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

14.

OA 2054/2024 WITH MA 2524/2024

Sub Bikram Singh (Retd) ..... Applicant
Versus
Union of India & Ors. ..... Respondents

For Applicant : Mr. Manoj Kr Gupta,
Ms. Prachi Chaturvedi and Ms Mirdula Rani Singh, Advocates
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
05.07.2024

The applicant has invoked the jurisdiction of this Tribunal under Section 14 of The Armed Forces Tribunal Act, 2007. The following prayers have been made in the OA:-

(a) To summon the entire service records along with medical dossier including the file of Unit. Humbly the petitioner/applicant further seeks prayer to direct the respondents to grant disability element of pension from 01 Nov 1992 @50% duly broad-banded, as his disability already conceded attributable to military service.

(b) To direct the respondents to pay the due arrears with interest @10% p.a. and/or to pass such further order or orders, direction/directions as this Hon'ble Tribunal may deem fit and proper in accordance with law by conducting RSMB/re-survey Medical Board as per policy in vogue i.e., Entitlement Rule 1982, if any, to access the disability percentage of hearing loss, which otherwise can't be less than 20% as per Para- 20 of GMO 2008.

3. The applicant was enrolled in the Indian Army on 04.12.1975, and after serving for 16 years, he was discharged from the service in rank of Subedar on 30.10.1992 at his own request on compassionate grounds. The Discharge Order indicates that he was discharged on account of his old widow mother's need for care, as he was her only child. His request for compassionate discharge on this ground was allowed, and he was discharged on 30.10.1992. However, the applicant claims that while undergoing boxing practice in 1979, he received a punch in the right ear, causing a severe injury to his right ear, i.e., "CSOM (RT) Ear". However, when he was discharged after being placed in a Low Medical Category, no Release Medical Board (RMB) was conducted, and now after 32 years, he has filed this application claiming disability pension.

4. In MA 2524/2024, i.e., for condonation of delay filed under Section 22(2) of Armed Forces Tribunal, Act, 2007 wherein in Para 1 the applicant seeks condonation of delay on the following grounds, which reads to the effect.

> *1. That the applicant discharged on medical ground in the year 1992 and ought to draw disability pension but has not been paid with disability element since discharge despite entitled for the*

same. Due to un-awareness clubbed with pre occupy due to parents' sickness as well as resettlement issue post discharge, he could not proceed further. Being resident of Far-flung area and responsibility of children marriages resulting in pre occupied. More so, he obtained copy of RMB under RTI Act as well as rejection letter and start exploring the legal. Therefore, delay is totally unintentional.

5. Further placing reliance on judgements of ***Deokinandan Prasad*** Vs. ***State of Bihar~*** Air 1971 SC 1409 and ***Union of India*** & Ors. Vs. ***Tarsem Singh*** (2008) 8 SCC 648 condonation of delay is sought on the ground that grant of disability pension is a continuous right and therefore, on the account of delay the right cannot be curtailed.

6. We have heard learned counsel for the respondents and he objects to the grant of benefits and points out that after his discharge from service on 30.10.1992 the applicant kept quiet and slept over his claim for 32 years, i.e. for 11, 348 days and neither raised any objection nor claimed any disability element or pension. It was for the first time that on 06.01.2024 he submitted an appeal for claiming disability element and further he filed another appeal on 26.05.2024 vide Annexure (A-I) Colly claiming disability pension.

