**Court No.3**

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**

**MISC. APPLICATION NO 1952 of 2015**

Tuesday, this the 8th day of March 2016

**Hon'ble Mr. Justice D.P. Singh, Member (J)**
**Hon'ble Air Marshal Anil Chopra, Member (A)**

B.D. Prajapati, No. 13962350L Sep AA son of Shri Bachcha Prajapati, Village Ladhaura, Post-Atarra District- Banda.

……Applicant

Ld. Counsel for the Applicant: **Shri Anand Pratap Singh, Advocate**

Versus

1. The Union of India Through Secretary, Ministry of Defence, New Delhi.

2. Chief of Army Staff, Army HQ, Ministry of Defence, New Delhi.

3. Corps Commander, 10 Corps, C/O – 56 APO.

4. Commanding Officer, 174 MH, C/O – 56 APO.

5. Chief Record Officer, Amy Medical Corps Record, Lucknow

.....Respondents

Ld. Counsel for the Respondents: **Shri DK Pandey, Advocate, Govt Counsel assisted by Lt Col Subodh Verma, OIC, Legal Cell.**

# ORDER

1. This is an application for condonation of delay under Section 5 of the Indian Limitation Act in preferring the O.A. being aggrieved by impugned order dated 30.10.1993.

2. We have heard Ld. Counsel for the parties at some length and have perused the record.

3. Admittedly, the applicant was enrolled in the Army in Army Medical Corps as Ambulance Assistant on 17.04.1985. After serving for about 8 years, he was discharged by the impugned order dated 30.10.1993. After discharge from service, the applicant kept silent and only on 31.10.2012 he moved application for payment of pension without challenging the discharge order. The application was rejected by order dated 03.12.2012, a copy of which has been placed on record.

4. It appears that later on the applicant again submitted representation on 22.04.2013 for payment of pension. It was again rejected by the competent authority on 10.07.2013 on the ground that the applicant had not completed pensionable service and was not entitled to payment of pension. Admittedly, payment of pension to Army personal is after 15 years of service or more. Accordingly, impugned order passed by the competent authority declining payment of pension does not seem to suffer from any substantial illegality.

5. However, a question cropped up whether in the facts and circumstances of the case, the applicant has been able to make out a case for condonation of delay in moving the present O.A.?

6. Ld. Counsel for the applicant has relied upon the following cases in support of his submission that in the interest of justice, the delay deserves to be condoned:

i. ***M.K. Prasad vs. P.Arumugam***, LAWS (SC)2001-7-93,

ii ***V.K. Industries vs. Madhya Pradesh Electricity Board***, LAWS(SC)-2002-3-84,

iii. ***State of Haryana vs. Chandra Mani***, 1996-SCC-3-132,

iv. ***Habib Ahmad Khan vs. U.P. Sunni Central Board of Waqf and others***, 2011 (3) ALJ 162,

v. ***Vijai Prakash Gautam vs. Satya Prakash Gupta and others***, Writ – C No. 15811 of 2007 decided on 16.01.2013

vi. ***Ram Pyari vs. State of U.P. and others***, Writ – C No. 39449 of 2012 decided on 14.05.2013.

7. There appears no room of doubt with regard to the fact that while condoning delay the Courts/Tribunals have to adopt a liberal approach, moreso, when right to life and livelihood is involved. But even then there must be some reasonable challenge on the part of the incumbent to approach the authorities within a reasonable time. In the present case, the applicant was discharged on 30.10.1993 and since then till 31.10.2012 the applicant did not move any representation to the authorities against the impugned order of discharge. For the first time the order of discharge has

been impugned before this Tribunal in the present O.A. which has been filed in the month October, 2015. So far as the impugned order of discharge is concerned, the unexplained delay is of 21 years and 9 months. Nothing has been brought on record to show why the applicant kept mum for such a long period of 21 years and 9 months. Ld. Counsel for the respondents has relied upon the case of ***Balwant Singh (Dead) vs. Jagdish Singh and others***, (2010) 8 SCC 685 and invited attention of the Tribunal to paras, 32, 33, 34, 35, 36 and 37, which for convenience sake, may be reproduced as under:-

