

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

M.A. No. 507 of 2017
(Application for condonation of delay)

Inre:

MA No. NIL of 2017

Tuesday, this the 29th day of January 2019

“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)
Hon’ble Air Marshal BBP Sinha, Member (A)”

14533022X Ex Hav Dinesh Chandra, son of Shri Ram Sonahi, resident of
Village Batala, Post Kosaba, district Kannauj (UP) Pin 209721

..... 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 Army Staff, Sena Bhawan, New Delhi PIN 110011.
3. Commanding Officer, EME Records Secunderabad.
4. Commanding Officer, 606 EME, Bn c/0 56 APO.
5. Commandant, Stationary Depot, Central Command, Lucknow.

.....Respondents

Counsel for the Respondents. : **Dr Shailendra Sharma Atal**
Central Govt. Standing Counsel

ORDER (ORAL)

1. Being aggrieved by order of dismissal dated 21.04.2005, the applicant has approached this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 with the following prayers:-

- (A) *To quash the impugned dismissal order dated 26.04.2005 passed by the respondents which is annexed as Annexure No.1 to this Original Application.*
- (B) *To reinstate the petitioner with all consequential benefits.*
- (C) *To pass an order or direction commanding the respondents to pay the arrear of amount due along with interest @ 18% per annum till actual realization of the aforesaid amount.*
- (D) *Allow the Original application with exemplary cost.*

2. From the record, it is borne out that the applicant was declared deserter on 27.08.2001 and thereafter after the lien period of three years, he was dismissed from service on 21.04.2005. The Registry has reported that the present OA has been filed with delay of 11 years, 04 months and 25 days.

3. Brief facts of the case are that the applicant claims that he was enrolled in the Indian Army on 15.12.1960 as MT Driver and subsequently was promoted to the rank of Havildar. As per information received by the applicant under the Right to Information Act, 2005, the applicant was detailed on temporary duty on 26.08.2001 to collect stationery from Central Command Stationery Depot, Lucknow. The applicant proceeded on the temporary duty but did not report back to his Unit 07.09.2001. The Central Command Stationery Depot, Lucknow vide letter dated 14.09.2001 reported that the applicant did not report to said Depot for collection of stationery on the said date. Consequently, on 24.09.2001 an apprehension roll was issued to the Superintendent of

Police, Farookhabad. Since the applicant could not be apprehended by the local police nor he reported back to duty, after waiting for three years, he was dismissed from service by the impugned order dated 21.04.2005. On 21.03.2013 the applicant is alleged to have moved an application under the Right to Information Act, 2005 which was replied by the appropriate authority under the Right to Information Act 2005 vide letter dated 06.04.2013 enclosing copy of the Part-II order regarding dismissal of the applicant. The same is enclosed along with the O.A. The applicant has approached this Tribunal with prayer to quash the dismissal order dated 21.04.2005 and to reinstate him in service.

4. In the application for condonation of delay in preferring the O.A. it is stated by the applicant that in pursuance to order detailing him on temporary duty, he reached Lucknow on 26.08.2001. At the railway station, his suitcase containing the movement order and other papers with regard to collection of stationery articles were stolen. On advice, the applicant reported the matter to the Government Railway Police at Lucknow but his report was not lodged. He was asked by the official at the Central Command Stationery Depot, Lucknow to return back to his Unit and get fresh papers issued for collection of the stationery. The applicant reported back to his Unit on 27.07.2001 where he was kept in custody for three days and thereafter was made to run away from the Unit. The applicant submitted a representation on 30.12.2001 apologising the mistake. It is further stated that the applicant approached an Advocate at District Court, Farukkhabad in May 2002 and when no action was taken by said Advocate, he again approached one Shri Vikas Mishra, Advocate in High Court, Allahabad on 14.07.2009 who informed the applicant that no case was

filed in his name in the High Court. Thereafter the applicant sought information under the Right to Information Act, 2005 vide his application dated 21.03.2013 and then he came to know that he has been dismissed from service vide order dated 21.04.2005. Thereafter, the applicant has approached this Tribunal on 24.03.2017.

5. Learned counsel for the applicant has argued that the order of dismissal was never served upon the applicant, as such, till the receipt of information under the Right to Information Act, 2005 and he was not aware of the order of dismissal and as such he could not approach the Tribunal for redressal of his grievance. It is further argued that the applicant was pursuing his cause by engaging legal practitioners and therefore there is no delay on the part of the applicant in approaching this Tribunal. It is submitted that delay in approaching the Tribunal within the period of limitation should receive liberal construction so as to advance substantial justice.

6. 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. It is vehemently submitted that mere filing of representation does not make out a case for condonation of delay. It is argued that adequate explanation must be brought on record to explain the period of delay, in the absence of which the petition deserves to be dismissed.

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

8. In the case in hand, admittedly the applicant was declared deserter with effect from 27.08.2001 and after expiry of the waiting period of three years, he

was dismissed from service vide order 21.04.2005. As per own pleading of the applicant, he approached one Shri Dhan Lal Yadav, Advocate in the year 2002 and then after waiting till 2009, i.e. almost for 07 years, he approached another Advocate Shri Vikas Mishra on 14.07.2009 who informed that no case in the name of the applicant was pending in the High Court, Allahabad. The applicant again did not pursue his grievance till 21.03.2013 when he moved an application under the Right to Information Act, 2005. Submission of learned counsel for the applicant that order of dismissal was not served upon the applicant has no legs to stand for the simple reason that the applicant had deserted the Army service and apprehension roll was issued for his arrest, and since his whereabouts were not known, the order of dismissal could possibly not be served upon him. It is pertinent to note that the applicant as per his own saying had approached an Advocate initially in the year 2002. Thus, it would be safely presumed that he was aware of the order declaring him a deserter and he had approached the Advocate for the purpose of setting aside said order declaring him a deserter. Even after the year 2002, he remained dormant and did not pursue his cause, and only in the year 2009 he approached another Advocate practicing in the High Court. It is unexplained that even after knowing that no case was pending in his name in the High Court why the applicant remained inactive till 21.03.2013 when he moved the application under the Right to Information Act, 2005. Mere assertion that the applicant had preferred representation and had approached some Advocates would not suffice to explain the otherwise inordinate delay in approaching the Tribunal. Learned counsel for the applicant could not dispute that the order of dismissal 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 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).

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 the settled legal proposition propounded by Hon'ble Supreme Court in above referred pronouncements, there is an absolute lack of bona fide imputable to the applicant in approaching the Tribunal within a reasonable and explainable delay. From our observations made hereinabove, we are of the considered opinion that the applicant has miserably failed to bring on record adequate explanation to explain the laches and delay in approaching this Tribunal within reasonable period and thus is not entitled for any indulgence.

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

13. 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: 29th January, 2019
anb