IN THE ARMED FORCES TRIBUNAL PRINCIPAL BENCH,
NEW DELHI

TA NO. 481 OF 2009
(WRIT PETITION (CIVIL) NO. 3599 OF 1998)

K.S TIWARI ...APPELLANT

VERSUS

UNION OF INDIA & ORS. ...RESPONDENTS

ADVOCATES

DR. H.B MISHRA FOR THE APPELLANT
M/S. ANIL GAUTAM
WITH
LT. COL. NAVEEN SHARMA FOR THE RESPONDENTS

CORAM :

HON'BLE SH. S.S.KULSHRESTHA, MEMBER
HON'BLE SH. S.S.DHILLON, MEMBER

J U D G M E N T
01.04.2011

1. The petitioner filed W.P (C) No. 3599 of 1998 before the Delhi High Court seeking to quash the Summary Court Martial (SCM) proceedings, whereby he was held guilty of having committed the offence under Army Act Section 64(c) and sentenced him to undergo

rigorous imprisonment for six months and to be dismissed from service. Simultaneous prayer also has been made in the writ petition to direct the respondents to reinstate him in service and to hold a Medical Review Board to examine the petitioner so as to made consequential recommendation for reinstatement of the petitioner. Subsequently the case was transferred to this Tribunal on its formation and is being disposed of, treating it as an appeal under Section 15 of the Armed Forces Tribunal Act 2007.

2. The facts giving rise to this appeal, in brief, are: The appellant joined the Indian Army as Signalman on 2.7.1970. He was then posted to 1st Armoured Division Signal Regiment, Jhansi (M.P), from where he was shifted to Ambala. While so, the appellant, on account of a family dispute, which necessitated his presence at the native place, applied for discharge from service unsuccessfully. Under compelling circumstances, he again submitted an application for discharge on compassionate grounds. Despite repeated reminders, no action was taken. Finally, in the year 1973, again he sought discharge from service, which supposedly enraged the authorities. The appellant was threatened of dire consequences if he did not withdraw his application for discharge.

He was abused and tortured by his unit Subedar Major before taking him to the Commanding Officer. Instead of hearing his grievances, the CO started abusing him and called him a mad man. Thereafter, he was sent to the unit doctor for medical examination. He was forcibly administered medicines and even electric shocks. He was hospitalised in the mental ward of the Command Hospital, Chandigarh, where he was kept under psychiatric treatment from 19.11.1974 to 7.12.1974. He was then placed in lower medical category viz. CEE for six months by a medical board. He was then put to trial by the SCM for attempting to commit suicide and doing act towards the commission of the same. He was found guilty and sentenced to undergo rigorous imprisonment for six months and to be dismissed from service.

3. Counsel for the appellant has contended that the appellant was subjected to SCM proceedings when he was of unsound mind and, therefore, the proceedings against the appellant are against the provisions of Section 84 of the Indian Penal Code. The appellant was not provided the copy of the SCM proceedings which denied him the opportunity to have his say in the matter. That apart, there was clear violation of the provisions of Sections 145 to 149 of the Army Act.

4. Resisting the appeal, learned counsel for the respondents, inter alia, contended that the appeal is belated. The appellant was discharged from service in the month of June 1975. After about 23 years, the present appeal is filed. Therefore, the appeal is not maintainable on the ground of delay and laches. Moreover, it would be difficult for the respondents to bring on record the evidence against the appellant as in course of time; the records have already been weeded out. However, from the available records, it is clear that he was sentenced to undergo imprisonment for six months and to be dismissed from service for the offence under Army Act Section 64(c). It was stated that the appellant was hospitalised and put to psychiatric treatment and he was placed in the lower medical category of CEE by a medical board, which categorised him as a psychiatric case. He was tried and convicted and there is no justification after 23 years to consider his appeal.

5. The respondents were time and again directed to bring on record the original documents so as to facilitate the disposal of this appeal. It was submitted that the records have already been weeded out, after the prescribed period. As is rightly pointed out by learned counsel for the respondents, there could be no possibility of keeping any record

with the anticipation of filing any representation or appeal after such a long delay. Therefore, no undue advantage could be taken by the appellant on the ground of not making available the original records.

