Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

M.A. No. 614 of 2018

Inre: OA No. NIL of 2018

Monday, this the 14th day of January 2019

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

Ajai Kumar Chaubey (No. 1369687F Ex Rect) son of Shri Ram Taran Chaubey, resident of village Matehu, Post Matehu, Tehsil Ghazipur, district Gazipur (UP).

…. 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-110011.

2. The Chief of Army Staff, Army Headquarters, DHO Post Office,New Delhi-110011.

3. The Officer-in-Charge, Records Brigade of the Guards, Pin 900 746 C/o 56 APO.

4. Commandant, Brigade of the Guards Regiment Centre,Kamptee (MP).

.....Respondents

Counsel for the Respondents. : **Shri Yogesh Kesarwani,**
Add. 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) The Hon'ble Tribunal may be pleased to set aside the orders dated 30/01/2014 (Annexure A-1).*
>
> *(II) The Hon'ble Tribunal may kindly be pleased to direct the respondents top reinstate the applicant in service with all consequential benefits.*
>
> *(III) Any other appropriate order or direction which this Hon'ble Tribunal may deem just and proper in the nature and circumstances of the case including cost of the litigation.*

2. Facts of the case are that the applicant was enrolled in the Indian Army on 01.03.1996 and was discharged after putting in 112 days of service on 20.06.1996 on the ground that during drill the knee of the applicant was found to be bent. Admittedly he was not attested. It is averred by the applicant that the applicant had made an appeal against his illegal discharge but since service records available with the applicant have been lost, as such, he is not in a position to bring the same on record. It appears that the applicant applied for a second copy of his discharge book which was supplied to him on 30.01.2014. On the basis of said discharge book, the applicant has approached this Tribunal for his reinstatement in service.

3. Learned counsel for the applicant has argued that the applicant was not provided copy of the discharge order. He argued that the applicant had preferred appeal against his discharge on medical grounds and subsequently had also preferred representations which are still pending. It is argued that all service record of the applicant have been lost as such the applicant is not in a

position to bring the same on record. It is further argued that due to financial constraints the applicant could not approach the Tribunal for redressal of his grievance within prescribed limitation.

4. In rebuttal, learned counsel for the respondents argued that the applicant was discharged as far back on 20.06.1996 and now after about 22 years the applicant has preferred the present O.A. 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 ground of unexplained long delay and laches.

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

6. As per report of the Registry, there is delay of 03 years, 07 months and 03 days in filing the O.A. From a perusal of Annexure A-1 annexed to the O.A. which is dated 30.01.2014, it is borne out that it is a copy of the discharge book. Serial No. 7 Part-IV (Page-7) of said discharge book mentions that the applicant was discharged on 20.06.1996. The delay in approaching the Tribunal is to be reckoned from 20.06.1996. Thus, in fact there is delay of about 22 years in approaching this Tribunal and the office has submitted report on the basis of the date of issuance of the impugned order.

7. The submission of learned counsel for the applicant that the applicant was provided discharge book on 30.01.2014, as such delay is to be counted from said date, is fallacious. Annexure A-1 to the O.A. is not an order of discharge passed by the Army authorities, rather it is only Photostat copy of the discharge book which appears to have been re-issued. Now the applicant

has attempted to explain the delay in preferring the present O.A. from the date of issuance of the copy of the discharge book.

8. In the case in hand, admittedly the applicant was discharged on 20.06.1996. A bald averment that the applicant made an appeal and representations without placing on record any document in support of this averment would not help the applicant. Even after 30.01.2014 there is a delay of more than three years and this delay is also not satisfactorily explained by the applicant.

9. Admittedly, the applicant was discharged from service on medical grounds on 20.06.1996. Discharge from service does not involve recurring cause of action. The Hon'ble Supreme Court in a plethora of pronouncements has laid down that 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).

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.*
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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.*
>
> *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. 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."*
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> > *(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."*

12. In view of these pronouncements, the applicant was under an obligation to explain each day delay. The applicant has utterly failed to explain the inordinate delay of about 22 years. It is surprising that the applicant has preferred the O.A. with prayer to quash Annexure A-1. As mentioned earlier, Annexure-1 is copy of the discharge book which also mentions the order of discharge to be 20.06.1996.

13. Furthermore, 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."*

14. 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."*

15. Similar is the fact position in this case. In the present case, the applicant has made an averment in the OA. that he has filed representations but has not

mentioned the dates on which such representations, if in fact filed, were preferred and has also not mentioned the fate of such representations. The submission of the applicant that the appeal preferred by him was not disposed of is a devise to explain the delay in preferring the O.A. Now the applicant has come up with the lame plea that his service records available with him have been lost. Therefore, the aforesaid pronouncements of Hon'ble Apex Court have full force in the facts of the present case.

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

17. 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: 14th January, 2019
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