

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW****M.A. No. 1058 of 2017****In re:****OA No. (Nil) of 2017****Friday, this the 16<sup>th</sup> day of November, 2018****Hon'ble Mr. Justice S.V.S. Rathore, Member (J)****Hon'ble Air Marshal BBP Sinha, Member (A)**

No.14900628-P Hav Pratap Narayan Chaubey,  
 S/o Shri Srinath Chaubey,  
 R/o Village Budhaipur, Post Office Kiriharapur,  
 Tehsil Belthara Road, Distt. Ballia (U.P.) Pincode-221717  
 ..... Applicant

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

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. The Chief of Army Staff, Integrated Headquarter of the Ministry of Defence (Army), South Block, New Delhi-110001.
3. General Officer Commanding, Mukhyalaya 26 Infantry Division, HQ Inf Div, C/o 56 APO.
4. Officer-in-Charge Records, Mechanised Infantry Regiment, Abhilekh Karyalaya, PIN 900476, C/o 56 APO.
5. Commanding Officer, 23 Mechanised Infantry, PIN 911723, C/o 56 APO.

.....Respondents

Ld. Counsel for the: Dr Shailendra Sharma Atal, CGSC  
 Respondents.

**ORDER (Oral)**

1. We have heard learned counsel for the parties on the application for condonation of delay (MA No. 1058 of 2017) and perused the record.
2. As per office report, this OA was filed after a delay of 24 years, 07 months and 16 days.
3. In brief, the facts of the case are that the applicant was enrolled in the Army on 30.07.1980. On 16.04.1992 the applicant was discharged from service after rendering 11 years, 08 months and 16 days of service. From 01.10.1988 to 26.11.1991, the applicant was charged with and was punished under Section 39 (d) on three occasions i.e. 14<sup>th</sup> June 1988, 12<sup>th</sup> Sept. 1988 and 07<sup>th</sup> October 1988 and thereafter under section 39(c) and 39(a) the applicant has been made an accused for committing an offence during the said period. From June 1988 to October 1988 the applicant has been summarily tried by the same Commanding Officer. On 09.03.1992, the applicant was served with show cause notice. On 16.04.1992 the applicant has been dismissed from service. Now, by means of this OA, the applicant has made a prayer for setting aside the order of dismissal dated 16.04.1992 and also for grant of pension to the applicant. After his dismissal from service in the year 1992, the applicant, for the first time, sent representations to the respondents on 29.03.2017 and 06.02.2017 for supply of some documents, but as stated by the applicant, the same has not been provided to the applicant. The

applicant has approached this Tribunal after more than 24 years after his dismissal from service.

4. Learned counsel for the applicant has tried to justify the aforesaid delay on certain compelling reasons relating to family commitments and due to his not being much educated and paucity of funds. He has, however, failed to explain the delay in moving the aforesaid representation to the competent authorities in the year 2017 i.e. after about 25 years. The dismissal from service is not a recurring cause of action. The cause of action in the instant case started from the date of dismissal from service. The applicant appears to have been satisfied with his dismissal and, therefore, till 2017 he did not challenge his dismissal. He moved a belated representation for supply of some documents.

5. The submission of learned counsel for the applicant is that the delay in the present case ought to have reckoned from the date of moving the representations to the Commanding Officer, could be said to have substance if the representation had been made by the applicant within a reasonable time. If this submission is accepted, then there would be no finality of any order or administrative decision taken by the army authorities and virtually it would make the provisions of the limitation provided under the AFT Act redundant. Admittedly, the applicant was dismissed from service with effect from 16.04.1992.

