

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

M.A. No. 613 of 2018
Inre: OA No. NIL of 2018

Friday, this the 04rd day of January 2019

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

Hardip Singh (No. 7105259 Ex Rfn) son of late Sunder Singh, resident of village Bhikaripur, Post Usrana, BKT, district Lucknow.

..... Applicant

Counsel for the Applicant : **Shri R. Chandra**, Advocate.

Versus

1. Union of India, through the Secretary, Ministry of Defence, Government of India, New Delhi.
2. The Chief of the Army Staff, Integrated Headquarters, New Delhi-11.
3. The Officer-in-Charge, EME Records, Secunderabad (AP).
4. The Commanding Officer 18, Cavalry C/o 56 APO.

.....Respondents

Counsel for the Respondents. : **Shri Sunil Sharma**,
 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:-

- (i) *Hon’ble Tribunal be pleased to summon the SCM Proceedings dated 13.02.1976 from custody of the respondents and be set aside.*

- (ii) *To direct the respondents to re-instate the applicant in service notionally w.e.f. 14.02.1976 till completion of pensionable service without back wages and service pension be granted.*
- (iii) *Any other appropriate order or direction which the Hon'ble Tribunal may deem just and proper in the nature and circumstances of the case.*

2. As per report of the Registry, there is delay of 41 years, 06 months and 20 days in filing the O.A.

3. The applicant was enrolled in the Indian Army on 11.05.1066. In the year 1976 while posted with 18 Cavalry, the applicant was tried by Summary Court Martial (SCM) on 13.02.1976 under Section 40 (a) of the Army Act, 1955 for using criminal force to his superior officer. The SCM after following due procedure, vide order dated 13.02.1076 awarded punishment of dismissal from service and six months' imprisonment in Civil Jail.

4. Learned counsel for the applicant has argued that after being released from jail, the applicant lost his mental balance and became a psychiatric patient. Since he was jobless and his family's financial condition was not good, his treatment was done by a Baidya without demanding professional fees and cost of medicines. However, applicant's condition remained static without any improvement. When the son of the applicant got a private job, he arranged for treatment of the applicant by Registered Medical Practitioners and ultimately he was treated at Balrampur Hospital, Lucknow for psychiatric treatment. In nutshell, the arguments of learned counsel for the applicant is that the applicant was a psychiatric patient and could not pursue his cause and now after being treated at Balrampur Hospital and

gaining senses, he has approached this Tribunal and thus the delay in preferring the present O.A. is well explained and deserves to be condoned.

5. Rebutting arguments of learned counsel for the applicant, learned counsel for the respondents vehemently argued that the applicant has preferred the present O.A. after inordinate unexplained delay of more than 41 years. It is submitted that bald assertion that the applicant was treated by a Baidya and was provided medicines free of cost for a very long period till he was treated at Balrampur Hospital, Lucknow in the year 1917 is not sufficient to explain the delay in approaching this Tribunal, as such, the application for condonation of delay deserves to be rejected on the ground of long unexplained delay in approaching the Tribunal. He has also argued that the entire record of the SCM proceedings has been weeded out after expiry of period of retention

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

7. Admittedly, punishment inflicted after following due procedure by the SCM does not involve recurring cause of action. 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. The argument of learned counsel for the applicant that the applicant lost his mental balance on being released from jail after undergoing civil imprisonment and became a psychiatric patient, and after his treatment in Balrampur Hospital, Lucknow in the year 2017, he regained his mental faculty has approached this Tribunal and thus there is no lack of bona fide imputable to the applicant in approaching the Tribunal within a reasonable and explainable delay, is not tenable and is rejected. The applicant has not mentioned the name and address of the so-called Baidya who had treated him for a very long period of about 40 years from 1976. A bald averment without supporting documents or averments cannot form a ground to argue to condone otherwise long and unexplained delay. It is unbelievable that a person shall continue the treatment of a Vaidya for forty long years without there being any improvement in his condition. Such a ground is only an afterthought and has no substance.

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 these pronouncements, the applicant was under a legal obligation to explain each day delay. In the case in hand, admittedly the applicant was punished as far back as in the year 1976 by the SCM. He slept over his cause for a long period of about 40 years and it appears that now at the fallible age of 70 years (as mentioned in the array of parties by the applicant himself), he started getting treatment from the Psychiatric Department of Balrampur Hospital, Lucknow and has devised the fact of his treatment at this stage to explain the delay in approaching this Tribunal for redressal of his service grievance which relates to the year 1976.

12. It is also worth mentioning that the medical prescriptions of Balrampur Hospital, Lucknow show that the applicant was given some treatment and the same was repeated for further period. But none of the prescriptions show as to what was the disease of the applicant, what was

his mental condition at the time when he was produced before the doctor for the first time on 13.11.2017. Apart from it, the affidavit filed in support of replication to objection filed by the respondents on application for condonation of delay has been filed by one Jai Bahadur Singh son of Late Kalika Singh, aged about 60 years, resident of Village Dumraon, district Mau claiming himself to be the applicant in this O.A. This affidavit has been signed by Hardip Singh (present applicant). How reliance can be placed on such an affidavit. It goes on to show that the ground to explain the delay is absolutely fabricated. Therefore, the aforesaid pronouncements of Hon'ble Apex Court have full force in the facts of the present case and in view of the settled legal proposition enunciated by Hon'ble Supreme Court in abovementioned pronouncements, there is an absolute lack of bona fide imputable to the applicant in approaching the Tribunal within a reasonable and explainable delay. Thus, the applicant has utterly failed to explain the delay.

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

14. 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: 04th January, 2019
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