Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

MISCELLANEOUS APPLICATION NO 79 OF 2016

Wednesday, this the 15th day of November 2017

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

No 4183485X Ex Sepoy Vijaypal Singh S/O Sri Malkhan Singh, R/O Gadanpur, PO-Basundhara, Distt-Etah (UP).

….Applicant

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

Verses

1. Union of India, through its Secretary, Min of Defence, New Delhi.

2. Chief of Army Staff, Army Head Quarters, New Delhi.

3. Officer-in-Charge, Records, Kumaon Regiment, C/O 56 APO.

.....Respondents

Ld. Counsel for the Respondents: **Dr. Shailendra Sharma Atal,** Central Govt Counsel assisted by Maj SalenXaxa, OIC, Legal Cell**.**

ORDER (Oral)

1. This is an application for condonation of delayin preferring application feeling aggrieved by impugned order of discharge dated 26.05.1994.

2. According to Ld. Counsel for the applicant in the year 2008 the Hon'ble Supreme Court delivered a judgment in the case of ***Union of***

India vs.Rajpal Singh**,** reported in 2009 (1) SCC 216, whereby all identical persons were directed to be recalled in service. However, it appears that even after 2008, applicant spent eight years to approach the Tribunal. The application for condonation of delay has been filed on 16.01.2017. Reasons assigned by the applicant are contained in paras 3,4 and 5 of the affidavit filed in support of the application for condonation of delay. For convenience sake, same are reproduced as under:-

> *"3. That the applicant's disease was diagnosed as SUBLUXATION ACROMIO CLAVICULAR JOINT (LT) WITH CERVICAL SPONDYLOSIS AND BRACHIAL GIS (LT). During March 1994, while the applicant's unit was located at Jukhama in Manipur, he was admitted in 154 General Hospital, located thereat. After the treatment since the applicant's disease did not improve, during April 1994, his Release Medical Board (RMB) was held in this Hospital. The applicant was placed in low medical cat CEE (P) by this board with 40% disability declared attributable to Military Service. The applicants discharge was recommended by this med board.*
>
> *4. That thereafter, since the applicants discharge was contemplated, he applied for a sheltered appointment but that was not granted and he was discharged from the service on medical grounds in medical cat CEE (P) with 40% disability on the recommendation of RMB. The applicant was discharged from the service on 26 May 1994. A photocopy of the discharge certificate is already marked as Annexure A-1 and attached with this OA.*
>
> *5. That by this time the applicant had rendered 5 years and 5 months service in the Army. The applicant had applied for a sheltered appointment but that was denied on the grounds that no sheltered appointment was available in the unit. A photocopy of the letter is already marked as Annexure A-2 and attached with this OA."*

3. A plain reading of the affidavit filed in support of the application indicates that even after 2008 i.e. the judgment in ***Rajpal Singh's*** case (supra) the delay has broadly not been explained. The reasons assigned by the applicant are vague and do not meet the requirement of law laid down by Hon'ble Supreme Court in ***Balwant Singh vs. Jagdish Singh and others***, reported in(2010) 8 SCC 685.In **Balwant Singh** (supra)theirLordships of Hon'ble Supreme Court laid down

certain guidelines with regard to condonation of delay since this petition has been filed after an inordinate delay of about eight years from the date of judgment of **Rajpal Singh** (supra).

4. We have heard Ld. Counsel for the parties at length and perused the records. 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 PerumonBhagvathyDevaswom (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).*

4. Needless to say application under Section 5 of the limitation act read with Section 22 of the AFT Act, 2007, grant statutory right to the respondents to oppose an application filed beyond statutory period under the statute and the respondents also have a valuable right to draw the attention of the Tribunal that the statutory right of the respondents has been infringed on account of delay caused in preferring the application.

5. In view of the above, since the applicant has failed to meet the requirement of law laid down in ***Balwant Singh***(supra) and has not been fulfilled the same, the application for condonation of delay seems to be not sustainable and is liable to be dismissed.

5. The application for condonation of delay is accordingly **rejected**. In consequence thereof, application moved challenging the discharge order is also **rejected**.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice Devi Prasad Singh)
Member (J)

Dated: 15th November, 2017

JPT