6. Section 22 of the Armed Forces Tribunal Act, 2007 provides for limitation. It reads as under:

“22. **Limitation.** —(1) *The Tribunal shall not admit an application—*

*(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of section 21 has been made unless the application is made within six months from the date on which such final order has been made;*

*(b) in a case where a petition or a representation such as is mentioned in clause (b) of sub-section (2) of section 21 has been made and the period of six months has expired thereafter without such final order having been made;*

*(c) in a case where the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which jurisdiction, powers and authority of the Tribunal became exercisable under this Act, in respect of the matter to which such order relates and no proceedings for the redressal of such grievance had been commenced before the said date before the High Court.*

*(2) Notwithstanding anything contained in sub-section (1), the Tribunal may admit an application after the period of six months referred to in clause (a) or clause (b) of sub-section (1), as the case may be, or prior to the period of three years specified in clause (c), if the Tribunal is satisfied that the applicant had sufficient cause for not making the application within such period.”*

7. Armed Forces Tribunals were established in the year 2007, even then the applicant did not approach the Tribunal. He moved the representation for the first time after about 10 years of the establishment of the AFT.

8. We would like to deal with the issue of limitation raised in the instant case in the light of proposition of law as laid down by the Hon’ble Apex Court in catena of decisions. In the case of **D.Gopinathan Pillai versus State of Kerala and another**, reported in (2007) 2 SCC 322, the Hon’ble Supreme Court has observed as under:

*“5. We are unable to countenance the finding rendered by the Sub-Judge and also the view taken by the High Court. There is no dispute in regard to the delay of 3320 days in filing the petition for setting aside the award. When a mandatory provision is not*

*complied with and when the delay is not properly, satisfactorily and convincingly explained, the court cannot condone the delay, only on the sympathetic ground. The orders passed by the learned Sub-Judge and also by the High Court are far from satisfactory. No reason whatsoever has been given to condone the inordinate delay of 3320 days. It is well-considered principle of law that the delay cannot be condoned without assigning any reasonable, satisfactory, sufficient and proper reason. Both the courts have miserably failed to comply and follow the principle laid down by this Court in a catena of cases. We, therefore, have no other option except to set aside the order passed by the Sub-Judge and as affirmed by the High Court. We accordingly set aside both the orders and allow this appeal.”*

9. There is absolutely no explanation on record as to why the applicant did not initiate the appropriate proceedings after dismissal from service within the prescribed period of limitation. In view of the settled proposition of law, as laid down by the Hon’ble Apex Court in **Mewa Ram (Deceased by L.Rs) & Ors v. State of Haryana, AIR 1987 SC 45**, **State of Nagaland v. Lipok AO & Ors, AIR 2005 SC 2191** and **D. Gopinathan Pillai v. State of Kerala & Anr, AIR 2007 SC 2624**, the applicant was under obligation to give cogent and valid reasons for the delay. Time and again it has been held by the Hon’ble Apex Court that if the law provides for a limitation, it is to be enforced even at the risk of hardship to a particular party, as the Judge cannot, on applicable grounds, enlarge the time allowed by law, postpone its operation or introduce exceptions not recognised by law. The law of limitation has to be applied with all its rigour. The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play. We are, therefore, not inclined to accept such a plea as raised by the applicant supra, which is wholly unjustified and cannot furnish any ground for ignoring delay

and laches. (Vide **General Fire and Life Assurance Corporation Ltd v. Janmahomed Abdul Rahim**, *AIR 1941 PC 6*, **P.K.Ramachandran v. State of Keral & Anr**, *AIR 1998 SC 2276*, **Esha Bhattacharjee v. Raghunathpur Nafar Academy & Ors**, *(2013) 12 SCC 649*, **Basawaraj v. Land Acquisition Officer**, *(2013) 14 SCC 81*, **State of Karnataka & Ors v. S.M.Kotrayyqa & Ors** *(1996) 6 SCC 267*, **Jagdish Lal & Ors v. State of Haryana and Ors**, *AIR 1997 SC 2366* and **M/s Rup Diamonds & Ors v. Union of India and Ors**, *AIR 1989 SC 674*).

10. In view of the discussion held above, the application for condonation of delay (MA No. 1058 of 2017) has no merit. It deserves to be dismissed and is hereby **dismissed**. Consequently, the OA also stands dismissed.

(Air Marshal BBP Sinha)  
Member (A)

(Justice SVS Rathore)  
Member (J)

Dated : 16<sup>th</sup> November, 2018  
PKG