7. Having considered the rival contentions, we find that the applicant suffered the injury in 1979 even though he was

placed in Low medical category for some time the medical records, i.e., Re-cat Medical Board dated 02.03.1985 filed by the applicant reads to the effect:-

> *"Summary and Opinion of Lt Col J.B.Samaddar Lt- Col AMC classified specialist ((ENT) of 92 Base hospital dated 01.03.1985*
>
> *An old case of CSOM (Rt) due to the direct blow over Rt ear during boxing in 1979 at misamari. He was placed in Med Cat CEE(T) for 06 months w.e.f. 10.01.84 at 92 BH. Placed in Med Cat BEE (T) for 06 months w.e.f. 22nd August, 1984 at 148 Base Hospital C/o 56 APO. Now reported for recategorisation, Presents Complaints --- NIL.*
> *On Exam- G.C. good. PTR- normal. Systemic exam- NAD. Nose- NAD Throat-NAD. Both ears/Eam-normal T/M-intact, mobility- normal. Granulation tissue- Nil.*
>
> *Hearing - Rt 600 cm*
> *Lt 600 cm*
> *Rinnes- test+ ve both ears*
> *Wabes- equal both ears*
> *Nystagmus- Nil*
> *Facial Palsy –Nil*
> *Eustachian Poteney- normal*
>
> *OPINION- An old case of "CSOM (RT) EAR" healed. At present a asymptomatic. Right ear drums has healed. Hearing is normal in both the ears".*
>
> *Recommended to be upgraded to Med Cat AYE fit for all duties.*
>
> *Sd/*
> *JB Samaddar*
> *Lt Col AMC*
> *ENT Specialist (Classified)*

Further order of presiding officer of Medical Board at Para 10 which read as under:-

> *"10. Orders given to the individual by the presiding officer on the Medical Board.*
> *You are upgraded medical category AYE w.e.f. 02 March, 85."*

8. The subsequent reports of Medical Board held on 06.12.1989 available on record indicate that there is no percentage of disability assessed even though he has been placed in Low medical category BEE (hearing) Temp for 6/12 years but he was continued in service. The medical report of 1989 also shows that the tympanic membrane has healed and his hearing has improved. The fact remains that the applicant while in service never claimed any element of disability, compensation or disability pension from the department. On the contrary, on account of family issues he got discharged from service on 31.10.1992 on compassionate ground after 16 years of service. Even at that point of time he never claimed any compensation or disability pension. From 1992 right up to 06.01.2024, i.e., 32 years he kept quiet and made no representation to the respondents in any manner. It was only January 2024 he came out with a claim for grant of disability pension.

9. The inordinate delay in invoking the jurisdiction of this Tribunal and claiming the benefit is not explained by the applicant in accordance with the requirement of the law. The

prayer made in MA 2054/2024 for condonation of delay does not make out any reasonable justification for condoning the delay. On the contrary, the applicant accepted his discharge and never raised any claim for 32 long years. The contention of the applicant is that the grant of disability pension is a continuous right and the applicant's claim for pension cannot be disallowed as pension can be claimed every month when due is wholly misconceived. The applicant is already getting his service pension and other dues and now what he is claiming is disability and disability pension. As of now, the applicant does not have any right to receive any disability element, and therefore, on the ground that pension is a continuous right, delay cannot be condoned until and unless there is an adjudication regarding the entitlement of the applicant to claim disability element. This should have been done by him within a reasonable period of time.

10. 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, 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.*

11. 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.

12. 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.

13. 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. 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 list 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.

14. The applicant, having not done so, we are of the considered view that it is not a fit case for the delay to be condoned and the matter re-opened now after 32 years. The contention of the learned counsel for the applicant that no medical board was conducted at the time of discharge even though he was discharged on low medical grounds is unsustainable in law for the simple reason that the applicant sought discharge on his accord on compassionate grounds, and he was never discharged by the respondents for being in a Low Medical Category.

15. Taking note of the totality of the circumstances and the manner in which the applicant is slept over his right for such a long period of time, i.e., 32 years, we see no reason to make any indulgence into the matter more particularly when the records are only retained for a period of 25 years and destroyed in accordance to the Army Regulation 529 after 25 years.

16. Accordingly, finding no ground for any indulgence into the matter, therefore, the MA and OA is dismissed on account of inordinate delay and latches which remains unexplained on the part of the applicant.

17. In view of the above, The MA and the OA both stand disposed of.

18. No order as to costs.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[LT GEN C.P. MOHANTY]
MEMBER (A)

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