

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****M.A. No.709 of 2015 with M.A. No. 1626 of 2015 Inre
O.A. No. Nil of 2015**Wednesday, This the 7th day of October 2015**Hon'ble Mr. Justice D.P. Singh, Member (J)
Hon'ble Air Marshal Anil Chopra, Member (A)**JC-402385 P Ex N/Sub Indrajeet Pandey
S/O Sri Brindaban Pandey
R/O Vill Doharia, PO Minwa
Distt Gorakhpur PIN-273209

.....Applicant

Ld. Counsel for : **Shri K.K. Mishra, Advocate**
the Applicant

Versus

1. Union of India, through its Secretary Ministry of Defence,
New Delhi.
2. Chief of Army Staff, Army HQ, New Delhi.
3. Adjutant General, Army HQ, New Delhi.
4. Records, Brigades of Guards, PIN-900746.

...Respondent

Ld. Counsel for the : **Shri D.K. Pandey, Central Govt**
Respondents **Counsel assisted by Capt Ridhishri
Sharma, OIC Legal Cell.**

ORDER (ORAL)

1. Heard learned counsel for the parties and perused the record.
2. M.A. No. 709 of 2015 has been preferred by the applicant for condonation of delay in filing the O.A.
3. The applicant was enrolled in the Army on 06.08.1976. He was detected to be suffering from RHEUMATOID ARTERITIS. Thereafter in 1997 he was placed in medical category BEE (T) and later on he was discharged from service on 31.01.2000. The applicant submitted statutory complaint dated 23.09.2000.
4. Attention has been invited to letter dated 16.11.2000 which shows that the applicant's statutory complaint was communicated to the competent authority. Our attention has also been invited to letter dated 16.11.2000 which also shows to contain a prayer for extension of service to the JCO. It is submitted by learned counsel for the applicant that applicant's case for extension of service was not considered. However, the fact remains that the applicant informed by letter dated 26.09.2000 pointing out that his disability pension has been sanctioned. Nothing has been brought on record to substantiate that against communication dated 26.09.2000, the applicant had submitted any objection raising grievance against discharge order, rather he has accepted the disability pension. Admittedly, disability pension is being paid to the applicant.
5. Contention of learned counsel for the applicant is that that the applicant has submitted statutory complaints dated 10.01.2002, 12.07.2004, 04.11.2007 and 18.12.2009, but failed to get any response from the respondents. However, in response to letter dated 11.06.2012

the competent authority informed vide letter dated 23.08.2012 with regard to grant of disability pension.

6. There is no material evidence on record which may indicate that the statutory complaints submitted by the applicant from 2002 to 2009 are genuine and were submitted by the applicant. There is no reference in the letter dated 23.08.2012 with regard to statutory complaint submitted by the applicant prior to 11.06.2012.

7. Otherwise also assuming that applicant had submitted first complaint on 10.01.2002 to 18.09.2009, in case there was no response, then the applicant should have approached proper forum within reasonable period after filing of first reminder/statutory complaint on 10.01.2002. Even from 2004 to 2009, followed by 2012, the applicant has not explained why he has not approached proper forum and submitted statutory complaint at the intervals of 3 years and 2 years. The delay seems not to have been explained so far as order dated 23.08.2012 is concerned, it has been communicated in response to complaint dated 11.06.2012. The period between 26.09.2000 to 11.06.2012 has remained unexplained. Moreover, once the applicant has accepted disability pension, there appears to be no reason for him to assail the discharge order after gap of so many unexplained years.

8. Hon'ble Supreme Court in the case reported in AIR 1960 SC 20 **Sitaram Ramcharan & ors. vs. M.N. Nagrashana Authority** held that sufficient cause must cover the whole period delay. Against the Hon'ble Supreme Court in the case 1994f (Supp) 2 SCC 195 **Ex Capt Harsh Uppal vs. Union of India & ors** has held that parties should puruse their right promptly and not sit over their rights. The parties should not be permitted

to sleep over their rights and choose to avail the remedy after inordinate delay. Yet in another case reported in 1997 (7) SCC 556, **P.K. Ramchandran vs. State of Kerala & ors.** Hon'ble Supreme Court has held not to condone the delay in mechanical manner while deciding the application under Section 5 of the Indian Limitation Act according to its satisfaction for condonation of delay. In the case reported in 2005 (8) SCC 709 **State of Karnataka vs. Lamuman** had declined to condone the delay where right of the party has been extinguished by a fiction of law.

9. While considering the application for condonation of delay, it should not be over sighted that statutory condition under Section 5 of the Indian Limitation Act is alike provision of Section 21 of the Armed Forces Tribunal Act, 2007. The applicant has casually approached without explaining the delay and has not approached the proper forum as early as possible. Thus, liberal approach should not be adopted. Moreover, in the present case, the applicant has accepted disability pension without approaching the proper forum against discharge order and still is being paid disability pension.

10. In view of the above, the cause shown seems to be not sufficient for purpose of condonation of delay.

11. Accordingly, we decline to condone the delay. M.A. No. 709 of 2015 is rejected.

12. Since application for condonation of delay has been rejected, the O.A. fails and is also rejected.

(Air Marshal Anil Chopra)
Member (A)

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

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