

**ARMED FORCES TRIBUNAL, PRINCIPAL BENCH  
NEW DELHI**

**TA NO. 262 of 2010**  
**(WRIT PETITION (C) NO. 16762 of 2006)**

**SINGHA B.**

**...APPELLANT**

**VERSUS**

**UNION OF INDIA AND ORS.**

**...RESPONDENTS**

**ADVOCATES**

**MR. AJAI BHALLA  
FOR THE RESPONDENTS**

**CORAM :**

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

**J U D G M E N T**  
**14.01.2010**

1. The petitioner filed W.P (C) No. 16762 of 2006 before the Delhi High Court challenging the District Court Martial (DCM) proceedings, whereby he was held guilty of having committed the offence under Section

39(a) of the Air Force Act 1950 and was sentenced to undergo detention for two months and to be dismissed from service. The writ petition was transferred to this Tribunal on its formation and the same was treated as an appeal under Section 15 of the Armed Forces Tribunal Act 2007 and is being disposed of by this judgment.

2. The appellant joined Indian Air Force on 12.7.1991. On completion of his initial training course, he became eligible to work on Canberra Aircraft as Air Frame Fitter. While so, he was detailed to Chief Engineer Office, No.4 Wing in December 1994. The appellant applied for three months leave to look after his aged mother, which was granted to him in January 1996. When he applied for extension of leave, the same was rejected. He had to bring his mother to live with him, but it became difficult for him to keep her in the unit, where family members were not permitted to reside. Resultantly, he had to send his mother to his home town. For that purpose, he asked for leave and the same was rejected on the ground of shortage of manpower. On 13.7.1998, he left his unit. When he reached his village Singerkone, he found his mother in a critical condition and could not report back. On 3.9.1998, Cpl. Chakraborty from Barackpore apprehended him and kept under close arrest from 3.9.1998 to 6.11.1998. On the ground

of absence without leave, two charges were framed against the appellant.

They are as under:

**FIRST CHARGE**

**Section 38(1) AF Act, 1950**

**DESERTING THE SERVICE**

in that he,

at Air Force Station Agra on 14 Jul 98 with the intention at the time of leaving or formed thereafter, of remaining permanently absent, and remained absent till his apprehension on 03 Sep 98 at Singarkone, West Bengal by 727405-S Cpl Chakraborty SK IAF/P of 6 P&S Unit Dett.

**SECOND CHARGE**

**Section 39(a) AF Act, 1950 (alternative to the first charge)**

**ABSENTING HIMSELF WITHOUT LEAVE**

in that he,

at 106 SR Sqn AF absented himself without leave from 14 Jul 98 till he was apprehended at Singarkone, West Bengal on 03 Sep 98 by 727405-S Cpl Chakraborty SK IAF/P of 6 P&S Unit Dett.

When the appellant pleaded not guilty to the charges, he was put to trial by the court martial. Based on evidence, the court martial found him guilty of the second charge, which was alternative to the first charge. He was sentenced to suffer detention for two months and to be dismissed from



service. Feeling aggrieved, he preferred a petition under Section 161(2) of the Air Force Act unsuccessfully. His petition under Section 162 is stated to be pending for a considerable time. Hence the challenge.

3. The fact remains that his representation under Section 161(2) was rejected on 8.3.1999. He failed to challenge the findings arrived at by the court martial. After about seven years, he filed the present writ petition. It is stated that since his petition under Section 162 was pending, he thought it unnecessary to prefer any appeal. Suffice it to mention that making of any representation would not be a ground to condone the delay in filing the statutory appeal. Furthermore, the reasons stated by him are not sufficient to condone the delay. Reliance may be placed on the decision in **Union of India and others v. M.K Sarkar** (2010(2) SCC 59), wherein the apex Court observed thus:

“14. The order of the Tribunal allowing the first application of respondent without examining the merits, and directing the appellants to consider his representation has given rise to unnecessary litigation and avoidable complications. The ill-effects of such directions have been considered by this Court in **C. Jacob v. Director or Geology and Mining** (2008(10) SCC 115): (SCC pp. 122-23, para 9)

"9. The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly, they assume that a mere direction to consider and dispose of the representation does not involve any 'decision' on rights and obligations of parties. Little do they realise the consequences of such a direction to 'consider'. If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to 'consider'. If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored."

15. When a belated representation in regard to a 'stale' or 'dead' issue/dispute is considered and decided, in compliance with a direction by the court/tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the 'dead' issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's

direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.

16. A court or tribunal, before directing 'consideration' of a claim or representation should examine whether the claim or representation is with reference to a 'dead' or 'stale' issue. If it is with reference to a 'dead' or 'stale' issue or dispute, the court/tribunal should put an end to the matter and should not direct consideration or reconsideration. If the court or tribunal deciding to direct 'consideration' without itself examining the merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and laches. Even if the court does not expressly say so, that would be the legal position and effect."

4. The appellant could not explain the delay and the laches satisfactorily. In the light of the above discussion, the appeal is dismissed.

**(S.S DHILLON)**  
**MEMBER**

**(S.S KULSHRESTHA)**  
**MEMBER**