**

(No. 1397974H) Ex- Naik (TS) Mahendra Kumar Tiwari s/o Shri Chandrika Prasad Tiwari, R/o-Village and Post-Teone, Tehsil-Mangawa, District-Rewa (M.P.).

.....Applicant

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

Versus

1. Union of India, through the Secretary Ministry of Defence, New Delhi-01.
2. Chief of the Army Staff, Integrated Headquarter of the Ministry of Defence (Army), South Block, New Delhi-110011.
3. Officer-In-Charge, Records, AMC Central Command, Lucknow Cantt. 02.
4. Commandant Military Hospital Bhopal.

...Respondents

Ld. Counsel for the : **Mrs Appoli Shrivastava, Central**  
Respondents. **Govt Counsel assisted by**  
**Capt Priti Tyagi, OIC, Legal Cell.**

**ORDER (ORAL)**

1. We have heard Ld. Counsel for the parties and perused the record.
2. This is an application for condonation of delay against the impugned order of discharge dated 31.03.2006 on account of low medical category.
3. It has been submitted by Ld. Counsel for the applicant that the applicant had made several representations but none of them was decided and ultimately in the year 2012, the applicant submitted application under Right to Information Act in pursuance to which copy of the order was provided to him on 12.10.2012. Later on he wrote a letter in the year 2012. Submission of the Ld. Counsel for the applicant is that, since the applicant had submitted representations as such there is no delay in moving the Original Application.
4. On the other hand, Ld. Counsel for the respondents submitted that there is no explanation for the delay hence cause shown for condonation of delay is not sufficient and the application for condonation of delay is liable to be rejected.
5. We have considered arguments advanced by Ld. Counsel for the parties and perused the record.
6. In para 2 of the affidavit filed in support of application for condonation of delay, it has been averred that the applicant was discharged from service on account of Low Medical Category

after completing 17 years of service and was not considered for extension of service. Submission is that the applicant was discharged on account of Low Medical Category P2 as such sheltered appointed for extended period of service should have been provided to the applicant. It is further submitted that two years extension should have been given to the applicant even in P2 category by the respondents so that he could have continue to remain in service till 31.03.2008. A cumulative reading of paras 2, 3 and 4 of the affidavit shows that the applicant has not stated as to what he has done after discharge from service on 31.03.2006. There is not even a whisper in paras 2, 3 and 4 of the affidavit that the applicant preferred statutory or non statutory complaint before the appropriate authority of the Army. Even if the applicant is entitled for extension of service up to 31.03.2008, as alleged in para 2 of the affidavit, more than 7 years have been passed after the applicant claims to be entitled to continue in service.

7. Merely because the applicant moved some application in the year 2012 under the Right to Information Act to avail certain record, it does not mean that anterior period from 2012 should not be explained. Attention has been invited to the application dated 30.11.2005 which according to Ld. Counsel for the applicant was preferred to competent authority seems to be not on record. In case applicant moved any such applicant, even then he should have pursued the matter. Between 2005 to 2012 no effort was made on part of the applicant to pursue the matter. Moreover,

even if, the applicant could have been granted extension, said period of extension would have expired on 31.03.2008.

8. Now it is well settled proposition of law that the litigants who are sleeping over their right and approach the court after inordinate delay, shall not be entitled for any relief broadly to make out a case to approach before the Tribunal, the applicant has moved cursorily application for condonation of delay without explaining delay of the period in question. Thus there is time-lag of 3 years between 2012 to 2015 which has not been explained. In view of the above, cause shown in application is not sufficient to make out a case for condonation of delay.

9. Ordinarily liberal approach should be adopted and as far as possible a case should not be thrown out on technical grounds viz delay in filing the case, but in case where the applicant has slept over his right for seven years, he is not entitled for any indulgence for condoning the delay.

10. In view of the above, application for condonation of delay lacks merit and deserves to be rejected.

11. It is accordingly rejected.

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

No order as to costs.

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

anb

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