COURT NO. 1, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

(Supplementay) 1.

OA 3224/2023 with MA 4396/2023

Ex Swr Rohtash Singh … Applicant
Versus
Union of India & Ors. … Respondents

For Applicant : Mr. Raj Kumar, Advocate
For Respondents : Mr. Sundeep Kumar, Advocate

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN C. P. MOHANTY, MEMBER (A)

O R D E R
16.10.2023

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act 2007, the applicant has filed this application and the reliefs sought in Para 8 read as under:

(a) Quash the Impugned Order/Letter No. 1049106/DP/10/PEN dated 04.01.1975;

(b) Direct the respondents to grant invalid pension with effect from the date prior to institution of this O.A;

(c) Direct the respondents to pay the arrears of pension with interest @ 12% per annum; and

(d) Pass any other relief which this Tribunal may deem fit and proper in the facts and circumstances of the case along with cost of the application in favour of the applicant and against the respondents.

2. The applicant was enrolled in the Indian Army on 16.07.1971 and was invalidated out of service in low medical category on 03.10.1974. It is the case of the applicant that he was invalidated out of service on account of the injury sustained by him. His claim for disability pension was rejected by the Record Office on 04.01.1975. He was granted only invalid gratuity. He submitted an appeal in the form of representation on 17.05.1975. This was forwarded by the Record Office to the concerned authority on 31.07.1975. Thereafter the applicant sent a reminder to the concerned authority on 16.09.1975. Finally on 16.01.2023, he sent another representation claiming invalid pension but when nothing happened, after a period of about 37 years, the applicant has approached this Court claiming invalid pension.

3. The respondents have raised a preliminary objection and pointed out that the entire records had been destroyed and now the applicant cannot claim any benefit. The applicant has filed an application seeking condonation of delay under Section 22 of the AFT Act wherein except for contending that under Section 22 of the AFT Act 2007 this Tribunal can condone the delay, he has further stated that he had submitted an application for grant of invalid pension on 17.05.1975 and when no reply had been received, he sent a reminder to the respondents on 16.01.1976. Thereafter, he sent another representation for grant of invalid pension on 16.01.2023. He waited for six months and as his representation has not been decided, he has invoked the jurisdiction of this Tribunal.

4. Having heard learned counsel for the parties, we find that the applicant has invoked the jurisdiction of this Tribunal after a delay of about 37 years and very cleverly refers to a representation submitted after 37 years on 16.01.2023 and wants this Tribunal to invoke the jurisdiction on the ground stipulated under Section 21 and 22 of the AFT Act as the representation has not been disposed of within six months. However, a perusal of M.A No. 4396/2023 indicates that no reasonable justification or sufficient cause has been shown by the applicant in the application for condonation of delay except for pointing out certain judgments of this Tribunal where delay had been condoned in certain cases. Nothing has been brought to our notice to show that there are sufficient grounds and reasonable justification on the part of the applicant for approaching this Tribunal after a delay of more than 37 years.

5. This is a case where the applicant slept over the matter for 37 years and as a consequence thereof, in accordance with Regulation 595 of the Regulations for the Army, the entire records have been destroyed by the respondents and no documents or any other materials to adjudicate the case are available with the respondents. The applicant having slept over the matter for all these years, we are of the considered view that no case is made out for condoning the delay and interfering into the matter.

6. An identical matter viz. ***Ex Rect Bhuwaneshwar Sah v. Union of India and others*** (O.A No. 3123/2023) argued by the same counsel

who appeared for the applicant in the instant OA was dismissed on the ground of delay of more than 35 years, for the same reasons.

7. Meaning and expression of the term "sufficient cause" as used in Section 5 of the Limitation Act has been subject matter of consideration by the Hon'ble Supreme Court in various cases and it would be appropriate to take note of the principles laid down by the Hon'ble Supreme Court in this regard in various judgments. In the case of ***Maniben Devraj Shah Vs Municipal Corporation Of Brihan Mumbai*** (2012) 5 SSC 157 in Para 14, the Hon'ble Supreme Court held as under:-

> *The law of limitation is founded on public policy. The Limitation Act, 1963 has not been enacted with the object of destroying the rights of the parties but to ensure that they approach the court for vindication of their rights without unreasonable delay. The idea underlying the concept of limitation is that every remedy should remain alive only till the expiry of the period fixed by the legislature. At the same time, the courts are empowered to condone the delay provided that sufficient cause is shown by the applicant for not availing the remedy within the prescribed period of limitation.*

Even though the Hon'ble Supreme Court goes on to say that the Court should adopt a liberal approach to do substantive justice to the parties but if the other side has acquired certain right on account of delay of the petitioner, it should not be taken away and it is incumbent upon the Court to draw a distinction where the delay is inordinate where the delay is of a few days only. In a case of inordinate delay, consideration of prejudice to the other side becomes a relevant factor in the matter of condonation of delay.

8. Again in the case of ***B, Madhuri Goud Vs. B. Damodar Reddy*** (2012) 12 SSC 693, it has been held by the Hon'ble Supreme Court that the purpose of Limitation Act is not to destroy the rights of the parties but to ensure that they approach the Court for vindication of their right without unreasonable delay. The expression "Sufficient Cause" used in Section 5 of the Limitation Act has been held to be elastic but it has to be given effect to in a manner that it does not encroach into the rights and causes prejudice to the opposite party.

9. Finally, we may take note of the law laid down by the Hon'ble Supreme Court in the case of ***Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others*** (2013) 12 SCC 649, wherein after taking note of various aspects with regard to condonation of delay and meaning of the expression "sufficient cause" 17 principles have been curled out by the Hon'ble Supreme Court. Principle (i), (ii), (iv), (viii), (ix), (x), (xiv) and (xvii) reads as under:-

> "*(i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.*
>
> *(ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.*
>
> *(iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.*
>
> *(viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.*
>
> *(ix) The conduct, behavior and attitude of a party relating to its inaction or negligence are relevant factors to be taken into*

consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

(x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

(xiv) An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

(xvii) The increasing tendency to perceive delay as non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters.

The complete reading of all these principles indicates that even though liberalize pragmatic justice oriented approach has to be applied in dealing with an application for condonation of delay, the term "sufficient cause" has to be understood in its proper spirit, philosophy and deliberate causation of delay and gross negligence on the part of the litigant has to be taken note of while considering the prayer for condonation of delay. The conduct and in action or negligence on the part of the party are relevant factors to be taken note. The court is required to weigh and balance the scale of justice for both the parties and on the ground of liberalized approach, the principle cannot be given go by. It has been observed by the Hon'ble Supreme Court that after the extension offered or the grounds served in an application for condonation are fanciful, the court should be vigilant and should not expose the opposite party to unnecessarily facing litigation after inordinate period of time. The Hon'ble Supreme Court has also

deprecated the increasing tendency to perceive delay in a non serious matter in the garb of liberal approach.

10. If we analyze the facts of the present case and the attitude and approach of the applicant, we are of the considered view that sufficient cause is not made out for condonation of delay. Merely because the applicant is claiming invalid pension, we cannot condone the delay mechanically when in our considered view, the sufficient cause for the delay is not reasonably explained.

10. We find that the applicant has not made out a case for condonation of delay in entertaining this application after 37 years.

7. Accordingly, the M.A and the O.A both stand dismissed on the ground of dealy.

[RAJENDRA MENON]
CHAIRPERSON

[C. P. MOHANTY]
MEMBER (A)

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