

BY CIRCULATION

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Review Application No. 01 of 2019**Inre:****M.A. No. 2001 of 2017**

Rect Nihal Singh

...Applicant

vs.

Union of India & ors

...Respondents

Thursday, this the 10th day of January, 2019**ORDER**

1. Review Application under Rule 18 of the Armed Forces Tribunal (Procedure) Rules, 2008 has been preferred by the Applicant against judgment and order of the Armed Forces Tribunal, Regional Bench, Lucknow dated 03.10.2018 passed in M.A. No. 2001 of 2017. The matter came up before us by way of Circulation as per provisions of Rule 18 (3) of the AFT (Procedure) Rules, 2008.

2. By order under review dated 03.12.2018, the Application for Condonation of Delay (**M.A. No. 2001 of 2017**) in approaching the Tribunal preferred by the applicant was rejected by a reasoned order and as a consequence thereto, the O.A. was dismissed. In this Review Application, the prayer made by the applicant is that said order whereby the M.A. was dismissed be recalled and the order of dismissal of the applicant be set aside

3. From the pleadings on record, it is borne out that the applicant was enrolled in the Army on 23.06.2013. Since he absented himself from training, as such, he was declared a deserter with effect from

28.10.2013 in accordance with the procedure prescribed and after completion of three years, he was dismissed from service. The applicant approached this Tribunal belatedly with a delay of three years, six months and nine days. The solitary ground taken by the applicant in the application for condonation of delay in filing the O.A. was he was implicated in a case under Sections 498A, 323, 504, 506 and 328 IPC. Copy of the FIR was also filed as Annexure A-12 by the applicant himself. Upon perusal of the FIR, this Tribunal by the impugned order in paragraphs 12 and 13 of the order had observed as under:

“12. The solitary argument advanced by learned counsel for the applicant is that the applicant could not report for joining after passing of order dated 27.07.2016 for the reason that he and his family members were falsely implicated in a case being Case Crime No. 0451 under Sections 498A, 323, 504, 506 & 328 IPC. Copy of the FIR in which the applicant claims to have been involved has been annexed by the applicant as Annexure A-12. A perusal of said FIR indicates that Case Crime No. 0451 was registered on 01.11.2016, i.e. after about three months when order was passed by this Tribunal dated 27.07.2016 permitting the applicant to join duty. This shows that the applicant was not the least interested to join duty and the occurrence of lodging of the FIR is a lame excuse set up by the applicant not to join duty in compliance of orders of this Tribunal.

13. Besides this, in the affidavit sworn and filed by the applicant in support of application for condonation of delay, in para 16, it is averred that on 02.11.2016 FIR was lodged by the deponent's (applicant) sister-in-law against the deponent and all family members as case crime No. 0541 under Sections 498A, 323, 504, 506, 328IPC at Police Station Sivli, district Rambai Nagar. This is virtually the only ground taken by the applicant for condonation of delay in approaching this Tribunal. As stated earlier, this FIR was lodged on 01.11.2016 and it is really strange to note that no person having the name and address as that of the applicant has been arrayed as an accused in said FIR. It reflects that the applicant has not approached the Tribunal with clean hands.”

Thus, the application for condonation of delay was rejected not only on the ground that the applicant has failed to explain the delay in approaching this Tribunal but also on the ground that the applicant has not approached the Tribunal with clean hands. The applicant has filed

this Review Application on the wrong premise as if the O.A. was dismissed on merits whereas the fact is that the O.A. was found not justiciable on the ground of unexplained delay in approaching the Tribunal. Besides this, the law on Review is well enunciated that the scope of Review is limited. The Review Application can be heard if there is an error apparent on the face of record and only to that extent order can be corrected. Since the prayer made by the applicant is beyond the scope of review jurisdiction, hence it deserves to be rejected.

4. As a result of foregoing discussion, Review Application, being devoid of merit, is **dismissed**.

5. The Applicants may be informed accordingly.

(Air Marshal BBP Sinha)
Member (A)

Dated:10 Jan 2019
anb

(Justice SVS Rathore))
Member (J)