Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

M.A. No. 2474 of 2016
In re:
OA No. (Nil) of 2016

Monday, this the 07th day of January, 2019

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

No 4082637M Ex-Rect Jitendra Kumar Chaubey, Son of late Shyam Lal Chaubey, resident of Village & Post Office- Murdahan, Tehsil- Sadar, District- Varanasi, U.P., Pincode- 221202.

….. Applicant

Ld. Counsel for the Applicant: **Shri K.K.S. Bisht, Advocate**

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi-110011

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

3. General Officer Commanding, Uttar Bharat Area, Pin-900496, C/O 56 APO.

4. Commandant, Garhwal Regimental Centre, Lansdown, Uttarakhand- 246155.

5. Officer-in-Charge Records/ Chief Record Officer, The Garhwal Rifles, Pin – 900400, C/o 56 APO.

.....Respondents

Ld. Counsel for the Respondents: Ms Appoli Srivastava, Advocate

ORDER (Oral)

1. By means of this petition, the applicant has made following prayers:-

> "(a) Issue/ pass an order or direction of appropriate nature to the respondents to quash/ set- aside the discharge order dated 01 January 2002 {Annexure No. A-1(i)} passed in respect of the applicant.
>
> (b) Issue/ pass an order or direction of appropriate nature to the respondents to quash/ set-aside the order dated 28 June 2011 {Annexure No.A-1(iv)} passed by the Chief of the Army Staff, respondent No.2.
>
> (c) Issue/ pass an order or direction of appropriate nature to the respondents to re-muster the applicant along with his batch-mates with effect from the date of his discharge i.e. with effect from 01.01.2002 with all service and monetary consequences.
>
> (d) Issue/ pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.
>
> (e) Allow this application with costs."

2. As per office report, there is delay of 14 years, 04 months and 04 days in filing this O.A.

3. In brief the facts of the case are that the applicant was enrolled in the Indian Army on 16.08.2000. After completing training he was required to undergo Recruit Clerk Course but as per the applicant he was not allowed to undergo the said course and subsequently a notice was given to him on 07.10.2001 to show cause as to why he should not be discharged from service

on the ground of lack of academic aptitude and unlikely to become an efficient soldier. The applicant replied to the said notice but on 01.01.2002 he was discharged under Rule 13(3) Item IV of Army Rules, 1954. Thereafter the applicant filed a writ petition bearing No. 2832 of 2003, which was transferred to this Tribunal and registered as T.A. No. 1250 of 2010 and this Tribunal vide its order dated 07.10.2010 disposed of the same with a direction to the respondents to decide the representation dated 12.02.2002, if already not decided within a period of three months by a speaking and reasoned order. In pursuance of the said order the competent authority has disposed of the representation of the applicant and the same was dismissed by a speaking order vide order dated 28.06.2011. The applicant has come up before this Tribunal challenging the said speaking order and this application has been filed on 06.11.2016 i.e. after more than five years of passing the aforesaid order. On this ground the learned counsel for the applicant has argued that since the applicant has challenged his discharge order immediately by filing a writ petition, which was disposed of in the year 2010 and his pending representation was disposed by a speaking order in the year 2011, therefore, the delay stands explained.

4. On behalf of the respondents written objections have been filed and it has been argued that there is no explanation of delay

from the date of passing of speaking order till date of filing of present petition.

5. During the course of arguments we asked the learned counsel for the applicant as to why after the speaking order was passed the applicant did not prefer any O.A. within the reasonable time and how he intends to explain the said delay. It is submitted in reply to this query that the applicant was not mentally fit and his condition deteriorated and he was not having sufficient funds to prefer the O.A.

6. We have heard learned counsel for the parties on the application for condonation of delay and perused the record.

7. So far as the ground of mental illness is concerned there is absolutely no medical document for the relevant period in support of it. Since it is a case of discharge of the applicant from Army service it is not a recurring cause of action and hence the applicant was under legal obligation to explain each day delay in filing this O.A. Even if, we propose to condone the delay till the date the statutory petition was filed in the year 2011, even then there is absolutely no reliable explanation thereafter to condone the delay of more than five years in preferring this O.A. The perusal of the record shows that not even a single document in support of argument of mental illness has been filed by the applicant. Therefore this ground of mental illness is only an afterthought and has absolutely no substance and the applicant is not entitled to any benefit thereof. The law on condoning delay

in approaching the appropriate forum is well settled. In the case of ***M.P. vs. Nandlal Jaiswal & ors*** reported in AIR 1987 SC 251, their Lordships of Hon'ble Apex Court have held that if there is inordinate delay and such delay is not satisfactorily explained, the Courts/Tribunals are loath 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.

8. At this juncture we would like to deal with legal aspect of the issue.

9. Section 22 of the Armed Forces Tribunal Act, 2007 provides for limitation. It reads as under:

> *"22. **Limitation.** —(1) The Tribunal shall not admit an application-—*
>
> *(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of section 21 has been made unless the application is made within six months from the date on which such final order has been made;*
>
> *(b) in a case where a petition or a representation such as is mentioned in clause (b) of sub-section (2) of section 21 has been made and the period of six months has expired thereafter without such final order having been made;*
>
> *(c) in a case where the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which jurisdiction, powers and authority of the Tribunal became exercisable under this Act, in respect of the*

matter to which such order relates and no proceedings for the redressal of such grievance had been commenced before the said date before the High Court.

(2) Notwithstanding anything contained in sub-section (1), the Tribunal may admit an application after the period of six months referred to in clause (a) or clause (b) of sub-section (1), as the case may be, or prior to the period of three years specified in clause (c), if the Tribunal is satisfied that the applicant had sufficient cause for not making the application within such period."

10. 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 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).*
>
> *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****).*

11. When the grounds of delay condonation are tested on the touchstone of aforementioned guidelines, the conclusion is irresistible that the applicant has utterly failed to explain the delay of more than five years from the date of passing the speaking order in pursuance of the order of this Tribunal in filing this petition.

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."*
>
> > *(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. Accordingly, in view of the above we do not find it a fit case for condonation of delay. It deserves to be dismissed and is hereby **dismissed.** Consequently, the OA also stands dismissed as being barred by time.

(Air Marshal BBP Sinha)
Member (A)

(Justice SVS Rathore)
Member (J)

January 07, 2019
JPT