Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

M.A. No. 1320 of 2018
Inre: OA No. NIL of 2018

Thursday, this the 03rd day of January 2019

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

No. 294711-T Ex JWO Shiv Pujan Mishra, son of late Jag Prasad Mishra, resident of House No. E-13, Sector-B, Sainik Vihar, Nanda Nagar, Post Office Kunraghat, District Gorakhpur

….. Applicant

Counsel for the Applicant : **Shri Sudhir Kumar Singh**, Advocate.

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, New Delhi-110011
2. The Chief of Air Staff, Vayu Bhawan, New Delhi, PIN 110011
3. Air Officer Commanding-in-Chief, Eastern Air Command, Shilong.
4. Air Officer Commanding, Directorate of Air Veteran, Air Force Record Office, Subroto Park, New Delhi.
5. Commanding Officer, 58 Signal Unit, AF, C/o 56 APO.

.....Respondents

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) To quash the impugned sentence and finding dated 15.09.1993 and 13.10.1993 with all consequential benefits, which is annexed as Annexure N0 1 & 2 to this Original Application.*
>
> *(B) To pass an order or direction commanding the respondents to provide complete GCM proceeding*
>
> *(C) To pass an order which this Hon'ble Tribunal deems fit and just under the facts and circumstances of the case, in favour of the applicant.*
>
> *(d) Allow the Original Application with exemplary cost.*

2. As per report of the Registry, there is delay of 24 years, 02 months and 28 days in filing the O.A.

3. The applicant was enrolled in the Indian Air Force as Airman on 14.03.1967 and was discharged on 30.06.2005. While posted 19 Wing, Air Force, the applicant was tried by the General Court Martial (GCM) and by punishment order dated 15.09.1993 was awarded the sentence of reduction to the rank of Corporal, and to be Severely Reprimanded. By order dated 13.10.1993 the findings of GCM and sentence awarded were revised and the applicant was saddled with punishment to be reduced to the ranks, and to undergo detention for three months. By means of present O.A. the applicant has challenged the punishment orders dated 15.09.1993 and 13.10.1993.

4. Learned counsel for the applicant has argued that the applicant was not provided copy of the GCM proceedings to enable him to prefer a departmental petition to the appropriate authority, but he somehow preferred the same under Section 161 (1) and Section 161 (2) of the Air Force Act, 1950 which were

rejected. Thereafter the applicant submitted several representations for redressal of his grievance and ultimately moved an application under the Right to Information Act (RTI Act) in the year 2017. It is further argued that from the order dated 11.01.2018 of the RTI Appellate Authority, it transpires that the department was not in possession of the impugned GCM proceedings. The crux of arguments of learned counsel for the applicant is that the applicant was pursuing his cause and thus there is no delay in preferring the present O.A. which deserves to be condoned.

5. In rebuttal, learned counsel for the respondents argued that the applicant has preferred the present O.A. after inordinate unexplained delay of more than 25 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.

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

7. Admittedly, punishment inflicted after following due procedure by the GCM 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 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 since the RTI Appellate Authority had rejected the appeal preferred by the applicant by order dated 11.01.2018 as such there is no delay in preferring the present O.A. is concerned, we find this argument to be fallacious. From Annexure-5 filed by the applicant along with the O.A. it transpires that by order dated 11.01.2018 the RTI Appellate Authority has rejected the appeal preferred by the appellant under Section 2 (f) of the RTI Act, 2005 preferred against the order of the Chief Public Information Officer (CIPO) under the RTI Act, 2005 rejecting the application of the applicant under the RTI Act on the ground that the information sought is vague in nature and does not come under the purview of 'information' as defined under Section 2(f) of said Act. The attempt of the applicant to calculate the period of limitation from that date when his appeal under the RTI Act was rejected would not extend the period of limitation.

9. In the case in hand, admittedly the applicant was punished way back vide order 15.09.1993 which was revised by order dated 13.10.1993. The applicant has made a bald averment in the application for condonation of delay that he made representations but has not placed on record any document to show that in fact he had preferred any complaint provided under the Air Force Act, 1950. He has also not mentioned the dates on which his complaint(s) was/were sent and rejected by the authorities. The applicant remained dormant since 1993 and did not approach any forum for redressal of his grievance. At the cost of repetition, it may be observed that the fact that the applicant moved application and appeal under the RTI Act would not help

him in explaining the inordinate delay in preferring the present O.A. The purpose of application under the RTI Act is to receive any information or documents and by no stretch of imagination it may be said to be a departmental appeal against order of punishment.

10. In view of the settled legal proposition enunciated 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.

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.*
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> *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."*
>
> > *(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. The order of punishment dated 15.09.1993 was revised on 13.10.1993 and it appears that for the first time, on 24.08.2017, the applicant moved application under the RTI Act which was rejected on 25.10.2017 and ultimately the appeal preferred against order dated 25.10.2017 was also rejected by the Appellate Authority on 11.01.2018. Preferring application and appeal under the RTI Act would not come to the rescue of the applicant to explain the delay in moving the present O.A. It goes without saying that the RTI Act is a complete Code and the procedure provided therein has to be followed. Thus, the applicant has utterly failed to explain the delay.

14. The only ground to explain the delay taken by the learned counsel for the applicant is that he received the order of the Appellate Authority under the RTI Act in the year 2017, therefore, the period of delay should be calculated from said date. We also do not find any substance in this submission of learned counsel for the applicant because any application or appeal moved under the RTI Act would not in any manner be taken to extend the period of limitation provided under the Armed Forces Tribunal Act, 2007.

15. It is settled law that if any order is passed by the Court or Tribunal to dispose of a representation, then the period of limitation would not commence from the date of decision of such a representation. 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."

16. 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."*

17. Similar is the fact position in this case. In the present case, the applicant has filed an application and appeal under the RTI Act in the year 2017 though he has approached this Tribunal challenging his punishment order passed in the year 1993 on the ground that speaking order was passed by the Appellate Authority under the RTI Act in the year 2017. Therefore, the aforesaid pronouncements of Hon'ble Apex Court have full force in the facts of the present case and thus, the order passed under the RTI Act and appellate jurisdiction would not in any manner explain or extend the period of limitation to file this O.A. Even otherwise, the applicant has failed to explain the long delay of about 24 years in moving the; application under the RTI Act while has statutory complaint was decided much earlier against him.

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

19. 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: 03rd January, 2019
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