Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

M.A. No. 989 of 2017
Inre: OA No. NIL of 2018

Tuesday, this the 17th day of December 2018

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

Ex Sepoy Lal Singh (Army No. 4188617K) of the19 Kumaon Regiment, C/o 99 APO, son of Shri Laxman Singh, permanent resident of village Malan, Post Jhune, Tehsil, Police Station and District Pithoragarh (U.K.)

….. Applicant

Ld. Counsel for the Applicant : Col (Retd) YR Sharma , Advocate.

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi.

2. Chief of the Army Staff, Integrated Headquarter of the Ministry of Defence (Army), South Block, New Delhi-110011.

3. Directorate General, Infantry (Personal), IHQ of MoD (Army), DHQ PO New Delhi-110105.

4. Officer-in-Charge Records Kumaon Regimental Centre, Lancedown.

5. Commanding Officer, 19 Kumaon Regiment C/o 56 APO.

6. Principal Controller, Defence Accounts (Pension), Draupadi Ghat, Allahabad.

.....Respondents

Ld. Counsel for the Respondents. : **Dr Shalendra Sharma Atal,**
Central Govt. Standing Counsel

ORDER (ORAL)

1. This is an application for condonation of delay in preferring the O.A. By means of the O.A. the applicant has made the following prayers:-

> *(a) Issue/pass an order or direction to the respondents to quash/set aside the discharge from service on 06.06.2006 as mentioned in Discharge Certificate (Annexure No. A-1)*
>
> *(b) Issue/pass an order or direction to reinstate the applicant in service with effect from 06.06.2006 with all service and monetary consequences.*
>
> *(c) Issuing/passing any other order or direction as this Hon'ble Tribunal made deem fit in the circumstances of the case.*
>
> *(d) Allow this application with costs.*

2. As per report of the Registry, there is delay of 10 years, 6 months and 15 days in filing the O.A.

3. Learned counsel for the applicant has argued that after being discharged from service on 06.06.2006, the applicant faced acute financial problems and he was virtually on street and worked as a labourer to support his family. He submitted an application on 30.03.2009 which was rejected by the GOC-in-C Northern Command vide letter dated15.12.2009. The applicant moved a mercy petition dated 11.04.2011 to the GOC-in-C which was also rejected vide order dated 20.07.2012. Yet another mercy petition was moved by the applicant to the Chief of the Army Staff on 11.03.2013 which was rejected and the result was communicated to the applicant. It is further pleaded that on improvement of his financial condition, the applicant approached the counsel who advised him to avail alternative remedy in terms of Section 21 of the Armed Forces Tribunal Act, 2007, as such he submitted petition dated

16.07.2016. It is further argued that the no reply was received by the applicant, thus, the applicant sent a legal notice dated 27.01.2017 to expedite the matter. In reply, the applicant was informed about the fate of his earlier petitions vide letter dated 17.02.2017 and within six month, now the applicant has preferred this O.A. along with application for condonation of delay.

4. In rebuttal, learned counsel for the respondents argued that the applicant has preferred the present O.A. after inordinate unexplained delay of more than 11 years. Learned counsel for the respondents has argued that the applicant has utterly failed to explain the delay in filing this O.A., as such, the O.A. deserves to be dismissed on the anvil of unexplained long delay and laches.

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

6. Admittedly, discharge from service does not involve recurring cause of action. It is settled law that if there is inordinate delay and such delay is not satisfactorily explained, the Courts/Tribunals shall decline to intervene and grant relief in exercise of its jurisdiction. The High Court (Tribunal in this case) in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. (See ***M.P. vs. Nandlal Jaiswal & ors*** reported in AIR 1987 SC 251).

7. So far as the submission of learned counsel for the applicant of giving legal notice and to calculate the period of limitation from that date is concerned, we are of the view that simply by giving legal notice, the period of limitation does not extend automatically. The applicant is under an legal

obligation to explain each day delay. On this point we may refer to the following pronouncements of Hon'ble Apex Court.

8. 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 fresh 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."

9. 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."*

10. In the case in hand, admittedly the applicant was discharged from service on 06.06.2006 after incurring four red ink entries. He did not approach any forum for redressal of his grievance and after a long gap, on 30.03.2009, he submitted an application to the GOC-in-C which was rejected on 15.12.2009. The applicant remained dormant and only on 11.04.2011 he woke up and moved a mercy petition which was rejected on 20.07.2012. Again after about six months on 11.03.2013, he moved yet another mercy petition to Chief of the Army Staff. There is no gainsaying that there is difference between a representation and a mercy petition. In a representation, prayer is made for redressal on the ground that the order passed is unsustainable while in a mercy petition, the mercy-petitioner accepts his guilt and prays for unconditional mercy. In the present case, the applicant has moved two mercy petitions meaning thereby that he has admitted his guilt and has prayed for showing mercy. As stated in the preceding paragraphs, both the mercy petitions have been rejected. After rejection of the mercy petitions, yet again, after a very long gap of more than three years, on 16.07.2016 he availed belated alternative remedy. In view of the settled legal proposition enunciated by Hon'ble Supreme Court in the above referred cases, there is an absolute lack of bona fide imputable to the applicant in approaching the appropriate authority/Tribunal within a reasonable and explainable delay. Simply by sending a legal notice, period of limitation shall not extend.

11. 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.*
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> *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.*
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> *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 discretion 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).*
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> *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)****.*

12. 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."*
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> > *(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."*

13. In view of these pronouncements, the applicant was under an obligation to explain each day delay. Learned counsel for the applicant has argued that since by letter dated 17.02.2017 the applicant has been informed about

rejection of his petitions, as such, there is no delay. We are unable to accept this submission of learned counsel for the applicant for the reason that the applicant has utterly failed to explain the delay in approaching the appropriate authority for redressal of his grievance from the date of discharge i.e. 06.06.2006 till 30.03.2009 when for the first time he submitted application, and subsequently again from 20.07.2012 till 27.01.2017 when he sent a legal notice. A bald averment that due to financial constraints the applicant was hampered to pursue his cause is not sufficient to condone the otherwise inordinate delay. 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: 17th December, 2018
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