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**COURT NO. 2, ARMED FORCES TRIBUNAL,  
PRINCIPAL BENCH, NEW DELHI**

**O.A. No.05/12**

**IN THE MATTER OF:**

**Naik Rajendra R.**

**.....Petitioner**

**VERSUS**

**Union of India & Ors.**

**.....Respondents**

**Dated: 19.10.2012**

Present: Mr. K. Ramesh and Ms. R. Archana, counsel for the  
petitioner

Mr. Ajai Bhalla counsel for the respondents

Heard learned counsel for the petitioner on the M.A. filed for condonation of delay including the subsequent application filed on 01.02.2012. At the outset, we may observe that the punishment was passed by the Summary Court Martial on 22.04.1997. Against that a statutory complaint was filed which had been dismissed. Date of dismissal is not available. However, challenging that, CWP No.23035 of 2000 was filed by the petitioner before the Kerala High Court which came to be allowed vide judgment dated 15.06.2006 directing the respondents to consider the matter afresh treating the already filed statutory complaint and pass appropriate orders therein and as expeditious as possible, at any time within six months from the date of receipt of copy of that judgment. Thereafter, the impugned order has been passed on 04.01.2012 only. Reasons given by the petitioner in

para (B) of the application about having come from Kerala, meeting counsels and going back, then arranging for basic minimum agreed and then facing domestic problems including rearing of children and elders in the family dependent on him and meagre daily wagers, apart from the fact that there were certain deaths in the family in between on account of which the petitioner got delayed in filing this OA, as hardly any explanation here or there. Apart from, there being bereft of any fact capable of being verified by other side. All that it shows is that the filing of OA by the petitioner was a thing of last priority after getting over all his domestic affairs. It is different story that the petitioner was aware of the legal process, in as much as, on passing of the earlier order, he filed a writ petition before the Kerala High Court which remain pending for six years. In such circumstances, many of the defences projected in para (B) would not have been there, if the petitioner wants to file the OA before the Kochi Bench of this Tribunal. We make it clear that we do not mean to held that the petitioner could not file the present OA at Delhi but this observation is being made only for the purpose of considering the aspect of entitlement to have the delay condoned.

To say the least, in our view, no sufficient ground has been made for condonation of delay. The M.A. is, therefore, dismissed and consequently the OA is also dismissed as time barred. We may gainfully referred to and relied upon the judgment of this Tribunal passed recently in the case of **ERA Rakesh Kumar Aggarwal Vs Union of India & Ors.**, (OA No.55/2012 dated 17.02.2012) which in

turn proceeds on the basis of the judgment of Hon'ble Supreme Court in the matter of **D.C.S. Negi Vs Union of India & Ors., bearing SLP (Civil) CC No.3709 of 2011 dated 07.03.2011.**

The petition is thus dismissed as time barred.

**M.L. NAIDU**  
**(Administrative Member)**

**N.P. GUPTA**  
**(Judicial Member)**

**Dated: 19.10.2012**

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