> *"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.*
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> *33. Furthermore, it is also a well settled canon of interpretative jurisprudence that the Court should not give such am 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 learned 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 secretion 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).*

*37. We feel that it would be useful to make a reference to the judgment of this Court in Perumon Bhagwathy Devaswom. In this case, the Court, after discussing a number of judgments of this court as well as that of the High Courts, enunciated the principles which need to be kept in mind while dealing with applications filed under the provisions of Order 22 CPC along with an application under Section 5 of the Limitation Act for condonation of delay in filing the application for bringing the legal representatives on record.*

*In SCC para 13 of the judgment, the Court held as under: (SCC pp. 329-30)*

> *"(i) The words 'sufficient cause for not making the application within the period of limitation' should be understood and applied in a reasonable, pragmatic, practical and liberal manner, depending upon the facts and circumstances of the case, and the type of case. The words 'sufficient cause' in Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice, when the delay is not on account of any dilatory tactics, want of bonafides, deliberate inaction or negligence on the part of the appellant.*
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> *(ii) In considering the reasons for condonation of delay, the courts are more liberal with reference to applications for setting aside abatement, than other cases. While the court will have to keep in view that a valuable right accrues to the legal representatives of the deceased respondent when the appeal abates, it will not punish an appellant with foreclosure of the appeal, for unintended lapses. The Courts tend to set aside abatement and decide the matter on merits, rather than terminate the appeal on the ground of abatement.*
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> *(iii) The decisive factor in condonation of delay, is not the length of delay, but sufficiency of a satisfactory explanation.*
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> *(iv) The extent or degree of leniency to be shown by a court depends on the nature of application and facts and circumstances of the case. For example, courts view delays in making applications in a pending appeal more leniently these delays in the institution of an appeal. The courts view applications relating to lawyer's lapses more leniently than applications relating to litigant's lapses. The classic example is the difference in approach of courts to applications for condition of delay in filing an appeal and applications for condonation of delay in re-filing the appeal after rectification of defects.*

> *(v) Want of 'diligence' or 'inaction' can be attributed to an appellant only when something required to be done by him, is not done. When nothing is required to be done, courts do not expect the appellant to be diligent. Where an appeal is admitted by the High Court and is not expected to be listed for final hearing for a few years, an appellant is not expected to visit the court or his lawyer every few weeks to ascertain the position nor keep checking whether the contenting respondent is alive. He merely awaits the call or information from his counsel about the listing of the appeal'.*
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> *We may also notice here that this judgment had been followed with approval by an equivalent-Bench of this Court in* ***Katari Suryanarayana.****"*

8. In case the applicant's case is considered in view of the observations made by Hon'ble Supreme Court in the case of ***Balwant Singh*** (supra), keeping in view the fact that no effort was made by the applicant to challenge the impugned order of discharge dated 30.10.1993 for more than 21 years, condonation of delay shall be in utter disregard to the statutory mandate. Even if adopting a liberal approach, it shall not make out a case to condone the delay, that too of more than 21 years. Condoning the unexplained delay of more than 21 years shall frustrate the very object of Section 5 of the Indian Limitation Act and the statutory period as provided in the Armed Forces Tribunal Act, 2007.

9. There is one more reason why the controversy in question is not required to be opened again. The applicant has served only for 8 years. The application for payment of pension was rejected since he has not completed 15 years of mandatory period for pension. Hence in any case, the applicant is also not entitled for payment of pension.

10. Accordingly, application for condonation of delay lacks merit; hence rejected.

11. As a consequence, the O.A is also rejected.

No order as to costs.

**(Air Marshal Anil Chopra)**
**Member (A)**

**(Justice D.P. Singh)**
**Member (J)**

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