

ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW

Court No. 1

Misc. Application No. 82 of 2015

With

Misc. Application No. 95 of 2015

(Inre : Transferred Application No. 479 of 2010)

Tuesday the 14th day of July, 2015

“Hon’ble Mr. Justice S.C. Chaurasia, Member (J)
Hon’ble Air Marshal Anil Chopra, Member (A)”

No.14806607A Ex Sep Emanuel
S/o Shri Mukhtar Masih,
R/o village – Kang, P.O. Dhariwal,
District - Gurdaspur

..... Applicant

By Legal Practitioner Col (Retd) Ashok Kumar and Shri
Rohit Kumar, Advocate

Versus

1. Union of India
Through - Ministry of Defence,
South Block, New Delhi-110011.
2. Chief of Army Staff,
Army Headquarters,
New Delhi-110011.
3. Officer Commanding,
946, TPT Coy,
C/o 56 APO.
4. Officer Commanding,
64, Assault Engineering Regiment,
C/o 56 APO.

..... Respondents

By Legal Practitioner Shri D.K. Pandey, Standing Counsel
for the Central Government

ORDER

Hon'ble Air Marshal Anil Chopra, Member (A)

1. This application, supported with an affidavit, has been moved on behalf of the applicant, Emanuel, for condonation of delay in moving the Application for Leave to Appeal under Section 31 of the Armed Forces Tribunal Act, 2007, against the Judgment dated 17.10.2014, passed by this Bench in Transferred Application No. 479 of 2010, Ex Sep. Emanuel Versus Union of India and others. The applicant has not mentioned any ground, whatsoever, for not moving the application for leave to appeal within statutory period of thirty days. However, he has prayed for condonation of delay.

2. Heard Col. (Retd) Ashok Kumar and Shri Rohit Kumar, Learned Counsel for the applicant, Shri D.K. Pandey, learned counsel for the respondents and perused the record.

3. As per office report dated 07.01.2015, there is delay of 01 month and 17 days in filing the application for leave to appeal.

4. From the perusal of record, it transpires that the final Judgment in Transferred Application No. 479 of 2010, Ex Sep Emanuel Versus Union of India and others, was delivered on 17.10.2014. Thereafter, application for leave to appeal and application for condonation of delay in moving the said application were filed on 05.01.2015 & 16.01.2015 respectively.

The application for leave to appeal has been filed under Section 31 of the Armed Forces Tribunal Act, 2007. It provides as under:-

“31. Leave to Appeal -(1) An appeal to the Supreme Court shall lie with the leave of the Tribunal; and such leave shall not be granted unless it is certified by the Tribunal that a point of law of general public importance is involved in the decision, or it appears to the Supreme Court that the point is one which ought to be considered by that Court.

(2) An application to the Tribunal for leave to appeal to the Supreme Court shall be made within a period of thirty days beginning with the date of the decision of the Tribunal and an application to the Supreme Court for leave shall be made within a period of thirty days beginning with the date on which the application for leave is refused by the Tribunal.

(3) An appeal shall be treated as pending until any application for leave to appeal is disposed of and if leave to appeal is granted, until the appeal is disposed of; and an application for leave to appeal shall be treated as disposed of at the expiration of the time within which it might have been made, but it is not made within that time.”

5. In view of Sub Section (2) of Section 31 of the said Act, an application for leave to appeal to the Hon’ble Supreme Court should have been moved within a period of 30 days beginning with the date of the decision of the Tribunal, but, in the instant case the application for leave to appeal has been moved after 02

months and 17 days from the date of passing of the impugned final Judgment i.e. beyond the statutory period. No sufficient cause has been shown for condonation of delay in moving the application for leave to appeal. Since the application for leave to appeal has not been moved within the statutory period of thirty days, it shall be treated as disposed of at the expiration of said period, in view of Section 31(3) of the Armed Forces Tribunal Act, 2007.

6. In Misc. Application No. 32 of 2011, Lt. Col. Ranjodh Singh Vs. Union of India and others, vide Order dated 23.02.2012, it has been held by this Bench of the Tribunal that the application under Section 5 of the Limitation Act is not maintainable. Learned Counsel for the applicants has not made out any case for taking a different view in the matter. Thus, we are in agreement with the said Order dated 23.02.2012 delivered by this Tribunal in Misc. Application No. 32 of 2011, Lt. Col. Ranjodh Singh Vs. Union of India and others.

7. In view of the aforesaid discussion, we are of the view that the application for leave to appeal has been moved after delay, which has not been explained satisfactorily, and the application under Section 5 of the Limitation Act is also not maintainable and it is rejected, accordingly. Besides it, no point of law of general public importance is involved in the impugned

decision. Consequently, the application for Leave to Appeal under Section 31 of the Armed Forces Tribunal Act, 2007 is also rejected.

(Air Marshal Anil Chopra)
Member (A)

(Justice S.C. Chaurasia)
Member (J)

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