Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

M.A. No. 58 of 2018
Inre: OA No. NIL of 2018

Tuesday, this the 14th day of December 2018

"Hon'ble Mr. Justice S.V.S. Rathore, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)"

Laxman Singh Attri (No. 13697919F Ex Gdsm) son of Shri Bijendra Singh, resident of village Atari, Post Baina, district Aligarh-202165 (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.

2. The Chief of the Army Staff, Integrated Headquarters, New Delhi-11

3. The Officer-in-Charge, Records, Brigade of the Guards, PIN 900746, C/o 56 APO.

4. Commanding Officer, 10 Guards, PIN 910910, C/o 56 APO.

.....Respondents

Ld. Counsel for the Respondents. : **Shri Virendra Singh,** Addl Central Govt. Standing Counsel

ORDER (ORAL)

1. This is an application for condonation of delay in filing the present O.A. whereby the applicant has challenged the Summary Court Martial (SCM) proceedings dated 22.11.2008. As per report of the Registry, there is delay of 8 years, 7 months and 16 days in filing the O.A.

2. Learned counsel for the applicant has argued that after his punishment, the applicant filed an O.A. in March, 2009 before Hon'ble Principal Bench, Armed Forces Tribunal, New Delhi. His counsel expired in March, 2011 and thereafter father of the applicant expired in August 2011 due to heart attack. The applicant in the year 2012 approached respondent no. 3 for documents whereby he was replied that the documents have already been provided to the applicant. It is further argued that in the year 2013, the wife of the applicant suffered from Epilepsy and she was under treatment. Applicant's wife suffered Epilepsy attacks at short intervals of few days gap. In the year 2016 the applicant requested the respondents to reinstate him in service with further request to provide him copy of the SCM proceedings. In the year 2017, a memorandum was sent by the respondents mentioning therein that copy of the SCM proceedings is forwarded herewith. On 11.04.2017, respondent No. 4 intimated the applicant that copy of the SCM proceedings was provided to his counsel on 03.02.2009. Thereafter a legal notice was sent by the applicant on 20.09.2017 upon which on 07.10.2017 respondent no. 3 sent copy of the SCM proceedings; hence the present O.A.

3. Thus, in the instant case, the applicant has tried to explain the delay. Admittedly, punishment inflicted upon the applicant is not a recurring cause of action, thus the applicant is supposed to explain each and every day's delay in approaching the Tribunal. Development of facts as stated by learned counsel for the applicant show that it was the stand of the respondents from the very beginning that copy of the SCM proceedings were provided to the applicant, but when in the year 2017 the applicant again sent a legal notice, then the

same was again provided to him. The applicant has also concealed the outcome of the case which he claims to have filed in the Principal Bench, Armed Forces Tribunal, New Delhi in the 2009; whether the same is pending or has been dismissed. There is absolutely no medical certificate in support of the ground taken by the applicant that his wife suffered from Epilepsy. Simply because the applicant has sent a legal notice in the year 2017, it does not in any manner extend the period of limitation.

4. Learned counsel for the respondents has argued that the applicant has utterly failed to explain the delay in filing this O.A.

5. We have heard learned counsel for the parties and perused the record.

6. The Hon'ble Apex Court in the case of ***Balwant Singh (dead) vs. Jagdish Singh & ors***, reported in (2010) 8 SCC 685 has laid down certain guidelines with regard to condonation of delay. Relevant portion of the judgment reads thus:

> *"32. It must be kept in mind that whenever, a law is enacted by the legislature, it is intended to be enforced in its proper perspective. It is an equally settled principle of law that the provisions of a statute, including every word have to be given full effect, keeping the legislative intent in mind, in order to ensure that the projected object is achieved. In other words, no provision can be treated to have been enacted purposelessly.*
>
> *33. Furthermore, it is also a well settled canon of interpretative jurisprudence that the Court should not give such an interpretation to the provisions which would render the provision ineffective or odious. Once the legislature has enacted the provisions of Order 22, with particular reference to Rule 9, and the provisions of the Limitation Act are applied to the entertainment of such an application, all these provisions have to be given their true and correct meaning and must be applied wherever called for. If we accept the contention of the Ld. Counsel appearing for the applicant that the Court should take a very liberal approach and interpret these provisions (Order 22 Rule 9 CPC and Section 5 of the Limitation Act) in such a manner and so liberally, irrespective of the period of delay, it would amount to practically rendering all*

these provisions redundant and inoperative. Such approach or interpretation would hardly be permissible in law.

34. Liberal construction of the expression "sufficient cause" is intended to advance substantial justice which itself presupposes no negligence or inaction on the part of the applicant, to whom want of bonafide is imputable. There can be instances where the court should condone the delay; equally there would be cases where the court must exercise its discretioin against the applicant for want of any of these ingredients or where it does not reflect "sufficient cause" as understood in law. (Advanced Law Lexicon, P. Ramanatha Aiyer, 2nd Edn., 1997).

35. The expression "sufficient cause" implies the presence of legal and adequate reasons. The word "sufficient" means adequate enough, as much as may be necessary to answer the purpose intended. It embraces no more than that which provides a plentitude which, when done, suffices to accomplish the purpose intended in the light of existing circumstances and when viewed from the reasonable standard of practical and cautious men. The sufficient cause should be such as it would persuade the court, in exercise of its judicial discretion, to treat the delay as and excusable one. These provisions give the courts enough power and discretion to apply a law in a meaningful manner, while assuring that the purpose of enacting such a law does not stand frustrated.

36. We find it unnecessary to discuss the instances which would fall under either of these classes of cases. The party should show that besides acting bonafide, it had taken all possible steps within its power and control and had approached the court without any unnecessary delay. The test is whether or not a cause is sufficient to see whether it could have been avoided by the party by the exercise of due care and attention. ***(Advanced Law Lexicon, P. Ramanatha Aiyar, 3rd Edn., 2005****).*

7. In the case of ***H. Dohil Constructions Company Private Limited vs. Nahar Exports Limited & anr***, (2015) 1 SCC 680. their Lordships of the Hon'ble Apex Court have observed as under:

"*23. We may also usefully refer to the recent decision of this Court in Esha [(2013) 12 SCC 649)] where several principles were culled out to be kept in mind while dealing with such applications for condonation of delay. Principles (iv), (v), (viii), (ix) and (x) of para 21 can be usefully referred to, which read as under: (SCC pp. 658 to 59."*

(iv) No presumption can be attached to deliberate causation of delay but gross negligence on the part of the counsel for litigant is to be taken note of.

(v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

> *(vii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter, it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.*
>
> *(ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant facts to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go-by in the name of liberal approach.*
>
> *(x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such litigation."*

8. In State of ***M.P. vs. Nandlal Jaiswal & ors*** reported in AIR 1987 SC 251, it was held that the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction.

9. In view of these pronouncements, the applicant was under an obligation to explain each day delay. Learned counsel for the applicant has argued that after sending legal notice, the respondents have provided the copies of the SCM proceedings to the applicant, hence there is no delay. Here it is pertinent to mention that admittedly applicant had challenged SCM proceedings in the year2009 before Hon'ble Principal Bench, Armed Forces Tribunal, New Delhi. This act of the applicant shows that he had the material available with him to challenge the SCM proceedings, hence he filed O.A. in the year 2009. Respondents have pleaded from the very beginning that all the copies were provided to him after SCM. However, the same were again

provided in reply to the legal notice. So the question arises whether by sending legal notice, the period of limitation shall get extended automatically.

