Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

M.A. No. 1143 of 2017
Inre: OA No. NIL of 2017

Friday, this the 11th day of January 2019

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

Sri Ram Maurya, son of late Ram Nath Maurya, resident of Village Pure Jagti Pandey-Ka-Purwa Kakwa, Pargana and Tahsil Amethi, district Amethi, U.P. ….. Applicant

Counsel for the Applicant : **Shri Om Prakash Kushwaha**, Advocate.

Versus

1. Union of India, through the Secretary, Department of Air Force.

2. The Air Marshal, Air Officer Commanding-in-Chief, Eastern Air Command, I.F.A.

3. Smt Bulbuli Devi, daughter of Sri Anil Kumar, Village Chaurangudi, Bangaingan, MES Gate Temple Jorhat, Assam.

4. Smt Bijma Devi, wife of Sri Ram Maurya, Village Pure Jagti Pandey-Ka-Purwa , Naraini, Post Kakwa, Tahsil Amethi, district CSM Nagar, U.P. .....Respondents

Counsel for the Respondents. : Shri Bhanu Pratap Singh**,**
Addl 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:-

(8.1) Set aside the order dated 26.04.1999 order of Discharge from service 821277 NC.(E) Maurya S.R. Lascar passed by opposite party No. 2 which is contained as Annexure No. 1 to this Original Application.

(8.2) Issue order or direction thereby directing opposite parties to re-engage service 821277 NC.(E) Maurya S.R. Lascar and pay full salary in period 26.04.1999 till present time along with interest @ 18 % in favour of applicant.

(8.3) Issue any other order or direction deemed just and equitable under the circumstances of the case in favour of applicant.

(8.4) Allow the Original Application with consequential benefits.

2. The applicant has challenged the order of discharge passed on 26.04.1999. As per report of the Registry, there is delay of 17 years 08 months and 15 days in filing the petition.

3. Brief facts of the case are that the applicant was enrolled in the Indian Air Force on 27.03.1991 and was discharged on 26.04.1999 under Rule 15 (2) (k) read in conjunction with Rule 15 (2) of the Air Force Rules, 1969 on the ground of contracting plural marriage. Against his discharge from service, the applicant preferred representations dated 04.08.1999 and 17.06.2000 which were rejected vide order dated 27.06.2000 and the decision was duly communicated to the applicant. (Annexure-2 annexed by the applicant along with the petition).

4. Learned counsel for the applicant has argued that the applicant was discharged from service for contracting plural marriage. It is submitted that the wife of the applicant has not made any application praying for his removal from service as such the order of discharge is per se illegal and deserves to be set aside. It is further argued that the financial condition of the applicant became very poor after his discharge from service since he had to sustain his family consisting of wife and five unmarried children on account of which the applicant became mentally disturbed between 2007 to 2009 and could not pursue his cause. It is further argued that after sometime when the applicant

regained health and became financially stable, he contacted his lawyer in January 2017 and has filed the instant petition.

5. In rebuttal, learned counsel for the respondents argued that the applicant has preferred the present petition after inordinate unexplained delay of more than 17 years. Learned counsel for the respondents has argued that the applicant has utterly failed to explain the delay in filing this petition which deserves to be dismissed on the ground of unexplained long delay and laches.

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

7. From a perusal of the pleadings on record it is established that the applicant had contracted plural marriage and on this count after due enquiry he was discharged from service after following due procedure by the competent authority. Learned counsel for the applicant could not dispute that discharge from service is not a recurring cause of action. It is settled law 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. (See ***M.P. vs. Nandlal Jaiswal & ors*** reported in AIR 1987 SC 251).

8. So far as the submission of learned counsel for the applicant that the applicant could not pursue his cause due to financial hardships he became mentally disturbed is concerned, this submission of learned counsel for the applicant lacks substance for the reason that as per own saying of the applicant

he remained mentally ill from 2007 to 2009. Admittedly, the applicant was discharged on 26.04.1999 and his representations were rejected and the factum of rejection of the representations was communicated to the applicant on 27.06.2000. Legal notice was sent by the counsel on advice of the applicant on 25.09.2000. Thus, the applicant has not explained the delay in approaching the appropriate forum from 2000 till 2007 when it is alleged that he became mentally ill and thereafter from 2009 till 2017 when the present petition was filed by the applicant in this Tribunal. A bald averment without being supported by any documentary evidence would not suffice to explain the otherwise inordinate delay in approaching the Tribunal. In view of the settled legal proposition propounded by Hon'ble Supreme Court in several pronouncements, there is an absolute lack of bona fide imputable to the applicant in approaching the Tribunal within a reasonable and explainable delay.

9. 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****).*

10. 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."*

11. In view of aforesaid pronouncements, the applicant was under an obligation to explain each day delay. The order of discharge is dated 26.04.1999 and the fate of the representations preferred by the applicant was communicated to him on 27.06.2000. Thus, there is a delay of more than 17 years in approaching this Tribunal which the applicant has miserably failed to explain. The argument advanced by learned counsel for the applicant that the wife of the applicant did not make any application for taking action against the applicant on account on contracting plural marriage would not help the applicant in explaining the inordinate delay in approaching the Tribunal.

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

12. 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: 11th January, 2019
anb