

Reserved
Court No.1

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

M.A. No. 1521 of 2016
Inre:
O.A. No. Nil of 2016

Friday, the 05th day of October, 2018

Hon'ble Mr. Justice SVS Rathore, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)

Ex- Havildar Nathun Singh (No.7774025P) S/o Late Ram Kripal Singh Last unit-7 Infantry Division Provost Unit C/o 56 APO, presently R/o Village and post- Dhanawati, Tehsil-Bansdih, Police Station-Sukhpura, District- Ballia Uttar Pradesh Pin-277304

.....Applicant

Ld. Counsel for the Applicant: **Col (Retd) B.P. Singh, Advocate**

Versus

1. Chief of the Army Staff, Integrated Headquarter of the Ministry of Defence (Army), South Block, New Delhi-110011.
2. General Officer Commanding In Chief, Western Command.
3. Officer In-Charge, Corps of Military Police Commandant CMP Centre and School, Bangalore 25, Pin-900493
4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad.

.....Respondents

Ld. Counsel for the Respondents: **Shri Virendra Singh, Advocate**

ORDER(Oral)

1. Heard learned counsel for the parties on the application for condonation of delay in filing the OA.

2. By means of this O.A. filed under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has challenged the discharge order dated 30.09.2010.

3. As per office report, there was a delay of 05 years, 03 months and 13 days in filing the OA.

4. Learned counsel for the applicant has argued that the delay was occasioned because the applicant was an accused in Sessions Trial No. 127 of 2001 and was facing trial under Sections 307, 352, 504 and 506 IPC before Additional Sessions Judge, Court No. 3, Ballia. The said case ended in acquittal on 15.12.2015. Immediately thereafter, the applicant presented a statutory petition and has now approached this Tribunal for setting aside his discharge.

5. The aforesaid trial of the applicant was under Sections 307, 352, 504 and 506 IPC, relating to an incident that took place in March, 2001. Learned counsel for the applicant has tried to impress that the applicant was facing trial in criminal court and it was only after his acquittal that he has challenged his discharge. When we asked him as to whether the pendency of a criminal trial was the only ground of his discharge, then he submitted that the applicant was discharged after completion of the term of engagement after 26 years of service. He has also admitted that the applicant was on bail during the aforesaid trial. Apart from the above, no other ground for condoning the delay in filing the OA has been raised or pressed into service.

6. On a perusal of record, we find that the applicant was facing criminal trial since 2001 in respect of an incident that took place on 10.03.2001. The pendency of aforesaid criminal trial was the only ground that has been pressed into service by learned counsel for the applicant for condoning the delay in filing the OA. It has not been denied that the applicant was on bail during trial and he could approach this Tribunal well in time for redressal of his grievance, but he failed. Mere pendency of aforesaid criminal trial against the applicant has no bearing on the instant case and we find no justification in challenging the discharge order after such a long delay of several years. He was discharged in due course vide order dated 30.09.2010 after completion of his term of engagement.

7. The office has reported the delay of five years from the date of discharge as OA was filed in 2016. Law is settled that in such matters, each day of delay has to be explained. The ground raised by learned counsel for the applicant is absolutely no ground to explain the delay. Pendency of a criminal trial was no impediment to the applicant to move the statutory petition.

8. The legal position on the subject is very clear. Section 22 of the Armed Forces Tribunal Act, 2007 holds the field and provides for limitation 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.”

9. We would like to deal with the issue of limitation raised in the instant case also 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.”

10. There is absolutely no explanation on record as to why the applicant did not initiate the appropriate proceedings after his discharge from service within the prescribed period of limitation. Discharge or dismissal is not a recurring cause of action and 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, but he has utterly failed in explaining the delay of more than five years. 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 does not furnish a reasonable 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 Kerala & 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.Kotrayya & 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.

11. In view of what has been observed above, the application for condonation of delay (**MA No. 1521 of 2016**) 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)

Sept. 05, 2018
LN/-