10. Hon'ble the Apex Court in the case of ***C. Jacob vs. Director of Geology & ors,*** reported in (2008)10 SCC 215 has held that simply because a direction to decide representation was given and the representation was decided, it would not furnish a cause of action. In this regard, we may refer to paras 9, 10, 11 and 15 of the case of ***C. Jacob*** (supra), which read thus:-

> *"9. The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly they assume that a mere direction to consider and dispose of the representation does not involve any `decision' on rights and obligations of parties. Little do they realize the consequences of such a direction to `consider'. If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to `consider'. If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The Tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored.*
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> *10. Every representation to the government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the department, the reply may be only to inform that the matter did not concern the department or to inform the appropriate department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim.*
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> *11. When a direction is issued by a court/tribunal to consider or deal with the representation, usually the directee (person directed) examines the matter on merits, being under the impression that failure to do may amount to disobedience. When an order is passed considering and rejecting the claim or representation, in compliance with direction of the court or tribunal, such an order does not revive the stale claim, nor amount to some kind of acknowledgment of a jural relationship' to give rise to a fresh cause of action.*

> *15. The present case is a typical example of `representation and relief'. The petitioner keeps quiet for 18 years after the termination. A stage is reached when no record is available regarding his previous service. In the representations which he makes in 2000, he claims that he should be taken back to service. But on rejection of the said representation by order dated 9.4.2002, he filed a writ petition claiming service benefits, by referring the said order of rejection as the cause of action. As noticed above, the learned Single Judge examined the claim, as if it was a live claim made in time, finds fault with the respondents for not producing material to show that termination was preceded by due enquiry and declares the termination as illegal. But as the appellant has already reached the age of superannuation, the learned Single Judge grants the relief of pension with effect from 18.7.1982, by deeming that he was retired from service on that day. We fail to understand how the learned Single Judge could declare a termination in 1982 as illegal in a writ petition filed in 2005. We fail to understand how the learned Single Judge could find fault with the department of Mines and Geology, for failing to prove that a termination made in 1982, was preceded by an enquiry in a proceedings initiated after 22 years, when the department in which appellant had worked had been wound up as long back as 1983 itself and the new department had no records of his service. The appellant neither produced the order of termination, nor disclosed whether the termination was by way of dismissal, removal, compulsory retirement or whether it was a case of voluntary retirement or resignation or abandonment. He significantly and conveniently, produced only the first sheet of a show cause notice dated 8.7.1982 and failed to produce the second or subsequent sheets of the said show cause notice in spite being called upon to produce the same. There was absolutely no material to show that the termination was not preceded by an enquiry. When a person approaches a court after two decades after termination, the burden would be on him to prove what he alleges. The learned Single Judge dealt with the matter as if he the appellant had approached the court immediately after the termination. All this happened, because of grant of an innocuous prayer to `consider' a representation relating to a stale issue."*

11. Similar view was expressed by their Lordships of Hon'ble Apex Court in the case of and ***Union of India vs. M.K. Sarkar*** reported in (2010) 2 SCC 59 wherein in para 18, their Lordships have observed thus:-

> *"Where a belated representation in regard to a "stale" or "dead" issue/dispute is considered and decided, in compliance with a direction by the court/tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the "dead" issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction.*

> *Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches."*

12. Thus it is clear that simply by sending a legal notice, period of limitation shall not extend.

13. Adverting to the facts of the case in hand, the ground of illness of the wife of the applicant has not been substantiated by the applicant by any medical report from the year 2013 to 2016. There is absolutely no explanation for the delay of that period. The ground that the applicant had no copies of the SCM proceedings is also false as the applicant had filed an O.A. before Hon'ble Principal Bench, Armed Forces Tribunal, New Delhi in 2009 which shows that he had all the material to file an O.A. at that point of time, Thus, the applicant has utterly failed to explain the delay.

14. In view of the observations made herein above, the application for condonation of delay deserves to be rejected; hence **rejected**.

15. As a consequence to rejection of application for condonation of delay, the O.A. is also dismissed.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice S.V.S. Rathore)
Member (J)

Dated: 14th December, 2018
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