

Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
(CIRCUIT BENCH NAINITAL)

M.A. No. 523 of 2020 Inre O.A. 460 OF 2022

Kalam Singh Kandari

Applicant

By Legal Practitioner for the Applicant

Versus

Union of India & Others

Respondents

By Legal Practitioner for Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>31.05.2022</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></p> <ol style="list-style-type: none">1. Heard Shri Anil Anthwal, learned counsel for the applicant and Shri Rajesh Sharma, learned counsel for the respondents.2. In this case no counter affidavit has been filed.3. Brief facts of the case are that the applicant was enrolled in the Army in July, 1984 and was tried by Summary Court Martial under Section 40 (b) of the Army Act, 1950. He was dismissed from Army w.e.f. 08.04.1989. Feeling aggrieved with the sentence awarded by the SCM he preferred a petition dated 17.06.1989 to Chief of the Army Staff under Section 164 of the Army Act, disposal of which is not on record. This O.A. has been filed after a prolonged delay.4. There is a delay of more than 30 years in filing Original Application through which prayer has been made to set aside SCM proceedings and grant of service pension.5. During the course of hearing, learned counsel for the respondents submitted that the applicant was tried by SCM on account of using threatening language to his superior officer.6. It is argued by learned counsel for the applicant that the applicant, after dismissal, was busy in earning bread and butter for his family including growing children and that is why he could not contact any counsel till the year 2022 and he filed this O.A. in this Tribunal on 30.05.2022.7. Learned counsel for the applicant further submitted that delay in filing Original Application is not deliberate, but on account of poverty and aforesaid reasons, therefore, the same should be condoned.

8. On the other hand, learned counsel for the respondents has vehemently opposed the prayer and has submitted that there is a long delay of more than 30 years and the same has not been properly and satisfactorily explained as the applicant has not assigned any cogent and convincing reason for not approaching the Tribunal earlier.

9. Having heard submissions of learned counsel of both sides and considering the facts and circumstances of the case, we find that inordinate delay of more than 30 years has not been properly and satisfactorily explained.

10. Needless to say, in a matter where Original Application is not filed within time, applicant is required to explain delay on day to day basis, which applicant has miserably failed and, therefore, he is not entitled to benefit of his so called poverty and nourishing his family.

11. In view of the above, delay is not liable to be condoned, therefore delay condonation application is **rejected**.

12. Original Application being time barred is also **rejected**.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

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