

Court No.1**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****M.A. No. 1230 of 2018****Inre:****O.A.No. Nil of 2018**Wednesday, the 03rd day of October, 2018**Hon'ble Mr. Justice SVS Rathore, Member (J)**
Hon'ble Air Marshal BBP Sinha, Member (A)Gokul Ram (Ex Sepoy 10301407), S/o Late Bhodu Ram, R/o
C/o Akhilesh Sharma, 1348 Kidwai Nagar, Allahpur,
Allahabad-211006 (UP)

.....Applicant

Ld. Counsel for the Applicant: **Shri R. Chandra, Advocate**

Versus

1. Union of India, through, the Secretary, Ministry of Defence, Government of India, New Delhi-110011.
2. The Officer In-Charge Defence Security Corps Records PIN-901277, C/o 56 APO.
3. The Chief Controller Defence Accounts, Draupadi Ghat Allahabad-14 (UP)

.....Respondents

Ld. Counsel for the Respondents: **Dr. Shailendra Sharma Atal,
Advocate****ORDER(Oral)**

1. We have heard learned counsel for the parties on the application for condonation of delay (MA No. 1230 of 2018) and perused the record.

2. As per office report, this OA was filed after a delay of 04 years, 06 months and 07 days.

3. In brief, the facts of the case, as averred in the OA, are that the applicant was enrolled in the Army on 12.11.1971. He took voluntary discharge from service in September, 1980 on compassionate ground. In August 1981, the applicant was enrolled in DSC where he served till 01.12.1989. Since 02.12.1989 the applicant remained absent due to mental illness and he also did not reach his home while absent without leave. After a long period, his family members are said to have searched him. The applicant, however, did not join his duty and his contract period of service also lapsed. He was dismissed from service vide order dated 14.05.1993. After a long period, on 11.03.2010, the applicant preferred an appeal with a prayer for grant of service pension, but the same was denied by the respondents on 10.11.2017. It is noteworthy that the applicant has approached this Tribunal after more than 17 years of his dismissal from service.

4. Learned counsel for the applicant has tried to justify the aforesaid delay on the ground of mental illness of the applicant. The indisputable fact of the case is that the applicant is challenging his dismissal after more than 17 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 did not challenge his dismissal in time.

5. The submission of learned counsel for the applicant that the delay in the present case ought to have reckoned from the date the applicant's appeal for grant of service pension was rejected by the respondents. The said appeal was rejected on 10.11.2017. Reckoning the period of limitation from the said date too, there is a delay of 04 years, 06 months and 07 days if preferring the OA, for which there is absolutely no satisfactory explanation.

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. 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.”

8. 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. There is not even a single document showing the mental illness of the applicant for such a long period. No lenient approach can be adopted in condoning the delay while challenging dismissal/discharge orders, because it would adversely affect the discipline of the Army. 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 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.Kotravyqa & 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.

9. In view of the discussion held above, the application for condonation of delay (MA No. 1230 of 2018) has no merit. It deserves to be dismissed and is hereby **dismissed**.

Consequently, the OA being barred by time is also **dismissed**.

(Air Marshal BBP Sinha)
Member (A)

(Justice SVS Rathore)
Member (J)

Oct 03, 2018

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