6. The appellant was medically categorised as CEE, which is not sufficient to exonerate him from the charge levelled against him. For claiming the benefit of Section 84 of the Indian Penal Code, the appellant should prove legal insanity and not medical insanity. Reliance may be placed on the decision in **Surendera Mishra** v. **State of Jharkhand** (JT 2011(1) SC 83), wherein the apex Court held thus:

> "7. From a plain reading of the aforesaid provision it is evident that an act will not be an offence, if done by a person who, at the time of doing the same by reason of unsoundness of mind, is incapable of knowing the nature of the act, or what he is doing is either wrong or contrary to law. But what is unsoundness of mind? This Court had the occasion to consider this question in the case of Bapu alias Gujraj Singh v. State of Rajasthan (JT 2007(11) SC 1 : 2007(8) SCC 66), in which it has been held as follows:
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> > 'The standard to be applied is whether according to the ordinary standard, adopted by reasonable men, the act was right or wrong. The mere fact that an accused is conceited, odd, irascible and his brain is not quite all right, or that the physical and mental ailments from which he suffered had rendered his intellect weak and had affected his emotions and will, or that he had committed certain unusual acts in

> the past, or that he was liable to recurring fits of insanity at short intervals, or that he was subject to getting epileptic fits but there was nothing abnormal in his behaviour, or that his behaviour was queer, cannot be sufficient to attract the application of this section.'
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> 9. In our opinion, an accused who seeks exoneration from liability of an act under Section 84 of the Indian Penal Code is to prove legal insanity and not medical insanity. Expression 'unsoundness of mind' has not been defined in the Indian penal Code and it has mainly been treated as equivalent to insanity. But the term insanity carries different meaning in different contexts and describes varying degrees of mental disorder. Every person who is suffering from mental disease is not ipso facto exempted from criminal liability. The mere fact that the accused is conceited, odd, irascible and his brain is not quite all right, or that the physical and mental ailments from which he suffered had rendered his intellect weak and affected his emotions or indulges in certain unusual acts, or had fits of insanity at short intervals or that he was subject to epileptic fits and there was abnormal behaviour or the behaviour is queer are not sufficient to attract the application of Section 84 of the Indian Penal Code."

7. This appeal was not admitted on account of delay and laches and this point remained open during the pendency of this case. In **Sawaran Lata and others** v. **State of Haryana and others** (JT 2010(3) SC 602), while considering the question of delay and laches, the apex Court

observed that the matter should be challenged before it attained finality. It would be appropriate if we quote paragraphs 7 and 8 of the said decision, viz.:

> "7. A Constitution Bench of this Court, in *Aflatoon & Ors.* v. *Lt. Governor, Delhi & Ors*. (AIR 1974 SC 2077), while dealing with the issue, observed as under:
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> > "..... to have sat on the fence and allowed the government to complete the acquisition on the basis that notification under Section 4 and the declaration under Section 6 were valid and then to attack the notification on the grounds which were available to them at the time when the notification was published, would be putting a premium of dilatory tactics. The writ petitions are liable to be dismissed on the ground of laches and delay on the part of the petitioner."
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> 8. Same view has been reiterated by this Court observing that acquisition proceedings should be challenged before the same attain finality. In *State of Mysore* v. *V.K Kangan* (AIR 1975 SC 2190); *PT. Girdharan Prasad Missir* v. *State of Bihar* (1980(2) SCC 83); *Bhoop Singh* v. *Union of India* (JT 1992(3) SC 322 : AIR 1992 SC 1414); *State of Orissa* v. *Dhobei Sethi & Anr*. (JT 1995(6) SC 624 : 1995(5) SCC 583); *State of Maharashtra* v. *Digambar* (JT 1995(9) SC 310 : AIR 1995 SC 1991); *State of Tamil Nadu* v. *L. Krishnan* (JT 1996(1) SC 660 : AIR 1996 SC 497); and *C. Padma & Ors*. v. *Dy. Secretary to Govt. of Tamil Nadu & Ors*. (JT 1996(Suppl.) SC 263 : 1997(2) SCC 627)."

8. Counsel for the appellant contended that on the advice of the Additional Director General (Discipline & Vigilance), the appellant

submitted a petition on 5.9.1997 and reminders were also sent. There was no response from the side of the respondents. Therefore, ultimately, without any loss of time, this appeal was filed in July 1998. The appellant has drawn the cause of action from the subsequent representation, which is stated to have been made by him on 5.9.1997. Making representation would not in any confer fresh cause of action and the cause of action which occasioned on account of his discharge from service in the year 1975 cannot be extended. In **C. Jacob** v. **Director of Geology and Mining and another** (2008(10) SCC 115), while dealing with the issue, the apex Court observed that "there is need for circumspection and care in issuing directions for 'consideration'. If the representation on the face of it is stale, or does not contain particulars to show that it is regarding a live claim, courts should desist from directing 'consideration' of such claims. It further held at Paragraph 9 thus:

> "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."

Viewed in this light, we have no hesitation in holding that this appeal is highly belated.

8. In the result, the appeal is dismissed, on account of delay and laches.

(S.S DHILLON)
MEMBER

(S.S KULSHRESTHA)
MEMBER