Court No.3

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Miscellaneous Application No. 1345 of 2015

Friday, this the 16th day of October 2015

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

No. 14421936A (RHM) TIFC Gaurav Gupta
s/o Late Shri Ashok Kumar Gupta
resident of 2 Sai Kutia, Green City, Arjun Ganj
Lucknow-02.

……Applicant

Ld. Counsel for the Applicant : **Shri Vinay Pandey, Advocate**

Versus

1. Union of India, through Secretary Ministry of Defence, New Delhi-01

2. Chief of the Army Staff, Integrated Headquarters of the Ministry of Defence (Army), South Block, New Delhi-110011.

3. Director General of Artillery, Artillery Directorate IHQ of MoD (Army), Sena Bhawan, New Delhi-110011.

4. Commandant, School of Artillery, Devlali, PIN-908804, c/o 56 APO.

5. Officer-in-Charge, Records Office, Artillery Records Nasik Road-Camp (Maharashtra).

……Respondents

Ld. Counsel for the Respondents : **Shri A. Patnaik, Central Govt Counsel assisted by Lt Col Subodh Verma, Departmental Representative for the Respondents**

ORDER (ORAL)

1. Heard Ld. Counsel for the parties and perused the record.

2. The applicant was working as Technical Instructor Fire Control and had been denied for remustering vide letter dated 22.03.2011 a copy of which is annexed at Annexure A1(i) of the O.A. After denial of remustering by the respondents, the applicant moved application for voluntarily retirement from Army service. As a consequence thereof, he was discharged from service on 31.05.2012. The discharge order has been passed on the application moved by the applicant dated 08.07.2011. Present application has been preferred against the order of discharge after inordinate delay of 3 years and 9 months and once the discharge order has been passed in pursuance to the application submitted the applicant himself, then there appears no reason to interfere in the order at this belated stage.

3. While preferring this O.A. the applicant has not explained why he has approached this Tribunal after delay of 3 years and 9 months, that too in the teeth of his own application for voluntarily discharge from the Army. It appears that after discharge from Army the applicant after lapse of 3 years and 9 months has changed his mind and as a afterthought decision, he approached this Tribunal against the order of discharge. It may be noticed that after discharge order was passed which has been accepted by the applicant and he is getting pension according to rules and

Regulations, then in such circumstances, there appears to no reason for the applicant to approach this Tribunal assailing the impugned order of discharge.

4. Application for condonation of delay does not explain sufficient cause of delay. While approaching the Tribunal, the applicant has moved application for condonation of delay, indicating his family problems and submitted that on account of financial constraints, he could not approach the Tribunal earlier and ultimately filed the present O.A in February 2014. He submitted that the delay is only 1 year and 10 months, which was beyond his control.

5. However, the order of discharge is 01.06.2012. Merely since the applicant was under financial constraint, hence he could not approach the Tribunal in time does not seem sufficient cause to condone the delay. Ld. Counsel for the respondent has relied upon the decision of Principal bench in O.A. No 708 of 2010 **Raghunath vs. Union of India** wherein the Principal Bench has observed that sufficient cause must be shown with all conditions which resulted into delay in preferring the O.A. Relevant portion of the judgment and order dated is reproduced below:-

> *"It may not be out of place to mention that the Apex Court in case MANIBEN DEVRAJ SHAH vs. MUNICIPAL CORPPORATION OF BRIHAN, MUMBAI (2012) 5 SCC 157, after having considered its various previous*

pronouncements held that even though a liberal and just approach is required to be adopted in the exercise of power under Section 5 of the Limitation Act and other similar statutes, the court can neither lose sight of the fact that the successful litigant has acquired certain rights on the basis of judgment under challenge and lot of time is consumed at various stages of litigation apart from the cost. What colour the expression "sufficient cause" would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the Court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay.

In Bala Krishnan V. M. Krishnamurthy (1998) 7 SCC 123, the Apex Court in Para 11 has held as follows :-

> *"Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy for approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do*

not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time".

The aforesaid judgment has been relied upon and referred in a recent case of the Apex Court in B. MADHURI GOUD Vs B. DAMODAR REDDY, (2012) 12 SCC 693 wherein the judgment of the High Court condoning the delay in filing the appeal has been set aside. Condonation of delay was sought on the point that the file was misplaced in the office of the Advocate, which was held to be vague to the core and the Single Judge committed grave error by entertaining the fanciful explanation given for 1236 days' delay".

6. Prima facie, we do not find any merit to interfere in the order passed by the respondents which is an order of voluntary discharge. It is not fit case where a liberal approach may be adopted for condonation of delay, more so, when it is a case of voluntary discharge.

7. In view of the above we **reject** the application for condonation of delay with Original Application without entering into the controversy.

8. Since the application for condonation of delay has been rejected, as a consequence the O.A. also stands rejected.

No order as to costs.

(Air Marshal Anil Chopra)
Member (A)

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

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