

**ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
NEW DELHI.
O.A. NO. 493/10**

LT. CDR. I S RANDHAWA

.....APPLICANT

VERSUS

UNION OF INDIA & ORS.

.....RESPONDENTS

CORAM:

**HON'BLE MR. JUSTICE S S KULSHRESTHA, MEMBER
HON'BLE LT. GEN. S S DHILLON, MEMBER**

**ORDER :
25-8-2010**

Present : Cmde. Sukhjinder Singh, Advocate for the Petitioner.
Lt. Cdr. Varun Singh, Officer on behalf of the Respondents.

This appeal has been brought against the Order of discharge passed by the Government on 14-11-2006. It has been asserted by the petitioner that after the issuance of order of discharge from service, as per the advice of Advocate, he made representation only for grant of the pensionary benefits which remained pending for a considerable long time with the Respondents. Even he was told not to challenge impugned order in Court till the matter with regard to the pensionary benefits is finally decided at the appropriate level, otherwise that would also be put in abeyance till the conclusion of Court proceedings. The petitioner was not having sufficient means to file writ petition against the discharge order. This petition was resisted on behalf of the Union of India, contended that the petitioner adopted one or the other tactics to delay his

trial by Court Martial which was initiated against him way back in the year 1997 on three charges but he challenged those proceedings before Andhra Pradesh, High Court by filing Writ Petition No. 1041/97. By way of interim order High Court permitted Court Martial to continue with the proceedings but ^{refrained} ~~sustained~~ it to pass final order. The Court Martial kept its finding and order in the sealed cover, till further directions from the High Court. Stay order was vacated by High Court on 7-8-2000. By that time some of the members of the Court Martial retired and so it could not re-assemble. Ultimately the show cause notice was given to the petitioner on 14-3-2002 referring all those charges. He had submitted his reply after about 2 years and finally he was discharged from service on 14-11-2006. Since the petitioner kept his statutory representation confined for pensionary benefit and so the alleged grievance, against his discharge order would be deemed to have been abounded. The petitioner is also said to be belated and there are laches on the part of the petitioner, which would not make him entitled to bring writ petition.

Learned Counsel for the petitioner submitted that in the given circumstances of the case, the petitioner can not be said to be defaulter and laches on his part can not be construed when he was advised by the Advocates for keeping his claim confined to the pensionary benefits at the moment. This is the admitted position that the petitioner made representation for pensionary benefits to the Appropriate authority. As per the advice of the lawyers he did not

prefer to make any representation, would not be a justified ground to explain delay. In ^{other} after words it is just playing 'hide and seek' to have pension first and then to agitate against the discharge order. Cause of action on the basis of which pensionary benefits were sought, had already accrued and now to challenge the discharge order would be abuse of process of Law.

It has further been submitted from the side of the petitioner that his representation for pensionary benefits was pending for considerable from long period and he had not the sufficient means to come to the Court for filing the writ petition. Reliance is placed in the case ***State of Bihar & Ors. Vs Kameshwar Prasad Singh & Anr. JT 2000 (5) SC 389***, wherein the Hon'ble Apex court observed that the application for condonation of delay should be approached liberally, so as to provide substantial justice to the parties. This is also ^{conveyed} ~~conveyed~~ that the expression "sufficient cause" enables the Courts to apply the law in a meaningful manner which sub serves the ends of justice. In this regard it may be mentioned that the Court Martial proceedings were initiated in the year 1997, however in the changed circumstances the Members of the court Martial were not available, ultimately the disciplinary action was taken against the petitioner. From the date of his discharge 14-11-2006 the period of four years has elapsed. The Apex Court in the case ***Swaran Lata etc. Vs State of Haryana JT 2010 (3) SC 602*** observed that where inordinate delay not explained by the petitioner, no remedy could be availed of by him. Identical view was reiterated by Hon'ble Supreme Court in the

case of *Municipal Corporation of Greater Bombay vs Industrial Development Investment Co. Pvt. Ltd. and Ors.* Air 1997 SC 482; *State of Rajasthan and Anr. Vs D R Laxmi & Ors.* JT 1996 (9) SC 327.

As has been mentioned above the petitioner purposely ^{defamed} repaired himself for challenging the impugned order and was ^{awaiting} waiting first for the grant of pension. Approaching the Bench only after the sanction of the pensionary benefits, the delay and laches of four years ^{are} is not explained. Reliance may be placed in the case of *Sharif Masih vs Punjab & Haryana High Court (2007) 15 SCC 753*. Again after pension switching over to the discharge order after four years with no valid ground to explain laches would not make the petition maintainable. (see *Panchi Devi vs State of Rajasthan & Anr. (2009) 2 SCC 589*).

In view of the above discussions the petition suffers from delay and laches and is hereby rejected.

S S DHILLON
(MEMBER)

S S KULSHRESTHA
(MEMBER)