Court No.1

ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW

M.A.No. 1665 of 2016
In Re: Original Application No. Nil of 2016

Wednesday, the 8th day of March, 2017

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

Ex Sepoy No. 14576534X Driver (MT) Goverdhan Vishwakarma, son of late Shri Tika Ram, resident of H. No. 2/237/A, Rajni Khand, Sharda Nagar, P.O. Bhadrukh, District Lucknow-226002

…….. Applicant

By Legal Practitioner Col (Retd) Rakesh Johri, learned counsel for the applicant.

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi-110001
2. Chief of the Army Staff, Integrated Headquarters of the Ministry of Defence, South Block, New Delhi-110001
3. The Commanding Officer, 614 EME Batgtalion, C/o 56 APO
4. Officer Commanding, 244 Field Workshop Company EME, C/o 56 APO
5. Officer in Charge, EME Records, Secunderabad-(A.P.) PIN-500021.

…… Respondents

By Legal Practitioner Dr. Shailendra Sharma Atal, Learned Counsel for the Central Government, assisted by OIC Legal Cell Maj Soma John.

ORDER

1. This is an application for condonation of delay in preferring the OA, which has been filed by the applicant being aggrieved with the impugned order of dismissal from service as deserter on 19.04.2003.

2. We have heard Shri Rakesh Johri, learned counsel for the applicant and Dr. Shailendra Sharma Atal, learned counsel for the respondents, assisted by OIC Legal Cell Maj Soma John and perused the record.

3. Admittedly, the applicant was enrolled in the Indian Army on 24.12.1984. In October, 1999 he was granted 10 days' casual leave, but he did not turn up after availing the said leave, hence he was declared a deserter in pursuance to the provisions of Section 106 of the Army Act and after waiting for a period of three years, he was dismissed from service on 19.04.2003. Being aggrieved with the impugned order of dismissal, the applicant preferred OA No. Nil (34) of 2012, which was dismissed on 12.09.2012. The operative portion of the order passed by the Tribunal is reproduced as under:

> "4. *The applicant has been dismissed. The dismissal order has not been challenged on any ground. Item No. (v) of the letter dated 14.08.2001 relied upon by the applicant relates to condonation of shortfall in qualifying service for grant of pension. It applies to a case where but for shortfall in the qualifying service the PBOR is eligible for pension. In this case the applicant is not eligible for pension being a dismissed employee unless the President of India or competent Authority to whom the power has been delegated under the letter dated 14.08.2001 passes an*

order granting pension under clause (x) of the letter. The Original Application lacks merit and it is accordingly dismissed."

4. A plain reading of the aforesaid order dated 12.09.2012 shows that the Tribunal while dismissing the OA had not granted any liberty to the applicant for preferring another OA. However, the applicant preferred another OA bearing No. Nil of 2016 alongwith M.A.No. 203 of 2016, which was also dismissed vide order dated 31.05.2016 with the observation that the applicant has not challenged the dismissal order. However, the Tribunal granted liberty to the applicant to file a fresh petition if so advised.

5. It appears that attention of the Tribunal was not drawn to the well settled proposition of law that second petition would not be maintainable in case liberty is not granted to prefer a fresh petition. However, in pursuance to the liberty granted to the applicant in the second petition as aforesaid, he has preferred this OA alongwith an application for condonation of delay (MA No.1665 of 2016). Submission of learned counsel for the applicant is that the order of dismissal was never communicated to the applicant and he has been dismissed from service without serving a show cause notice under Rule 17 of the Army Rules, 1954.

6. So far as the service of notice is concerned, under proviso to said Rule 17, an order of dismissal can be passed even without serving a

show cause notice if in the opinion of the officer competent to pass such an order, it is not expedient or reasonable practicable to comply with the provisions of the said Rule, with due communication to the Central Government.

