Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

M.A. No. 572 of 2019
(Application for condonation of delay)
Inre:

OA No. NIL of 2019

Monday, this the 01st day of July, 2019

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

No. 4196937N, Ex Rect., Dev Kumar Yadav, S/o Shri Ram Chandra Yadav, R/o Village- Badhauli, Post-Majhiwa, Tehsil & P.S.- Bareru, District- Banda, Uttar Pradesh.

….. Applicant

Counsel for the Applicant : **Shri Manoj Kumar Awasthi**, Advocate.

Versus

1. Union of India through Secretary, Ministry of Defence (Army), South Block, New Delhi-110010.
2. Chief of the Army Staff, IHQ MOD (Army), Army HQ, South Block, New Delhi.
3. Officer-in-Charge Records, The Kumaon Regiment, PIN-900473, C/o 56 APO.
4. Commanding Officer, The Kumaon Regiment, Ranikhet, Pin Code-263645.
5. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad.

.....Respondents

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

ORDER (ORAL)

1. Being aggrieved by order of discharge dated 30.09.2001, the applicant has approached this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 with the following prayers:-

A. To issue/ pass an order or direction to set-aside/ quash the Discharge order dated 30.09.2001 and letter no. C3/4196937/SR/NE-1 Dated 19.06.2018 passed by respondents.

B. To issue/ pass an order or direction to the respondents to reinstate the applicant in service and grant all consequential benefits by notionally reinstating the applicant in service from date of discharge i.e. 30.09.2001 to till date alongwith @ 12% interest on arrear.

C. To issue/ pass any other order or direction as this Hon'ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant.

D. To allow this original application with costs."

2. From the record, it is borne out that during training the applicant was discharged from training within 02 months of service on 30.09.2001 under Army Rule 13(3) Item (iv) before fulfilling the conditions of enrolment being unlikely to become an efficient soldier. The Registry has reported that the present OA has been filed with delay of 17 years, 03 months and 10 days.

3. Brief facts of the case are that the applicant claims that he was enrolled in the Indian Army on 31.07.2001 but he was discharged within 02 months of service although he was categorized in medical category AYE. Admittedly the applicant was not attested.

4. In the application for condonation of delay in preferring the O.A. it is stated by the applicant that after discharge from service the applicant sent several representations to the respondents for redressal of his grievance but he received no response from the respondents on these representations. It is also pleaded by the applicant that after discharge from service the applicant suffered from severe financial hardship, his father had fallen ill in December, 2001 and underwent treatment upto 2011 including surgery. It is further pleaded that in the year 2010 applicant went for his livelihood to Mumbai,

where he suffered from dengue and further remained under financial hardship. Being aggrieved by not reinstating him in service the applicant on legal advice sought relevant information through RTI dated 06/08/2018, in reply whereof he received letter dated 19.06.2018, which finds mention that reply to his discharge has already been forwarded to him vide letters dated 24.02.2018 and 11.03.2018. All these letters show that his discharge from service was under Army Rule 13(3) Item (iv) before fulfilling the conditions of enrolment being unlikely to become an efficient soldier. Thereafter the applicant has approached this Tribunal on 11.06.2019.

5. Learned counsel for the applicant has argued that the order of discharge was never served upon the applicant, as such, till the receipt of information under the Right to Information Act, 2005 he was not aware of the order of discharge and as such he could not approach the Tribunal for redressal of his grievance. It is further argued that the applicant remained busy in connection with treatment of his ailing father and thereafter was also under financial constraint 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 17 years. It is vehemently submitted that mere filing of representation or seeking information under the RTI Act 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 discharged from service within 02 months of service on 30.09.2001 under Army Rule 13(3) Item (iv) before fulfilling the conditions of enrolment being unlikely to become an efficient soldier. As per own pleading of the applicant, he was busy in connection with the treatment of his ailing father from December, 2001 till 2011 and thereafter as per advice of his counsel he sought relevant information through RTI only on 06.08.2018 regarding his discharge. Thus, admittedly the applicant did not pursue his grievance from 2011 till 06.08.2018, the date of moving 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 has not brought on record any representation made by him ventilating his grievance against his discharge. The applicant has also not brought on record any paper regarding illness of his father on account of which he claims that he could not approach this Tribunal earlier. The applicant has also claimed that due to financial hardship he could not pursue his remedy and for this reason he had also sold a piece of his agricultural land. But the applicant has not brought on record any material indicating the same. Admittedly the applicant went to Mumbai to earn livelihood as pleaded by him. It shows that the applicant was well aware of the order of discharge and therefore he was in search of some alternative

source of livelihood. Thus, it would be safely presumed that he was aware of the order discharging him from service having no grievance against the same. Mere assertion that the applicant was in financial hardship and got information regarding his discharge under the RTI Act, 2005 only on 19.06.2018 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 discharge 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 latches and delay in approaching this Tribunal within reasonable period and thus is not entitled for any indulgence. Moreover, the applicant has been discharged from service under Army Rule 13(3), item (iv) before fulfilling the conditions of enrolment being unlikely to become an efficient soldier within 02 months of service before completion of six months of service i.e. even before his attestation in the Army service. Learned counsel for the applicant could not deny that the initial term of engagement of the rank on which the applicant was allegedly appointed was 15 years plus two years. The present O.A. has been filed by the applicant after more than 17 years of his discharge, meaning thereby that the O.A. has been filed after expiry of term of engagement. It is pertinent to mention here that the status of an unattested recruit is like a probationer, who can be removed by the employer at any point of time as observed by Hon'ble

Apex Court in Civil Appeal No. 5015 of 2008 ***Union of India and others vs. Manoj Deshwal and others*** decided on 28.10.2015.

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

13. Since the application for condonation of delay has been rejected, as a consequence thereof 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: 01 July, 2019
Anb/jpt