

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

3.

O. A. No. 106 of 2011

Capt Sarish Mathur

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Sh. Sukhjinder Singh, Advocate.

For respondents: Capt S. Singhal.

CORAM:

HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.

HON'BLE LT. GEN. S.S.DHILLON, MEMBER.

ORDER
11.03.2011

Petitioner is challenging the order of November 2003 which is a belated petition in 2011. The same is dismissed with no order as to costs.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
March 11, 2011

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NEW DELHI.

O.A.No.106 of 2011

Captain Sarish Mathur ...Petitioner

Versus

Union of India & Ors. ...Respondent

For the Petitioner : Shri Sukhjinder Singh, Advocate

For the Respondents: Shri R. Balasubramanian, Advocate

C O R A M:

HON'BLE MR. JUSTICE A.K.MATHUR, CHAIRPERSON

HON'BLE LT.GEN. S.S.DHILLON, MEMBER (A)

JUDGMENT

22.03.2012

BY CHAIRPERSON:

1. Petitioner by this writ petition has prayed that impugned orders 04/11/2003 (Annx. A-4) and 04/12/03 be set aside, quashed and declared null and void and Aviation Allowance and other associated perquisites be restored to the applicant w.e.f. 01/03/2004.

2. Petitioner was commissioned in Indian Navy on 01.07.1981 and after successfully completing 18 months training as a Cadet and Sea Cadet at Naval Academy and INS Mysore and as Midshipman on INS Betwa and INS Beas, he was commissioned as Sub Lieutenant Technical Course in June 1982 and was posted on INS Kiltan for award of Watch Keeping Ticket. In September, 1983, the applicant was appointed to INS Porbander as TAS & MCMO and completed a successful tenure of 18 months as Ship's 5th commissioning crew. Thereafter in Sep.1985, the applicant was appointed to INS Brahmputra as Watch Keeping Officer. In January, 1986, the applicant volunteered for 'Observers Branch of Naval Aviation' and in 1989, the applicant appeared and cleared all the papers of Command and Staff College entrance examination in the first attempt and ultimately he was appointed as Commanding Officer of IN LCU-L-32 from mid-1994 to mid-1995. Thereafter, he served as Staff Officer to Flag Officer Commanding-in-Chief Eastern Naval Command, Vishakhapatnam from mid-1995 to

mid-1996. He had also undergone Staff Course at DSSC Wellington. In June, 1999, he was appointed as Executive Officer of INS Ganga.

3. On 1.10.2002, whilst celebrating the Silver Jubilee of the Squadron, an unfortunate accident of mid air collision of two IL-38's took place and the applicant was immediately transferred as EXO INS Garuda at Kochi. On request of the applicant that his son was appearing in Xth Board in 2003 and also to facilitate in looking after the welfare and rehabilitation of the families of the deceased aircrew officers and sailors, the petitioner was appointed SO (Aviation) HQ GNA till end April, 2003. On account of this crash, a Board of Inquiry was ordered and applicant was awarded letter of Severe Displeasure by CNS vide letter dated 04.11.2003, without serving any show cause notice. The censure letter resulted in his name not being considered by the promotion board for select list of Captains in 2002 and subsequent years. Also as a result of this he was de-inducted from the Aviation cadre resulting in forfeiture of Aviation Pay and Allowances,

however, even for this action, no show cause notice was given.

4. Petitioner filed the representation dated 27.1.2004 and 22.7.2005 and same were rejected vide Ministry of Defence letter dated- 25.1.2006. Therefore, petitioner filed present petition challenging his de-induction from aviation cadre on the ground of 'double jeopardy'. The petition came before us earlier and since petitioner challenged the order of 4.11.2003, which was dismissed being barred by time as petitioner approached this Tribunal in 2011 after 7 years of issuance of impugned order. However, he made an application for review of the order and same was reviewed and petition was restored back to be considered on merit.
5. A reply was filed by the respondent and respondent took serious objection of delay. It was pointed out that on account of this mid air collision, both the aircrafts were destroyed and all air crew i.e. 12 persons died in the crash. In addition, about 10 fatal civil casualties also took place. In the Court of Inquiry, he was found to be

guilty for supervisory lapses as a Sqn Cdr of INS350. He was awarded a letter of severe displeasure and thereafter looking into the severity of the accident, the Aviation Cadre management Board recommended that he should be de-inducted w.e.f.1.3.2004 and accordingly he was de-inducted by the order dated-4.12.2003.

6. The Learned Counsel for the Respondent, Sh.R.Balasubramanian took serious objection of delay and cited a decision of this Tribunal in the case of **Rakesh Kumar Aggarwal Vs. Union of India & Ors.[OA No.55 of 2012]** in which this Tribunal after examining the scope of section 22 of the limitation observed:

"These are the three contingencies which have been laid down in respect of limitation. Section 22(2) clearly says that Tribunal shall not admit an application after the period of six months referred to in clause (a) or clause (b), if the Tribunal is satisfied that the applicant had sufficient cause for not making the application within such period. So far as Section 22(a) and (b) are concerned, the period of limitation is six months. Sub Clause C of Section 22 only applies for the cases in which grievance had arisen by reason of any order preceding three years the date of jurisdiction, powers and authority of the Tribunal became exercisable i.e. three years prior to constitution of the Tribunal. But so far as approaching this Tribunal is concerned, the period is six months. But powers have been given as per Section 22 (2) to condone the delay beyond the

*prescribed period of six month if the Tribunal is satisfied that the applicant had sufficient cause for not making the application within such period. Section 21 of the Central Administrative Tribunal Act is para material with that of Section 22 of the Armed Forces Tribunal Act 2007. As such, decision of Hon'ble Supreme Court given in the case of **D.C.S. Negi Versus Union of India & Ors. (Supra)** squarely covers this case."*

7. Therefore learned counsel for the respondents seriously objected to the petitioner seeking to challenge the order dated-4.11.2003 by filing the petition in 2011. Learned Counsel for the petitioner argued the matter at length and banked upon a decision of this tribunal wherein it was held that principal of natural justice should be invoked whenever such de-induction from any cadre takes place. We would have interfered in the matter had the petitioner approached this tribunal in time. The petitioner's case does not fall in any of the categories of exception. Neither has any application been filed u/s 22(2) for condoning the delay by explaining the delay in approaching the Tribunal. Consequently, we have no alternative but to uphold the objection of the learned counsel for the respondent that this petition is extremely belated and same is accordingly dismissed.

8. No order as to costs.

[Justice A.K. Mathur]
Chairperson

(Lt. Gen. SS Dhillon]
Member (A)

New Delhi
22nd March, 2012