6. Now, coming to the question of delay, we find that the applicant was dismissed from service in the year 2003. He preferred the earlier OA in the year 2012, which was dismissed. There is no reasonable explanation with regard to the laches of the period between 2003 and 2012. The only argument advanced by learned counsel for the applicant in this regard is that the applicant had been submitting representations to the respondents, but failed to get any response. Mere filing of a few representations does not make out a case to condone the delay. Submission of representations must be within a reasonable period; it should not be an unreasonable one. The applicant has filed copies of three representations, first one dated 06.12.2004, second dated 14.03.2005 and last one dated 04.06.2016. Nothing has been brought on record to explain the laches of the period between 2005 and 2012. Even after dismissal of the first OA in the year 2012, the applicant preferred the representation on 04.06.2016, copy of which has been filed as Annexure A-3. Thus, on the face of record, it is apparent that even between 2012 and 2016, he submitted only one representation. The Hon'ble Supreme Court in a recent decision, reported in *(2010) 8 SCC 685* ***Balwant Singh (Dead) vs. Jagdish***

Singh & Ors, has laid down certain guidelines with regard to condonation of delay. In M.A. No. 1952 of 2015 ***B.D. Prajapati vs. Union of India & Ors,*** we have relied upon the judgment of **Balwant Singh** (supra) while deciding the controversy with regard to condonation of delay. The relevant portion of the aforesaid judgment is reproduced as under:-

> *"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 provisions can be treated to have been enacted purposelessly. Furthermore, it is also a well settled canon of interpretative jurisprudence that the Court should not give such an interpretation to 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 of the 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. 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 bona fide 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 Aiyar, 2nd Edition, 1997] 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 an 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. 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 bona fide, 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 Edition, 2005]

15. We feel that it would be useful to make a reference to the judgment of this Court in Perumon Bhagvathy Devaswom (supra). 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, Limitation Act *for condonation of delay in filing the application for bringing the legal representatives on record. In paragraph 13 of the judgment, the Court held as under:-*

"13 (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 bona fides, deliberate inaction or negligence on the part of the appellant."*

(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 decided the matter on merits. The courts tend to set aside abatement and decide the matter on merits, rather than terminate the appeal on the ground of abatement.

(iii) The decisive factor in condonation of delay, is not the length of delay, but sufficiency of a satisfactory explanation.

(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 than 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 condonation 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 contesting respondent is alive. He merely awaits the call or information from his counsel about the listing of the appeal.

We may also notice here that this judgment had been followed with approval by an equi-bench of this Court in the case of ***Katari Suryanarayana*** *(supra).*

7. A plain reading of the aforesaid judgment of Hon'ble Supreme Court shows that their Lordships have interpreted the sufficient cause in making the application within the period of limitation and held that it 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 the case. The decisive factor in condonation of delay is not the length of delay but sufficiency of a satisfactory explanation, depending upon the facts of each case. The want of diligence or inaction can be attributed to an applicant only when something required to be done by him, but is not done.

8. In the present case, the applicant was sleeping over for more than a decade before approaching the Tribunal. Even after dismissal of his second OA (supra), he had not taken care to approach this Tribunal within a reasonable time and has miserably failed to show cause with regard to the inordinate delay in preferring the present application. Accordingly, we feel that since cause of delay has not been satisfactorily explained by the applicant, this application is liable to be rejected.

9. However, before parting with the case, we would like to observe that the applicant was absconding for about three years and did not turn up to join his Unit after availing ten days' casual leave granted to him in October, 1999. After waiting for a period of three years, he has been dismissed from service as deserter. A army personnel, who deserts the Army, deserts the nation. When he joins the Army, trust is reposed on him that he shall remain disciplined while discharging his official duty. In the present case, the applicant seems to be an undisciplined person, who has not

followed the oath while serving the Army. He does not deserve any leniency and has rightly been dismissed from service.

10. Accordingly, the application for condonation of delay lacks merit and is hereby rejected. In consequence thereof, the OA is also dismissed.

(Air Marshal Anil Chopra)
Member (A)

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

Dated: 8th March, 2017
LN/